



Wisconsin Department of Transportation

Region

Request for Proposals: Design-Build Contract

**Book 1 Template
Draft, 05/21/21**

Design-Build Project

S.P.

Contract No.

Federal Project No.

Table of Contents

Recitals	xi
1 Contract Components; Interpretation of Contract Documents	1-1
1.1 Certain Definitions	1-1
1.2 Contract Documents	1-1
1.3 Order of Precedence	1-1
1.4 Interpretations.....	1-2
1.5 Referenced Standards and Specifications	1-2
1.6 Omission of Details; Clarification by WisDOT	1-2
1.7 Computation of Periods	1-3
1.8 Standard for Approvals	1-3
1.9 Federal Requirements	1-3
2 Design-Builder’s Obligations	2-1
2.1 Performance Requirements.....	2-1
2.1.1 Performance of Work	2-1
2.1.2 Performance Standards	2-1
2.1.3 Performance as Directed	2-1
2.2 General Obligations of Design-Builder	2-1
2.3 Representations, Warranties and Covenants.....	2-3
2.3.1 Maintenance of Professional Qualifications	2-3
2.3.2 Evaluation of Constraints	2-3
2.3.3 Feasibility of Performance.....	2-3
2.3.4 Review of Site Information	2-4
2.3.5 Governmental Approvals.....	2-4
2.3.6 Progression of Work.....	2-4
2.3.7 Design and Engineering Personnel.....	2-4
2.3.8 Organization	2-5
2.3.9 Authorization	2-5
2.3.10 Legal, Valid, and Binding Obligation	2-5
2.3.11 False or Fraudulent Statements and Claims.....	2-5
2.4 Design-Builder Requirements.....	2-5
2.4.1 Required Acceptance	2-5
2.4.2 Design Review Process; Compliance with Design	2-6
2.4.3 Ownership of Design.....	2-7
3 Information Supplied to Design-Builder; Responsibility for Design; Disclaimer	3-1
3.1 Information Supplied.....	3-1
3.2 Responsibility for Design	3-1
3.3 Reliance on Specified RID Information	3-2

3.3.1	No Other Liability Regarding RID.....	3-2
3.3.2	No Representation or Warranty Regarding RID.....	3-2
3.4	Professional Licensing Laws	3-2
4	Time within which Project will be Completed; Scheduling.....	4-1
4.1	Time of Essence	4-1
4.2	Notices to Proceed	4-1
4.2.1	Issuance of NTP1.....	4-1
4.2.2	Issuance of NTP2.....	4-1
4.3	Completion dates.....	4-2
4.3.1	Substantial Completion Date.....	4-2
4.3.2	Final Acceptance Deadline.....	4-2
4.3.3	No Time Extensions	4-2
4.4	Contract Schedule	4-2
4.5	Prerequisites for Start of Construction	4-3
4.6	Limitation of Operations.....	4-3
5	Control of Work	5-1
5.1	Control and Coordination of Work	5-1
5.2	Safety.....	5-1
5.3	Process to be Followed for Discovery of Certain Site Conditions	5-1
5.3.1	Notification to WisDOT	5-1
5.3.2	Further Investigation and Necessary Actions.....	5-2
5.3.3	Resume Work.....	5-2
5.4	Obligation to Minimize Impacts.....	5-2
5.5	Quality Management	5-3
5.5.1	Design-Builder Quality Management	5-3
5.5.2	Oversight, Inspection, and Testing by WisDOT and Others.....	5-3
5.5.3	Obligation to Uncover Finished Work.....	5-3
5.6	Effect of Oversight, Spot Checks, Audits, Tests, Acceptances, and Approvals.....	5-4
5.6.1	Oversight and Acceptance	5-4
5.6.2	No Estoppel.....	5-4
5.7	Nonconforming Work.....	5-4
5.7.1	Rejection, Removal and Replacement of Work	5-4
5.7.2	Acceptance of Nonconforming Work.....	5-5
6	Access to Site; Environmental Mitigation	6-1
6.1	Access to Site.....	6-1
6.1.1	Access to Right-of-Way.....	6-1
6.1.2	Access to Right-of-Way Not Identified on Plats or Exhibits	6-2
6.1.3	Sharing of Cost Savings for Avoided Right-of-Way Acquisitions	6-2
6.1.4	Design-Build.....	6-2
6.1.5	Mitigation Requirements	6-3

6.1.6	New Environmental Approvals	6-3
7	Equal Employment Opportunity; Subcontracts; Labor.....	7-1
7.1	Equal Employment Opportunity.....	7-1
7.1.1	Equal Employment Opportunity Policy.....	7-1
7.1.2	Inclusion in Subcontracts	7-1
7.2	Design-Build Disadvantaged Business Enterprises	7-1
7.2.1	Disadvantaged Business Enterprises Policy.....	7-1
7.2.2	Inclusion in Subcontracts	7-1
7.3	Subcontracting Requirements	7-1
7.3.1	Major Participants.....	7-2
7.3.2	Assignment of Subcontract Rights.....	7-2
7.3.3	Subcontract Terms	7-2
7.3.4	Subcontract Data.....	7-3
7.3.5	Responsibility for Work by Subcontractor	7-3
7.3.6	Subcontract Work.....	7-3
7.3.7	Debarred Subcontractors	7-3
7.4	Key Personnel; Character of Workers	7-4
7.4.1	Key Personnel.....	7-4
7.4.2	Representations, Warranties and Covenants	7-4
7.4.3	Employee Performance Requirements	7-4
8	Surety Bonds	8-1
8.1	Payment and Performance Bond	8-1
8.2	Warranty Bond.....	8-1
8.3	Utility Work.....	8-1
8.4	No Relief of Liability	8-1
9	Insurance	9-1
9.1	General Insurance Requirements	9-1
9.1.1	Evidence of Insurance.....	9-1
9.1.2	A.M. Best Rating	9-1
9.1.3	Full Force and Effect; Notice of Cancellation or Non-Renewal.....	9-1
9.1.4	No Recourse	9-1
9.1.5	Indemnification	9-1
9.1.6	Commercial Unavailability of Required Coverages.....	9-2
9.1.7	Primary and Non-Contributory	9-2
9.1.8	Governmental Immunity	9-2
9.1.9	Subcontractor as Named Insured	9-2
9.2	Design-Builder-Provided Insurance.....	9-2
10	Risk of Loss	10-1
10.1	Site Security.....	10-1

10.2	Maintenance and Repair of Work and On-Site Property	10-1
10.2.1	Responsibility of Design-Builder	10-1
10.2.2	Relief from Liability for Maintenance	10-1
10.3	Damage to Off-Site Property	10-2
10.4	Title	10-2
11	Payment	11-1
11.1	Contract Price	11-1
11.1.1	Contract Price	11-1
11.1.2	Items Included in Contract Price	11-1
11.1.3	Delay in Award of Contract	11-1
11.1.4	Fuel Cost Adjustment	11-2
11.2	Invoices and Payment	11-2
11.3	Limitations on Payment	11-2
11.3.1	Materials Ineligible for Payment	11-3
11.3.2	Nonconforming Work	11-3
11.3.3	Third Party Payments	11-3
11.4	Deductions	11-3
11.5	Final Payment	11-4
11.5.1	Application for Final Payment	11-4
11.5.2	Payment	11-4
11.6	Payments to Subcontractors	11-5
11.7	Interest on Late Payments	11-5
11.8	Disputes	11-6
12	Contract Incentives	12-1
12.1	Early Completion Incentives	12-1
12.2	Other Incentives	12-1
13	Changes in the Work	13-1
13.1	Circumstances under which Change Orders May Be Issued	13-1
13.1.1	Definition of and Requirements Relating to Change Orders	13-1
13.1.2	Directive Letter as Condition Precedent to Claim That a WisDOT-Directed Change Has Occurred	13-2
13.1.3	Significant Changes in the Character of Work	13-2
13.2	Procedure for WisDOT-Initiated Change Orders	13-3
13.2.1	Request for Change Proposal	13-3
13.2.2	Unilateral Change Orders	13-4
13.2.3	Changes in Law	13-4
13.3	Procedure for Design-Builder-Initiated Change Orders	13-5
13.3.1	Eligible Changes	13-5
13.3.2	Conditions Precedent	13-6
13.3.3	Performance of Disputed Work	13-10

13.4	Contents of Change Orders.....	13-10
13.4.1	Scope of Work, Cost Estimate, Delay Analysis, and Information Regarding Change.....	13-10
13.4.2	Design-Builder Representation	13-11
13.5	Certain Limitations.....	13-12
13.5.1	Limitation on Contract Price Increases	13-12
13.5.2	Limitation on Delay and Disruption Damages.....	13-12
13.5.3	Limitation on Time Extensions	13-13
13.6	Negotiated Price Change Orders	13-13
13.6.1	Unit Price Change Orders	13-13
13.6.2	Added Work.....	13-14
13.6.3	Deleted Work.....	13-14
13.6.4	Work Both Added and Deleted.....	13-14
13.7	Force Account Change Orders.....	13-14
13.7.1	Determination of Costs.....	13-15
13.7.2	Force Account Records.....	13-16
13.7.3	Compliance with the Federal Acquisition Regulation.....	13-17
13.8	Differing Site Conditions	13-17
13.8.1	Responsibilities of WisDOT.....	13-17
13.8.2	Burden of Proof	13-17
13.9	Certain Events	13-17
13.10	Contaminated Materials Management	13-18
13.11	Matters Not Eligible for Change Orders	13-18
13.12	Waiver	13-19
13.13	Disputes	13-19
13.14	No Release or Waiver.....	13-20
13.14.1	Extension of Time for Performance.....	13-20
13.14.2	No Change Order Based on Course of Conduct or Order by Unauthorized Person.....	13-20
14	Suspension of Work.....	14-1
14.1	Suspension for Convenience.....	14-1
14.2	Suspension for Cause	14-1
14.3	Design-Builder Responsibilities During Suspension	14-1
15	Termination for Convenience.....	15-1
15.1	Notice of Termination	15-1
15.2	Design-Builder's Responsibilities Upon Termination	15-1
15.3	Responsibility After Notice of Termination	15-2
15.4	Negotiated Termination Settlement	15-3
15.4.1	Settlement Proposal.....	15-3
15.4.2	Negotiated Settlement Amount	15-3
15.5	Determination of Settlement Amount If Negotiations Fail.....	15-3

15.5.1	Payment Amount	15-4
15.5.2	Maximum Compensation	15-5
15.5.3	Excluded Items	15-5
15.5.4	Payment of Termination Amount	15-5
15.6	Partial Termination	15-5
15.7	Reduction in Amount of Claim	15-5
15.8	Partial Payments	15-6
15.9	Inclusion in Subcontracts	15-6
15.10	Limitation on Payments to Subcontractor	15-6
15.11	No Unearned Profits or Consequential Damages	15-6
15.12	No Waiver	15-7
15.13	Dispute Resolution	15-7
15.14	Allowability of Costs	15-7
15.15	Suspension of Work	15-7
15.16	Termination Due to Non-Appropriation of Funds	15-7
15.16.1	Availability of Funds	15-7
15.16.2	Anticipated Appropriations	15-7
15.16.3	Remedy for Failure to appropriate	15-8
16	Default	16-1
16.1	Default by the Design-Builder	16-1
16.1.1	Events of Default	16-1
16.1.2	Right to Cure	16-2
16.2	Remedies	16-3
16.2.1	Rights of WisDOT	16-3
16.2.2	Liability of the Design-Builder	16-4
16.3	Right to Stop Work If Undisputed Payment Is Not Made	16-6
16.4	Notice and Opportunity to Cure Other Types of WisDOT Breaches	16-6
17	Damages	17-1
17.1	Liquidated Damages and Disincentives	17-1
17.1.1	Failure to Meet Completion dates	17-1
17.1.2	Reasonableness of Liquidated Damage Amounts	17-2
17.2	Monetary Deductions	17-2
17.3	Offset; Waiver	17-2
17.3.1	Offset	17-2
17.3.2	Waiver of Liquidated Damages	17-3
17.4	Payment of Liquidated Damages	17-3
18	Indemnification	18-1
18.1	Indemnifications by the Design-Builder	18-1
18.1.1	General Indemnities	18-1
18.1.2	Design Defects	18-2

18.1.3	Losses Due to Negligence of Indemnified Parties	18-2
18.1.4	Claims by Employees.....	18-2
18.1.5	Reliance on Design-Builder’s Performance	18-3
18.2	Responsibility of WisDOT for Certain Contaminated Materials.....	18-3
18.2.1	Pre-Existing Site Contamination	18-3
18.2.2	Generator Number for Hazardous Waste Materials.....	18-3
18.3	No Effect on Other Rights.....	18-4
18.4	CERCLA Agreement.....	18-4
18.5	Intent of Indemnity for Breach of Contract.....	18-4
19	Partnering, Claims for Adjustment and Disputes	19-1
19.1	Partnering	19-1
19.1.1	Partnering Participants.....	19-1
19.1.2	Partnering Workshops.....	19-2
19.2	Claims for Compensation Adjustment and Disputes	19-4
20	Acceptance of Project.....	20-1
20.1	Substantial Completion.....	20-1
20.1.1	Notice by the Design-Builder.....	20-1
20.1.2	Correction of Defects	20-2
20.1.3	Notice of Substantial Completion	20-2
20.2	Final Acceptance	20-2
20.2.1	Conditions to Final Acceptance.....	20-2
20.2.2	Inspection and Issuance of Notice of Final Acceptance.....	20-4
20.2.3	Overpayments; No Relief from Continuing Obligations	20-4
20.3	Opening of Sections of Project to Traffic	20-5
20.3.1	Plan for Opening to Traffic	20-5
20.3.2	Direction to Open Following the Design-Builder Failure to Perform	20-5
20.3.3	No Waiver.....	20-5
20.4	Assignment of Causes of Action.....	20-5
21	Warranties	21-1
21.1	Warranties by Design-Builder	21-1
21.1.1	Project Warranties	21-1
21.1.2	Project Warranty Term.....	21-1
21.1.3	Additional Warranty Requirements	21-1
21.1.4	Corrective Work.....	21-2
21.1.5	Costs of Correction of Work	21-3
21.2	Warranty of Corrected Work	21-3
21.3	Subcontractor Warranties	21-3
21.3.1	Assignment.....	21-3
21.3.2	Enforcement.....	21-4
21.4	No Limitation of Liability.....	21-4

