



The 11th Street Corridor Design-Build Project

BOOK 1 — DESIGN-BUILD CONTRACT

December 5, 2008

RFP Number DCKA-2008-R-0146
District Department of Transportation
2000 14th Street, NW, 6th Floor
Washington, DC 20009





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EXHIBITS

- A Acronyms and Definitions
- B Completion Date
- C Federal Requirements
- D Disadvantaged Business Enterprise (DBE) Program
- E Key Personnel
- F Performance Bond
- G Payment Bond
- H VECP Sample Calculation
- I Cost Analysis for Request for Change Order



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A. SOLICITATION, OFFER, AND AWARD

SOLICITATION, OFFER, AND AWARD			1. Caption		Page of Pages 1		
2. Contract Number		3. Solicitation Number		4. Type of Solicitation		5. Date Issued	
				<input type="checkbox"/> Sealed Bid (IFB) <input type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Design-build Contract <input type="checkbox"/> Emergency		6. Type of Market	
						<input type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open with Sub-Contracting Set Aside <input type="checkbox"/> Open with DBE Requirements	
7. Issued By: Office of Contracting and Procurement (Indicate Cluster Name) (Indicate Address, including Room/Suite Number) Washington, DC (Include Zip Code)				8. Address Offer to: Office of Contracting and Procurement			
NOTE: In sealed bid solicitations "offer" and "offeror" means "bid" and "bidder"							
SOLICITATION							
9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at _____ until _____ local time _____ (Date)							
CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.							
10. For Information Contact		A. Name		B. Telephone		C. E-mail Address	
		(Area Code)		(Number)		(Ext)	
11. Table of Contents							
(X)	Section	Description	Page No.	(X)	Section	Description	Page No.
	BOOK I - CONTRACT				BOOK 2 - TECHNICAL REQUIREMENTS		
X	A	Solicitation/Contract Form		X		Includes Appendices and Exhibits	
X	B-Z	Contract Requirements		X		BOOK 3 - APPLICABLE STANDARDS	
X				X		DDOT and Federal Standards	
x	ITP	Packaging and Marking				BOOK 4 - CONTRACT DRAWINGS	
X		Instructions to Proposers		X		Includes ROW Drawings	
X				X		PROPOSAL	
X				X		To the extent it meets or exceeds RFP	
OFFER							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.							
13. Discount for Prompt Payment		Not Applicable		Not Applicable		Not Applicable	
		N/A					
14. Acknowledgement of Addenda (The Proposer has acknowledged receipt of addenda to the RFP in its Proposal):				16. Name and Title of Person Authorized to Sign Offer/Contract			
15A. Name and Address of Proposer							
15B. Telephone		15 C. Check if remittance address is different from above - Refer to Section G		17. Signature		18. Offer Date	
(Area Code)		(Number)		(Ext)			
AWARD (TO BE COMPLETED BY GOVERNMENT)							
19. Accepted as to Items Numbered			20. Amount		21. Accounting and Appropriation		
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (District of Columbia)			24. Award Date	



B.1 INTRODUCTION

B.1.1

This Design-Build Contract is entered into as of _____, 2009, by and between the District of Columbia, Office of Contracting and Procurement, by and through the District Department of Transportation (hereinafter referred to as, “the District”) and _____, a _____ (hereinafter, “Contractor”), (collectively referred to as “the parties”), with reference to the definitions contained in Exhibit A hereto and the following facts:

B.1.2

The purpose of this project is to reduce congestion and improve the mobility of traffic across the Anacostia River on the 11th Street Bridges and on the local streets in the area. The project is also intended to increase the safety of vehicular, pedestrian and bicycle traffic; to replace the deficient infrastructure and roadway design; and to provide an alternative evacuation route or routes for security movements in and out of Washington, DC.

B.1.3

A Final Environmental Impact Statement (FEIS) was issued by FHWA on October 1, 2007, and a Record of Decision (ROD) was issued by FHWA on Wednesday, July 2, 2008. The final RFP requirements encompass environmental commitments and mitigation measures set forth in the FEIS, and the final Contract Documents will include the environmental commitments applicable to the Project commitments as defined by the Contractor’s Proposal and the District.

B.1.4

The Contract is a lump-sum design/build contract obligating the Contractor to perform all Work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to specified exceptions. To allow the District to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting the Contractor’s ability to make claims for an increase to the Contract Price or an extension of the Completion Date(s). The Contractor agrees to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Contract Price.

B.1.5

If the Contractor fails to complete the Project within the time limitations set forth in the Contract Documents, then the District will suffer substantial losses and damages. The Contract Documents therefore provide that the Contractor shall pay the District substantial Liquidated Damages if such completion is delayed.

B.1.6

The District has provided Reference Information to the Contractor. The Contractor has no right to rely on the Reference Information. The District and the Contractor both intend for the Contractor to assume full responsibility and liability with respect to the design of the Project, and the District and the Contractor both intend for the Contractor to indemnify and hold harmless the District and others with respect to any defects in the Project.

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

C.1 CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

C.1.1 Certain Definitions

Exhibit A hereto contains the meaning of various acronyms and terms used in the Contract Documents.

C.1.2 Contract Documents

The term “Contract Documents” shall mean the documents listed in Section C.1.3, including all Exhibits thereto.

C.1.3 Order of Precedence

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

1. Book 1, as executed by the District and the Contractor, including all exhibits (Design-Build Contract).
2. Book 2, including all Appendices and Exhibits (Technical Requirements).
3. Book 3 Applicable Standards.
4. Book 4 Contract Drawings, Data, and Reports.
5. The Proposal Documents and the Proposal Appendix, to the extent that they meet or exceed the requirements of the other Contract Documents, including the Approved Alternative Technical Concepts. In other words, if the Proposal Documents or Proposal Appendix include statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents, or to perform services in addition to those otherwise required or otherwise contain terms which are more advantageous to the District than the requirements of the other Contract Documents, the Contractor’s obligations hereunder shall include compliance with all such statements, offers, and terms. Any information provided by the Proposer in an attachment to its Proposal that is in addition to the information required to be submitted in the ITP will be for information only and will not become part of the Contract Documents.

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement within a Book or a reference contained within a Book of the Contract Documents, the District shall have the right to determine, in its sole discretion, which requirement(s) apply. The Contractor shall request the District’s determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

C.1.4 Reference Information

The documents included in the Reference Information are for information only and are not Contract Documents to be relied upon by the Contractor. Cross-references in the Contract Documents to the Reference Information do not incorporate the Reference Information or portions of the Reference Information as Contract Documents or requirements.

C.1.5 Interpretations

In the Contract Documents, where appropriate:



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- 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 as of the Proposal Due Date;
- Words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or section;
- Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and
- Words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to the District’s attention any conflicts or ambiguities contained therein. The Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them, and instead other rules of interpretation shall be used. The District’s final answers to the questions posed during the proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

C.1.6 Referenced Standards, Codes, or Criteria

Except as otherwise specified in the Contract Documents, or otherwise directed by the District, references to standards, codes, or criteria, or to the latest version of standards, codes, or criteria, shall mean the latest version in effect on the Final Proposal Due Date, except that the applicable version date of the Alternative Technical Concepts shall be the date found acceptable by the District.

C.1.7 Omission of Details; Clarification by the District

The Contractor shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the District in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the District of all Errors that it may discover in the Contract Documents, and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby.

C.1.8 Computation of Periods

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless specified otherwise. 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



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specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day that 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 G.5.3 and any other requirements for which it is clear that performance is intended to occur when necessary 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.

C.1.9 Standard for Approvals

In all cases where Approvals, acceptances or consents are required to be provided by the District or approvals, acceptances or consents are required to be provided by the Contractor hereunder, such Approvals, acceptances, approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

C.1.10 Federal Requirements

Contractor must comply with all Federal Requirements, including the requirements in Exhibit C. Notwithstanding anything to the contrary contained herein, in the event of any conflict between any Federal Requirement 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.

C.1.11 Completion Dates

The Instructions to Proposers (ITP) permits the Contractor to propose the Project Completion Date as described therein on Exhibit B. All references in the Contract Documents to the Completion Dates shall be deemed to include the Project Completion Date and Final Acceptance Date described in the Proposal Documents.

D OBLIGATIONS OF CONTRACTOR

D.1 Performance Requirements

D.1.1 Performance of Work

All materials, services and efforts necessary to achieve Final Acceptance on or before the Final Acceptance Date as shown on Exhibit B shall be the Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section O, the costs of all such materials, services and efforts are included in the Contract Price.

D.1.2 Performance Standards

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

D.1.3 Performance as Directed

At all times during the term hereof, including during the course of and notwithstanding the



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existence of any dispute, the Contractor shall perform as directed by the District in a diligent manner and without delay, shall abide by the District'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 U.

D.2 General Obligations of Contractor

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

1. Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other Persons): (i) to construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, including the Contract Schedule, all Legal Requirements, all Governmental Approvals, the Quality Manual, the Maintenance of Traffic Plan, the Public Information Plan, Applicable Standards (including Approved Alternative Technical Concepts), and all other applicable safety, environmental, licensing and other requirements, taking into account the Right of Way (ROW) Drawings and other constraints affecting the Project, so as to achieve the Completion and Final Acceptance Dates; and (ii) otherwise to do everything required by and in accordance with the Contract Documents.
2. At all times provide a Contractor Project Manager, Approved by the District, who: (i) will have full responsibility for the prosecution of the Work; (ii) will act as agent and be a single point of contact in all matters on behalf of the Contractor; (iii) will be present (or his Approved designee will be present) at the Site at all times that Work is performed; and (iv) will have authority to bind the Contractor on all matters relating to the Project. Either the Contractor Project Manager or his designee will attend all meetings related to the Project.
3. Obtain all Governmental Approvals (other than the Environmental and National Park Service Approvals and certain New Environmental Approvals agreed to be obtained by the District in other areas of the Contract Documents).
4. Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, including implementation of all environmental commitments and mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.
5. Provide such assistance as requested by the District in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require the Contractor to provide legal services.
6. Comply with all requirements of all applicable Legal Requirements, including: (i) the Environmental Laws, including all environmental commitments, mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 5, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Substances; (ii) 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 (iii) the Federal Requirements.
7. Comply with all Applicable Standards as revised to ensure their enforceability.
8. Cooperate and coordinate with the District and Governmental Persons with jurisdiction over



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- the Project in the review and oversight of the Project and other matters relating to the Work.
9. Make payments to Third Parties required by the Contract Documents, if any, including but not limited to, payments to Utility Companies.
 10. Supervise and be responsible to the District for acts and omissions of all Contractor-Related Entities, as though the Contractor directly employed all such Persons.
 11. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating or redeploying the Contractor's forces to other work, as appropriate.
 12. The Government of the District of Columbia is exempt from, and will not pay, Federal Excise Taxes and DC Sales and Use Tax for materials which are physically incorporated as a permanent part of the finished Project. **PROPOSERS MUST EXCLUDE SUCH TAXES, AS WELL AS STATE AND CITY TAXES FROM THEIR BIDS.** It is the Contractor's responsibility to furnish its suppliers with a Contractor's Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the District of Columbia. However, if there are any other applicable taxes, imposed by a Governmental Person, whether direct or indirect, relating to or incurred in connection with the performance of the Work, the Contractor shall be responsible for such taxes.
 13. All Work over, on or adjacent to navigable waters shall be so conducted that free navigation of the waterways will not be interfered with and that existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard and/or the U.S. Army Corps of Engineers, as applicable.

D.3 Representations, Warranties, and Covenants

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

D.3.1 Evaluation of Constraints

The Contractor has evaluated the constraints affecting delivery of the Project, including the ROW Drawings and the conditions of the Environmental Approvals, and has grounds for agreeing that the Project can be delivered within such constraints, within the time specified in Exhibit B and within the Contract Price.

D.3.2 Review of Site Information

The Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, shall review the boring logs provided by the District in Book 4, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, to the extent the Contractor deemed necessary or advisable for submittal of a Proposal. As a result of such review, inspection, examination and other activities, the Contractor is familiar with and accepts the physical requirements of the Work. The Contractor acknowledges and agrees that changes in conditions at the Site may occur after the Proposal Due Date, and that the Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Section N. Before commencing any Work on a particular aspect of the Project, the Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work, which may have an impact on such Work. The Contractor shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.



D.3.3 Governmental Approvals

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

D.3.4 Progression of Work

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

D.3.5 Contractor/Employee Performance Requirements

The District has the authority for administration and engineering oversight of the Contract.

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

If the District determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, then, the District has the authority to require the Contractor to replace any Contractor's representative, including staff, who is not performing to the satisfaction of the District. At the written request of the District, such Person shall not be re-employed on the Project without the prior written Approval of the District. If such Person is not replaced with skilled and experienced personnel for the proper performance of the Work, then the District may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

D.3.6 Design and Engineering Personnel

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



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D.3.7 Organization

The Contractor, _____, is a _____, duly organized and validly existing under the laws of the District of Columbia with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor and its joint venture members [or the Contractor and its Major Participants] are duly qualified to do business, and are in good standing, in the District of Columbia, 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.

D.3.8 Authorization

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

D.3.9 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor.

D.3.10 False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and the USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

**E INFORMATION SUPPLIED TO CONTRACTOR;
RESPONSIBILITY FOR DESIGN; DISCLAIMER**

E.1 Information Supplied

The District has made available to the Contractor information, which is described in the Contract Documents as certain Reference Information regarding the Project, and has agreed to allow the Contractor access to the Site for purposes of inspection and testing.

E.2 Responsibility for Design

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

1. The Contractor is not entitled to rely on and has not relied on: (i) the Reference Information; or (ii) any other documents or information provided by the District, unless specifically



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permitted in the Contract Documents.

2. The Contractor's Warranties and indemnities hereunder cover any Errors in the Project even though they may be related to Errors in the Reference Information.

E.3 Disclaimer

E.3.1 No Liability Regarding Reference Information

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

E.3.2 No Representation or Warranty Regarding Reference Information

THE DEPARTMENT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE REFERENCE INFORMATION IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS TO THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

E.4 Professional Licensing Laws

The District does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract, the Contractor acknowledges that the District has no such intent. It is the intent of the parties that the Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to the Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Contractor shall "furnish" the design for the Project. The terms and provisions of this Section E.4 shall control and supersede every other provision of the Contract Documents.

F TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING

F.1 Time of Essence

Time is of the essence of the Contract.

F.2 Notices to Proceed

F.2.1 Issuance of Notice-to-Proceed 1

The Contractor shall begin performance of certain limited Work as directed and described in Notice-to-Proceed 1 (NTP1)/Contract award is issued by the District. NTP1 Work that may be performed includes all Work other than construction. The Contract will be awarded and NTP1



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will be issued after the District has received Contractor's Performance and Payment Bonds and insurance certificates. The Contractor shall not receive its first monthly progress payment until it has submitted a Preliminary Baseline Schedule that is acceptable to the District. If the District does not award the Contract after receipt of Contractor's Performance and Payment Bonds and insurance certificates through no fault, negligence, act or failure to act of Contractor, Contractor shall be entitled to an extension of the Completion Dates to the extent of the delay between acceptance of the Contractor's documents described above and Contract award.

F.2.2 Issuance of Notice-to-Proceed 2

The Contractor shall begin performance of the remainder of the Work as directed and described in Notice-to-Proceed 2 (NTP2) issued by the District. The District shall issue NTP2 upon Approval of the Original Baseline Schedule in accordance with Book 2, Section 2, and Approval of the Quality Manual in accordance with Book 2, Section 3. The District will provide comments on the Original Baseline Schedule and the Quality Manual within 30 days of receipt of each and will issue NTP2 immediately upon satisfactory incorporation by Contractor of the District's comments on both documents.

F.3 Completion Dates

F.3.1 Project Completion Date

The Contractor shall achieve Project Completion within the deadline set forth on Exhibit B. Said deadline for Project Completion, as it may be extended hereunder, is referred to as the "Project Completion Date."

F.3.2 Final Acceptance Date

The Contractor shall achieve Final Acceptance within 90 days after achieving Project Completion. Said deadline for Final Acceptance, as it may be extended hereunder, is referred to as the "Final Acceptance Date."

F.3.3 No Time Extensions

Except as otherwise specifically provided in Section N, the District shall have no obligation to extend any Completion Dates and the Contractor shall not be relieved of its obligation to comply with the Contract Schedule and the applicable Completion Dates for any reason.

F.4 Contract Schedules

The Contractor shall deliver the Work in accordance with the Accepted Contract Schedules, as described in Book 2, Section 2.1. Such schedules shall also be the basis for determining the amount of monthly progress payments to be made to the Contractor.

F.5 Recovery Schedule

The Contractor shall submit a Recovery Schedule in accordance with Book 2, Section 2.1.5. All costs incurred by Contractor in preparing and achieving the Recovery Schedule shall be borne by Contractor 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 O.

If a Recovery Schedule would be required in order to meet a Completion Date due to an event which entitles the Contractor to a Change Order as described in Section N, the District shall have the right in its sole discretion to decide whether to allow a time extension (with no extended overhead or other delay or disruption damages payable except as provided in



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Section O) or to require implementation of the Recovery Schedule without such time extension. In such event Contractor shall submit to the District at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other of which shall provide for an extension of the Completion Date without any increase in the Contract Price except as provided in Section O. If the District elects to implement the Recovery Schedule in lieu of a time extension, the District shall issue a Change Order increasing the Contract Price to account for additional Acceleration Costs, if any. If it is not feasible to recover to the original Completion Date or if Contractor believes that the costs associated with such a recovery are prohibitive, then the Contractor shall recommend a date to be shown in the time extension Change Order form.

In the event that the Contractor fails to provide an Approved Recovery Schedule within 30 days from the Contractor's receipt of a notice to do so, the District shall withhold 20% of the Contractor's progress payments until such time as Contractor has prepared and the District has Approved such Recovery Schedule. Such Approval by the District will not be unreasonably withheld.

F.6 Prerequisites for Start of Construction

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

1. The District has issued NTP1 and NTP2.
2. All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed.
3. All insurance policies and bonds required to be delivered to the District hereunder have been submitted to the District as applicable and remain in full force and effect.
4. All necessary rights of access for such portion of the Project have been obtained.
5. Any additional conditions for construction set forth in the Contract Documents have been met.

G CONTROL OF WORK

G.1 Control and Coordination of Work

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

G.2 Safety

The Contractor shall 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 District and its consultants, visitors to the Site and members of the public who may be affected by the Work. The Contractor shall at all times comply with its safety program. The Contractor shall immediately notify the District if the Contractor believes that any Contract requirement creates a safety issue.

Except as otherwise expressly provided in the Contract Documents, the Contractor is authorized



to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the District.

G.3 Process to be Followed for Discovery of Certain Site Conditions (To be Provided)

G.4 Quality Management

G.4.1 Contractor Quality Management

The Contractor shall perform the quality management necessary for the Contractor to comply with its obligations under the Contract Documents.

G.4.2 Oversight, Audit, Inspection, and Testing by the District and Others

All materials and each part or detail of the Work shall also be subject to oversight, audit and testing by the District and other Persons designated by the District. When any third party, including a Utility Owner, railroad company, unit of government, or political subdivision, is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, audit, inspect and test the Work to the extent such work is related to such third party. Such oversight, audit, inspection and/or testing does not make such Person a party to the Contract nor will it change the rights of the parties hereto. The Contractor hereby consents to such oversight, inspection and testing by the District and other Persons. Upon request from the District, the Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

G.4.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, the Contractor shall remove or uncover such portions of the finished construction Work as directed by the District. After examination by the District, the Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work or making good the parts removed and recovery of any delay to the Critical Path occasioned thereby shall be at the Contractor's expense. If Work exposed or examined under this Section G.5.3 is in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work shall be at the District's expense and any delay in the Critical Path from uncovering, removing and restoring Work shall be the District's responsibility. Refer to Section G.7 for provisions regarding payments owing by the Contractor to the District, if the District agrees (in its sole discretion) to accept certain Nonconforming Work.

G.5 Effect of Oversight, Spot Checks, Assessment, Tests, Acceptances, and Approvals

G.5.1 Oversight and Acceptance

The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, assessments, reviews, tests, inspections, acceptances, Approvals, or



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

G.5.2 No Estoppel

The District shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, 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 the Contractor 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 District shall not be precluded or estopped from recovering from the Contractor and its Surety(ies) such damages as the District may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract Documents.

G.6 Nonconforming Work

G.6.1 Rejection, Removal, and Replacement of Work

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

G.6.2 Nonconforming Work Pay Adjustment

The District may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In such event, the District shall be entitled to reimbursement of a portion of the Contract Price in an amount determined by the District. In certain events, however, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, but not limited to, the Contractor's failure to perform required items to be paid in equal monthly amounts indicated in the Work Breakdown Structure (WBS) in Book 4 during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at the District's election: (i) the amount allocated to such Work in



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the Revised Baseline Schedule; (ii) the Contractor's cost savings associated with its failure to perform the Work in accordance with the Contract requirements; or (iii) the amount deemed appropriate by the District to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, the District shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents. Such reimbursement shall be deducted from future payments or, if future payments are insufficient to cover the amount owing, shall be payable to the District within 30 Days after Contractor's receipt of an invoice therefor.

H ACCESS TO SITE, UTILITY RELOCATIONS, AND ENVIRONMENTAL COMPLIANCE

H.1 Access to Right of Way Identified on Right of Way Drawings

H.1.1 Obligation to Provide Access to Right of Way

The District has identified certain ROW to be used for permanent improvements included in the Project (the "ROW Drawings"), which are depicted in Book 4. The District will provide access to the ROW identified on the ROW Drawings in accordance with the ROW Schedule in Book 4.

H.1.2 Right of Way Access Requirements

Concurrently with review of the Original Baseline Schedule, the Contractor and the District shall discuss the access requirements for the ROW identified on the ROW Drawings associated with the scheduled Activities. The Contractor and the District may agree to revise the ROW Schedule set forth in Book 4 in writing without a Change Order. The Contractor shall be provided access to those parcels identified on the ROW Drawings in accordance with the ROW Schedule or as modified by the parties.

H.1.3 Delay in Providing Access

If the District at any time determines it will be unable to provide access to a particular parcel in accordance with the ROW Schedule, the District shall notify the Contractor regarding the revised projected date for delivery of access. The Contractor shall take appropriate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section H.1.4, to the extent that a delay to the Critical Path cannot be avoided due to not providing access to a parcel(s) in accordance with the ROW Schedule, the Contractor shall be entitled to additional compensation and/or time in accordance with Section N.

H.1.4 Obligation to Provide Written Notice

In addition to the requirements of Section H.1.3, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Date related to the District's delivery of access to the parcels identified on the ROW Drawings, the Contractor shall provide the District written notice within five Business Days after receipt of a revised projected date if the lack of availability will result in an impact to the cost or schedule.

H.1.5 Access to Right of Way Not Identified on Right of Way Drawings

The cost of obtaining any ROW not identified on the ROW Drawings associated with a Value Engineering Change Proposal (VECP) will be included in determining the Contract Price

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adjustment under Section O.

The Contractor shall prepare all documents described in Book 2, Section 8 and shall deliver them to the District in sufficient time to allow review and Approval prior to the date the transfer is scheduled to occur.

The Contractor shall reimburse the District for any costs (including attorneys', accountants' and expert witness fees and costs) of acquiring any real property which is not the District's responsibility and which the Contractor determines is necessary or advisable in order to complete the Project, including obtaining any Temporary Easements. The District may deduct such amounts from payments otherwise owing hereunder, or may invoice the Contractor. The Contractor shall reimburse the District for any such amounts paid by the District within a month after receipt of an invoice from the District therefore.

H.1.6 Failure to Have Necessary Rights of Access

If the Contractor enters any property in connection with the Project without having all necessary rights of access, the District may, in its sole discretion, obtain consent from the landowner for the Contractor's access. The Contractor shall be responsible for all costs incurred by the District as a result thereof.

H.2 Utility Relocations – [To be provided.]

H.3 Environmental Compliance

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

H.3.1 Mitigation Requirements

The Contractor shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project as agreed upon by the District and the Contractor. The mitigation requirements for the Final Environmental Impact Statement and the Record of Decision are set forth in Book 2, Section 5. The Contract Price includes compensation for the Contractor's performance of all such mitigation measures that are included in the agreed-upon scope of the Contract, for performance of all mitigation measures arising from New Environmental Approvals which Section H.3.3 designates as the Contractor's responsibility, for mitigation measures required by any Governmental Approvals, and for all other Activities to be performed by the Contractor as described in Book 2, Section 5.

H.3.2 New Environmental Approvals to be Obtained by the District

The District will be responsible for obtaining any New Environmental Approvals necessitated by a time and money change order described in Section N.1. The Contractor shall provide support services to the District with respect to obtaining any such New Environmental Approval.



H.3.3 New Environmental Approvals to be Obtained by Contractor

If a New Environmental Approval becomes necessary for any reason other than those specified in Section H.3.2, the Contractor shall be fully responsible for obtaining the New Environmental Approval and any other environmental approvals that may be necessary, and for all resulting requirements, as well as for any litigation arising in connection therewith. The District will reasonably assist the Contractor in obtaining any New Environmental Approvals. If the New Environmental Approval is associated with a VECP or other Contractor requested change order, the costs of obtaining and complying with the terms of the New Environmental Approval shall be considered in determining the Contract Price adjustment under Section O.

I EQUAL EMPLOYMENT OPPORTUNITY; SUB-CONTRACTS; LABOR

I.1 Equal Employment Opportunity

I.1.1 Equal Employment Opportunity Policy

The Contractor confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or disability; and that it maintains no employee facilities segregated on the basis of race, color, religion or national origin. The Contractor shall comply with the District's Equal Employment Opportunity Policy and the requirements set forth in FHWA Form 1273, and in all Exhibit C, Federal Requirements Forms.

I.1.2 Non-Discrimination

The Contractor shall comply with all applicable Legal Requirements that enumerate unlawful employment practices, including discrimination because of race, religion, color, gender, age, disability, or national origin, and that define actions required for affirmative action and minority/disadvantaged business programs. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age or disability. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, national origin, religion, gender, age or disability. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

I.1.3 Inclusion in Subcontracts

The Contractor shall include Sections I.1.1 and I.1.2 in all contracts and Subcontracts over \$10,000 (including purchase orders) on the Project, so that such provisions will be binding upon each Subcontractor working on the Project.

I.1.4 Federal Workforce Requirements

The Federal standards of ____ minorities per trade and ____ percent women shall be the Contract



goal for this Project as determined by the U. S. District of Labor.

I.2 Disadvantaged Business Enterprises (DBE)

I.2.1 Disadvantaged Business Enterprises Policy

The Contractor shall comply with the District's Disadvantaged Business Enterprises (DBE) Policy ensuring that DBEs shall have a full and equal opportunity to compete fairly in the performance of contracts financed in whole or in part with Federal funds. The Contractor shall comply with the requirements set forth in Exhibit C and the DBE requirements set forth in Exhibit D. The Contractor shall either meet the DBE goals established for the Project, which are 15 percent for design and 6 percent for construction, or shall make a good faith effort to meet the DBE goals.

I.2.2 Inclusion in Subcontracts

The Contractor shall include Section I.2.1 and Exhibit D in every contract and Subcontract (including purchase orders), so that such provisions will be binding upon each Subcontractor.

I.3 Limitation on Subcontracted Work

The Contractor shall sublet no more than 60 percent of the construction Work, and the Major Participant responsible for design shall sublet no more than 60 percent of the design Work. The percentage of construction Work sublet shall be determined by dividing the total dollar value of the Subcontracts for construction Work, excluding any Subcontracts with Major Participants but including any Subcontracts under and through Major Participants, by the portion of the Contract Price allocable to construction Work (as determined by the District). The percentage of design Work sublet shall be determined by dividing the total dollar value of the design Subcontracts (except Subcontract(s) between the Contractor and the Major Participant(s) responsible for design) by the total dollar value of the prime design Subcontract(s); (i.e. the Subcontract(s) between the Contractor and the Major Participant(s) responsible for design).