21.5	Warranty Beneficiaries.....	21-4
21.6	Remedies for Breach of Warranty	21-4
21.7	Disputes.....	21-5
22	Documents and Records	22-1
22.1	Escrowed Proposal Documents	22-1
22.1.1	Review of EPD	22-1
22.1.2	Property of the Design-Builder	22-1
22.1.3	Representation and Warranty	22-2
22.1.4	Contents of EPD.....	22-2
22.1.5	Format of EPD.....	22-3
22.1.6	Review by WisDOT	22-3
22.1.7	Return of EPD	22-3
22.1.8	Material Cost Reporting	22-3
22.2	Subcontractor Pricing Documents.....	22-3
22.3	Project Records	22-4
22.3.1	Maintenance of Records	22-4
22.3.2	Audit and Inspection Rights	22-4
22.3.3	Audit of Force Account Work.....	22-4
22.3.4	Change Order Pricing Data.....	22-4
22.3.5	Claims Audits.....	22-5
22.4	Retention of Records	22-6
23	Provisions	23-1
23.1	Amendments.....	23-1
23.2	Waiver.....	23-1
23.2.1	No Waiver of Subsequent Rights	23-1
23.2.2	Custom Does not Constitute Waiver	23-1
23.2.3	Waivers Must Be in Writing	23-1
23.3	Independent Design-Builder	23-2
23.4	Successors and Assigns.....	23-2
23.4.1	Assignment by WisDOT	23-2
23.4.2	Assignment by the Design-Builder	23-2
23.5	Designation of and Cooperation with Representatives	23-3
23.5.1	Designation of Representatives	23-3
23.5.2	Cooperation.....	23-3
23.6	Officials not to Benefit.....	23-3
23.7	Survival.....	23-3
23.8	Limitation on Third-Party Beneficiaries.....	23-4
23.9	No Personal Liability.....	23-4
23.10	Notices and Communications.....	23-4
23.10.1	Delivery of Notices	23-4

23.10.2	Receipt of Notices	23-5
23.10.3	Copies of Correspondence to WisDOT.....	23-6
23.11	Further Assurances	23-6
23.12	Severability	23-6
23.13	Headings.....	23-6
23.14	Governing Law	23-6
23.15	Limit of Liability	23-7
23.16	Entire Agreement.....	23-7
23.17	Counterparts	23-7

Exhibits

- Exhibit A Acronyms and Definitions
- Exhibit B Certification to Secretary of Transportation
- Exhibit C Additional Warranty Requirements
- Exhibit D EEO Special Provisions
- Exhibit E Disadvantaged Business Enterprise (DBE) Special Provisions for Design-Build Projects
- Exhibit F Federal and State Prevailing Wage Requirements and Additional Federal Requirements
 - Exhibit F-1 Traffic Control Prevailing Wage Coverage
 - Exhibit F-2 Federally Funded Construction Contracts; Special Provisions Division A – Labor
 - Exhibit F-3 Federal Wage Rates
- Exhibit G Key Personnel
- Exhibit H Limitation on Use of Contract Funds for Lobbying
- Exhibit I Debarment and Suspension

{Note to authors: Exhibits E, F-1, F-2, F-3, F-6, H, and I are only required on federally funded projects.}
Put "Not Used" next to these exhibit names for state-funded only projects.

THIS Design-Build Contract is entered into by and between the State of Wisconsin Department of Transportation acting through its Secretary of Transportation (WisDOT) and (Design-Builder). This Contract is effective as of the last date signed by the parties below.

Recitals

1. The Project is located in County, Wisconsin, within the city limits of . The Project limits include . The Project scope is to design and construct . The proposed construction includes . The Project also includes .
2. WisDOT selected the Design-Builder [insert process] according to Wisconsin Statute Section 84.062.
3. This Contract is a lump-sum Design-Build Contract. The Design-Builder will perform all Work necessary to complete the Project by the specified deadlines, for the not-to-exceed Contract Price. The specified deadlines and Contract Price may only be adjusted as provided in this Contract. The Contract limits the Design-Builder's ability to make claims for an increase to the Contract Price or an extension of the Completion dates, in order to allow WisDOT to budget for the Project and reduce the risk of cost overruns. The Design-Builder agrees to assume the responsibilities and risks included in this Contract, and the assumption of those responsibilities and risks is reflected in the Contract Price.
4. WisDOT will suffer substantial losses if the Design-Builder fails to complete the Project within the time limitations set forth in the Contract Documents. The Contract Documents therefore provide that the Design-Builder will pay WisDOT substantial Liquidated Damages if such completion is delayed.
5. WisDOT has provided the Basic Configuration to the Design-Builder for the purpose of defining certain aspects of the Project. WisDOT has also provided Reference Information Documents (RID) to the Design-Builder. The Design-Builder has no right to rely on the RID except to the extent specifically permitted in the Contract Documents. WisDOT and the Design-Builder both intend for the Design-Builder to (1) assume full responsibility and liability with respect to the design of the Project, including correcting any errors in the Basic Configuration or RID; and (2) indemnify and hold harmless WisDOT and others with respect to any defects in the Project, including, but not limited to, errors in the Preliminary Design Drawings generally referenced in the Basic Configuration, or other errors in the RID.

NOW, THEREFORE, the parties agree as follows.

1 Contract Components; Interpretation of Contract Documents

1.1 Certain Definitions

Exhibit A to this **Book 1** contains the meaning of various terms used in the Contract Documents.

1.2 Contract Documents

The phrase “Contract Documents” means the documents listed in Section 1.3, including all of the exhibits to these documents.

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 comprise a complete Contract. In the event of any conflict among the Contract Documents, the order of precedence is as follows:

1. Change Orders and Contract amendments
2. Book 1, as executed by WisDOT and the Design-Builder (Design-Build Contract)
3. Book 2 (Project Requirements)
4. Book 3 (Applicable Standards)
5. The Proposal, except that the Design-Builder must comply with all statements, offers, and terms 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 that are more advantageous to WisDOT than the requirements of the Contract Documents, as determined by WisDOT. An Approved Alternative Technical Concept (ATC) incorporated into the Proposal and any associated conditions of Approval will take precedence over conflicting requirements of standards in Book 1, 2, or 3.
6. The Statement of Qualifications, except that the Design-Builder must comply with all statements, offers, and terms 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 that are more advantageous to WisDOT than the requirements of the Contract Documents, as determined by WisDOT.

WisDOT will have the right to determine, in its sole discretion, which requirement applies if there is a conflict between a requirement and another requirement established by reference in the Contract Documents. The Design-Builder must request WisDOT's determination about the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Interpretations

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to; the words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation" unless the context requires otherwise; in phrases involving performance by a Person, the word "must" indicates a requirement imposed on the Person; unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references; words 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 include each other gender where appropriate. Unless otherwise specified, the Design-Builder is the subject of all statements and commands in the Contract. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work will not be deemed all-inclusive. WisDOT's final answers to the questions posed during the proposal process for the Contract will not be deemed part of the Contract Documents and will not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.5 Referenced Standards and Specifications

Work that must comply with a specified standard established by reference to a described publication must comply with the latest edition or revision of that standard in effect on the RFP Release Date, including any amendments in effect on that date, unless otherwise specified in the Contract or otherwise directed by WisDOT.

1.6 Omission of Details; Clarification by WisDOT

The Design-Builder must not take advantage of any apparent error in the Contract. If it appears that the Work to be done or any matter related to the Work is not sufficiently detailed or explained in the Contract Documents, the Design-Builder will request in writing from WisDOT further written explanations as may be necessary and will conform to the explanation provided. Design-Builder must promptly notify WisDOT of any error that it discovers in the Contract Documents and must obtain specific instructions in writing regarding any such error before proceeding with the affected Work. The fact that the Contract Documents omit or misdescribe any details of any Work that are necessary to carry out the intent of the Contract Documents, or

that are customarily performed under similar circumstances, will not relieve the Design-Builder from performing the omitted Work or misdescribed details of the Work, and they must be performed as if fully and correctly stated and described in the Contract Documents, without entitlement to a Change Order except as specifically allowed under Section 13.

1.7 Computation of Periods

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

1.8 Standard for Approvals

In all cases where approvals, acceptances, or consents are required from WisDOT or the Design-Builder, these approvals, acceptances, or consents may not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and may not be unreasonably delayed if no response time is specified.

1.9 Federal Requirements

Notwithstanding anything to the contrary contained in this Contract, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements will prevail, take precedence, and be in force over and against any such conflicting provisions.

2 Design-Builder's Obligations

2.1 Performance Requirements

2.1.1 Performance of Work

The Design-Builder is responsible for providing all materials and performing all Work and services necessary to achieve Substantial Completion and Final Acceptance on or before the Completion date except for the materials, Work, and services that are the responsibility of others as specifically provided in the Contract Documents. The costs of all such materials, services, and efforts are included in the Contract Price, except for changes in the Work as provided in Section 13.

2.1.2 Performance Standards

The Design-Builder will design the Project and will construct the Project as designed. The Design-Builder will perform design work in accordance with all professional engineering principles, the applicable standard of care, and the requirements of the Contract Documents. Contactor will perform construction practices generally accepted as standards of the industry in the State (but at least meeting the requirements of the Contract Documents), in a good and workmanlike manner. The Work must be free from defects except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents unless the Design-Builder (a) has actual or constructive knowledge of such inherent defects, and (b) fails to request that WisDOT remedy the inherent defects.

2.1.3 Performance as Directed

The Design-Builder will, at all times, comply with all provisions of the Contract Documents. The Design-Builder will perform the Work diligently, without delay, and in compliance with WisDOT's decisions and orders, even during the course of a dispute between the parties. The parties will resolve disputes in accordance with Section 19.

2.2 General Obligations of Design-Builder

Design-Builder must perform the duties in the following list, in addition to meeting all other requirements of the Contract Documents:

1. Furnish all design and other services, provide all materials and labor, and undertake all efforts necessary or appropriate (excluding only those services, materials, and labor that the Contract Documents specify will be undertaken by other Persons) to:

- a. construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, all Governmental Rules, all Governmental Approvals, and all other applicable safety, environmental, licensing, and other requirements, taking into account the Transportation Project Plat or Plat and other constraints affecting the Project, to achieve Substantial Completion and Final Acceptance by the applicable Completion dates; and
 - b. do everything else required by and in accordance with the Contract Documents.
2. Provide a Design-Builder's Project Manager, Approved by WisDOT, who at all times will:
 - a. have full responsibility for prosecuting the Work, and
 - b. act as agent of and be a single point of contact in all matters for the Design-Builder, and
 - c. be present at the Site at all times Work is performed, or have an Approved designee present, and
 - d. have authority to bind the Design-Builder on all Project-related matters.
3. Obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals as provided in Section 6.3 that are to be obtained by WisDOT or other parties).
4. Comply with all conditions imposed by all Government Approvals, and undertake all actions required by and necessary to maintain those Government Approvals in full force and effect. This includes, but is not limited to, implementing all environmental mitigation measures required by the Contract Documents, except where the Contract Documents expressly assign responsibility for those measures to another Person.
5. Provide such assistance as is reasonably requested by WisDOT in dealing with any Person, and in prosecuting and defending lawsuits in any and all Project-related matters. This may include, but is not limited to, providing information and reports regarding the Project, executing declarations, and attending meetings and hearings. This clause does not require the Design-Builder to provide legal services, nor does it limit the Indemnification requirements in Section 18.
6. Comply with all requirements of all Governmental Rules including, but not limited to, the following:
 - a. the Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 4, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Contaminated Materials and Regulated Materials;
 - b. the Americans with Disabilities Act of 1990 (ADA), 42 United States Code (U.S.C.) Section 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and

- c. the Federal Requirements.
7. Comply with the Quality Manual requirements in Book 2, Section 5.
 8. Cooperate with WisDOT and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other Work-related matters.
 9. Supervise and be responsible to WisDOT for acts and omissions of all Design-Builder-Related Entities, as though all such Entities (and Persons employed by those entities) were directly employed by the Design-Builder.
 10. Mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating, or redeploying the Design-Builder's forces to other Work, as appropriate.
 11. Pay all applicable federal, State, and local sales, consumer, use, and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Person, whether direct or indirect, relating to, or incurred in connection with, performing the Work.

2.3 Representations, Warranties and Covenants

The Design-Builder represents, warrants, and covenants as follows:

2.3.1 Maintenance of Professional Qualifications

The Design-Builder represents that the Design-Builder and its design Subcontractor(s) have the required professional licenses and the professional skills, competence, and capacity to perform the Work in accordance with the requirements of the Contract Documents.

2.3.2 Evaluation of Constraints

The Design-Builder has evaluated the constraints affecting delivery of the Project, including, but not limited to, the Transportation Project Plat (TPP), Traditional Plat, Acquisition Exhibits, Basic Configuration, and the conditions of the Environmental Approvals. The Design-Builder represents that the Project can be delivered within those constraints.

2.3.3 Feasibility of Performance

The Design-Builder has evaluated the feasibility of performing the Work within the time specified in this Contract and for the Contract Price. The Design-Builder represents that it is feasible to perform the Contract within those cost and time constraints.

2.3.4 Review of Site Information

The Design-Builder has, before submitting its Proposal, and in accordance with prudent and generally accepted engineering and construction practices, undertaken appropriate and reasonable activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project. These activities have included reviewing the boring logs provided by WisDOT in Book 2, if any, and inspecting and examining the Site and surrounding locations, to the extent possible. Having performed these activities, the Design-Builder represents that it is familiar with and accepts the physical requirements of the Work, subject to the right to receive a Change Order for Differing Site Conditions as specified in this Contract. Before commencing any Work on a particular aspect of the Project, Design-Builder will verify all governing dimensions and conditions at the Site and examine all adjoining work that may have an impact on such Work. The Design-Builder is responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Governmental Approvals

The Design-Builder represents and warrants that it has obtained or will obtain all Governmental Approvals it is required to obtain to permit the Work to proceed in accordance with the Contract Documents. If any Governmental Approval that the Design-Builder is required to obtain must formally be issued in the name of WisDOT, the Design-Builder will undertake all efforts to obtain such Approvals. WisDOT will cooperate with the Design-Builder, including executing and delivering appropriate applications and other documentation in a form Approved by WisDOT. The Design-Builder will assist WisDOT in obtaining any Governmental Approvals that WisDOT is obligated to obtain, including providing information requested by WisDOT and participating in meetings regarding the Approvals.

2.3.6 Progression of Work

The Design-Builder will schedule and direct its Work to provide an orderly progression of the Work to achieve Substantial Completion and Final Acceptance by the applicable Completion dates. The Design-Builder will prosecute its Work in accordance with the Contract Schedule; will furnish labor, materials, facilities, and equipment; and will work the hours (including extra shifts and overtime operations) needed to meet the Completion dates.

2.3.7 Design and Engineering Personnel

The Design-Builder will ensure that its design and engineering Work is performed by or under the supervision of Persons licensed to practice architecture, engineering, or surveying (as applicable) in the State of Wisconsin. The Design-Builder's Work will be performed by personnel who are: (1) competent, skilled, and experienced in their respective trades or professions; (2) professionally qualified to perform the Work in accordance with the Contract Documents; and

(3) able and willing to assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents that they prepare or check.

2.3.8 Organization

The Design-Builder represents and warrants that it is a _____ duly organized and validly existing under the laws of the State of _____. The Design-Builder represents and warrants that it is in good standing in the State and duly qualified to conduct business in the State. The Design-Builder warrants that it will remain in good standing for as long as needed to perform its obligations under the Contract Documents.