I.4 Subcontracting Requirements

The Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts (including Exhibits C and D), and shall ensure that all Subcontractors performing Work on the Project comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibits C and D). The Contractor shall not add, delete, or change the role of, any Major Participant without the prior written Approval of the District.

I.5 Assignment of Subcontract Rights

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to the District: (i) the District is a third party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and (ii) all guarantees and warranties, express and implied, shall inure to the benefit of the District as well as the Contractor. Any acceptance of assignment of a Subcontract from the District, its successor(s), or assign(s) shall not operate to make the assignee(s) responsible or liable for any breach of the Subcontract by the Contractor or for any amounts due and owing under the Subcontract included in an invoice paid by the District.

I.6 Subcontract Terms

Each Subcontract shall include all terms and conditions of the Contract Documents in the



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Subcontracts and ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, including Sections C, D, E, G, H, I, LM.8, N, O, P, Q, R, T, U, W, X, Y, Z, and Exhibits C and D..

I.7 Subcontract Data

The Contractor shall notify the District, in writing, of the name and address of, and licenses held by, each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by Contractor, but in no event less than 14 Days prior to the scheduled initiation of Work by such proposed Subcontractor. The Contractor shall provide the District with a list of its Subcontractors (including Suppliers) from time to time upon request by the District; shall allow the District access to all Subcontracts and records regarding Subcontracts; and shall deliver to the District, within ten days after execution, copies of all Subcontracts with Major Participants and, within ten days after receipt of a request from the District, copies of all other Subcontracts.

I.8 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, the Contractor shall be fully responsible for all of the Work. The District shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the District.

I.9 Key Personnel

I.9.1 Key Personnel

Exhibit E hereto identifies key positions for the Project. The District may, with the Contractor's approval, add key positions at no cost to the District. The District shall have the right to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to Approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The Contractor shall notify the District in writing of any proposed changes in any Key Personnel, and shall include a resume of proposed Key Personnel. The Contractor shall not change any Key Personnel without the prior written Approval of the District.

I.9.2 Representations, Warranties, and Covenants

The Contractor acknowledges and agrees that the award of the Contract by the District to the Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Statement of Qualifications and the Proposal, and the Contractor's commitment that such individuals would be available to undertake and perform the Work. The Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Statement of Qualifications and the Proposal in connection with the Work. Unless otherwise agreed to by the District in writing, individuals filling Key Personnel roles shall devote a sufficient amount of their time for the applicable role with respect to the prosecution and performance of the Work and the Contractor shall document such commitment to the District's satisfaction upon the District's request.

I.10 Character of Workers

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 District determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of the District, the Contractor or such Subcontractor shall remove such Person



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and such Person shall not be re-employed on the Project without the prior Approval of the District in its sole discretion. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the District may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

J SURETY BONDS

The Contractor shall provide to the District and maintain at all times during the term of the Contract security for performance of the Work as described below (or other assurance satisfactory to the District in its sole discretion). Each bond required hereunder shall be provided by a Surety or Sureties licensed as surety and qualified to do business in the State. The Surety(ies) shall be listed in the current United States District of the Treasury, Fiscal Service, District Circular 570, *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies*. The Contract bonds may not be in excess of the cumulative underwriting limitation listed in the circular of the underwriting capacities of the Contractor's surety companies.

J.1 Performance Bond

The Contractor shall provide a Performance Bond, in the form of Exhibit F, in the amount of \$260,000,000.00.

J.2 Payment Bond

The Contractor shall provide a Payment Bond, in the form of Exhibit G, in the amount of \$130,000,000.00. The surety must be authorized to do business in the District of Columbia. The Payment Bond may also be the equivalent in cash, or other security considered satisfactory to the District.

The Payment Bond shall be for the protection of all businesses supplying labor and materials, including lessors of equipment to the extent of the fair rental value of the equipment, to the contractor or a subcontractor in the performance of work provided for by the Contract.

Before receiving a progress or final payment under a contract covered by this chapter, the Contractor shall certify in writing that the Contractor has made payment from the proceeds of prior payments, and that the Contractor will make timely payments from the proceeds of the progress or final payment then due the Contractor, to the Contractor's subcontractors and suppliers in accordance with its contractual arrangements with them.

The Payment Bond shall be released one year after Final Acceptance or the District's receipt of the Contractor's Affidavit Regarding Settlement of Claims, , whichever occurs later.

J.3 Replacement of Performance Bond

Provided that all conditions to Final Acceptance have occurred, the Contractor shall have the right to replace the Performance Bond with a replacement performance bond in an amount and in a form satisfactory to the District in its sole discretion (provided that it shall not be required to exceed 5 percent of the Contract Price) or with such other security as is Approved by the District in its sole discretion, guaranteeing due and punctual performance of all obligations of the



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Contractor under the Contract Documents which survive Final Acceptance.

J.4 No Relief of Liability

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

K INSURANCE

K.1 General Insurance Requirements

K.1.1 Evidence of Insurance

The Contractor shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section K. These insurance requirements are applicable to the Contractor only. The Contractor shall require its Subcontractors to obtain insurance in amounts deemed appropriate by Contractor.

The Contractor's insurance shall cover all of the Work under this Contract, whether the Work is performed by the Contractor or its Subcontractors. The Contractor's insurance shall cover the entire Project. The Contractor has the option of either providing evidence of the insurance required in K.2 below either: (a) as part of its existing insurance, or (b) as Project specific insurance. If the Contractor provides insurance as part of its existing insurance, its insurance premiums shall be included as part of its Proposal Price without any reimbursement from the District. If the Contractor purchases Project-specific insurance, it shall be reimbursed for the insurance premiums as provided in Section M.4, and such premiums shall be included in the Contractor's Proposal Price.

The evidence of Contractor's insurance shall provide for 10 Days written notice of cancellation for nonpayment of premiums, or 45 Days written notice of cancellation for any other reason, including non-renewal. The Contractor shall delete the phrase "will endeavor to" preceding all references to provisions of notice by the insurance company in the evidence of insurance. A Certificate of Insurance indicating certain specified amendments and attachments shall be acceptable, but the District reserves the right to request a complete certified copy of the policy, at the District's sole discretion. No Work will start until proof of insurance has been submitted to the District. If the insurance required by this Section K become no longer commercially reasonable, as determined by the District, the District will work with the Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to the District.

K.1.2 A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best rating of A- or better.

K.1.3 Full Force and Effect

The commercial general liability, excess (umbrella) liability, contractor's pollution liability and professional liability insurance coverage requirements will remain in full force and effect until Project Acceptance at which time the Contractor shall maintain completed operations insurance throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.



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K.1.4 No Recourse

There shall be no recourse against the District for payment of premiums or other amounts with respect to the insurance provided by the Contractor, or for deductibles under these policies. This provision does not affect any rights the Contractor is entitled to pursuant to Section N.

K.1.5 Indemnification

The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor's indemnification obligations under Section T.

K.2 Contractor Provided Insurance

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

K.2.1 Workers' Compensation and Employer's Liability Coverage

The Contractor shall furnish evidence to the District that, with respect to the Work, the Contractor carries workers' compensation insurance according to the statutes of the District of Columbia, including Employer's Liability in the amount of \$1,000,000, \$1,000,000 for employee disease, with a policy disease limit of \$1,000,000.

K.2.2 Commercial General Liability Insurance

The Contractor shall provide commercial general liability broad form coverage for bodily injury, property damage, personal injury and advertising liability written on an occurrence form that shall be no less comprehensive or more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 10 01.

6. Limits of liability. General liability:
 - \$2,000,000 - each occurrence.
 - \$4,000,000 - per aggregate.
 - \$2,000,000 - products/completed operations liability.
7. Such insurance shall include, by its terms or appropriate endorsements, bodily injury, property damage, legal liability, personal injury, blanket contractual, independent contractors, premises, operations and products and completed operations. Such insurance shall also include blanket coverage for explosion, collapse, and underground (XCU) hazards.
8. Products and completed operations coverage shall be continued for a minimum of two years from Final Acceptance.
9. The District shall be an additional insured with respect to liability arising out of acts or omissions of the Contractor or its Subcontractors, whether on or off the Site.

K.2.3 Automobile Liability Insurance

The Contractor shall provide occurrence-based commercial automobile liability insurance covering all owned/leased, non-owned and hired vehicles used in the performance of Work, both on and off the Site, including loading and unloading.

The following limits of liability and other requirements shall apply:

1. \$2,000,000 combined single limit for bodily injury and property damage liability.



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2. Coverage shall be provided on ISO form number CA 00 01 10 01 or equivalent.
3. The policy shall be endorsed to include Motor Carrier Act endorsement – Hazardous Materials Cleanup (MCS-90), if applicable.

K.2.4 Excess (Umbrella) Liability Insurance

The Contractor shall provide umbrella or excess liability insurance with limits of not less than \$5,000,000 per occurrence for each wrongful act which will provide bodily injury, personal injury and property damage liability at least as broad as the primary coverages set forth above, including employer's liability, commercial general liability and commercial automobile liability, as set forth in Sections K.2.1, K.2.2, and K.2.3.

K.2.5 Contractor's Pollution Legal Liability Coverage

The Contractor shall provide pollution legal liability coverage for the Project. The limit of liability per occurrence shall be \$5,000,000 and the total Project aggregate shall be \$10,000,000.

K.2.6 Additional Insureds

Each policy of commercial general liability insurance, commercial auto liability and excess liability (umbrella) insurance shall name the District and the District's members, agents and employees as additional insureds. The insurance afforded by the Contractor shall be primary insurance.

K.2.7 Navigable Waters Insurance Protection

In addition to United States Longshoreman's and Harbor Workers' Compensation Act Insurance, any Work that is performed on or adjacent to navigable waters of the United States must be covered by Jones Act Insurance and maritime law liability insurance as required in the permits issued by the U. S. Coast Guard and/or the U.S. Army Corp of Engineers, as applicable.

K.2.8 Professional Liability Insurance

The Major Participant in the Contractor entity that will perform the design function ("Designer"), shall maintain professional liability insurance appropriate to the consultant's profession, endorsed to include contractual liability, with provisions at least as follows:

1. The policy shall protect against any negligent act, error or omission arising out of design or engineering activities of the Designer;
2. The policy shall have a retroactive date of no later than the date the first design or engineering activities have been conducted by the Designer; and
3. The policy shall be required to cover up to \$1,000,000 per claim and \$3,000,000 per aggregate for each wrongful act.
4. If the policy is written on an occurrence, or claims reported, basis, (that is, the policy covers claims arising out of acts, errors or omissions that occur and are reported during a specific policy period or an extended reporting period), the insured shall provide an extended reporting period covering five years after Final Acceptance;
5. If the policy is written on a strict claims made basis (that is, the policy covers claims made while the policy is in effect without regard to when the event giving rise to the claim occurred), the insured shall maintain the policy in force for a period of five years following Final Acceptance.



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6. Should the Contractor or the Designer contract any design work to a consultant other than the Designer, the Contractor or the Designer shall require the additional consultant to carry professional liability coverage, on a form providing coverage equivalent to the Designer's professional liability coverage, including extended reporting period or continuing coverage for five (5) years following Final Acceptance, and, except with prior approval of the District, with policy limits of no less than \$1,000,000 per claim and \$3,000,000 aggregate for each wrongful act, and to provide District with proof of such coverage, upon request.

K.2.9 Railroad Protective Insurance

The Contractor shall obtain Railroad Protective Liability Insurance in accordance with the third party agreements in Book 4.

K.2.10 Builder's Risk

The Contractor shall be responsible for all builder's risk claims on a replacement cost basis.

K.2.11 Crime Insurance

The Contractor shall be responsible for crime insurance in the amount of \$1,000,000 for each wrongful act and \$2,000,000 aggregate for each wrongful act.

L RISK OF LOSS

L.1 Site Security

The Contractor shall provide appropriate security for the Site, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by the Contractor, the District, or any other Person.

L.2 Maintenance and Repair of Work and On-Site Property

L.2.1 Responsibility of Contractor

The Contractor shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Released for Construction Documents, As-Built Documents, materials, equipment, supplies, and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the District has title thereto under the Contract Documents) that is injured or damaged prior to the date of acceptance of maintenance liability by the District or third parties as specified in Section L.2.2. All such Work shall be at no additional cost to the District except to the extent that the District is responsible for such costs as provided in Section N. Additional requirements regarding maintenance of highways during construction are set forth in Section 19, Book 2.

L.2.2 Relief from Liability for Maintenance

Effective as of the date of Partial Acceptance by the District of a Milestone of the Project, the District is responsible for maintenance for all elements of the Project which have been Accepted. All remaining elements of the Project shall be considered Accepted for maintenance purposes as of the date on which Final Acceptance occurs. Nothing in the Contract Documents, however, shall be construed to relieve the Contractor of full responsibility for making good any non-latent defect in Work or material found on any section of Work prior to Final Acceptance of the entire Project, to alter in any manner the method of payment prescribed in the Contract



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Documents, or to constitute a waiver of any claim the District may have against the Contractor on the entire Project. Notwithstanding the foregoing, all elements of the Work, which will be owned by Persons other than the District (such as Utility facilities), will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons.

L.3 Damage to Off-Site Property

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

L.4 Third Party Agreements and District-Obtained Permits

The Contractor shall comply with all provisions in the third party agreements and District-obtained permits in Book 4.

L.5 Title

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the District 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 District, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the District to the Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section L.1, the Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the Contractor is removed from the Project.

M PAYMENT

M.1 Contract Price

M.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by the Contractor under the Contract Documents, the District shall pay to the Contractor the Fixed Price of \$260,000,000.00. (Such amount, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the "Contract Price"). The Contract Price may be increased or decreased only by a Change Order issued in accordance with Section O or by a Contract amendment.

M.1.2 Items Included in Contract Price

The Contractor acknowledges and agrees that, subject only to the Contractor's rights under Section O, the Contract Price includes:

- A. Performance of each and every portion of the Work.
- B. All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to the



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Contractor's performance of its obligations under the Contract Documents (including all Work, Warranties, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work).

- C. The cost of obtaining all Governmental Approvals (except for approvals which are the responsibility of the District, as specifically provided elsewhere in the Contract Documents).
- D. All costs of compliance with and maintenance of the Governmental Approvals and compliance with Legal Requirements, including Environmental commitments and mitigation measures.
- E. Payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein.
- F. All Contractor's Utility Work as described in Book 2, Section 7.

M.1.3 Delay in Award of Contract

The District will award the Contract and issue NTP1 upon execution and delivery of the Contract, subject to the requirements in F.2.1. If the District has not issued NTP1 within 5 Business Days after execution of the Contract by the District, the Contractor may seek to negotiate a Change Order including an extension in the time allowed to the District for issuance of NTP1 and an increase in the Contract Price mutually acceptable to the Contractor and the District. If the Contractor does not wish to seek a Change Order as provided above or the District fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract by delivery of notice of termination to the District, with the right to receive payment as specified in Section R. Any price increase under this Section M.1.3 shall be amortized proportionally over all Work remaining to be performed, and shall be evidenced by a Change Order.

M.2 Invoices and Payment

Requirements relating to invoicing are set forth in Section 2.2 of Book 2. Within thirty days after Approval by the District of each final and complete invoice, as described in Section 2.2 of Book 2, the District shall pay the Contractor the amount of the invoice Approved for payment less any amounts that the District is entitled to withhold.

M.3 Limitations on Payment

In no event shall the District have any obligation to pay the Contractor any amount which would result in: (i) payment for any Activity in excess of the value of the Activity times the completion percentage of such Activity; or (ii) aggregate payments hereunder in excess of: (i) the overall completion percentage for the Project times the Contract Price; or (ii) the payment caps described herein. The District does not have the obligation to pay the Contractor for any Nonconforming Work.

M.3.1 Requirement to Provide Corrected Monthly Update

After Approval of the Original Baseline Schedule, no payment will be processed or owing to the Contractor for Work performed during any period not covered by the accepted current Monthly Progress Schedule.



M.3.2 Notice-to-Proceed 1 Payment Cap

The amount of funds available to pay the Contractor for Work performed prior to issuance of NTP2 is limited to the amount of the NTP1 Payment Cap. The District has no obligation to make any payment to the Contractor in excess of this amount until such time (if any) as NTP2 is issued. If the Contractor performs any Work in excess of the NTP1 Payment Cap, it does so at its own risk.

M.3.3 Stockpiled Materials.

Payment for stockpiled materials shall be included in the monthly progress payments provided the following conditions are met:

1. The stockpile site is under the control of the Contractor and will remain so until the material is incorporated in the Work. The stockpile materials must have been specifically authorized by and acquired for the Project. The stockpile site must be bonded and be acceptable to the District and must be kept secure at all times by the Contractor. Proof of such bond and control shall be submitted to the District.
2. Appropriate test reports, if required, shall be submitted to the District which show that the materials meet the requirements of the Contract. The District has the authority to inspect, test and Approve the stockpiled materials.
3. If the stockpiled materials are stored in a site that is more than 20 miles from the Project Site, Contractor shall be responsible for payment of all costs for the District to inspect the stockpile site and the materials stored at the site.
4. Contractor requests for payment shall be in writing and shall include the written consent of the surety as well as insurance in the District's name that covers loss, damage or destruction of the stockpiled materials.
5. Copies of suppliers' invoices shall accompany all requests for payment. Copies of paid invoices for materials shall be submitted to the District within one (1) month after the Contractor has received payment for the materials. Failure to provide timely submissions of paid invoices shall be cause to deduct payment for the materials from the subsequent monthly progress payment.
6. Payment shall be limited to the following stockpiled materials unless specifically approved by the District: sewer pipe, water pipe, water and sewer valves, guiderail, electrical work materials, mechanical work materials, piling, PCC form materials, reinforcing steel, prestressed concrete beams, structural steel, paint, stone masonry, railing, bridge deck drainage, steel sign structures, and wall tile. No payment will be made for invoices less than \$10,000.00 or for materials that will be stored for less than 30 days. No payment greater than \$13,000,000 will be made for stockpiled materials for any given month. The total maximum amount that will be paid by the District for stockpiled materials during the Project implementation is \$25,000,000.

M.4 Mobilization, Bonds and Insurance Payment

The actual amount of premiums paid by the Contractor for the Payment and Performance Bonds and for insurance required to be provided by the Contractor under Sections J and K may be invoiced at any time after issuance of NTP1. In addition, the Contractor shall be entitled to four additional mobilization payments totaling \$13,000,000 (that is, the maximum amount payable under this Section M.4 shall be \$13,000,000). The initial mobilization payment shall be in the amount of \$3,250,000 less the amount invoiced for the Payment and Performance Bonds and insurance premiums, and may be invoiced at any time after issuance of NTP2. The second



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payment shall be in the amount of \$3,250,000, and may be invoiced at any time after 30 days after issuance of NTP2. The third payment shall be in the amount of \$3,250,000, and may be invoiced at any time after 60 days after issuance of NTP2. The fourth payment shall be in the amount of \$3,250,000, and may be invoiced at any time after 90 days after issuance of NTP2.

M.5 Retainage; Deductions

M.5.1 Retainage

The District shall withhold funds (the "Retainage") from each payment to be made to Contractor under this Section M. The Retainage shall be an amount equal to five percent of the amount owing. If the District determines, in its sole discretion, that satisfactory progress is being made at the time the Project is 50 percent complete, the District may discontinue or reduce Retainage withholding.

M.5.2 Deductions

The District may deduct from any amounts otherwise owing to Contractor, including each monthly progress payment and the final payment, the following:

1. Any accrued losses, liability, Liquidated Damages or other damages for which Contractor is responsible hereunder.
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Contractor.
3. The amount of any outstanding claim relating to the Work.
4. The amount for Work that the Contractor is obligated to perform under the Contract, which the Contractor has failed to perform.
5. Any other sums which the District is entitled to recover from the Contractor under the terms of the Contract.

The District's failure to deduct from a progress payment any amount, which the District is entitled to recover from the Contractor under the Contract, shall not constitute a waiver of the District's right to such amounts.

M.6 Final Payment

Final payment will be made in accordance with this Section M.6.

M.6.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, the Contractor shall prepare and submit a proposed Application for Final Payment to the District showing the proposed total amount due the Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include: (a) an affidavit, on the form prescribed by the District, to the effect that all payments have been made and all claims have been released for all material, labor and other items covered by the Contract bond; or (b) a list of any outstanding or pending Potential Change Order (PCO) Notices and all existing or threatened claims, Liens and stop notices by Subcontractors, laborers, Utility Owners or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such notice; (c) the written consent by the surety to such payment; and (d) such other documentation as the District may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. PCO Notices filed concurrently with the Application for



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Final Payment must be otherwise timely and meet all requirements under Sections N and O. If a Subcontractor refuses to furnish a release or waiver required by the District, the Contractor may furnish a bond satisfactory to the District to indemnify the District against such Lien. If such Lien remains unsatisfied after payments are made, and is not bonded over as provided in the previous sentence, Contractor shall promptly pay to the District all money that the District may be compelled to pay in discharging such Lien, including all costs and attorneys' fees.

The District will review the Contractor's proposed Application for Final Payment, and changes or corrections will be forwarded to the Contractor for correction. If no changes or corrections are required, the District will Approve the Application for Final Payment.

M.6.2 Payment

As a condition to its obligation to make payment to the Contractor based on the Application for Final Payment, the District shall have received an Affidavit Regarding Settlement of Claims from the Contractor, releasing and waiving any claims against the Indemnified Parties and those matters identified in any PCO Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to the District.

The Settlement of Claims Affidavit shall include, as a minimum, a certification by the Contractor that:

1. That it has resolved any claims made by Subcontractors, Utility Owners, and others against the Contractor or the Project.
2. That it has no reason to believe that any Person has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the District as of the date of the certificate.
3. That all guarantees and warranties are in full force and effect.

The Settlement of Claims Affidavit shall survive final payment. The payment amount will be reduced by any amounts deductible under Section M.5.

All prior partial estimates and payments shall be subject to correction in the final payment.

Contractor's acceptance of final payment shall constitute a waiver of affirmative Claims by Contractor except those previously made in writing and identified as unsettled at the time of final payment.

M.7 Prompt Payment to Subcontractors

The Contractor shall ensure that all Subcontractors and suppliers at every tier are promptly paid in accordance with the District of Columbia Prompt Pay Act of 2002, D.C. Code §31-3135. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to the Subcontractors and suppliers must be included in all subcontracts at every tier. If the Contractor fails to comply with this requirement, the District may withhold the amount due from any monthly progress payment until the required payment(s) have been made.

M.8 Disputes

Subject to the District's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section, any disagreement between the District and the Contractor relating to this Section M shall be subject to Section U. Failure by the District to pay any amount in dispute shall not alleviate, diminish, or modify in any respect the Contractor's obligation to perform under the Contract Documents, including the Contractor's obligation to achieve Final Acceptance in accordance with the Contract Documents, and the Contractor shall



not cease or slow down performance under the Contract Documents on account of any such amount in dispute. The Contractor shall proceed as directed by the District pending resolution of the dispute. Upon resolution of such dispute, each party shall promptly pay to the other any amount owing.

N CHANGE ORDER RISK ALLOCATION

N.1 Time and Money Changes

The Contractor may request a Change Order, subject to the limitations set forth in Sections O.7 and O.8, for increased costs or additional time for Completion Dates only for the following:

- A. Additional costs or time directly attributable to additional Work resulting from District-Directed Changes.
- B. Additional costs or time directly attributable to unavoidable delays, arising from a suspension order pursuant to Section P.1.
- C. Failure or inability of the District to provide the Contractor with access to ROW identified on the ROW Drawings on or before the deadline for such access set forth in the ROW Schedule.
- D. Delay in issuance of NTP2 or provision of reasons why it was unable to do so to the extent provided in Section F.2.2 (Approval of Quality Plan and Approved Baseline Schedule).
- E. Additional costs or time directly attributable to Differing Site Conditions, to the extent provided in Section O.9.
- F. Certain additional costs or time relating to Remediation Work as described in Section O.9, to the extent provided therein.
- G. Certain additional costs or time relating to Utility Work, as described in Section G.2, to the extent provided therein.
- H. Certain additional costs or time relating to material errors in the ROW Drawings, as described in Section O.11, to the extent provided therein.
- I. Additional costs or time directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section F.5.3.
- J. Additional costs or time directly attributable to the discovery at, near, or on the Site articles of historical, architectural, or archaeological significance discovered within the Right of Way, provided that the existence of such resources was not disclosed in the RFP.
- K. Additional costs or time directly attributable to the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval required to be obtained by the District, except as otherwise provided in Section G.3.
- L. Any change in a Legal Requirement, change in the judicial interpretation of a Legal Requirement, or adoption of any new Legal Requirement, excluding changes in tax laws, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or adopted as of the Proposal Due Date but



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has a defined future effective date), and which: (i) requires a material modification in the Project Work; (ii) requires the Contractor to obtain a major State or federal environmental approval not previously required for the Project; or (iii) specifically targets the Project or the Contractor

- M. Any lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project, except to the extent that the risk of such lawsuit has been assumed by Contractor under Section G.3; or the lawsuit otherwise arises out of any act, omission or breach of obligation of Contractor, a Subcontractor or any person for whom Contractor is contractually or legally liable.
- N. Failure to award the Contract and issue NTP1 within 5 Business Days after Contract execution by the District.

N.2 Time Only Changes

The Contractor may request a Change Order for time extensions, subject to the limitations set forth in Section O.7.3, for additional time for Completion Dates, only for the following:

- A. Fire, floods, earthquakes, epidemics, quarantine restrictions.
- B. Freight embargos.
- C. Acts of the public enemy.
- D. Work stoppages or strikes, unless caused by the Contractor.
- E. Failure or inability of the District to provide responses to proposed schedules, design submittals or other submittals and matters for which response by the District is required within the time periods indicated in the Contract Documents.
- F. Utility Delays.

O CHANGES IN THE WORK

This Section O sets forth the requirements for obtaining all Change Orders under the Contract. The Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section O, and that the District is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Dates. Contractor hereby waives the right to make any claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section O.

O.1 Circumstances Under Which Change Orders may be Issued

O.1.1 Change Orders

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section O. A Change Order shall not be effective for any purpose unless executed by the District. Execution of a Change Order by the District shall mean that the Change Order has been fully executed by the District and any other necessary parties of the State. Change Orders may be requested by the Contractor only pursuant to Section O.3. Change Orders may be issued for the following purposes (or combination thereof):



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1. To modify the Work.
2. To revise a Completion Date.
3. To revise the Contract Price.
4. To revise other terms and conditions of the Contract Documents.

Upon the District's Approval of the Change Order form, the District will execute the Change Order form indicating Approval thereof.

O.1.2 Issuance of Directive Letter

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

Receipt of a Directive Letter from the District is a condition precedent to the Contractor's right to claim that a District-Directed Change has occurred, provided that no Directive Letter shall be required for alleged District-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by the District. The fact that a Directive Letter was issued by the District shall not be considered evidence that in fact a District-Directed Change occurred. The determination whether a District-Directed Change in fact occurred shall be based on an analysis of the original Contract document requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section O.

O.1.3 Performance of Changed or Extra Work

As a condition precedent to the Contractor's right to receive additional payment or an extension of a Completion Date for changed or extra work, the Contractor shall have received either a Directive Letter from the District stating that it is issued pursuant to Section O or a Change Order for such work executed by the District. To the extent that the Contractor undertakes any such work without receiving a Directive Letter or Change Order executed by the District, the Contractor shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such work, at its sole cost.

O.2 Value Engineering Change Proposals

The parties desire for the Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. The Contractor is encouraged to submit Value Engineering Change Proposals (VECPs) whenever it identifies potential savings. Notwithstanding the foregoing, the District's Approval is required with respect to any proposed changes in the requirements of the Contract Documents. This Section O.2 sets forth the requirements applicable to VECPs.