2.3.9 Authorization

The Design-Builder represents and warrants that it has taken all actions necessary to execute, deliver, and perform the Contract. If applicable, the Design-Builder's members have also taken all actions necessary to execute, deliver, and perform the Contract. The Design-Builder represents that executing and performing this Contract will not result in a material breach or a default under any other contract or legal obligation.

2.3.10 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the Design-Builder, and if applicable, of each member of the Design-Builder team. If applicable, each Guaranty constitutes the legal, valid, and binding obligation of Guarantor.

2.3.11 False or Fraudulent Statements and Claims

The Design-Builder recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. Section 3801 et seq.) and the U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," (49 Code of Federal Regulations (CFR) Part 31), apply to its actions under this Contract. By signing this Contract, the Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. Any false, fictitious, or fraudulent claim, statement, submission, or certification is subject to penalties under federal law and regulations.

2.4 Design-Builder Requirements

2.4.1 Required Acceptance

The Design-Builder acknowledges and agrees that the Design-Builder's ability to revise the Basic Configuration is constrained by the Contract Documents.

2.4.2 Design Review Process; Compliance with Design

2.4.2.1 Design Review Process

The Design-Builder will furnish the Released for Construction Documents and other Design Documents to WisDOT in accordance with Book 2, Section 5. The Design-Builder must obtain WisDOT's Acceptance of the Released for Construction Documents in accordance with Book 2, Section 5. The Design-Builder must also obtain WisDOT's Acceptance or Approval of the other Design Documents (as applicable) in accordance with Book 2, when required. WisDOT has the right to review all Released for Construction Documents and other Design Documents for compliance with the requirements of the Contract Documents in accordance with Book 2, Section 5, and WisDOT may comment on the Released for Construction Documents and Design Documents. Design-Builder will revise and modify all such documents or materials so as to fully reflect all of WisDOT's comments, no later than 14 Days after receiving WisDOT's comments, unless the Engineer approves a longer period in writing. If Design-Builder believes incorporating WisDOT's comments would cause the Released for Construction Documents, other Design Documents, or any Contract Documents to contain errors or would otherwise adversely affect the design or construction of the Project, then Design-Builder must notify WisDOT in writing no later than 14 Days after receiving those comments. WisDOT will have the right to modify its comments. If the Design-Builder fails to notify WisDOT as required by this clause, then the Design-Builder accepts all responsibility for WisDOT's changes to the Released for Construction Documents and other Design Documents, and those changes will be treated as if the Design-Builder had initiated those changes.

2.4.2.2 Third Party ATC Approvals

The Design-Builder is solely responsible for obtaining any Approvals from Persons other than WisDOT, when required to implement Approved ATCs incorporated in the Contract Documents, unless specifically written otherwise. The Design-Builder acknowledges ATCs may be disapproved for any reason, or for no reason. If Design-Builder fails to obtain any such Approval, the Design-Builder will comply with the corresponding baseline requirements (unmodified by the ATC) without any increase in the Contract Price or extension of the Completion dates.

2.4.2.3 Design Reviews Required by Third Parties

The Design-Builder will be responsible for obtaining all design reviews required by Utility Owners, Regulatory Agencies, Railroad owners, and any other Persons other than WisDOT. WisDOT may assist in coordinating these reviews.

2.4.2.4 Compliance with Contract Documents and Design

The Design-Builder will deliver the Project in accordance with, and otherwise meet the requirements of, the Contract Documents and Design Documents. If there are any conflicts

between the Contract Documents and the Design Documents, the Contract Documents take precedence over the Design Documents.

2.4.3 Ownership of Design

Released for Construction Documents and other Design Documents become WisDOT's property when the Design-Builder prepares them. Other documents prepared or obtained by the Design-Builder to meet its obligations under this Contract become WisDOT's property when the Design-Builder prepares or receives them, including, but not limited to, Construction Documents, studies, manuals, as-built drawings, calculations, technical and other reports. All Project Documents must be submitted within 10 Business Days of request or completion of the Contract. The Department's reuse of Project Documents other than for the intended Project will be at the sole risk of WisDOT.

3 Information Supplied to Design-Builder; Responsibility for Design; Disclaimer

3.1 Information Supplied

WisDOT has made available to the Design-Builder information that is described in the Contract Documents and certain Reference Information Documents regarding the Project. WisDOT has allowed the Design-Builder access to the Site for purposes of inspection and testing.

3.2 Responsibility for Design

The Design-Builder has full responsibility for designing the Project. The Design-Builder will furnish the design of the Project, regardless of the fact that some conceptual design work occurred and was provided to the Design-Builder before the Design-Builder executed the Contract. The Design-Builder specifically acknowledges and agrees that:

1. The Preliminary Design Drawings, even as referenced by the Basic Configuration, are RID.
2. The Design-Builder is not entitled to rely on and has not relied on (i) the RID or (ii) any other documents or information provided by WisDOT, except to the extent specifically permitted in the Contract Documents.
3. The Basic Configuration specifies broad design requirements, scopes of work, and other Project elements by referencing the Preliminary Design Drawings in the RID. It should be noted that discrete portions of the Preliminary Design Drawings generally referenced by the broad Basic Configuration requirements may contain errors, because the drawings are only preliminary. Any such errors that exist in the Preliminary Design Drawings under a general Basic Configuration reference are not allowed by the Contract, and the Design-Builder must correct those errors through the design and/or construction process as set forth in Book 2 without any increase in the Contract Price or extension of a Completion date, if the Design-Builder elects to use a similar design.
4. The Design-Builder's Warranties and indemnities under the Contract cover errors in the Project even though they may be related to errors in the Preliminary Design Drawings or other RID.
5. One of the Design-Builder's personnel must be the Engineer of Record unless otherwise specified.

3.3 Reliance on Specified RID Information

3.3.1 No Other Liability Regarding RID

The Design-Builder understands and agrees that WisDOT will not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Design-Builder-Related Entity due to any use of any information contained in the RID or any action or forbearance in reliance on the RID, except to the extent that WisDOT has specifically agreed in the Contract that the Design-Builder will be entitled to an increase in the Contract Price and/or extension of a Completion date with respect to the matter. The Design-Builder agrees that (a) if and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of this information in any way, the use is made on the basis that Design-Builder, not WisDOT, has Approved and is responsible for the information; and (b) Design-Builder is capable of conducting and obligated under the Contract to conduct any and all studies, analyses, and investigations it deems advisable to verify or supplement the information, and that any use of the information is entirely at the Design-Builder's own risk and at its own discretion.

3.3.2 No Representation or Warranty Regarding RID

WisDOT does not represent or warrant that the information contained in the RID is either complete or accurate, or that the information conforms with the requirements in the Contract Documents. This provision will in no way affect WisDOT's agreement in the Contract to issue Change Orders in accordance with Section 13.

3.4 Professional Licensing Laws

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

4 Time within which Project will be Completed; Scheduling

4.1 Time of Essence

Time is of the essence for the Design-Builder to perform this Contract.

4.2 Notices to Proceed

4.2.1 Issuance of NTP1

The Design-Builder will begin performing certain limited Work as directed and described in NTP1 issued by WisDOT. Limited Work may include non-permanent construction that does not impact traffic such as preliminary design, tree removal, clearing and grubbing, Utility coordination, soil borings, temporary construction, final design, and other items specifically authorized in writing by WisDOT. The Design-Builder will not begin to perform this limited Work until all the following conditions have been fully satisfied with respect to the Work covered by NTP1:

1. The Design-Builder has notified WisDOT in writing of the Work to be performed and has received WisDOT Approval, which may require Released for Construction Plans with WisDOT Acceptance.
2. The Design-Builder has obtained all Governmental Approvals it needs to construct the limited Work, and met all prerequisite conditions for beginning the limited Work as required by the Governmental Approvals.
3. The Design-Builder has delivered, and WisDOT has received, all insurance policies and bonds that must be received and Accepted or Approved by WisDOT as required by this Contract.
4. All necessary rights of access for such portion of the Project have been obtained.
5. WisDOT has Accepted the Initial Work Plan in accordance with Book 2, Section 2.
6. The Design-Builder has acquired permits, if required prior to performing NTP1 Work, as listed in Book 2, Section 4.
7. WisDOT has Approved the environmental items listed in Book 2, Section 4.

4.2.2 Issuance of NTP2

The Design-Builder will begin performing the remainder of the Work as directed and described in NTP2. WisDOT will issue NTP2 after all of the following events have occurred:

1. WisDOT has Approved the Original Payment Breakdown required under Book 2, Section 2.
2. WisDOT has Approved the Design-Builder's Quality Manual. To expedite construction activities, the Design-Builder may request that WisDOT Approve a partially complete Quality Manual at WisDOT's sole discretion.
3. WisDOT has Approved the environmental items listed in Book 2, Section 4.
4. WisDOT has Approved the Traffic Control Plan required under Book 2, Section 18.
5. WisDOT has Approved the insurance policies, endorsements, and/or certificates required under Section 9.
6. WisDOT has Accepted the Baseline CPM Schedule required under Book 2, Section 2.
7. WisDOT has Approved the Safety Management Plan required under Book 2, Section 2.

4.3 Completion dates

4.3.1 Substantial Completion Date

The Design-Builder must achieve Substantial Completion by _____ (“Substantial Completion Date”).

4.3.1.1 Intermediate Completion dates {Use as applicable}

The Design-Builder must complete _____ by _____.

4.3.2 Final Acceptance Deadline

The Design-Builder must achieve Final Acceptance no later than _____ Calendar Days after it achieves Substantial Completion (“Final Acceptance Deadline”). See Section 11.3 on Limitations on Payment.

4.3.3 No Time Extensions

WisDOT is under no obligation to extend any Completion Date, except as specifically provided in Section 12 and Section 13.

4.4 Contract Schedule

The Design-Builder must deliver the Project in accordance with the Contract Schedule, as described in Book 2, Section 2.4. The Contract Schedule will also be the basis for determining the amount of monthly progress payments to be made to the Design-Builder.

4.5 Prerequisites for Start of Construction

The Design-Builder must not start construction (or recommence construction following any suspension) of any portion of the Project, except Work specifically authorized under NTP1, until all the following events have occurred:

1. WisDOT has issued a Notice to Proceed authorizing such Work.
2. The Design-Builder has met all requirements of the Quality Manual that are a condition to commencing construction. WisDOT may waive this requirement in writing.
3. The Design-Builder has furnished the Released for Construction Documents related to that portion of the Work and has received WisDOT's Acceptance of those documents in accordance with Book 2, Section 5. WisDOT may waive this requirement in writing.
4. The Design-Builder and WisDOT have obtained all Governmental Approvals necessary for construction of the relevant portion of the Project and have satisfied all conditions of those Governmental Approvals that are a prerequisite to commencing the relevant portion of construction.
5. The Design-Builder has delivered all required bonds and insurance policies required under Section 8 and Section 9, respectively, and WisDOT has Accepted or Approved those documents.
6. WisDOT and the Design-Builder have obtained all necessary rights of access for the relevant portion of the Project.
7. The Design-Builder has furnished the submittals set forth in Book 2, Section 14, and WisDOT has Accepted those submittals.
8. Any additional conditions for construction set forth in the Contract Documents have been satisfied.
9. The Design-Builder has furnished and WisDOT has Approved the diversity and inclusion documents required by Exhibit D.

4.6 Limitation of Operations

The Design-Builder must not perform construction operations on Sundays or State Holidays, unless WisDOT has specifically authorized those operations in writing. See Book 2, Section 4 for noise restrictions.

5 Control of Work

5.1 Control and Coordination of Work

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

5.2 Safety

The Design-Builder must take all reasonable precautions 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 WisDOT and its consultants, visitors to the Site and members of the public who may be affected by the Work. The Design-Builder must at all times comply with the Safety Management Plan (SMP) when an SMP is required by the Contract. The Design-Builder must immediately notify WisDOT if the Design-Builder believes that any Contract requirement creates a safety risk.

5.3 Process to be Followed for Discovery of Certain Site Conditions

5.3.1 Notification to WisDOT

5.3.1.1 Discovery of Certain Site Conditions

If the Design-Builder becomes aware of (a) any on-Site material that the Design-Builder believes may contain Contaminated Materials that are required to be removed or treated, or (b) any archeological, paleontological, cultural or biological resources, or (c) any Differing Site Conditions, the Design-Builder must immediately notify WisDOT via telephone or in person, to be followed immediately by written notification. Providing this notice to WisDOT is a condition precedent to the Design-Builder's right to a Change Order. In this event, the Design-Builder must immediately stop Work in the affected area and secure the affected area until it receives direction from WisDOT. WisDOT will view the location upon receiving the notification and will advise the Design-Builder whether Work may resume or whether investigation is required. Any delay, up to 2 Working Days, resulting from WisDOT viewing the location will not be considered a WisDOT-Caused Delay.

5.3.1.2 Identified Conditions; Alternative Procedure

Notwithstanding the other requirements in this Section, the Design-Builder is not obligated to stop Work upon discovery of any materials, resources, species or conditions that the Contract Documents indicate are present in that location. Additionally, if any Governmental Approval specifies a procedure to be followed that differs from the procedure referenced in this Section, the Design-Builder must follow the procedure indicated in the Governmental Approval.

5.3.2 Further Investigation and Necessary Actions

The Design-Builder must promptly conduct any further investigation that WisDOT deems appropriate.

If Differing Site Conditions are discovered, the Design-Builder must advise WisDOT within 1 Working Day after the initial notice to WisDOT of any findings and of any action that the Design-Builder recommends in response to the situation. Within 3 Working days of receiving the recommendation, WisDOT will either Approve, or require modification of, the recommendation. The development and execution of any recommended action plan will only be considered a WisDOT-Caused Delay to the extent these items affect the Critical Path.

Contaminated Materials requirements are further described in Book 2, Section 4.

If paleontological, cultural, or biological resources are present, WisDOT will determine and perform the necessary actions to address impacts to these resources, or direct the Design-Builder to perform any necessary actions pursuant to a Change Order issued under Section 13.6 or Section 13.7. The impacts of any necessary actions to address these resources will only be considered a WisDOT-Caused Delay to the extent that these items affect the Critical Path.

5.3.3 Resume Work

WisDOT may require the Design-Builder to resume Work in the area at any time, even though an investigation may still be ongoing (if resuming the Work is not in violation of any Government Rules or Government Approvals). The Design-Builder must promptly resume Work in the area upon receipt of notice from WisDOT to do so. On resuming Work, the Design-Builder must follow all applicable procedures contained in the Contract Documents and all other Government Rules with respect to the Work, consistent with WisDOT's determination or preliminary determination regarding the nature of the material, resources, species, or condition.

5.4 Obligation to Minimize Impacts

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

5.5 Quality Management

5.5.1 Design-Builder Quality Management

The Design-Builder must perform the quality management necessary for Design-Builder to comply with its obligations under the Contract Documents.