O.2.1 Definition of Value Engineering Change Proposal

A VECP is a proposal developed and documented by the Contractor that is a change in the requirements of the Contractor's Proposal, an Approved ATC or Book 2, Section 1 Use definition in Blue Book

O.2.2 Required Information

At a minimum, the following information shall be submitted by the Contractor with each VECP:

1. A statement that the submission is a VECP, a narrative description of the proposed change, the advantages and disadvantages of the proposed change and the justification for changes in function or characteristics and the effect the proposed change has on performance.
2. Identification of all contract requirements (with reference to specific sections), which must be changed if the VECP is Approved.
3. A description of any previous use or tests of the proposal and the conditions and results.
4. 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 Contract Schedule.
5. A complete cost analysis including current pricing for the existing Contract requirements compared to the Contractor's cost estimate of the proposed changes.

The Contractor shall provide any additional information requested by the District in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

O.2.3 District Review and Approval or Rejection

Upon receipt of a VECP, the District will process it, but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section O.2. The Contractor may withdraw all or part of any VECP at any time prior to Approval by the District. Until and unless the VECP is approved, the Contractor shall comply with the Contract Documents.

The District may Approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Until a Change Order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of the District as to rejection or Approval of any VECP shall be at the sole discretion of the District and shall be final and not subject to partnering, dispute resolution or appeal. The Contractor shall have no claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profit, or increased material or labor costs.

O.2.4 Contract Price Adjustment

If the District Approves a VECP submitted by the Contractor pursuant to this Section O.2, the Contract Price shall be adjusted in accordance with the following:

- A. The term "estimated net savings", as used in this Section O.2, shall mean: (i) the difference between the cost of performing the Work according to the Contract Documents using current estimates and the actual cost to perform it according to the proposed change; less (ii) the costs of studying and preparing the VECP as proven by the Contractor and Approved by the District in accordance with the Change Order procedures set forth herein; less (iii) any additional costs incurred by the District (including costs relating to any



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Relocations and ROW and implementation costs) resulting from the VECP. The Contractor's profit shall not be considered part of the cost.

- B. Except as specified in Section D, below, the Contractor is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in the District's costs resulting from the VECP, including costs of maintenance by the District, logistics, and the District-furnished property. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts resulting from a VECP submitted by the Contractor.
- C. Subject to Section D below, the Contract Price shall be reduced by an amount equal to the sum of (i) 100 percent of any additional costs incurred by the District resulting from the VECP; plus (ii) 50 percent of the estimated net savings.
- D. In a case where a VECP involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the VECP shall compare:
 - i. The incremental reduction in costs (such as for not designing and building a wall); and
 - ii. The costs involved in adjusting the ROW Drawings and Environmental Approvals (which shall be based on the Contractor's additional costs, such as for providing real property acquisition support services, including profit, plus the District's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of the District personnel involved in the acquisition);
or as (appropriate) shall compare:
 - iii. The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and
 - iv. The additional construction costs to be incurred.

The estimated net savings shall be shared 50-50 between the District and the Contractor. The Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by the District.

Refer to Exhibit H for a sample calculation.

O.2.5 Use of Value Engineering Changes by the District

All Approved VECPs and negotiated changes will become the property of the District, and shall contain no restrictions imposed by the Contractor on their use or disclosure. The District retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the Approved VECP or negotiated change proposal on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.



O.3 Lump Sum Change Orders

The preferred approach by both parties is that Change Orders will be reimbursed on a lump sum payment basis, if the parties can agree on a lump sum amount. If the parties cannot agree on a lump sum amount for change orders, the Change orders will be paid as Force Account Change Orders described in section O.4 below.

O.3.1 Procedure for District Initiated Lump Sum Change Orders

This Section O.3.1 concerns Change Orders requested by the District.

O.3.1.1 Issuance of Request for Change Proposal

If the District desires to evaluate whether to initiate such a change, the District may, at its discretion, issue a Request for Change Proposal (RCP).

Within seven days after the Contractor's receipt of a RCP, the District and the Contractor shall consult to define the proposed scope of the change. Within seven days after the initial consultation, the District and the Contractor shall consult concerning an estimated rough order of magnitude (ROM) cost and time impacts, if any. The Contractor shall prepare the ROM at its cost. The Contractor shall provide data regarding such matters as requested by the District.

Within seven days after the ROM consultation meeting and provision of any data requested by the District, the District shall notify the Contractor whether the District:

1. Wishes to request the Contractor to prepare a Change Order form as discussed at the meeting.
2. No longer wishes to issue a Change Order.

The District may at any time, in its sole discretion, require the Contractor to provide two alternative change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Dates, as well as any additional costs permitted hereunder.

If requested by the District, the Contractor shall, within 21 days after receipt of the notification, prepare and submit to the District for Approval a Change Order form for the requested change, complying with all applicable requirements of Section O.4, and incorporating all requests made by the District. The Contractor shall bear the cost of developing the Change Order form, including any modifications thereto requested by the District, except that costs of design and engineering Work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by the District shall be included in the Change Order as reimbursable items. If the Change Order is Approved, the design and engineering costs will be included within the Change Order. If the Change Order is not Approved, the Contractor shall be separately reimbursed for the design and engineering costs through a separate Change Order.

If the District and the Contractor 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 Date, the District may, in its sole discretion, order the Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at the District's option, be in the form of a:

1. Force Account Change Order or
2. Directive Letter



O.3.2 Procedures for Contractor-Initiated Lump Sum Change Orders

The Contractor's entitlement to a Change Order for eligible changes is subject to the procedure, restrictions and limitations contained in this Section O.3.2.

O.3.2.1 Conditions Precedent

The requirements set forth in this Section O.3.2.1 constitute conditions precedent to the Contractor's entitlement to request and receive a Change Order in all circumstances. The Contractor agrees that the filing of a PCO Notice and subsequent filing of a Request for Change Order (RCO) with the District pursuant to this Section are necessary in order to begin the administrative process for Contractor-requested Change Orders. The Contractor understands that it shall be forever barred from recovering against the District under this Section O if it fails to give notice of any act, or failure to act, by the District or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section.

The Contractor shall deliver to the District a PCO Notice stating that an event or situation has occurred and shall state whether it is entitled to additional time or money. The first notice shall be labeled "PCO No. 1" and subsequent notices shall be numbered sequentially.

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to see an extension of any Completion Date with respect to any delay in the Critical Path which accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in Section G.3, the Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the District is not afforded the opportunity to inspect such material or condition before it is disturbed. The Contractor's failure to provide a PCO Notice within 30 days after the contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Contractor from any relief, unless the Contractor can show, based on a preponderance of the evidence that: (i) the District was not materially prejudiced by the lack of notice; or (ii) the District's designated representative specified in accordance with Section Z.4.1 had actual knowledge, prior to the expiration of the 30-Day period, of the event or situation and that the Contractor believed it was entitled to a Change Order with respect thereto. A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of Section O.

The PCO Notice shall (i) state in detail the facts underlying the potential Change Order, the reasons why the Contractor believes additional compensation or time will or may be due and the date of occurrence; (ii) state in detail the basis that the work is not required by the Contract, if applicable; (iii) identify particular elements of Contract performance for which additional compensation may be sought under this Section O; (vi) identify any potential Critical Path impacts affecting a Completion Date; and (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

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



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The Contractor shall deliver all RCO under this Section O to the District within 30 days after delivery of the PCO Notice. The District may require design and construction costs to be covered by separate Change Order requests. If the Contractor requests a time extension, then the District, in its sole discretion, may require the Contractor to provide two alternative change Order requests, 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 Dates, as well as any additional costs permitted hereunder.

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to the District. The District is relying on the Contractor to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect the Contract Price or a Completion Date, the District 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 District's funding and time restraints.

The following matters (among others) shall be considered in determining whether the District has been prejudiced by the Contractor's failure to provide timely notice:

1. The effect of the delay on alternatives available to the District (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 days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence);
2. The impact of the delay on the District's ability to obtain and review objective information contemporaneously with the event.

Prior to submission by the Contractor of any PCO Notice or a RCO to the District which is based in whole or in part on a request by a Subcontractor to the Contractor for a price increase or time extension under its Subcontract, the Contractor shall have reviewed all claims by the Subcontractor which constitute the basis for the RCO and determined in good faith that each such claim is justified hereunder and that the Contractor is justified in requesting an increase in the Contract Price and/or change in Completion Dates in the amounts specified in the RCO. Each RCO involving Subcontractor Work shall include a sworn certification in form acceptable to the District signed by the Contractor's Project Manager stating that the Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any RCO involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

If the District refuses to issue a Change Order based on the Contractor's request, the Contractor shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to dispute resolution in accordance with Section U. The Contractor shall maintain and deliver to the District, upon request, contemporaneous records, meeting the requirements of Section O.6, for all work performed which the Contractor believes constitutes extra work, until all Disputes regarding entitlement or cost of such work are resolved.



O.4 Force Account Change Orders

The District may at its discretion issue a Force Account Change Order whenever the parties cannot agree to a Lump Sum Change Order or the District determines that a Force Account Change Order is advisable. The Force Account Change Order shall instruct the Contractor 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 District shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The costs and additional amounts allowed in Section O.8 (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in Section O.5.

The District and the Contractor may agree to negotiate unit prices for a Force Account Change Order. Measurement of any unit-priced quantities will be as specified in the Change Order. Unit prices 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. Upon final determination of the quantities, the District will issue a modified Change Order setting forth the final adjustment to the Contract Price.

O.4.1 Force Account Records

The Contractor shall maintain its records in a manner that provides a clear distinction between: (i) 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 (ii) the costs of other operations. The Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (i) all data necessary to determine the costs described in this Section O.4 with respect to 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 Relocations; and (ii) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting a Completion Date with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting a Completion Date is in dispute. Such data shall be provided on forms Approved by the District. The cost of furnishing such reports is included in the Contractor's predetermined overhead and profit.

The Contractor shall furnish daily, on forms Approved by the District, reports of Force Account Change Order Work. The cost of furnishing such reports shall be included in the Contractor's overhead and profit percentages. The reports shall include:

1. Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices and extensions.
4. Transportation costs of materials, machinery, and equipment.
5. Invoices for materials used and for transportation charges.

The reports shall also state the total costs to date for the Force Account Change Order Work.

If materials used on the Force Account Change Order Work are not specifically purchased for



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the Work but are taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Contractor.

All Force Account Change Order reports shall be signed by the Contractor's Project Manager. The District will compare its records with the Contractor's reports, make the necessary adjustments and compile the costs of Force Account Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. The Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a Force Account basis shall be open, during all regular business hours, to inspection or audit by representatives of the District during the life of the Contract and for a period of not less than seven years after Final acceptance, and the Contractor (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 days after Final acceptance, the Contractor will be given a 20-day notice of the time when such audit is to begin.

O.5 Contents of Change Orders

Each lump sum, force account and value engineering Change Order and RCO shall meet all applicable requirements of this Section O. and shall include a Cost Analysis to be prepared in the form attached as Exhibit I.

The Contractor shall prepare a scope of work, cost estimate, impacted delay analysis, if any and other information as required by this Section for each Change Order form and RCO.

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

Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless the District agrees otherwise. The estimate shall include costs allowable under this Section O, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, the Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the Contractor's estimate. No additional payment shall be allowed except as provided in this Section O.

DBE Goal: The Contractor shall strive to ensure that DBEs have full and equal opportunity to compete fairly in the performance of Change Orders financed in whole or in part with Federal funds. The impact to the DBE goals will be taken into consideration and evaluated during the negotiation of each change order.

Impacted Delay Analysis: If the Contractor claims that such event, situation or change affects the Critical Path affecting a Completion Date, 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 District, which compares the proposed new schedule to the Original Baseline Schedule or Revised Baseline Schedule, as appropriate. Except as otherwise provided in this Section, the impacted delay analysis shall only modify the Activities which have been impacted by the event which justifies the extension. The Contractor may reschedule Activities not



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otherwise affected by the event, in order to take advantage of additional Float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

Other Supporting Documentation: The Contractor shall provide such other supporting documentation as may be required by the District.

O.5.1 Justification

All requests for Change Orders shall include a narrative justification therefore, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section O which permit a Change Order to be issued, and describing the data and documents which establish the necessity of such proposed change.

O.5.2 Contractor Representation

Each Change Order shall contain a sworn certification in form acceptable to the District by the Contractor (or Subcontractor, if applicable) that 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 that the Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

O.5.3 Incomplete Change Orders

Each RCO provided under Section O shall meet all requirements set forth in this Section O.5, provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide an incomplete RCO, which shall:

1. Comply with all requirements capable of being met.
2. Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to the District stating why such requirements cannot be met.
3. Provide such information regarding projected impact on the Critical Path affecting a Completion Date as is requested by the District.
4. In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Contractor shall furnish, when requested by the District, such further information and details as may be required to determine the facts or contentions involved. The Contractor agrees that it shall give the District access to any and all of the Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the District can investigate the basis for such proposed Change Order. The Contractor shall provide the District with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the District, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. The District may reject the Contractor's claim at any point in the process. Once a complete RCO is provided, the District's failure to respond thereto within 14 days of delivery of the request shall be deemed a rejection of such request. Although the District intends to review incomplete Change Orders for the purposes of timely delivery described in Section O.6.3, the District shall have no obligation to review the back up associated with any RCO until a complete RCO is provided.



O.5.4 Phased Change Orders

The District and Contractor may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated design 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 definition of the estimated construction cost.

O.6 Certain Limitations for all Change Orders

O.6.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

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

O.6.2 Limitation on Acceleration Costs; Delay and Disruption Damages

Acceleration Costs; Delay and Disruption Damages: Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the District as an alternative to allowing an extension of a Completion Date as contemplated by Section N. Delay and disruption damages shall be compensable hereunder only in the case of a delay pursuant to Section N to the extent that it entitles the Contractor to an extension of a Completion Date. Costs of rearranging the Contractor's work plan not associated with an extension of a Completion Date shall not be compensable hereunder.

Other Limitations: Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in this Section and overhead and profit thereon in accordance with Section O.8 and any additional field office and jobsite overhead costs incurred by the Contractor directly attributable to such delays. In addition, before the Contractor may obtain any increase in the Contract Price to compensate for any delay and disruption damages or Acceleration Costs, the Contractor shall have demonstrated to the District's satisfaction that:

1. Its schedule, which defines the affected Critical Path in fact sets forth a reasonable method for completion of the Work.
 2. 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 affecting a Completion Date.
 3. The delay or disruption damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by the Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).
 4. The delay for which compensation is sought is not concurrent with any other delay excluding
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a District caused delay.

5. The Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the District.

O.6.3 Limitation on Time Extensions

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

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

The Contractor shall demonstrate to the District's satisfaction that the change in the Work or other event or situation which is the subject of the RCO seeking a change in a Completion Date has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path Activity affecting a Completion Date.

O.7 Pricing of Change Orders

The District and the Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. Subject to the foregoing exceptions, in general the price of a Change Order shall be negotiated in accordance with this Section O.7 or shall be based on Force Account records pursuant to Section O.4.

O.7.1 Scope Development Risk

Risk associated with the Work described in the Change Order, defined as scope development risk, may be included in a Change Order through an additional amount agreed to by the District and the Contractor.

O.7.2 Labor Costs

The cost of labor shall be separated into construction-related Work and non-construction-related Work as described below. The use of a labor classification that would increase the extra work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. The cost of labor shall be calculated based on straight time for all hours worked, unless the Contractor obtains the District's prior Approval for overtime.

Construction Labor: The cost of labor for workers used in the actual and direct performance of construction-related Work, including Lead Workers, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) actual unburdened wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) the actual costs paid to, or on behalf of, employees for liability and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes, health and welfare benefits, pension fund benefits or other benefits, if such amounts are required by the collective bargaining agreement or employment contract, applicable to the classes of labor employed on the work; plus (iii) 15% overhead and profit of the sum of the above items.

Non-Construction Labor: The cost of labor for non-construction-related Work, whether provided



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by the Contractor or a Subcontractor, will equal the sum of the following: (i) Actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) an overhead based on the audited Federal Acquisition Regulations (FAR) field rates not to exceed 145%, or if a company has no FAR rate, an overhead of 145%. Contractor will also be paid for profit on non-construction labor of 10% of labor costs plus overhead.

O.7.3 Material Costs

Materials - Payment for cost of required materials will be F.O.B. the job site with an allowance of up to 15 percent to cover overhead and profit. For landscape plantings, up to 25 percent will be allowed to cover overhead and profit.

Rented Equipment – The current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest shall be used to determine the equipment rental rates.

Contractor's Equipment – Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate from the Rental Rate Blue Book for Construction Equipment published by Data Quest by 176 hours. No payment will be made under any circumstance for repair cost, freight and fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate under this subsection. Approved transportation charges will be paid (one way) from the nearest source if the equipment is brought up to the project specifically for use on the change order work and is not to be used on any other work.

Liability Insurance – When additional liability insurance is required the payment for the additional insurance will be based on the additional premiums, to which up to 5 percent of additional premium will be allotted to cover handling.

O.7.4 Permit Fees

The Contractor will be reimbursed for the cost of any additional permit fees payable as the result of a change in the Work requiring additional permit fees. Back-up documentation supporting each cost item for this category shall be provided by the Contractor and Approved by the District prior to any payment authorization being granted.

Contractor will be paid an additional 5% for overhead and profit.

O.7.5 Subcontracted Work

For administration and all overhead costs in connection with Subcontract Work, the Contractor will receive an amount equal to three percent of the cost of the Subcontracted Work, notwithstanding the actual number of intervening Subcontractors, provided that the Contractor may allocate all or any part of such administration and overhead costs among intervening Subcontractors. This shall fully compensate the Contractor (and all Subcontractors) for administration, general superintendence, overhead, profit and expenses not otherwise recoverable with respect to subcontracted Work. This shall not apply to: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

O.7.6 Overhead and Profit

Items included in Overhead and Profit: Unless otherwise indicated in this Section O, any overhead and profit and labor surcharges under this Section O are full and complete



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compensation for all indirect costs of the added or changed Work, as well as for profit thereon. The Contractor's overhead and profit percentages and labor surcharges under this Section O shall be considered to include, among other costs, salary and expenses of executive officers, supervising officers or supervising employees, clerical employees, charges for minor equipment, such as small tools, and other miscellaneous supplies and services, incidental job burdens, bonuses not otherwise covered, field, jobsite and general home office expenses of all types (including timekeepers, bookkeepers, and other general office help), supervisory expenses of all types (excluding only direct supervision of force account work) and all other overhead, general condition and indirect costs and expenses, and profit. With respect to non-construction related labor costs, overhead is included as part of the labor surcharge calculated in accordance with Section O and includes accessories such as Computer-Assisted Drafting and Design (CADD) systems, computers, facsimile transmission machines, scanners, plotters, etc.

Payment of Overhead and Profit: The foregoing overhead and profit and labor surcharges will be paid to the Contractor only for Work it performs; in the case of Work that is subcontracted, the additional payment for Subcontract administration will be allowed to the Contractor as described in Section O and all other overhead and profit and labor surcharges will be allowed to the Subcontractor who actually performs the Work.

Materials and Equipment: No overhead, profit or other surcharges will be paid to the Contractor for any materials or equipment furnished by the District.

Credit Items: Where the Contractor's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, the Contractor shall include all Contractor's and Subcontractor's overhead and profit in computing the value of the credit.

O.7.7 Compliance with Federal Acquisition Regulations

Reimbursable expenses shall be limited to and comply with the FARs. Expenses excluded by the FARs shall not be reimbursed.

O.8 Differing Site Conditions

O.8.1 Responsibilities of the District

Upon the Contractor's fulfillment of all applicable requirements of Sections G.3 and O, and subject to the limitations contained therein, the District shall be responsible for, and agrees to Approve Change Orders to: (i) compensate the Contractor for additional costs directly attributable to changes in the Work arising from Differing Site Conditions; and (ii) extend the Completion Dates as the result of any delay in the Critical Path affecting the Completion Dates caused by any such conditions.

O.8.2 Burden of Proof

The Contractor 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 a qualified professional setting forth all relevant assumptions made by the Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a Change Order under the terms of this Book 1, and stating the efforts undertaken by the Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.



O.9 Hazardous Substances Management [To be provided]

O.9.1 Limitations on Change Orders

All Change Orders authorized by this Section shall be subject to the restrictions, limitations and procedures set forth in Section O. Allowable costs shall be limited to the incremental costs associated with the fact that Hazardous Substances subject to Remediation Work compensable under Section O.9 are present. The Contractor shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Section O.9 will not be allowed unless the Contractor demonstrates to the District's satisfaction that: (i) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques; and (ii) the Contractor's plan for the Remediation Work represents the approach most beneficial to the Project and the public. The Contractor shall provide the District with such information, analyses and certificates as may be requested by the District in order to enable a determination regarding eligibility for payment.

O.10 Material Errors in Right of Way Drawings

Upon the Contractor's fulfillment of all applicable requirements of this Section O, and subject to the limitations contained therein, the District shall be responsible for, and agrees to issue Change Orders: (i) to compensate the Contractor for additional costs directly attributable to material errors in the Right of Way limits indicated in the ROW Drawings; and (ii) to extend the Completion Dates as the result of any delay in the Critical Path affecting the Completion Dates caused by any such errors. The Contractor shall provide written notice to the District immediately upon discovery of any such material error. The District, in the District's sole discretion, shall have the right to cure any such error such as by acquiring additional property.

O.11 Waiver

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

O.12 Disputes

If the District and the Contractor agree that a request to increase the Contract Price and/or extend any Completion Date by the Contractor has merit, but are unable to agree as to the amount of such price increase and/or time extension, the District agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Contractor to reduce the amount of the price increase and/or time extension as deemed appropriate by the District. In such event, the District will execute and deliver the marked-up Change Order to the Contractor within a reasonable period, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of the District and the Contractor to agree to any Change Order under this Section O (including agreement as to the amount of compensation allowed under a Force Account Change Order and the disputed amount of the increase in the Contract Price and/or extension of a Completion Date in connection with a



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Change Order as described above) shall be a Dispute to be resolved pursuant to this Section. 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 the Contractor of any nature arising from or relating to the Work covered by the Change Order. The Contractor's Claim and any award by the resolver of the dispute shall be limited to the incremental costs incurred by the Contractor with respect to the disputed matter (crediting the District for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed by this Section O with respect thereto.

O.13 No Release or Waiver

O.13.1 Extension of Time for Performance

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

O.13.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

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

P SUSPENSION OF WORK

P.1 Suspension for Convenience

The District may, at any time and for any reason, by written notice, order the Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that the District deems appropriate for the convenience of the District. The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from the District directing the Contractor to resume Work. Suspensions related to seasonal or climatic conditions shall not be considered a District caused delay.

P.2 Suspension for Cause

The District has the authority by written order to suspend the Work without liability to the District wholly or in part for the Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public.
2. Comply with any Governmental Approval, Legal Requirement, or otherwise carry out the requirements of the Contract.



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3. Carry out orders of the District.
4. Comply with environmental requirements.
5. Comply with the requirements for developing and implementing the Quality Manual.

The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from the District directing the Contractor to resume Work.

P.3 Contractor Responsibilities during Suspension

During periods that Work is suspended, the Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project and other facilities in the Project vicinity, provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Contractor-provided insurance and bonds and erect necessary temporary structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by the District, the Contractor shall continue to be responsible for maintenance of traffic in accordance with Maintenance of Traffic Plan and Section 16 of Book 2 and for maintenance during construction in accordance with Section 18 of Book 2. If the suspension is for the District's convenience, the additional work performed by the Contractor during the suspension period shall be considered a District-Directed Change. The Contractor shall be entitled to payment for all Work performed in accordance with the terms of the order of suspension.

Q TERMINATION FOR CONVENIENCE

Q.1 Notice of Termination

The District may terminate the Contract and the performance of the Work by the Contractor in whole or, from time to time, in part, if the District determines, in its sole discretion that a termination is in the best public, State or national interest to do so. The District shall notify the Contractor of its decision to terminate by delivering to the Contractor a written Notice of Termination specifying the extent of termination and its effective date. Termination (or partial termination) of the Contract shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

Q.2 Contractor Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by the District, the Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section Q.

1. Stop Work as specified in the notice.
 2. Communicate such notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by the District.
 3. Place no further Subcontracts or orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
 4. Terminate all Subcontracts to the extent that they relate to the Work terminated.
 5. Assign to the District in the manner, at the times, and as and to the extent directed by the District, all of the right, title and interest of the Contractor under the Subcontracts so terminated, in which case the District will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of such Subcontracts.
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6. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the Approval of the District, to the extent it may be required, which Approval shall be final.
7. Provide the District with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to the District, and such other information as the District may request; and transfer title and deliver to the District, in the manner, at the times, and as and to the extent, if any, directed by the District: (i) fabricated or unfabricated parts, the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and (ii) the 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 District if the Work had been completed.
8. Complete performance in accordance with the Contract Documents of all Work not terminated.
9. Take all action that may be reasonably necessary, or that the District may direct, for the safety, protection and preservation of: (i) the public, including public and private vehicular movement; (ii) the Work; and (iii) the equipment, machinery, materials and property related to the Contract Documents that is in the possession of the Contractor and in which the District has or may acquire an interest.
10. As authorized by the District in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by the District, any property of the types referred to in Section Q.2(7); provided, however, that the Contractor: (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed and at prices Approved by the District. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under the Contract Documents or paid in any other manner directed by the District.
11. If requested by the District, withdraw from the portions of the Site designated by the District and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, the Contractor and any Subcontractor in the performance of the Work as the District may direct.
12. Take other actions directed by the District.

Q.3 Responsibility After Notice of Termination

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

1. The Contractor's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the District certifies that those materials have been stored in the manner and at the locations directed by the District.
2. The Contractor's responsibility for damage to materials purchased by the District 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 District.

Immediately after the District determines that the Contractor 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 Contractor will not be required to provide for continuing safety,



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Security and maintenance at the Site. Subsequent to the determination that all materials have been stored in the manner and at the locations directed by the District, further handling of such materials shall be the responsibility of the District.

Q.4 Negotiated Termination Settlement

Q.4.1 Settlement Proposal

After receipt of a Notice of Termination, the Contractor shall submit a final termination settlement proposal to the District in the form and with the certification prescribed by the District. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless the Contractor has requested a time extension in writing within such 60-Day period and the District has agreed in writing to allow such an extension. The District will then review the Contractor's termination settlement proposal and will act upon it, return it with comments or reject it. If the Contractor fails to submit the proposal within the time allowed, the District may determine, on the basis of information available to it, the amount, if any, due the Contractor because of the termination and shall pay the Contractor the amount so determined.

Q.4.2 Negotiated Settlement Amount

The Contractor and the District may agree, as provided in Section Q.4.1, upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this Section Q. Such negotiated settlement may include a reasonable allowance for profit solely on Work, which has been completed as of the termination date and subsequently accepted by the District. Such agreed amount(s), exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount the Contract will be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in Section Q.5, prescribing the amount to be paid to the Contractor in the event that the Contractor and the District fail to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section Q, shall be deemed to limit, restrict or otherwise determine or affect the amount(s) which may be agreed upon to be paid to the Contractor pursuant to this Section Q.4. Unless otherwise agreed to by the parties as a part of a negotiated settlement, the District'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 the Contractor from its obligations with respect thereto, including Warranties, or affect the District's rights of payment or performance under the Payment and Performance Bond as to such completed or non-terminated Work.

Q.5 Determination of Settlement Amount if Negotiations Fail

If the Contractor and the District fail to agree, as provided in Section Q.4.2, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section Q, the amount payable (exclusive of interest charges) shall be determined by the District in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section Q.4:

Q.5.1 Payment Amount

The District will pay the Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination, as such amounts are determined by the District:

1. The Contractor's actual reasonable out-of-pocket cost (without profit, and including

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equipment costs only to the extent permitted by Section O) 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 District's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials and for other appropriate credits. Deductions will also be made for the cost of damaged materials. When, in the opinion of the District, the cost of an item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost will be disallowed.

2. As profit on Clause 1 above, a sum determined by the District to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Section Q.5.1 and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.
3. The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section Q.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 under the Contract, which amounts shall be included in the cost on account of which payment is made under clause 1 above.
4. The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section Q.2(9) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to the Contractor of handling material returned to the vendor, delivered to the District or otherwise disposed of as directed by the District, and including a reasonable allowance for the Contractor's administrative costs in determining the amount due to the Contractor as the result of the termination of Work under the Contract.