5.5.2 Oversight, Inspection, and Testing by WisDOT and Others

All materials and each part or detail of the Work is subject to oversight, inspection and testing by WisDOT and other Persons designated by WisDOT. When any Utility Owner is required to Accept Work or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the Work. Such oversight, inspection and testing does not make the Person a party to the Contract and does not change the rights of the Design-Builder or WisDOT. The Design-Builder consents to this oversight, inspection and testing. Upon request from WisDOT, Design-Builder must furnish information to the Persons WisDOT designates and permit these Persons access to the Site and all parts of the Work.

5.5.3 Obligation to Uncover Finished Work

The Design-Builder must remove or uncover portions of the finished construction Work as directed by WisDOT at any time before Final Acceptance. After WisDOT and any other Persons designated by WisDOT examine the Work, the Design-Builder must restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to the Critical Path as a result of these activities will be at the Design-Builder's expense, and the Design-Builder will not be entitled to a time extension. WisDOT may also order the Design-Builder to uncover, remove, and restore any Work that was done or materials that were used without notice to and opportunity for prior inspection by WisDOT as provided in Book 2, Section 5. These activities are at the Design-Builder's expense and without a time extension, even if the Work proves acceptable after uncovering. Except for Work done or materials used without opportunity for inspection, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing, and restoring Work will be considered a WisDOT-Caused Delay, and the Design-Builder will be entitled to a Change Order for the cost of these activities and recovery of any delay to the Critical Path that resulted from these activities , subject to the provisions of Section 13.

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

5.6.1 Oversight and Acceptance

Design-Builder will not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, Acceptances or Approvals by any Persons, or by any failure of any Person to take this action. The oversight, spot checks, audits, reviews, tests, inspections, Acceptances and Approvals by any Person do not constitute Final Acceptance of the material or Work, or a waiver of any legal or equitable right regarding the material or Work. WisDOT may reject or require the Design-Builder to remedy any Nonconforming Work and/or identify additional Work that must be done to bring the Project into compliance with Contract requirements at any time before Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, Acceptances or Approvals were conducted by any Person.

5.6.2 No Estoppel

WisDOT will not be precluded or estopped by any measurement, estimate or certificate, made either before or after Final Acceptance and payment for the Work, from showing: (1) that any measurement, estimate or certificate is incorrectly made or untrue, or (2) the true amount and character of the Work performed and materials furnished by the Design-Builder, or (3) that the Work or materials do not conform to the requirements of the Contract Documents.

Notwithstanding any measurement, estimate or certificate, or payment, WisDOT will not be precluded or estopped from recovering from the Design-Builder and its Surety(ies) the damages that WisDOT may sustain as a result of the Design-Builder's failure to comply with the terms of the Contract Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal and Replacement of Work

WisDOT has the right, in its sole discretion, to reject Nonconforming Work. The Design-Builder must remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at the Design-Builder's expense and without any time extension. The Design-Builder must also promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that WisDOT may not have discovered the Nonconforming Work does not constitute an Acceptance of the Nonconforming Work. If the Design-Builder fails to correct any Nonconforming Work within five Days of receipt of notice from WisDOT requesting correction, then WisDOT may cause the Nonconforming Work to be remedied, or removed and replaced, and may deduct the cost of doing so from any payment due or to

become due to the Design-Builder, or to obtain reimbursement from the Design-Builder for the cost. If the Nonconforming Work cannot be corrected within 5 days, WisDOT may take these actions if Design-Builder does not provide a schedule Approved by WisDOT for correcting the Nonconforming Work and begin correcting the Nonconforming Work within 5 Days, and diligently prosecute the correction in accordance with the Approved schedule to completion. Notwithstanding Final Acceptance, the Design-Builder will remain liable to WisDOT for latent defects, fraud, including gross mistakes that amount to fraud, and to meet its obligations to WisDOT under any warranty or guaranty.

5.7.2 Acceptance of Nonconforming Work

WisDOT may, in its sole discretion, Accept any Nonconforming Work without requiring it to be fully corrected. If WisDOT accepts Nonconforming Work, WisDOT will be entitled to an equitable adjustment of the Contract Price (or to be reimbursed a portion of the Contract Price, if applicable). In general, the equitable adjustment (or reimbursement) will equal, at WisDOT's election: (a) Design-Builder's cost savings associated with its failure to perform the Work in accordance with the Contract requirements; or (b) the amount deemed appropriate by WisDOT to provide compensation for impacts to affected Nonconforming Work, such as future additional maintenance and other costs and loss of value. When WisDOT deems it appropriate, WisDOT will be entitled to a pay adjustment (or reimbursement) as expressly stated elsewhere in the Contract Documents.

6 Access to Site; Environmental Mitigation

6.1 Access to Site

6.1.1 Access to Right-of-Way

6.1.1.1 Obligation to Provide Access to Right-of-Way

WisDOT will provide access to the existing Right-of-Way and will acquire proposed Right-of-Way as needed by the project under Wisconsin Statute Section 84.09.

6.1.1.2 Right-of-Way Access Requirements

During review of the Baseline CPM Schedule, Design-Builder and WisDOT must (a) discuss where access to Right-of-Way identified on the TPP, Traditional Plat, or Acquisition Exhibits will be required to perform scheduled activities; (b) mutually determine which parcels involve Work that is on the Critical Path; and (c) establish Baseline CPM Schedule dates for activities associated with obtaining access. When WisDOT has not obtained a parcel identified on the R/W Work Map by the Proposal Due Date, WisDOT must provide access to parcel no later than the deadline specified in Book 2, Section 7. The Design-Builder must structure the Baseline CPM Schedule to provide reasonable work-arounds until these parcels become available, and reasonably minimize dependence on these parcels. WisDOT's approval of the Baseline CPM Schedule is contingent on meeting these requirements.

6.1.1.3 Delay in Providing Access

If WisDOT at any time determines it will be unable to provide access to a particular parcel by the scheduled date on the Contract Schedule, WisDOT must notify Design-Builder of the revised projected date for delivery of access. Design-Builder must take appropriate action to minimize any cost and time impact and must work around the parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section 6.1.1.4, to the extent that a delay to the Critical Path cannot be avoided, WisDOT will consider the delay to the Critical Path to be a WisDOT-Caused Delay.

6.1.1.4 Obligation to Provide Written Notice

WisDOT will not increase the Contract Price or extend a Completion date related to WisDOT's delivery of access to the parcels identified on the R/W Work Map unless the Design-Builder does both of the following: (a) gives 30-Day written notice to WisDOT, describing how the unavailability of a given parcel will result in an impact to the cost or schedule, and (b) complies with the requirements of Section 6.1.1.3.

6.1.2 Access to Right-of-Way Not Identified on Plats or Exhibits

6.1.2.1 Unidentified Right-of-Way as a Result of a WisDOT-Directed Change

Any Right-of-Way not identified on the R/W Work Map that is required as the result of a WisDOT-Directed Change will be addressed in the Change Order for the WisDOT-Directed Change.

6.1.2.2 Right-of-Way Associated with a Design-Builder-Initiated Change Order

When WisDOT determines the Contract Price adjustment under Section 13 for a Design-Builder-initiated Change, WisDOT will consider the cost of obtaining any Right-of-Way not identified on the R/W Work Map associated with the Design-Builder-initiated Change Order.

6.1.2.3 Reimbursement of WisDOT Costs

Subject to WisDOT Approval, the Design-Builder must reimburse WisDOT for any costs of acquiring any real property not WisDOT's responsibility under Section 6.1.1.1, Section 6.1.2.1, or Section 6.1.2.2 that the Design-Builder determines is necessary or advisable to complete the Project, including the cost of obtaining any Construction Easements. The reimbursement must include fees and costs for attorneys, accountants, and expert witnesses. WisDOT may deduct these amounts from payments due under this Contract, or may invoice the Design-Builder. The Design-Builder must reimburse WisDOT for any amounts paid by WisDOT no later than 10 Days after receiving the related invoice from WisDOT.

6.1.2.4 Additional Requirements

Additional requirements applicable to Design-Builder are stated in Book 2, Section 7.

6.1.3 Sharing of Cost Savings for Avoided Right-of-Way Acquisitions

Design-Builder is encouraged to evaluate design alternatives that would avoid the need to acquire Right-of-Way. If WisDOT approves the design alternative, and the alternative results in a reduction of WisDOT's costs, WisDOT and the Design-Builder will negotiate a change in the Contract Price.

6.1.4 Design-Build

6.1.4.1 Environmental Compliance

The Design-Builder must comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued under these laws, whether obtained by WisDOT or the Design-Builder. The Design-Builder acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with these requirements.

6.1.5 Mitigation Requirements

The Design-Builder must perform all environmental mitigation measures for the Project. (The phrase “environmental mitigation measures” will include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether these requirements fall within a strict definition of the phrase.) The Contract Price includes compensation for the Design-Builder’s performance of all mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals that Section 6.3.2 designates as the Design-Builder’s responsibility, and the cost of all activities to be performed by the Design-Builder as described in Book 2, Section 4.

6.1.6 New Environmental Approvals

6.1.6.1 Approvals to Be Obtained by WisDOT

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

6.1.6.2 Approvals to Be Obtained by the Design-Builder

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.3.2.1, the Design-Builder will be fully responsible for obtaining the New Environmental Approval and any other Environmental Approvals that may be necessary, and for all requirements resulting from these Approvals. The Design-Builder will also be fully responsible for any litigation arising in connection with any New Environmental Approval. WisDOT will reasonably assist the Design-Builder in obtaining any New Environmental Approvals. If the New Environmental Approval is associated with a Design-Builder-initiated Change Proposal, the Design-Builder will be responsible for obtaining the Approval, and the costs of obtaining and complying with the terms of the New Environmental Approval will be considered in determining the Contract Price adjustment under Section 13.

7 Equal Employment Opportunity; Subcontracts; Labor

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Policy

The Design-Builder must comply with all labor compliance provisions and take responsibility for subcontractor and lower tier subcontractor compliance. Submit documentation requested by WisDOT within the time WisDOT specifies in a written notice. Resolve all labor compliance issues within 90 days after receiving WisDOT's first written notice. WisDOT and the Design-Builder can mutually agree to extend this 90-day requirement. Actively pursue resolution of contract labor compliance issues and attend all contract labor compliance meetings and hearings. The Design-Builder must also comply with Exhibit D (Equal Employment Opportunity Special Provisions) and Additional Special Provision 1 (ASP-1) for Transportation Alliance for New Solutions (TrANS) Program Employment Placements and Apprenticeships.

7.1.2 Inclusion in Subcontracts

The Design-Builder must include Annual EEO Report, FHWA 1391, in every Subcontract over \$10,000 (including purchase orders), and must require that Exhibit D and Exhibit F be included in all Subcontracts over \$10,000 at lower tiers.

7.2 Design-Build Disadvantaged Business Enterprises

7.2.1 Disadvantaged Business Enterprises Policy

The Design-Builder must comply with the requirements set forth in Exhibit E.

7.2.2 Inclusion in Subcontracts

The Design-Builder must include Exhibit E and Exhibit F in every Subcontract (including purchase orders), and must require subcontractors to include Exhibit E and Exhibit F in all lower-tiers Subcontracts, so that the provisions of Exhibit E and Exhibit F will be binding upon all Subcontractors at all tiers.

7.3 Subcontracting Requirements

The Design-Builder must comply with all applicable requirements of the Contract Documents relating to Subcontracts, and must ensure that its Subcontractors (at all tiers) comply with all

applicable requirements of the Contract Documents relating to subcontracting (including, but not limited to, Exhibit D, Exhibit E, Exhibit F, and Exhibit I).

7.3.1 Major Participants

The Design-Builder may not add, delete, or change the role of, any Major Participant as set forth in the Design-Builder's Proposal, without the prior Approval of WisDOT.

7.3.2 Assignment of Subcontract Rights

Each Subcontract must provide the following, in terms satisfactory to WisDOT: (a) WisDOT is a third-party beneficiary of the Subcontract and will have the right to enforce all terms of the Subcontract for its own benefit; (b) all guarantees and warranties, express and implied, will inure to the benefit of WisDOT and WisDOT's successors and assigns, as well as the Design-Builder; and (c) the Design-Builder's rights under the subcontract will be assigned to WisDOT contingent upon WisDOT delivering a written request following the Design-Builder's default or following the Contract expiring or being terminated. The subcontract must allow WisDOT to assume the benefit of Design-Builder's rights with liability only for those remaining obligations of the Design-Builder accruing after the date WisDOT assumes the assigned subcontract, and must not release or relieve the Design-Builder from its obligations or liabilities under the assigned Subcontract.

7.3.3 Subcontract Terms

Each Subcontract must include terms and conditions sufficient to ensure each Subcontractor complies with all applicable requirements of the Contract Documents. Each subcontract must include provisions addressing the requirements in paragraphs (a) and (b) below, as well as any other terms that the Contract Documents specifically require to be included in subcontracts:

1. Each Subcontract involving fuel in material quantities must specify how such Subcontractor's share of the price adjustment under Section 11.1.4 will be determined.
2. Each Subcontract must include terms that are substantially similar to those terms required by Section 5.1, Section 5.2, Section 5.3, Section 5.4, Section 7.1, Section 7.2, Section 7.3.1, Section 7.4.3, Section 10.1, Section 13.7, Section 14, Section 15, Section 19, Section 20.3, and Section 23.6 and Exhibit D, Exhibit E, and Exhibit F, specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding pursuant to Section 19 if such joinder is reasonably necessary to resolve the dispute; and each Subcontract other than Subcontracts with Suppliers must include terms that are substantially similar to those contained in Section 2.2(e), Section 2.2(f), Section 2.2(h), Section 2.3.1, Section 21.3, Section 22.2, Section 22.3, and Section 22.4, and Standard Specification 1505.

7.3.4 Subcontract Data

The Design-Builder must notify WisDOT, in writing, of the name and address of, licenses held by, and any insurance documents required pursuant to Section 9, of each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by the Design-Builder, but in no event less than 14 Days before the proposed Subcontractor starts its Work.

The Design-Builder must provide requests to sublet any portion of the Contract to WisDOT on a form provided by WisDOT, and at least 10 Days before the Subcontractor intends to start its work. The Design-Builder must allow WisDOT access to all Subcontracts and records regarding Subcontracts no later than 7 Days after receiving WisDOT's request. All Subcontracts must be in writing and must include design costs (if applicable).

7.3.5 Responsibility for Work by Subcontractor

The Design-Builder will be fully responsible for all of the Work, notwithstanding the terms of any Subcontract. WisDOT will not be bound by any Subcontract, and no Subcontract may include a provision purporting to bind WisDOT. Each Subcontract must include the following provision:

Nothing contained in this contract will be deemed to create any privity of contract between the State of Wisconsin through its Secretary of Transportation (WisDOT) and Subcontractor. Nor will this subcontract create any duties, obligations or liabilities on the part of WisDOT to Subcontractor except those allowed under Wisconsin law. If any claim or dispute arises under this Subcontract or Design-builder's contract with WisDOT, Subcontractor will look only to Design-builder for any payment, redress, relief or other satisfaction. Subcontractor waives any claim or cause of action against WisDOT arising out of this Subcontract or in connection with Subcontractor's work.