Q.5.2 Maximum Compensation

The Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section Q.5.1) plus its settlement costs, and that items such as lost or anticipated profit, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. However, the total amount to be paid to the Contractor, exclusive of costs described in Sections Q.5.1(3) and (4), may not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. Furthermore, if any refund is payable with respect to insurance or bond premiums, deposits or similar items which were previously passed through to the District by the Contractor, such refund shall be paid directly to the District or otherwise credited to the District. Notwithstanding anything to the contrary contained herein, if a termination occurs prior to issuance of NTP2, the total amount payable to the Contractor shall in no event exceed the NTP1 Payment Cap (and previously made insurance or bond payments).

Q.5.3 Excluded Items

Except for normal spoilage, and except to the extent that the District will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Section Q.5.1, the fair value, as determined by the District, of equipment, machinery, materials and property which is destroyed, lost, stolen or damaged so as to become



undeliverable to the District, or to a buyer pursuant to Section Q.2(10). The amount set forth in the Proposal by the Contractor for the Work terminated shall be a factor to be analyzed in determining the value of the Work terminated.

Q.5.4 Payment of Termination Amount

Upon determination of the amount of the termination payment, the Contract shall be amended to reflect the agreed termination payment, and the Contractor shall be paid the agreed amount.

Q.6 Partial Termination

If a termination hereunder is partial, the Contract Price for the remainder of the Work shall be adjusted as appropriate to account for the change in the overall scope of the Project.

Q.7 Reduction in Amount of Claim

The amount otherwise due the Contractor under this Section Q shall be reduced by: (i) all unliquidated advance or other payments made to or on behalf of the Contractor applicable to the terminated portion of the Contract; (ii) the amount of any claim which the District may have against any Contractor-Related Entity in connection with the Contract; (iii) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Section Q, and not otherwise recovered by or credited to the District; (iv) amounts that the District deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners; (v) the cost of repairing any Nonconforming Work, and (vi) any amounts due or payable by the Contractor to the District.

Q.8 Partial Payments

The District may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Contractor in connection with the terminated portion of the Contract, whenever in the opinion of the District the aggregate of such payments shall be within the amount to which the Contractor will be entitled under this Section Q. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section Q, such excess shall be payable by the Contractor to the District upon demand together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to the District. However, no interest will be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the District by reason of the circumstances.

Q.9 Inclusion in Subcontracts

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

Q.10 Limitation on Payments to Subcontractor

For the purposes of Sections Q.4.2 and Q.5, upon termination under Section Q.2(4) of Work under any Subcontract, the Contractor will not be entitled to reimbursement for that portion of



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the termination settlement with any such Subcontractor which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

Q.11 No Unearned Profit or Consequential Damages

Under no circumstances shall the Contractor be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or partial termination under this Section Q. The payment to the Contractor determined in accordance with this Section Q constitutes the Contractor's sole and exclusive remedy for a termination under this Section Q.

Q.12 No Waiver

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

Q.13 Dispute Resolution

The failure of the parties to agree on amounts due under this Section Q shall be a Dispute to be resolved in accordance with Section U.

Q.14 Allowability of Costs

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

Q.15 Suspension of Work

In the event of any suspension of Work by the District, occurring more than 180 consecutive days after issuance of NTP1, the Contractor shall have the right to consider the Contract to have been terminated for convenience under this Section Q. The Contractor shall notify the District of such election by delivering to the District a written notice of termination due to such suspension specifying its effective date. Upon delivery by the Contractor to the District of a notice of termination due to suspension, the provisions of this Section Q shall apply.

R DEFAULT

- A. The District may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of the Contract requirements in any one of the following circumstances:
 - 1. If the Contractor fails to make delivery of the supplies or perform the services within the time specified herein or any extension thereof; or
 - 2. If the Contractor fails to perform any of the other provisions of the Contract requirements, or so fails to make progress as to endanger performance of the Contract requirements in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting



Officer specifying such failure.

- B. In the event the District terminates this Contract in whole or in part as provided in paragraph (a) of this Section, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated,, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section.
- C. The Contractor shall not be liable for any excess costs if the failure to perform the Contract arises solely due to causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor or its Contractor-Related Entities.¹
- D. If this Contract is terminated, the provisions of Section P.2 are applicable..
- E. If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of suspension or termination had been a Termination of Convenience under Section Q. If any of the services do not conform to the Contract requirements, the District may require the Contractor to comply with the requirements of Section G.7.
- F. The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- G. If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to Contract requirements, the District may (1) by Contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the Contract for default.

S DAMAGES

S.1 Liquidated Damages

S.1.1 Failure to Meet Contract Requirements

The Contractor understands and agrees that if the Contractor fails to complete the Work in accordance with the Contract Documents, the District will suffer substantial losses and damages. The Contractor agrees that it shall be liable for all such losses and damages. The Contractor acknowledges and agrees that because of the unique nature of the Project, the fact



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that it is an essential part of the 11th Street Bridges Corridor system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to the District and the public in the event of the Contractor's failure to achieve Completion and Final Acceptance by the applicable Completion Dates. Therefore, the Contractor and the District have agreed to stipulate the amount payable by the Contractor in the event of its failure to meet the Completion Dates. The Contractor acknowledges and agrees that such Liquidated Damages are intended to compensate the District solely for the Contractor's failure to meet these Contract Document requirements, and shall not excuse the Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements.

S.1.1.1 Failure to Meet Completion Dates

If the Contractor fails to achieve Project completion and/or Final Acceptance by the applicable Completion Dates, the Contractor agrees to pay the District Liquidated Damages in the following amounts:

1. \$_____ per Day (or portion of a Day) for the Contractor's failure to achieve final completion by the Project Completion Date or Project Acceptance by the Project Acceptance Deadline (if not the fault of the District).
2. \$5,000 per hour (or portion of an hour) for the Contractor's failure to open a lane that has been Approved to be closed by the District within the time limit(s) of the Approval.

S.1.1.2 Maximum Damage Amounts

Cumulative Liquidated Damages under Section S.1.1.1 shall not exceed \$20,000,000.

S.1.1.3 Multiple Assessments of Liquidated Damages

If the Contractor sustains Liquidated Damages under more than one subsection under Section S.1.1 for the same delay event, only the greater amount of Liquidated Damages under the above subsections will be assessed.

S.1.1.4 Reasonableness of Liquidated Damage Amounts

The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by the District of damages, which it will incur in each of the above events, including additional interest expense as well as administrative costs. The Contractor and the District agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix the Contractor's costs and to avoid later disputes over which items are properly chargeable to the Contractor. The Contractor understands and agrees that any Liquidated Damages payable in accordance with this Section S.1 are in the nature of liquidated damages and not a penalty and such sums are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. The Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no event of default has occurred.



S.2 Offset; Waiver

S.2.1 Offset

The District shall have the right to deduct any amount owed by the Contractor to the District hereunder from any amounts owed by the District to the Contractor under this Contract.

S.2.2 No Waiver

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

S.3 Payment of Liquidated Damages

To the extent Liquidated Damages are not deducted in a Monthly Progress Report payment from any amount owed to the District by the Contractor, the District may send Contractor an invoice and the Liquidated Damages shall be payable by the Contractor to the District within ten days after the Contractor's receipt of the invoice therefor.

T INDEMNIFICATION

T.1 Indemnifications by Contractor

T.1.1 General Indemnities

Subject to Section T.1.3, the Contractor shall release, defend, indemnify and hold harmless the District and its agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from:

1. The breach or alleged breach of the Contract by any Contractor-Related Entity.
2. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Substances) or Governmental Approvals in performing the Work.
3. 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 District or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from the District's failure to comply with specific written instructions regarding use provided to the District by the Contractor.
4. The alleged negligent act or omission or willful misconduct of any Contractor-Related Entity or breach of Contract claim by any Contractor-Related Entity.
5. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of the Contractor or any of its Subcontractors or any of their respective agents, officers or employees with respect to any



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payment for the Work made to or earned by any Contractor-Related Entity.

6. Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or Lien, provided that the District is not in default in payments owing to the Contractor with respect to such Work.
7. Any spill or release or threatened spill or release of Hazardous Substances: (i) attributable to the negligence, willful misconduct or breach of contract by any Contractor-Related Entity; or (ii) that was brought onto the Site by any Contractor-Related Entity.
8. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors as described in Section Y.1, or failure of any Contractor-Related Entity to cooperate reasonably with other contractors in accordance therewith.

T.1.2 Design Defects

Subject to Section T.1.3, the Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from Errors in the Design Documents Reference Information. The Contractor agrees that, because the Basic Configuration and Reference Information are subject to review and modification by the Contractor, it is appropriate for the Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the Basic Configuration or Reference Information.

T.1.3 Losses Due to Negligence of Indemnified Parties

The Contractor's indemnity obligations under Sections T.1.1 and T.1.2 shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

T.1.4 Claims by Employees

In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section T.1 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

T.1.5 Reliance on Contractor's Performance

The Contractor hereby acknowledges and agrees that it is the Contractor'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 the Contractor's performance of such obligation. The Contractor further agrees that any review, acceptance and/or approval by the District and/or others hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.



T.2 Responsibility of the District for Certain Hazardous Substances

T.2.1 Pre-Existing Site Contamination[To be Provided]

T.3 No Effect on Other Rights

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

T.4 Comprehensive Environmental Response, Compensation, and Liability Act Agreement

Without limiting their generality, the indemnities set forth in Section T.1.1(7) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the parties indemnified in said Section T.1.1(7).

U PARTNERING; CLAIMS FOR ADJUSTMENT AND DISPUTES

U.1 Partnering

The District intends to encourage the use of an extensive partnering program among the District, the Contractor, its Subcontractors and other stakeholders, where appropriate. The partnering relationship will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives include effective and efficient Project performance and completion on schedule, within budget and in accordance with the Contract Documents.

The District anticipates a partnering effort involving the executive management, Project management, Project staff and others. Participation is encouraged. Any cost associated with effectuating partnering will be agreed to by both the Contractor and the District.

It is the intent of the parties that the claims and dispute provisions contained in this Section U shall apply only in the event that the normal District-Contractor issue resolution efforts through partnering are not successful. The dispute resolution provisions set forth in Section U.2 shall apply to all Disputes arising out of the Work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

U.2 Claims for Adjustment and Disputes

All Disputes between the Contractor and the District shall be resolved as provided by this Section.

A. Claims by the Contractor against the District

Claim, as used in this clause, means a written assertion by the Contractor seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause

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that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The Contractor's claim shall include at least the following:
 - (1) A description of the claim and the amount in dispute.
 - (2) Any data or other information to support the claim.
 - (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim, and
 - (4) The Contractor's request for relief or other action by the Contracting Officer.
 - (5) Certification that, to the best of the Contractor's knowledge, the cost and pricing data included with the claim is accurate, complete and current as of the date of claim submission. The Contractor shall agree that there is a continuing requirement to update cost and pricing data through the date of negotiations with the District are completed. The Contractor shall also agree that prices, including profit or fee, will be adjusted to exclude any significant price increases occurring as a result of cost or pricing data that was inaccurate, incomplete or not current.

- (b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

- (c) For any claim of \$50,000.00 or less, the Contracting Officer shall issue a decision within sixty (60) calendar days from receipt of a written request from a Contractor that a decision be rendered within that period.

- (d) For any claim over \$50,000.00, the Contracting Officer shall issue a decision within ninety (90) calendar days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

- (e) The Contracting Officer's written decision shall include the following:
 - (1) Provide a description of the claim or dispute.
 - (2) Refer to pertinent contract terms.
 - (3) State the factual areas of agreement and disagreement.
 - (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, shall not be binding in any subsequent proceeding.
 - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted.
 - (6) Indicate that the written document is the Contracting Officer's final decision, and,
 - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

- (f) Any failure by the Contracting Officer to issue a decision on a contract claim

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within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board, as authorized by D.C. Official Code§ 2-309.04.

(g) (1) If the Contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph g.1. shall be determined within six years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code§ 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the Contract in accordance with the decision of the Contracting Officer.

B. Claims by the District against a Contractor

(a) Claim as used in this clause means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to a contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides relief sought by the claimant.

(b) (1) All claims by the District against a Contractor arising under or relating to the contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted.

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(f) Indicate that the written document is the Contracting Officer's final decision, and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of his or her rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action of judicial review is timely commenced by the District as authorized by D.C. Official Code § 2-309.04.

(d) Pending final decision of an appeal, action or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

V ACCEPTANCE OF PROJECT

V.1 Project Completion

As a pre-requisite to Project completion, the Contractor shall provide written notice to the District when all of the following have occurred with respect to the Project:

1. The District and the Contractor have agreed upon a Punch List for Project Completion and Final Acceptance, as appropriate.
2. The Contractor has completed all Work (except for Punch List items, final cleanup and other items only included in the requirements for Final Acceptance).
3. The Contractor has ensured that the Work in connection with Project Completion has been performed in accordance with the requirements of the Contract Documents.
4. The Contractor has ensured that the Project may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site.
5. The Contractor has ensured that the Project is ready to be opened for traffic and that no further work is required which would involve any lane or shoulder closure.
6. The Contractor has received all applicable Governmental Approvals required for the Project.
7. The Contractor has furnished to the District certifications from the Contractor's Design Manager, in form and substance satisfactory to the District, certifying that the Design Documents meet the requirements of the Contract Documents.
8. The Contractor has furnished to the District certifications from the Contractor's Project Manager, in form and substance satisfactory to the District, certifying that the construction meets the requirements of the Contract Documents.



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9. The Contractor has furnished to the District certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the District, certifying that there are no outstanding Nonconforming Work or Punch List items, identified by the Contractor or the District, as prerequisites to Project Completion.
10. The Contractor has obtained all applicable third party approvals relating to the Work, and all third parties have completed all work that involves obligations by the Contractor.