7.3.6 Subcontract Work

The Design-Builder must coordinate the Work performed by Subcontractors.

7.3.7 Debarred Subcontractors

The Design-Builder must not enter into any Subcontracts with any Person currently debarred or suspended from submitting bids by the federal government or the State. The Design-Builder will take note of the current Debarment/Suspension Notice on the following website:

<https://wisconsindot.gov/hccidocs/debar.pdf>.

7.4 Key Personnel; Character of Workers

7.4.1 Key Personnel

Key positions for the Project are identified in Exhibit G (to be completed from Design-Builder's Proposal prior to execution). WisDOT may review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors). WisDOT may Approve or reject a person for a key position before Work begins or while the Work is being prosecuted. The presence of a person in a Key Personnel role on a team that is successfully shortlisted does not constitute Approval of the person in their role. The Design-Builder must give WisDOT written notice of any proposed changes in any Key Personnel, and must not change any Key Personnel without WisDOT's prior written Approval.

7.4.2 Representations, Warranties and Covenants

The Design-Builder acknowledges and agrees that WisDOT's award of this Contract was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and on the Design-Builder's commitment that such individuals would be available to perform the Work. The Design-Builder represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless WisDOT agrees otherwise in writing, individuals filling Key Personnel roles must devote a sufficient amount of their time to their applicable role to perform the Work, and the Design-Builder must document such commitment to WisDOT's satisfaction upon WisDOT's request.

7.4.3 Employee Performance Requirements

All individuals performing the Work must have the skill and experience and any licenses or certifications required to perform the Work assigned to them per Book 2, Section 2. If WisDOT determines, in its sole discretion, that any Person employed by the Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, or is intemperate or disorderly, then the Design-Builder or Subcontractor must remove that Person and must not re-employ that person on the Project without WisDOT's prior written Approval. If the Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then WisDOT may, in its sole discretion, suspend the affected portion of the Work by delivering written notice to the Design-Builder. A suspension under this clause will not relieve the Design-Builder of any obligation contained in the Contract Documents, or entitle the Design-Builder to a Change Order or time extension. The Design-Builder must promptly resume the Work when compliance is attained.

Surveys performed to progress the construction activities on the project are covered by the contract labor requirements.

8 Surety Bonds

The Design-Builder must provide bonds in accordance with Wisconsin Statute Section 84.062, and other bonds as required by this section. The Design-Builder must maintain the bonds in effect at all times during the term of the Contract unless a different period is specified for a particular bond. The Design-Builder must obtain the required bonds from a Surety licensed as Surety and qualified to do business in the State. The Surety must have a “Best’s Rating” of A- or better and Financial Size Category of VIII or better by A.M. Best Co. The surety bond is subject to WisDOT approval, and to the Governor’s approval, if required by law.

8.1 Payment and Performance Bond

The Design-Builder must provide Payment and Performance Bonds in the amount of \$ *[100% of the Contract Price]* under Part A and the amount of \$ *[100% of the Contract Price]* under Part B. The Design-Builder must use the Payment and Performance Bond form provided by WisDOT.

8.2 Warranty Bond

Not Used.

8.3 Utility Work

If the Design-Builder performs Utility Work under this Contract, that Utility Work will automatically be covered by the Payment and Performance Bond pursuant to Section 8.1 or other security the Design-Builder is required to provide. At the request of a Utility Owner having Utility Work performed by the Design-Builder, the Design-Builder will add the Utility Owner as an additional obligee to the Payment and Performance Bond (as their interests may appear), as well as to such replacement bond or other security (as their interests may appear), to the limited extent of the amount of the Utility Work required on behalf of the Utility Owner. The Design-Builder must provide a Payment and Performance Bond in their full amount on behalf of WisDOT, with no riders that reduce WisDOT’s potential of recovery based on the Utility Owner’s limited obligee amounts. Alternatively, the Design-Builder may provide separate bonds satisfactory to the Utility Owners. The Design-Builder must provide all information necessary for such coverage to the surety(ies) providing such bonds. The Design-Builder must include the cost of bond premiums in all cost estimates the Design-Builder is required to provide under the Contract Documents for Utility Work performed by the Design-Builder.

8.4 No Relief of Liability

If a surety or guarantor performs any of the Design-Builder’s obligations under this Contract, that performance will not relieve the Design-Builder of any of its obligations under this Contract.

9 Insurance

9.1 General Insurance Requirements

9.1.1 Evidence of Insurance

The Design-Builder must provide evidence of insurance (such as an Accord certificate) to show that it complies with all insurance requirements contained in this Section 9. WisDOT reserves the right, at its sole discretion, to request a complete copy of any policy required by this Section 9 at any time. The Design-Builder may not start Work until the Design-Builder has submitted the required evidence of insurance to WisDOT, and WisDOT has Accepted it.

9.1.2 A.M. Best Rating

As per WisDOT Standard Specification Section 103.5, the Design-Builder must obtain all insurance coverage from insurers that either have an A.M. Best rating of A- or better, and are authorized to transact business in the State of Wisconsin. The surety is subject to the department's approval, and to the Governor's approval, if required by law.

9.1.3 Full Force and Effect; Notice of Cancellation or Non-Renewal

The Design-Builder must ensure that all required policies remain in full force and effect throughout the term of the Contract, and for any extended reporting period when required by this Contract. The Design-Builder must promptly notify WisDOT when any policy required by this Contract is cancelled, not renewed, or reduced. The Design-Builder must cease operations immediately if any insurance is canceled or reduced. The Design-Builder may not resume the Work until the required insurance coverage is in full force and effect.

9.1.4 No Recourse

The State will not be responsible for: (1) paying premiums or other amounts with respect to the Design-Builder's insurance policies, or (2) paying or reimbursing the Design-Builder for deductibles under the Design-Builder's insurance policies.

9.1.5 Indemnification

The insurance coverage required by this Section 9 is intended to support the Design-Builder's indemnification obligations under Section 18. The insurance coverage is not intended to limit that indemnification obligation.

9.1.6 Commercial Unavailability of Required Coverages

The Design-Builder may propose alternative insurance packages and programs if, through no fault of Design-Builder, any of the coverages required in this Section 9 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums. WisDOT may Accept the Design-Builder's proposal if WisDOT determines, in its sole discretion, that package provides coverage equivalent to that specified in this Section 9. The Design-Builder must demonstrate and document, to WisDOT's reasonable satisfaction, that the Design-Builder used diligent efforts in the global insurance markets to place the required insurance coverages. The Design-Builder will not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. WisDOT will be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents (EPD) (or based on other evidence of insurance premiums as of the Proposal Due Date if the EPD does not provide adequate information).

9.1.7 Primary and Non-Contributory

For claims covered by the insurance required by this Section 9, the insurance coverage will be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and must specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents and consultants will be excess of such insurance and will not contribute with it.

9.1.8 Governmental Immunity

Insurance companies providing the policies required by this Section 9 must waive their rights to assert the immunity of the State of Wisconsin as a defense to any claims arising out of this Contract.

9.1.9 Subcontractor as Named Insured

This Section's insurance requirements apply with equal force whether the Design-Builder or a Subcontractor, or anyone directly or indirectly employed by either, performs Work under the Project.

9.2 Design-Builder-Provided Insurance

The Design-Builder must procure, at its own expense, insurance acceptable to WisDOT, as described in this Section 9.2, and must maintain the insurance in accordance with the

requirements stated in this Section 9.2 and Section 9.1, Standard Insurance Requirements per Section 107.26 of WisDOT Standard Specifications, or as otherwise Approved by WisDOT at its sole discretion. If required by the special provisions, the Design-Builder will provide railroad protective liability insurance in addition to the types and limits of insurance required in Section 107.26, as specified in Section 107.17.3 of WisDOT Standard Specifications. The insurance and insurance limits required in this Section 9.2 will not be deemed a limitation on the Design-Builder's liability regarding the indemnities granted to WisDOT under this Contract.

TEMPLATE

10 Risk of Loss

10.1 Site Security

The Design-Builder must provide appropriate security for the Site, including securing any buildings and structures from entry. The Design-Builder must take all reasonable precautions and provide protection to prevent damage, injury, or loss to equipment, the Work, and materials to be incorporated into the Work, as well as all other property at the Site, whether owned by the Design-Builder, WisDOT, or any other Person. The Design-Builder must maintain the Site in a neat and clean condition at all times, including removing litter and graffiti and controlling weeds.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Design-Builder

The Design-Builder must maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the date that WisDOT or a third party accepts maintenance liability as specified in Section 10.2.3. This responsibility includes, without limitation, Design Documents, Construction Documents, materials, equipment, supplies, and maintenance equipment that are purchased to be permanently installed in the Work, or for use during Project construction, regardless of whether WisDOT has title thereto under the Contract Documents. The Design-Builder must perform all Work under this section at no additional cost to WisDOT except to the extent that WisDOT is responsible for such costs as provided in Section 13. The Design-Builder is also responsible for rebuilding, repairing, and restoring all other property at the Site, whether owned by the Design-Builder, WisDOT, or any other Person, until acceptance as specified in Section 10.2.3. Book 2, Section 19 includes the requirements for maintaining highways during construction.

For damage within the Site for which WisDOT would typically seek compensation from the responsible party (or the responsible party's insurer), WisDOT will subrogate to the Design-Builder WisDOT's right to seek such financial reimbursement. WisDOT will provide copies of accident reports, when they exist, to the Design-Builder. WisDOT makes no guarantee that the Design-Builder will be able to obtain any financial reimbursement based on this subrogation of WisDOT's rights.

10.2.2 Relief from Liability for Maintenance

At the Substantial Completion Date, WisDOT accepts maintenance responsibility for all elements of the Project that are 100 percent complete and have been placed in service. WisDOT accepts maintenance responsibility for all remaining Project elements at Final Acceptance. For elements of the Work which will be owned by Persons other than WisDOT

(such as Utility facilities), maintenance responsibility will transfer to those Persons when they accept (or are contractually required to accept) those elements.

10.3 Damage to Off-Site Property

The Design-Builder must take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. If property is damaged, injured, or lost due to an act or omission of any Design-Builder-Related Entity, then the Design-Builder must restore such property to a condition similar or equal to that existing before the damage, injury, or loss occurred.

10.4 Title

The Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or that are otherwise purchased for WisDOT in connection with the Project, free and clear of all Liens. Title to all such materials, equipment, tools, and supplies will pass to WisDOT, free and clear of all Liens, following delivery to the Site and upon the sooner of (a) being incorporated into the Project, or (b) WisDOT paying Design-Builder invoiced amounts pertaining to such materials, equipment, tools, and supplies. Notwithstanding any such passage of title, and subject to Section 10.1, the Design-Builder will retain sole care, custody, and control of such materials, equipment, tools, and supplies, and must exercise due care with respect thereto as part of the Work until Final Acceptance or until the Design-Builder is removed from the Project.

11 Payment

11.1 Contract Price

11.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by the Design-Builder under the Contract Documents, WisDOT will pay to the Design-Builder a lump sum amount of \$. This amount, which may be adjusted as described here, is referred to as the "Contract Price." The Contract Price may be increased or decreased only by a Change Order issued under Section 13, by a Contract amendment, or as specifically provided elsewhere in the Contract Documents.

11.1.2 Items Included in Contract Price

The Design-Builder agrees that the Contract Price includes the following, subject to the Design-Builder's rights under Section 13:

1. Performance of the Work.
2. All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to the Design-Builder'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).
3. The cost of obtaining all Governmental Approvals (except for Approvals that are the responsibility of WisDOT, as provided elsewhere in the Contract Documents).
4. All costs of compliance with and maintenance of the Government Approvals and compliance with Government Rules and other law.
5. Payment of any taxes, duties, permit fees, and other fees or royalties imposed with respect to the Work.
6. Any equipment, materials, labor, or services included in the Work.

11.1.3 Delay in Award of Contract

11.1.3.1 Delays beyond 60 Days after Public Opening Date

The Design-Builder may seek to negotiate a Change Order for an increase in the Contract Price that is mutually Acceptable to the Design-Builder and WisDOT if WisDOT has not issued Award of Contract on or before 60 Days after the Public Opening Date due to no fault of the Design-Builder. If the Design-Builder does not wish to seek a Change Order or WisDOT fails to issue a

Change Order Acceptable to the Design-Builder, then the Design-Builder's sole remedy will be to terminate the Contract by delivery of notice of termination to WisDOT, with the right to receive payment as specified in Section 15.

11.1.3.2 Allocation of Price Increase

Any price increase under this Section 11.1.3 requires a Change Order and must be amortized proportionally over all remaining Work.

11.1.4 Fuel Cost Adjustment

Price adjustments will be made as specified in ASP-5. The Design-Builder must submit a Request for Change Order to WisDOT to request additional payment, in accordance with Section 13. The request must include a breakdown of quantities and fuel cost adjustment calculations.

WisDOT will request a WisDOT-initiated Change Order for fuel escalation credits under Section 13.2. Upon WisDOT request, the Design-Builder must provide a breakdown of quantities and fuel cost credit calculations.

11.2 Invoices and Payment

Section 2.3 of Book 2 states requirements relating to invoicing. WisDOT will pay the Design-Builder the amount of the invoice Approved for payment less any amounts that WisDOT is entitled to withhold within 30 Days after WisDOT's receipt of each invoice.

11.3 Limitations on Payment

WisDOT has no obligation to pay the Design-Builder any amount that would result in (a) payment for any activity that is more than the value of the entire activity multiplied by the percent that the activity is completed, or (b) aggregate payments that are more than the overall completion percentage for the Project multiplied by the Contract Price. WisDOT retains the right to withhold payments up to \$ _____ until Final Acceptance to ensure full Contract compliance. This may be in addition to any other disincentives, liquidated damages, or other monetary deductions allowed in the Contract.

Most quality and other issues should be resolved through the established quality, partnering, and other Contract processes without using withholdings. If this is not possible for a particular issue and a withholding is necessary, prior to the withholding, WisDOT will provide written notice to the Design-Builder indicating the withholding amount, reasons for the action, and steps necessary to end the withholding.

The withholding amount will not exceed the value of work in question and the total maximum withholding listed above any given time (all withholdings included).

11.3.1 Materials Ineligible for Payment

11.3.1.1 Equipment

WisDOT will not pay directly for equipment costs. The Design-Builder must allocate equipment costs, whether for new, used, or rented equipment, to the extent not included in the mobilization payments under Book 2, Section 2.3, to the activities with which the equipment is associated in accordance with the other requirements in Section 13.7.3.

11.3.1.2 Perishable Materials

WisDOT will not make partial payment on living or perishable materials until incorporated as specified in the Contract.

11.3.1.3 Design-Builder's Election

WisDOT will not pay for materials brought onto the Site at Design-Builder's election that may be incorporated into the Project such as fuels, supplies, metal decking forms, ties, or supplies used to improve efficiency of operations.

11.3.2 Nonconforming Work

WisDOT will not pay for Nonconforming Work, except as provided under Section 5.7.

11.3.3 Third Party Payments

The Design-Builder is prohibited from accepting payment from any other party for performing the Work, including any incentive or bonus payment, except for authorized payments from sureties. The Design-Builder must promptly report offers of additional payments from any third party to WisDOT.

11.4 Deductions

WisDOT may deduct from any amounts otherwise owing to the Design-Builder, including each progress payment and the final payment, the following:

1. Any anticipated or accrued losses, liability, Liquidated Damages, or other damages for which the Design-Builder is responsible under this Contract
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Design-Builder
3. Any amounts that WisDOT deems advisable, in its sole discretion, to cover any existing or threatened claims, Liens and stop work notices by Subcontractors, Suppliers, laborers, Utility Owners or other third parties relating to the Project

4. Any sums expended by WisDOT in performing any of the Design-Builder's obligations under the Contract which Design-Builder has failed to perform
5. Any other sums which WisDOT is entitled to recover from the Design-Builder under the terms of the Contract

WisDOT's failure to deduct from a progress payment any amount that WisDOT is entitled to recover from the Design-Builder under the Contract will not constitute a waiver of WisDOT's right to these amounts. The Design-Builder will be entitled to any excess amounts being withheld by WisDOT at the time of the Design-Builder's final payment.

11.5 Final Payment

Final payment will be made in accordance with this Section 11.5.

11.5.1 Application for Final Payment

On or about the date the Design-Builder delivers its Affidavit of Final Completion, the Design-Builder must prepare and submit a proposed Application for Final Payment to WisDOT showing the proposed total amount due the Design-Builder. In addition to meeting all other requirements for invoices under the Contract, the Application for Final Payment must list all outstanding or pending Change Notices and all existing or threatened claims, and Liens 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. The Application must state the amount at issue associated with each notice. The Application for Final Payment must be accompanied by (a) complete and legally effective releases or waivers of Liens satisfactory to WisDOT, from all Persons legally eligible to file Liens in connection with the Work, (b) consent of Surety(ies) to final payment, (c) the release and affidavit required by Section 11.5.2, (d) Subcontractor's Final Payment and Retainage Certification (DT1340) and the Contractor's Evaluation of Project Team (DT2509), and (e) such other documentation as WisDOT may reasonably require. Prior applications and payments will be subject to correction in the proposed Application for Final Payment. Change Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section 13 and Section 19. If a Subcontractor refuses to furnish a release or waiver required by WisDOT, the Design-Builder may furnish a bond satisfactory to WisDOT to indemnify WisDOT against such Lien.

WisDOT will review the Design-Builder's proposed Application for Final Payment, and changes or corrections will be forwarded to the Design-Builder for correction.

11.5.2 Payment

11.5.2.1 Release and Affidavit as Condition to Final Payment

WisDOT's obligation to pay the Design-Builder based on the Application for Final Payment does not arise until WisDOT has received an executed release from the Design-Builder for any and

all claims arising from the Work, releasing and waiving any claims against the Indemnified Parties, excluding only those matters identified in any Change Notices listed as outstanding in the Application for Final Payment. WisDOT's obligation to pay does not arise unless the Application for Final Payment is otherwise satisfactory in form and content to WisDOT.

The release must be accompanied by an affidavit from the Design-Builder certifying:

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

The release and the affidavit will survive final payment. The payment amount will be reduced by any amounts deductible under Section 11.5.

11.5.2.2 Partial Estimates and Payments Subject to Correction

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

11.6 Payments to Subcontractors

Within 10 Days after receipt of payment from WisDOT, the Design-Builder must pay each Subcontractor, out of the amount WisDOT paid to the Design-Builder for the Subcontractor, all undisputed amounts (less any retainage and any other offsets and deductions provided in the Subcontract or by law) due and owing under the Subcontract. Within 10 Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates, and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, the Design-Builder must return any moneys withheld in retention from the Subcontractor. The Design-Builder must, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors in a similar manner. WisDOT will have no obligation to pay or responsibility to cause the payment of money to a Subcontractor, except as may otherwise be required by law.

11.7 Interest on Late Payments

All amounts that the Design-Builder owes to WisDOT under the Contract will earn interest from the date on which the amount is owing at the lesser of (i) 10 percent per year or (ii) the maximum rate allowable under Governmental Rules.

11.8 Disputes

Subject to WisDOT's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section 11, any disagreement between WisDOT and the Design-Builder relating to this Section 11 will be subject to Section 19. Failure by WisDOT to pay any amount in dispute will not alleviate, diminish, or modify in any respect the Design-Builder's obligation to perform under the Contract Documents, including the Design-Builder's obligation to achieve Final Acceptance in accordance with the Contract Documents. The Design-Builder must not cease or slow down its performance under the Contract Documents due to any amount in dispute. The Design-Builder must proceed as directed by WisDOT pending resolution of the dispute. Upon resolution of any dispute, each party must promptly pay to the other any amount owing.

12 Contract Incentives

12.1 Early Completion Incentives

Not used. {Use if applicable}

If the Design-Builder achieves Substantial Completion before the Substantial Completion Date as described in Section 4.3.1, WisDOT will pay the Design-Builder an incentive of \$ for each Calendar Day that the Work is completed before the Substantial Completion Date. The total incentive will not exceed \$. {Use if applicable}

12.2 Other Incentives

See Book 1, Exhibit K, (Design-Build Special Provisions).

13 Changes in the Work

This Section 13 sets forth the requirements for obtaining all Change Orders under the Contract. The Design-Builder agrees (1) that the Contract Price constitutes full compensation for performing all of the Work, subject only to those exceptions specified in this Section 13, and (2) that WisDOT is subject to constraints that limit its ability to increase the Contract Price or extend the Completion dates. The Design-Builder waives the right to make any claim for a time extension or an increase in the Contract Price and other compensation specified in the Contract, except as set forth in this Section 13. If any other provision of this Contract expressly provides for a Change Order to be issued, the provision is incorporated into this Section 13.

13.1 Circumstances under which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Change Orders

The term “Change Order” means a written amendment to the Contract Documents issued in accordance with this Section 13. WisDOT may issue unilateral Change Orders as specified in Section 13.2. A Change Order will not be effective unless executed by WisDOT, as specified herein. WisDOT-executed Change Order means that the Change Order has been signed by all the required WisDOT and State of Wisconsin officials. Change Orders may be requested by the Design-Builder only pursuant to Section 13.3. Change Orders may be issued for the following purposes (or combination of the following purposes):

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

13.1.1.2 Issuance of Directive Letter

WisDOT may issue a Directive Letter to the Design-Builder, at any time, if WisDOT desires a change in the Work or if there is a Dispute regarding the scope of the Work. The Directive Letter will (1) state that it is issued under this Section 13.1.1.2, and (2) describe the required Work, and (3) state the basis for determining compensation, if any. The Design-Builder must immediately proceed with the Work as directed in the letter, and process a formal Change Order as promptly as possible (or, if the letter states that the Work is within the original scope of the Work, the Design-Builder must proceed with the Work as directed but may request that WisDOT issue a Change Order veering the work as specified in Section 13.3).

13.1.1.3 Performance of Changed or Extra Work

The Design-Builder's receipt of a Change Order executed by WisDOT or a Directive Letter is a condition precedent to the Design-Builder's right to receive additional payment or an extension of a Completion date for changed or extra work. If the Design-Builder undertakes any such work without receiving a Directive Letter or Change Order executed by WisDOT, the Design-Builder will be deemed to have performed such work voluntarily, at its sole cost, and will not be entitled to a Change Order for performing that work. In addition, the Design-Builder may be required to remove or otherwise undo any such work, at its sole cost.

13.1.2 Directive Letter as Condition Precedent to Claim That a WisDOT-Directed Change Has Occurred

There are two conditions precedent to the Design-Builder's right to claim that a WisDOT-Directed Change has occurred: (1) the requirements of Section 13.3.2 have been satisfied (Design-Builder has provided a Change Notice and subsequent Request for Change Order), and (2) the Design-Builder has received a Directive Letter from WisDOT. The Design-Builder is not required to receive a Directive Letter for alleged WisDOT-Directed Changes directly attributable to delays caused by WisDOT's bad faith actions, active interference, gross negligence, or comparable tortious conduct. The fact that WisDOT issued a Directive Letter will not be considered evidence that in fact a WisDOT-Directed Change occurred. The determination of whether a WisDOT-Directed Change in fact occurred will be made by analyzing the original Contract requirements and determining whether the Directive Letter in fact constituted a change in those requirements. The Design-Builder's receipt of a Directive Letter is not a condition precedent to the Design-Builder's right to be paid for Work within its original scope for which additional payment is specifically allowed under this Section 13.

13.1.3 Significant Changes in the Character of Work

If a WisDOT-Directed Change significantly changes the character of the Work, the Contract Price will be equitably adjusted, excluding anticipated profit. The equitable adjustment will be made if the alterations or changes included in such direction are in themselves significant changes to the character of the Work or if the direction affects other Work in such a manner as to cause such other Work to become significantly different in character. The basis for the adjustment should be agreed upon before such Work is performed, but if WisDOT and the Design-Builder do not agree on the basis for adjustment, then WisDOT will make an adjustment either for or against the Design-Builder in such amount as WisDOT determines to be fair and equitable. WisDOT's equitable adjustment is subject to Dispute in accordance with Section 19. The term "significant change" will be construed to apply only when (a) the changes materially modify the general definition of the Project or the Design-Build character of the Work, or (b) WisDOT requires the Design-Builder to perform Work that is physically remote from the original Project and not necessary for completion of the original Project. Changes that are specifically contemplated by the Contract will not be considered significant changes in the

character of the Work. If the changes do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.

13.2 Procedure for WisDOT-Initiated Change Orders

This Section 13.2 describes how WisDOT may initiate and unilaterally issue Change Orders, with or without using a Request for Change Proposal.

13.2.1 Request for Change Proposal

13.2.1.1 Issuance of Request

WisDOT may, at its discretion, issue a Request for Change Proposal if WisDOT wishes to issue a WisDOT-Directed Change or to evaluate whether to initiate a WisDOT-Directed Change.

13.2.1.2 Initial Consultation and Time/Impact Consultation

WisDOT and the Design-Builder must:

1. Have a first consultation to define the proposed scope of the change, no later than 2 Days after the Design-Builder receives a Request for Change Proposal
2. Have a second consultation concerning the estimated cost and time impacts, no later than 7 Days after the first consultation.

The Design-Builder must provide data regarding such matters as requested by WisDOT.

13.2.1.3 Notification by WisDOT

WisDOT must notify the Design-Builder of WisDOT's decision, no later than 7 Days after the second consultation and after the Design-Builder has provided data as described in Section 13.2.1.2. WisDOT must notify the Design-Builder whether WisDOT:

1. Wishes to issue a Change Order
2. Wishes to request that the Design-Builder prepare a Change Order form as discussed at the meeting
3. No longer wishes to issue a Change Order

WisDOT may at any time, in its sole discretion, require the Design-Builder to provide two alternative Change Order forms: one providing for a time extension and any additional costs permitted by this Contract, and the other showing all Acceleration Costs associated with meeting the original Completion dates, as well as any additional costs permitted by this Contract.

13.2.1.4 Submittal of Change Order Form

If WisDOT requests that the Design-Builder prepare a Change Order form, then the Design-Builder must prepare and submit the Change Order form to WisDOT no later than 21 Days after the Design-Builder receives notice pursuant to Section 13.2.1.3. Design-Builder's Change Order form must comply with all applicable requirements of Section 13.4, and must incorporate and fully reflect all of WisDOT's requests. The Design-Builder will bear the cost of developing the Change Order form, and modifying the form as requested by WisDOT, except that costs of design and engineering work required to prepare plans and exhibits necessary to the Change Order form may be included in the Change Order as reimbursable items if pre-authorized by WisDOT. If the Change Order is Approved, the design and engineering costs will be included within the Change Order; otherwise, WisDOT will reimburse those costs through a separate Change Order.

13.2.1.5 Order to Proceed

WisDOT and the Design-Builder may agree that a change to the required Work has occurred, but disagree as to (1) whether the change justifies additional compensation or time, or (2) the amount of change to be made to the Contract Price or a Completion date. In such a case WisDOT may, in its sole discretion, order the Design-Builder to perform the Work in question notwithstanding such disagreement. WisDOT may order the Design-Builder to perform the work in question by issuing either:

1. A Force Account Change Order as provided in Section 13.7
2. A Directive Letter as described in Section 13.1.1.2

13.2.2 Unilateral Change Orders

WisDOT may issue a Change Order at any time, regardless of whether it has issued a Request for Change Proposal.

13.2.2.1 Additive and Deductive Change Orders

Additive unilateral Change Orders must state that the Design-Builder will be entitled to compensation in accordance with Section 13.7 for the additional required Work. The Change Order may contain a price deduction deemed appropriate by WisDOT, and the Design-Builder will have the right to submit the amount of the price deduction to dispute resolution in accordance with Section 19.

13.2.3 Changes in Law

WisDOT will be entitled to a decrease in the Contract Price for any change in Governmental Rules that reduces the cost of the Work, if and to the extent that the change (a) allows a material modification in the design of the Project resulting in a net cost savings, or (b) reduces the requirements of complying with environmental Approvals.

13.3 Procedure for Design-Builder-Initiated Change Orders

13.3.1 Eligible Changes

This section outlines when the Design-Builder must submit Change Notice and Request for Change Order to WisDOT.

13.3.1.1 Time Extension

The Design-Builder may submit a Request for Change Order to extend a Completion date, subject to certain limitations, only for the following excusable delays if the delay changes the duration of the Critical Path:

1. WisDOT-Caused Delays
2. Delays directly attributable to Differing Site Conditions, if permitted by Section 13.8
3. Delays directly attributable to Force Majeure events, if permitted by Section 13.9
4. Certain delays relating to Contaminated Materials, as described in Section 13.10, if permitted in that section and Section 5.3
5. Certain delays relating to Utilities, as described in Section 6

13.3.1.2 Contract Price Increase

The Design-Builder may submit a Request for Change Order to increase the Contract Price, subject to certain limitations, including a request for delay damages, as specified in Section 13.5.2, only for the following increased costs in the Work:

1. Additional costs directly attributable to additional Work resulting from WisDOT-Directed Changes for which WisDOT has not submitted a Change Order or a Request for Change Proposal
2. Additional costs directly attributable to WisDOT-Caused Delays
3. Additional costs directly attributable to Differing Site Conditions, if permitted in Section 13.8
4. Additional costs directly attributable to the following, if permitted in Section 13.9:
 - a. Cataclysmic phenomena of nature or Extreme Rainfall Events to the extent not covered by the Design-Builder's builders' risk insurance policy, but only for costs necessarily incurred to recover and replace displaced material and remove debris from the Site
 - b. Any acts of a public enemy, rebellion, war, riot, terrorism, or civil commotion
 - c. The discovery at, near, or on the Site of any paleontological, cultural, or biological resources or any species presently or in the future listed as threatened or

- endangered under the federal or state endangered species act, provided that the existence of such resources was not disclosed in the RFP documents
- d. The suspension, termination, interruption, denial, failure to obtain, nonrenewal, or amendment of any Environmental Approval or New Environmental Approval, except as otherwise provided in Section 6.3
 - e. Any change in a Governmental Rule, change in the judicial interpretation of a Governmental Rule, or adoption of any new Governmental Rule that is materially inconsistent with Governmental Rules in effect on the Proposal Due Date (excluding any such change or new Governmental Rule which was passed or adopted but not yet effective as of the Proposal Due Date), and which (A) requires a material modification in the Project design; (B) requires the Design-Builder to obtain a major State or federal environmental Approval not previously required for the Project; or (C) specifically targets the Project or Design-Builder
 - f. Acts of a governmental authority
- 5. Certain additional costs relating to Contaminated Materials and Regulated Materials, as described in Section 13.10, if permitted in that section
 - 6. Adjustments as specified in Section 11.1.4, if permitted therein
 - 7. Additional costs directly attributable to uncovering, removing, and restoring Work, if permitted in Section 5.5.3

13.3.1.3 Design-Builder-Initiated Change Proposal

The Design-Builder at any time may submit a Request for Change Order to WisDOT that proposes changes to the scope of Work of the Contract. Proposals can include changes to add or reduce the scope of Work or implement changes to the Contract that are “equal to or better” than the original requirements. Provisions of Section 13.3.2 regarding delivery of Change Notice do not apply to a Design-Builder-initiated Change Proposal.