V.2 Notice of Project Completion

Upon receipt of the Contractor's notice under Section V.3, the District will verify that:

1. All Nonconforming Work identified as prerequisites to Project completion has been corrected.
2. All Punch List items identified as prerequisites to Project completion have been completed.
3. All other requirements identified as prerequisites to Project completion have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the District will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Project Completion. Upon correction of the Nonconforming Work (excluding Punch List items identified for Final Acceptance), the Contractor shall provide written notification to the District and the District will verify that all prerequisites to Project Completion have been met and will issue a Notice of Project Completion

V.3 Affidavit of Final Completion

The Contractor shall provide to the District an executed sworn Affidavit of Final Completion in accordance with this Section V.5 when all of the following have occurred:

1. The District has received all Released for Construction Documents, Design Documents, As-Built Documents, ROW record maps, surveys, test data, and other deliverables required under the Contract Documents for the Project, whichever is applicable. The Contractor has furnished to the District alignment points as part of the As-Built Documents.
2. All special tools, equipment, furnishings, and supplies purchased by and/or used by the Contractor, as provided in the Contract Documents, have been delivered to the District free and clear of Liens.
3. All of the Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities have been removed from the Site, the Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of the District and the Site is in good working order and condition.
4. The Contractor has furnished to the District certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the District, certifying that there are no outstanding Nonconforming Work or Punch List items.
5. The Contractor has delivered to the District a notice of completion for the Project in recordable form and meeting all statutory requirements.
6. All of the Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the District) have been satisfied in full or waived in writing by the District.

The Affidavit of Final Completion shall include the following statement:

To the best of the Contractor's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for



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

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

V.4 Notice of Final Acceptance

Upon the District's receipt of the Affidavit of Final Completion, the District will verify that:

1. All Nonconforming Work has been corrected (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the District).
2. All Punch List items have been completed (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the District).
3. All other requirements identified as prerequisites to Final Acceptance have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the District will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Final Acceptance. Upon correction of the Nonconforming Work (including incomplete Work), the Contractor shall provide written notification to the District and the District will verify that all prerequisites to Final Acceptance have been met and will issue a Notice of Final Acceptance.

V.5 Overpayments; No Relief from Continuing Obligations

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

V.6 Opening of Sections of Project to Traffic

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



V.7 Assignment of Causes of Action

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

W WARRANTIES

W.1 Warranties by Contractor

W.1.1 Project Warranties

The Contractor warrants that:

1. 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 and shall be free of Errors.
2. The construction Work furnished pursuant to the Contract Documents shall be performed in a good workmanlike manner and shall conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State.
3. Materials and equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new.
4. The Work shall meet all of the requirements of the Contract Documents.
5. The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.
6. The Project shall be fit for use for the intended function.

W.1.2 Transfer of Title

Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the District 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 District, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the District to Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Partial Acceptance or Final Acceptance or until Contractor is removed from the Project.

W.1.3 Project Warranty Term

The Warranty term for each element of the Project shall commence upon Acceptance thereof by the District or acceptance thereof by the appropriate Person who will own such element. Subject to extension under Section W.2, the Warranties regarding all elements of the Project shall remain in effect until two years after Partial Acceptance or Final Acceptance, whichever is applicable and comes first in time, provided that the Warranty term for elements of the Project



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that will be owned by Persons other than the District (such as Utility Owners) shall remain in effect for such term as may be required under any applicable agreement (such as Utility Agreements). If the District determines that any of the Work has not met the standards set forth in this Section W.1 at any time within the Warranty period, then the Contractor shall correct such Work as specified below within the two-year warranty term.

W.1.4 Corrective Work

Within seven days of receipt by the Contractor of notice from the District specifying a failure of any of the Work to satisfy the Contractor's Warranties, or of any Subcontractor representation, warranty, guarantee, or obligation which the Contractor is responsible to enforce, the Contractor and the District shall mutually agree when and how the Contractor shall remedy such violation; provided, however, that in case of an emergency as indicated by the District in its notice requiring immediate curative action, the Contractor and the District shall agree on a remedy immediately upon notice by the District of such emergency. If the Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Contractor and the District fail to reach such an agreement within such 7 Day period (or immediately, in the case of emergency conditions), then the District, after notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. The Contractor shall reimburse the District for such costs within 30 days after the Contractor's receipt of invoice therefor. The District may agree to accept Nonconforming Work in accordance with Section F.7.2.

The District and the Contractor 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.

W.1.5 Contractor's Costs of Correction of Work

All costs of correcting such rejected Work, including additional testing and inspections, shall be deemed included in the Contract Price. The Contractor shall reimburse the District and pay the District's expenses made necessary thereby within 30 days after the Contractor's receipt of invoice therefore. The Contractor shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

W.2 Warranty of Corrected Work

The Warranties shall apply to all Work redone, repaired, corrected or replaced pursuant to the terms of the Contract. The Warranties as to each redone, repaired, corrected or replaced element of the Work shall extend beyond the original warranty period if necessary to provide at least a two year warranty period following acceptance thereof by the District or acceptance thereof by the appropriate Person who will own such element.

W.3 Subcontractor Warranties

W.3.1 Assignment

Without in any way derogating the Contractor's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, the Contractor shall obtain from all Subcontractors and cause to be extended to the District, appropriate representations, warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors, including all such representations, warranties, guarantees, and obligations required to be furnished by Subcontractors pursuant to the Contract Documents. All representations, warranties,



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guarantees, and obligations of Subcontractors shall: (i) be written so as to survive all the District and the Contractor inspections, tests, and approvals; and (ii) run directly to and be enforceable by the Contractor and/or the District and their respective successors and assigns. The Contractor hereby assigns to the District all of the Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by the Contractor from any of its Subcontractors.

W.3.2 Enforcement

Upon receipt from the District of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, the Contractor shall enforce or perform any such representation, warranty, guarantee, or obligation, in addition to the Contractor's other obligations hereunder. the District's rights under this Section W.3.2 shall commence at the time such representation, warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the Contractor's relevant Warranty (including extensions thereof under Section W.2). Until such expiration, the Contractor shall be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and the Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by any Subcontractor.

W.4 No Limitation of Liability

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Contractor'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; provided, however, that, upon expiration of the Warranties, the Contractor shall have no further liability to the District hereunder for latent construction defects.

W.5 Warranty Beneficiaries

In addition to benefiting the District and its successors and assigns, the Warranties and Subcontractor warranties provided under this Section W shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Owners with respect to those portions of the Work owned or controlled by each such Person.

W.6 Remedies for Breach of Warranty

In addition to the District's other rights and remedies hereunder, at law or in equity, the Contractor shall be liable for actual damages resulting from its failure to provide corrective Work in accordance with Section W.1.4 and any breach of an express warranty or any defect in the Work.

W.7 Disputes

Any disagreement between the District and the Contractor relating to this Section W shall be subject to the dispute resolution provisions contained in Section U, provided that the Contractor shall proceed as directed by the District pending resolution of the dispute.



X DOCUMENTS AND RECORDS

X.1 Project Records

X.1.1 Maintenance of Records

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

X.1.2 Audit and Inspection Rights

The Contractor shall grant to the District, FHWA, and the U.S. Comptroller General and their respective authorized representatives, such audit and inspection rights and allow such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Persons) as such Persons may reasonably request from time to time in connection with the issuance of Change Orders, the resolution of disputes, and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Contract and Legal Requirements, including responding to requests pursuant to the D.C. Freedom of Information Act. The Contractor shall grant to Utility Owners and their respective authorized representatives, such audit and inspection rights and all such Persons access to and the right to copy such books and records as such Persons may request in connection with the resolution of disputes or such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Utility-related Contractual or Utility Agreement requirements.

X.1.3 Audit of Force Account Work

Where the payment method for any Work is on a Force Account 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 the Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

X.1.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, such Persons and their representatives have the right to examine all books, records, documents, and other Contractor data related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

X.1.5 Claims Audits

All Claims filed against the District shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the District or by an auditor under contract with the District. No notice is required before commencing any audit before 60 days after Final



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Acceptance. Thereafter, the District shall provide 20 days notice to the Contractor, any Subcontractors or their respective agents before commencing an audit. The Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to the District, for the audit during normal business hours. The Contractor, Subcontractors, and their agents shall cooperate with the auditors. Failure of the Contractor, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of the Contractor, Subcontractors, or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company equipment, rates, etc.).
10. Subcontractors' (including Suppliers) and agents' invoices.
11. Subcontractors' and agents' payment certificates.
12. Canceled checks (payroll and Suppliers).
13. Job cost report.
14. Job payroll ledger.
15. General ledger.
16. Cash disbursements journal.
17. E-mail, letters, and correspondence.
18. Network servers, data storage devices, backup media.
19. All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim.
20. Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals and the rates for the individuals.

Full compliance by the Contractor with the provisions of this Section X.1.5 is a contractual condition precedent to the Contractor's right to seek relief under Section U. The Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section X.

X.2 Retention of Records

The Contractor shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to the District) at the Contractor's Project Manager's office in the State until seven years after the earlier to occur of: (i) the date Final Acceptance is achieved; or (ii) the termination date. If Approved by the District, photographs, microphotographs, or other authentic reproductions may be maintained instead of original



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records and documents. The Contractor shall notify the District where such records and documents are kept.

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

X.3 District of Columbia Freedom of Information Act

X.3.1 Applicability of Law

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in the Contractor's or the District's possession directly related to the Project, including materials submitted to the District by the Contractor, are subject to the provisions of the D.C. Freedom of Information Act. The Contractor shall be solely responsible for all determinations made by it under such Law and for clearly and prominently marking each and every page or sheet of its materials with trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning such act and its application to the Contractor.

X.3.2 Confidential Materials

If any of the materials submitted by the Contractor to the District are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, the District will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the District be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of the District, except for any disclosure of trade secrets or proprietary information.

X.3.3 Contractor to Defend Against Disclosure Request

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

X.3.4 Cooperation with the District Regarding D.C. FOIA Requests

In the event the District receives a FOIA request for documents that are in the custody and control of the Contractor, the Contractor shall cooperate with the District in responding to the request in a timely manner under the D.C. FOIA.



Y COOPERATION AND COORDINATION WITH OTHERS

Y.1 Cooperation with Other Contractors

The District may undertake or award other contracts for additional work on or near the Site. The Contractor shall cooperate with the District and such other contractors to the extent reasonably necessary for the performance by the District and such other contractors of their work, and shall cause its employees, agents, officers, and Subcontractors and other Persons for whom the Contractor may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by the District, which affect the Work, the Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

Y.2 Interference by Other Contractors

If the Contractor asserts that any of the District's other contractors have hindered or interfered with the progress or completion of the Work, then the Contractor's sole remedy shall be to seek recourse against such other contractors. The Contractor shall have the right to request the District Contracting Officer to resolve such dispute, provided the other contractor and its sureties have agreed to submit the dispute to the Contracting Officer, and provided that such proceeding shall be conducted at no cost to the District.

Z MISCELLANEOUS PROVISIONS

Z.1 Amendments

The Contract may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

Z.2 Waiver

Z.2.1 No Waiver of Subsequent Rights

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

Z.2.2 Custom Does not Constitute Waiver

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



Z.2.3 Waivers Must be in Writing

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

Z.3 Independent Contractor

The Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the District other than that of Project owner and independent contractor. In no event shall the relationship between the District and the Contractor be construed as creating any relationship whatsoever between the District and any of the Contractor's employees. Neither the Contractor nor any of its employees is or shall be deemed to be an employee of the District. Except as otherwise specified in the Contract Documents, the Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Contractor or any Subcontractor hires or engages to perform or assist in performing the Work.

The Contract Documents shall be binding upon and inure to the benefit of the District and the Contractor and their permitted successors, assigns and legal representatives.

Z.4.1 Assignment by the District

The District may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the surety bonds required hereunder and any other performance security provided, to any Person with the prior written approval of the Contractor.

Z.4.2 Assignment by Contractor

The Contractor may assign its rights to receive payment under the Contract Documents and may subcontract Work in accordance with the Approved Subcontracting and Small Business Plan and in compliance with the requirements of the Contract Documents. The Contractor shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with the District's prior written Approval. The Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless the District, in its sole discretion, has Approved such relief from responsibility.

Z.5 Designation of, and Cooperation with Representatives

Z.5.1 Designation of Representatives

Concurrently with execution hereof, the District and the Contractor 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. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section Z.10. 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 District or the Contractor.

Z.5.2 Cooperation

The Contractor shall cooperate with the District and all representatives of the District designated as described above.



Z.6 Gratuities and Conflicts of Interest

Neither the Contractor nor any of its employees, agents or representatives shall offer or give to an officer, official, or employee of the District or the District of Columbia gifts, entertainment, payments, loans, or gratuities. The Contractor represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

Z.7 Survival

The dispute resolution provisions contained in Section U, and all other provisions, which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

Z.8 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto 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. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such 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 District and a Subcontractor or any other Person except the Contractor.

Z.9 No Personal Liability

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

Z.10 Notices and Communications

Z.10.1 Delivery of Notices

Notices under the Contract Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by tele-facsimile communication followed by a hard copy or 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 the Contractor shall be sent to the Contractor's Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be:

[Project Manager for Contractor]

All communications to the District shall be marked with the District's project identification number and shall be delivered to the District's Project Director, with copies to such additional Persons as may be designated by the District's Project Director, at the address set forth below:

Ardeshir Nafici
District Project Director

Jerry M. Carter



District Contracting Officer

Z.10.2 Receipt of Notices

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 fax after 4:00 p.m. Eastern Standard Time And all other notices received after 5:00 p.m. Eastern Standard (as applicable) 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.).

Z.10.3 Copies of Correspondence to the District

The Contractor shall copy the District on all written correspondence pertaining to the Contract between the Contractor and any Person other than the Contractor's Subcontractors, consultants and attorneys.

Z.11 Further Assurances

The Contractor shall promptly execute and deliver to the District all such instruments and other documents and assurances as are reasonably requested by the District to further evidence the obligations of the Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

Z.12 Severability

If any clause, provision, Section or part of the Contract is ruled invalid under Section U or otherwise by a court of competent jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section or part.

Z.13 Headings

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

Z.14 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the District of Columbia. Venue for any legal action in connection with the Contract shall lie in the _____ Court, District of Columbia.

Z.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,



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representations and negotiations between the parties with respect to its subject matter.

Z.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 parties have executed the Contract as of the date and year first set forth above.

[Signature Block]

[If the Proposal is a Joint Venture, it must be signed by all authorized parties to the Joint Venture]