13.3.2 Conditions Precedent

The requirements set forth in this Section 13.3.2 constitute conditions precedent to the Design-Builder’s entitlement to request and receive a Change Order in all circumstances except those involving a Request for Change Proposal by WisDOT, a share of cost savings under Section 6.1.3, or a price increase under Section 11.1.3 or Section 11.1.4. The Design-Builder agrees that the filing of Change Notices and subsequent filing of Requests for Change Orders with WisDOT pursuant to this Section 13.3.2 are necessary to begin the administrative process for Design-Builder-initiated Change Orders. The Design-Builder understands that it will be forever barred from recovering against WisDOT under this Section 13 if it fails to file a proper Change Notice concerning any act, or failure to act, by WisDOT or any of its representatives, or the

happening of any event, thing, or occurrence, and complies with the remaining requirements of this Section 13.3.

13.3.2.1 Delivery of Change Notice

The Design-Builder must deliver to WisDOT written notice (Change Notice) stating that an event or situation has occurred within the scope of Section 13.3.1.1 and/or Section 13.3.1.2, and indicate which subsection is applicable. The first notice must be labeled “Change Notice No. 1,” and subsequent notices must be numbered sequentially.

13.3.2.1.1 Importance of Prompt Delivery

Each Change Notice must be delivered as promptly as possible after the occurrence of the event or situation. If any Change Notice is delivered later than 5 Days after the Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described in the Change Notice, the Design-Builder will be deemed to have waived the right to collect any and all costs incurred before the delivery date of the Change Notice, and will be deemed to have waived the right to seek an extension of any Completion date with respect to any delay in the Critical Path that accrued before the delivery date of the written notice. Furthermore, if any Change Notice concerns any condition or material described in Section 5.3, the Design-Builder will be deemed to have waived the right to collect any and all costs incurred in connection with the condition or material if WisDOT is not afforded the opportunity to inspect the material or condition before it is disturbed. The Design-Builder’s failure to provide a Change Notice within 30 Days after the Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation will preclude the Design-Builder from any relief, unless the Design-Builder can show, based on a preponderance of the evidence, that (a) WisDOT was not materially prejudiced by the lack of notice, or (b) WisDOT’s designated representative, specified in accordance with Section 23.5.1, had actual knowledge (including items (a) through (f) of Section 13.3.2.1.2), before the expiration of the 30-Day period, of the event or situation and that the Design-Builder believed it was consequently entitled to a Change Order. A Change Notice will be deemed delivered only if it fully conforms to the requirements of Section 13.3.2.1.2.

13.3.2.1.2 Contents of Change Notice

The Change Notice must do the following:

1. Include a detailed, factual statement of the request for additional compensation and contract time. Include the date the issue was identified, the date initial notification was given to the project engineer, and the dates and specific locations of work involved.
2. Include references to relevant contract provisions and a narrative summarizing how the contract provisions support the request for a revision to the original contract.
3. When requesting additional compensation, include an itemized list of costs with a narrative supporting the requested amount and explaining how the costs are tied to the

requested contract revision. When requesting additional contract time, include a copy of the schedule that was in effect when the issue occurred and a detailed narrative explaining how the issue impacted controlling items of work. Provide a time impact analysis utilizing base and updated schedules. If the full extent of either compensation or time is not known at the date of submittal of the Design-Builder 5-Day written statement, provide a brief statement as to why, and include estimated compensation and time.

4. include copies of the following: (a) Relevant excerpts from specifications, special provisions, plans, change orders, or other contract documents; (b) Communication on the issues, including: letters, e-mails, meeting minutes, etc.; (c) Any other documentation to support or clarify the Design-Builder's position, including daily work records, cost summary sheets, weigh tickets, test results, and sketches.

13.3.2.1.3 Facts Supporting Objection to Decision

If the Change Notice relates to a decision that the Contract leaves to the discretion of a Person, or the Contract provides that such Person's decision is final, the Change Notice must set out in detail all facts supporting the Design-Builder's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

13.3.2.1.4 Notices Under Other Contract Provisions

The written notification under Section 5.3 may also serve as a Change Notice if it meets the requirements for Change Notices.

13.3.2.1.5 Failure to Provide Information

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

13.3.2.2 *Delivery of Requests for Change Orders*

The Design-Builder must deliver a Request for Change Order to WisDOT within 30 Days after delivery of the Change Notice. WisDOT may require design and construction costs to be covered by separate Request for Change Orders, in which case the Design-Builder will deliver each such Request for Change Order to WisDOT within 30 Days after delivery of the Change Notice. If the Design-Builder requests a time extension, then WisDOT, in its sole discretion, may require the Design-Builder to provide two alternative Request for Change Orders within 30 Days after delivery of the Change Notice, one of which will provide for a time extension and any additional costs permitted hereunder, and the other of which will show all Acceleration Costs associated with meeting the original Completion dates, as well as any additional costs permitted hereunder. If the Design-Builder fails to deliver a complete Request for Change Order or submits incomplete Request for Change Order failing to meet all the requirements of

Section 13.3.2.3 within the appropriate time period, the Design-Builder will be required to provide a new Change Notice before it may submit a Request for Change Order.

13.3.2.3 Incomplete Change Orders

Each Request for Change Order provided under Section 13.3.2.2 must meet all requirements set forth in Section 13.4. If, however, any of these requirements cannot be met due to the nature of the occurrence, the Design-Builder must provide an incomplete Request for Change Order that:

1. Complies with all requirements capable of being met
2. Includes a list of requirements that are not fulfilled and an explanation reasonably satisfactory to WisDOT stating why those requirements cannot be met
3. Provides information regarding projected impact on the Critical Path as requested by WisDOT
4. Includes sufficient detail to ascertain the basis for the proposed Change Order and any associated price increase, if the amount is then ascertainable

The Design-Builder must furnish, when requested by WisDOT, further information and details that may be needed to determine the facts or contentions involved. The Design-Builder agrees that it will give WisDOT access to any and all of the Design-Builder's books, records, and other materials relating to the Work, and will cause its Subcontractors to do the same, so that WisDOT can investigate the basis for the Request for Change Order. The Design-Builder must provide WisDOT with a monthly update of all outstanding incomplete Requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to WisDOT, time expenditures to date, and time anticipated for completion of the activities for which a time extension is claimed. WisDOT may reject the Design-Builder's claim at any point in the process. When a complete Request for Change Order is submitted, WisDOT's failure to respond to the request within 14 Days of delivery will be deemed a rejection of the request. Although WisDOT intends to review incomplete Request for Change Orders for the purposes described in Section 13.3.2.4, WisDOT will have no obligation to review the backup associated with any Request for Change Order until a complete Request for Change Order is provided.

13.3.2.4 Importance of Timely Delivery

The Design-Builder agrees that, due to the limited availability of funds for the Project, timely delivery of notification of these events and situations and Request for Change Orders and any related updates are of vital importance to WisDOT. WisDOT is relying on the Design-Builder to promptly evaluate any event or situation that might arise; whether the event or situation will affect schedule or costs; and if so, whether the Design-Builder believes a time extension and/or price increase is required. If an event or situation occurs that may affect the Contract Price or a Completion date, WisDOT will evaluate the situation and determine whether WisDOT wishes to

make any changes to the definition of the Project to bring it within WisDOT's funding and time restraints.

The following matters (among others) will be considered in determining whether WisDOT has been prejudiced by the Design-Builder's failure to provide timely notice:

1. The effect of the delay on alternatives available to WisDOT (that is, a comparison of alternatives which are available at the time notice was actually given, and alternatives that would have been available had notice been given when required under the Contract).
2. The impact of the delay on WisDOT's ability to obtain and review objective information contemporaneously with the event.

13.3.2.5 Subcontractor Claims

All claims must be submitted through the Design-Builder. Submission of claims directly from Subcontractors will constitute a waiver of that portion of the claim.

13.3.3 Performance of Disputed Work

If WisDOT refuses to issue a Change Order based on the Design-Builder's request, the Design-Builder must 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 19. The Design-Builder must maintain and deliver to WisDOT, upon request, contemporaneous records, meeting the requirements of Section 13.7.2, for all work performed that the Design-Builder believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of the work at issue are resolved.

13.4 Contents of Change Orders

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

The Design-Builder will prepare a scope of work, cost estimate, delay analysis, and other information as required by this Section 13.4.1 for each Request for Change Order.

13.4.1.1 Scope of Work

The scope of work must describe all activities associated with the Request for Change Order, including, without limitation, describing additions, deletions, and modifications to the existing Contract requirements, all in detail satisfactory to WisDOT.

13.4.1.2 Cost Estimate

The cost estimate must set out the estimated costs in such a way that WisDOT may evaluate those costs fairly. The cost estimate must include a breakdown for labor, materials, equipment,

overhead (including all indirect costs) and profit, unless WisDOT agrees otherwise. The estimate must include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and is sufficiently defined to obtain Subcontractor quotes, the Design-Builder must obtain quotes, with breakdowns showing cost of labor, materials, equipment, overhead, and profit. Subcontractor quotes must be provided on the Subcontractor's stationery or forms and the Design-Builder must include such quotes as back-up for the Design-Builder's estimate. WisDOT will not allow mark-up exceeding the amounts allowed under Section 13.5.2 and Section 13.7. The Design-Builder must identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

13.4.1.3 Impacted Delay Analysis

If the Design-Builder claims that an event, situation, or change affects the Critical Path, then the Design-Builder must provide an impacted delay analysis, in a form acceptable to WisDOT. The impacted delay analysis must show all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report that compares the proposed new schedule to the Baseline CPM Schedule or Revised Baseline CPM Schedule, as appropriate. The revision to the Contract Schedule associated with the time extension must not modify the "early and late start cost curves" of the Contract Schedule, except with respect to activities that have been impacted by the event which justifies the extension. The Design-Builder may reschedule activities not otherwise affected by the event, in order to take advantage of additional Float available as the result of the time extension. The Design-Builder must reflect any such rescheduling in the Contract Schedule.

13.4.1.4 Other Supporting Documentation

The Design-Builder must provide such other supporting documentation as WisDOT may require. See Section 13.3.2.1.2 for minimum information to be included in Change Orders or Change Notices.

13.4.2 Design-Builder Representation

Each Change Order (other than Change Orders issued unilaterally by WisDOT) must contain a sworn certification by the Design-Builder, in a form Acceptable to WisDOT. The Design-Builder must certify that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect, and consequential, that may be incurred as a result of the event or matter giving rise to such proposed change, and also certify that the Design-Builder has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

The Design-Builder acknowledges that a false statement or representation in connection with a change order may subject the Design-Builder to civil liability (including treble damages and attorney fees) under the Wisconsin False Claims Act.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed by this section must exclude:

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

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs will be compensable only with respect to Change Orders issued by WisDOT as an alternative to allowing an extension of a Completion date under Section 13.2.1.3 and Section 13.3.2.2. Other delay and disruption damages will be compensable only in the case of a delay that qualifies as a WisDOT-Caused Delay if the WisDOT-Caused Delay entitles the Design-Builder to an extension of a Completion date. Costs of rearranging the Design-Builder's Work plan to accommodate WisDOT-Directed Changes not associated with an extension of a Completion date will not be compensable.

13.5.2.2 Other Limitations

Delay and disruption damages must be limited to direct costs directly attributable to the delays described in Section 13.5.2.1, and mark-ups on those costs under Section 13.7, plus any additional field office and jobsite overhead costs incurred by the Design-Builder directly attributable to the delays. Before the Design-Builder may obtain any increase in the Contract Price to compensate for extended overhead, Acceleration Costs, or other damages relating to delay, the Design-Builder must demonstrate to WisDOT's satisfaction that:

1. The Design-Builder's schedule that defines the affected Critical Path in fact set forth a reasonable method for completion of the Work
2. The change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work that impacted the Critical Path activity.
3. The delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act, of any Design-Builder-Related Entity, and could not reasonably have

been avoided by the Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).

4. The delay for which compensation is sought is not concurrent with any other delay excluding WisDOT-Caused Delays.
5. Design-Builder has suffered or will suffer actual costs due to the delay that are documented in a manner satisfactory to WisDOT.

13.5.3 Limitation on Time Extensions

Any extension of a Completion date allowed under this section must exclude any delay to the extent that it:

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

The Design-Builder will be required to demonstrate to WisDOT's satisfaction that the change in the Work or other event or situation that is the basis of the request for Change Order seeking to change a Completion date has caused or will result in an identifiable and measurable disruption of the Work that has impacted the Critical Path activity.

13.6 Negotiated Price Change Orders

WisDOT and the Design-Builder (on its own behalf and on behalf of its Subcontractors) will endeavor to negotiate, in good faith, a reasonable cost for each Change Order. In general, the price of a Change Order will be negotiated in accordance with this Section 13.6, or be based on Force Account records pursuant to Section 13.7.

13.6.1 Unit Price Change Orders

WisDOT and the Design-Builder may negotiate unit prices for changed work as an alternative to negotiating the price for a Change Order in accordance with Section 13.6.3, Section 13.6.4, or Section 13.6.5. WisDOT will measure unit-priced quantities as specified in the Change Order. The unit prices will be deemed to include all costs for the Work, including labor, material, overhead, markups, and profit. Negotiated unit prices will not be subject to change, even if the

actual quantities vary from the estimated quantities. Any increase in the Contract Price resulting from the negotiated unit prices will be based initially on the estimated quantities. The final price of a Change Order may be lump sum or may be based upon a final determination of the quantities.

13.6.2 Added Work

When the Change Order adds Work to the Design-Builder's scope, WisDOT and the Design-Builder will negotiate an increase in the Contract Price based on estimated costs of labor, material, and equipment, or based on actual costs in accordance with Section 13.7.

13.6.3 Deleted Work

When the Change Order deletes Work from the Design-Builder's scope (including deleting any unnecessary Work contained in the Contract), the amount of the reduction in the Contract Price will be based upon all of the following associated with the deleted work: a current estimate including a bill of material, a breakdown of labor and equipment costs, and overhead and profit. WisDOT will be entitled to credits for mark-up for profit and overhead in the amounts provided in Section 13.7. WisDOT may include a credit for risk up to 8 percent of the total Change Order amount (excluding amount allocated to risk). Documented cancellation and restocking charges may be included in costs of deleting Work and be subtracted from the price deduction for the deleted Work.

13.6.4 Work Both Added and Deleted

When the Change Order includes both added and deleted Work, the Design-Builder must prepare separate cost breakdowns for Added Work and Deleted Work in accordance with Section 13.6.3 and Section 13.6.4.

The difference between the Added Work and Deleted Work cost breakdowns will be the cost (or credit to WisDOT) of the Change Order.

If the change results in a net change of zero, the Contract Price will not be changed.

13.7 Force Account Change Orders

WisDOT may issue a Force Account Change Order if WisDOT determines that doing so is advisable. The Force Account Change Order must state WisDOT's intent to treat the items as changes in the Work, and direct the Design-Builder and designer to perform the Work. The Force Account Change Order must also state the kind, character, and limits of the Work as far as they can be ascertained; the payment terms for changes to the Contract Price; and the estimated total anticipated change in the Contract Price. Upon final determination of the allowable costs, WisDOT will issue a modified Change Order stating the final adjustment to the Contract Price. The following costs and mark-ups (and no others) will be used to calculate the

change in the Contract Price. WisDOT will not allow direct compensation for other miscellaneous costs that are not specifically permitted in this Section 13.7.

13.7.1 Determination of Costs

Compensation for Force Account Change Orders will be in accordance with WisDOT Standard Specification 109.4.5 and this Section 13.7.

13.7.1.1 Non-Construction Labor Costs

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

1. Actual unburdened wages (i.e., the base wage paid to the employee excluding any fringe benefits), plus
2. WisDOT's Office of Audit most recent audited overhead rate for the Design-Builder or Subcontractor performing the Work, plus
3. ###% Markup.

13.7.1.2 Excessive Cost

If WisDOT, in its sole discretion, determines that the cost of materials is excessive, then the cost of these materials will be deemed to be the lowest current wholesale price at which the materials were available, in the quantities needed and delivered to the Site.

13.7.1.3 Evidence of Cost

If the Design-Builder, designer, or any Subcontractor (as applicable) does not furnish satisfactory evidence of the cost of the materials from the materials supplier used within 60 Days after the materials delivery date, WisDOT reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available, in the quantities needed and delivered to the Site.

13.7.1.4 Permit Fees

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

13.7.1.5 Credit Items

Where the Design-Builder's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, the Design-Builder will include all Design-Builder's and Subcontractor's overhead and profits in computing the value of the credit.

13.7.2 Force Account Records

13.7.2.1 Collection and Maintenance of Data

The Design-Builder will maintain its records in such a manner as to provide a clear distinction between (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price, and (b) the costs of other operations. The Design-Builder will contemporaneously collect, record in writing, segregate, and preserve all data necessary to determine the costs described in this Section 13.7 with respect to all Work that is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Relocations, but specifically excluding all negotiated Change Orders; and all data necessary to show the actual impact (if any) of the change on the Critical Path with respect to all Work that is the subject of a Change Order or a proposed Change Order, if the impact on the Contract Schedule is in dispute. Such data will be provided to WisDOT, and its authorized representatives as directed by WisDOT, on forms Approved by WisDOT. The cost of furnishing such reports is included in the Design-Builder's predetermined overhead and profit mark-ups.

13.7.2.2 Daily Reports

The Design-Builder will furnish daily reports, on forms Approved by WisDOT, of Force Account Change Order Work. The cost of furnishing such reports will be included in the Design-Builder's overhead and fee percentages. The reports will 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 will also state the total costs to date for the Force Account Change Order Work.

13.7.2.3 Reports as Basis for Payment

All Force Account Change Order reports will be signed by the Design-Builder's Project Manager. WisDOT will compare its records with the Design-Builder'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 will not preclude subsequent adjustment based on a later audit. The Design-Builder's (and each Subcontractor's) cost records pertaining to Work paid for on a Force Account basis will be open, during all regular business hours, to inspection or audit by representatives of WisDOT during

the life of the Contract, and for a period of not less than 7 years after Final Acceptance, and the Design-Builder (and each Subcontractor) will retain such records for that period. If an audit is to be commenced more than 60 Days after Final Acceptance, the Design-Builder will be given a 20-Day notice of the time when such audit is to begin.

13.7.3 Compliance with the Federal Acquisition Regulation

Reimbursable expenses under Force Account Change Orders will be limited to and comply with the FAR. Expenses excluded by the FAR may not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FAR, WisDOT will allow the Design-Builder the opportunity to respond to FHWA and defend the allowability of the expenses.

13.8 Differing Site Conditions

13.8.1 Responsibilities of WisDOT

WisDOT will (a) compensate the Design-Builder for additional costs directly attributable to changes in the scope of the Work caused by Differing Site Conditions, and (b) extend the Completion dates if Differing Site Conditions cause a delay in the Critical Path. The Design-Builder must fulfill applicable requirements of Section 5.3 and Section 13 as a condition precedent to WisDOT becoming responsible for additional costs or a time extension. WisDOT will issue Change Orders as necessary.

13.8.2 Burden of Proof

The Design-Builder bears the reasonable burden of proving (a) that a Differing Site Condition exists, and (b) that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost or time. The Design-Builder's request for any Change Order relating to a Differing Site Condition must include a statement signed by a qualified professional and providing (a) all of the Design-Builder's relevant assumptions concerning the condition of the Site, justifying the basis for such assumptions; (b) a specific explanation of how the existing conditions differ from those assumptions; and (c) a description of the Design-Builder's efforts to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

13.9 Certain Events

Upon Design-Builder's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, WisDOT will be responsible for, and agrees to issue Change Orders, to compensate the Design-Builder for additional costs directly attributable to the events set forth in Section 13.3.1.2, and/or to extend the applicable Completion dates as the result of any delay in the Critical Path caused by a Force Majeure event.

13.10 Contaminated Materials Management

See Book 2, Section 4.

13.11 Matters Not Eligible for Change Orders

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

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

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

13.12 Waiver

DESIGN-BUILDER 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 THAT, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH DESIGN-BUILDER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT DESIGN-BUILDER WILL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT DESIGN-BUILDER IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.13 Disputes

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

13.14 No Release or Waiver

13.14.1 Extension of Time for Performance

No extension of time granted hereunder will release the Design-Builder's Surety or any Guarantor from its obligations. WisDOT will 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 Design-Builder after such date.

13.14.2 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 WisDOT has been unjustly enriched will be the basis for any claim, request for additional compensation, or extension of a Completion date. Further, the Design-Builder will undertake, at its risk, work included in any request, order, or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. The Design-Builder will be deemed to have performed such work as a volunteer and at its sole cost. In addition, WisDOT may require the Design-Builder to remove or otherwise undo any such work, at the Design-Builder's sole cost.

14 Suspension of Work

14.1 Suspension for Convenience

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

Suspensions requested by the Design-Builder, or related to seasonal or climatic conditions, or Force Majeure events will not be considered WisDOT-Caused Delays. Adjustments to the Contract Price or Completion dates for other suspensions under this clause are subject to the limitations in Section 13.5.2 and Section 13.5.3.

14.2 Suspension for Cause

WisDOT may suspend the Work in writing for any reason at any time during the Contract if the Design-Builder fails to:

1. Correct conditions unsafe for the Project personnel or general public
2. Comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the Contract
3. Carry out orders of WisDOT duly given
4. Comply with environmental requirements or requirements for developing and implementing the Quality Manual

The Design-Builder will promptly comply with any such written suspension order. The Design-Builder will promptly recommence the Work upon receipt of written notice from WisDOT directing the Design-Builder to resume Work. There will be no adjustment to the Contract Price or Completion dates for a suspension under this clause.

14.3 Design-Builder Responsibilities During Suspension

While the Work is suspended, the Design-Builder remains responsible for the Work and for preventing damage or injury to the Project and other facilities in the Project vicinity. The Design-Builder must continue to provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Design-Builder-provided insurance and bonds, and erect necessary temporary structures, signs, or other facilities required to maintain the Project and other facilities in the Project vicinity. The Design-Builder will continue to be responsible for maintenance of traffic in accordance with the requirements of the Contract, for plant and

landscape maintenance in accordance with Section 14 of Book 2, and for maintenance during construction in accordance with Section 19 of Book 2, unless otherwise directed by WisDOT in writing. If the suspension is for WisDOT's convenience, the additional work performed by the Design-Builder during the suspension period will be considered WisDOT-Directed Changes, unless the suspension was requested by the Design-Builder.

TEMPLATE

15 Termination for Convenience

15.1 Notice of Termination

WisDOT may terminate the Contract if WisDOT determines, in its sole discretion, that terminating the Contract is in the public interest. WisDOT will deliver a written Notice of Termination to the Design-Builder, specifying the extent and Effective Date of termination. The Design-Builder and Surety will remain responsible for any claims arising out of the Work performed before the Effective Date of termination including, but not limited to, any claims for latent defects.

15.2 Design-Builder's Responsibilities Upon Termination

The Design-Builder must take the following actions promptly after receiving a Notice of Termination from WisDOT, regardless of any delay in determining or adjusting any amounts due under this Section 15:

1. Stop Work as specified in the notice;
2. Communicate the termination to all affected Subcontractors and cause subcontractors to Stop Work as specified in the notice, unless otherwise authorized in writing by WisDOT;
3. Do not enter into additional Subcontracts or place orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or as necessary to mitigate damages;
4. Terminate all Subcontracts to the extent that they relate to the Work terminated;
5. Assign to WisDOT all of the Design-Builder's right, title and interest in the terminated Subcontracts to WisDOT, if directed to do so by WisDOT and in the manner directed by WisDOT. In that case, WisDOT will have the right, in its sole discretion, to Accept performance, or to settle or pay any or all claims arising out of terminating those Subcontracts;
6. Settle all outstanding liabilities and claims arising out of the terminated Subcontracts, with WisDOT's prior approval;
7. Provide WisDOT 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. Provide WisDOT with any documentation or other property required to be delivered under this Contract that is either being developed or has been completed but not yet delivered to WisDOT. Provide other information as requested by WisDOT. Transfer title and deliver to WisDOT, in the manner directed by WisDOT: (i) fabricated or unfabricated parts, 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 WisDOT if the Work had been completed;

8. Perform, in accordance with the Contract Documents, all Work not terminated by WisDOT;
9. Take all action that may be necessary, or that WisDOT directs, for the safety, protection and preservation of (a) the public, including motorists, bicyclists, and pedestrians, (b) the Work and (c) the equipment, machinery, materials and property related to the Contract Documents that is in the possession of the Design-Builder and in which WisDOT has or may acquire an interest;
10. Use best efforts to sell any property of the types referred to in Section 15.2(7) as directed or authorized by WisDOT. Best efforts does not require the Design-Builder to extend credit to any purchaser. The Design-Builder may acquire the property for itself under the conditions prescribed and at prices Approved by WisDOT. The proceeds of any sale, transfer or disposition will be applied to reduce any payments to be made by WisDOT to the Design-Builder due to the Contract termination;
11. Remove materials, equipment, tools and instruments, debris or waste materials, from all or parts of the Site as directed by WisDOT; and
12. Take other actions directed by WisDOT.

15.3 Responsibility After Notice of Termination

The Design-Builder will remain responsible for damage to materials after WisDOT issues the Notice of Termination, except as follows:

1. The Design-Builder will not be responsible for damage to materials for which partial payment has been made as provided in this Contract when WisDOT certifies that the Design-Builder has stored those materials in the manner and at the locations directed by WisDOT.
2. The Design-Builder will not be responsible for damage to materials purchased by WisDOT after issuing the notice of termination, once WisDOT has received and taken title to those materials.

The Design-Builder will be relieved of its obligations to provide for continuing safety, security, and maintenance at the Site immediately after WisDOT determines that the Design-Builder has completed: (1) the Work directed to be completed before termination, and (2) any other Work that WisDOT ordered to secure the Project for termination. WisDOT reserves the right to declare in default a Design-Builder who does not carry out the conditions of this Section after Notice of Termination.

15.4 Negotiated Termination Settlement

15.4.1 Settlement Proposal

The Design-Builder must submit a final termination settlement proposal to WisDOT promptly after receiving a Notice of Termination from WisDOT. The settlement proposal must be in the form and with the certification prescribed by WisDOT. The Design-Builder must submit the proposal no later than 60 Days after the Effective Date of termination. The Design-Builder may request a time extension in writing. An extension request must be received within that 60-Day period. WisDOT will, in its sole discretion, decide whether or not to approve the requested extension, and will provide a written response documenting WisDOT's decision. WisDOT will review the Design-Builder's termination settlement proposal and will accept it, return it with comments, or reject it. If the Design-Builder fails to submit the proposal within the time allowed, WisDOT may determine the amount, if any, due the Design-Builder because of the termination. WisDOT will use the best information available to WisDOT to equitably determine the amount due, and will promptly pay that amount to the Design-Builder.

15.4.2 Negotiated Settlement Amount

The Design-Builder and WisDOT may agree, as provided in Section 15.4.1, on the whole or any part of the amount due to the Design-Builder because of total or partial termination of Work pursuant to this Section 15. A negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed by the termination date and subsequently Accepted by WisDOT. The negotiated settlement amount will not exceed the total Contract Price as reduced by (1) the amount of payments already made, and (2) the Contract Price of Work not terminated. WisDOT will promptly pay the agreed amount to the Design-Builder. A settlement under this Section 15.4 is not subject to the limits and requirements of Section 15.5. If WisDOT and the Design-Builder enter into a settlement agreement, that agreement will not (1) affect any of WisDOT's rights under the Contract Documents with respect to completed Work, (2) relieve the Design-Builder from the Design-Builder's warranty and other obligations with respect to the completed Work, and (3) relieve the Design-Builder of any payment obligations to subcontractors, or affect obligations under the Payment and Performance Bonds as to completed or non-terminated Work.

15.5 Determination of Settlement Amount If Negotiations Fail

If WisDOT terminates the Work pursuant to this Section 15, and the Design-Builder and WisDOT fail to agree on the whole amount to be paid to the Design-Builder as provided in Section 15.4.2, then WisDOT will determine the amount payable (exclusive of interest charges) in accordance with the following, but without duplicating any amounts agreed upon in accordance with Section 15.4.

15.5.1 Payment Amount

WisDOT will pay the Design-Builder the sum of the following amounts for Work performed prior to the Effective Date of the Notice of Termination, as such amounts are determined by WisDOT:

1. The Design-Builder's actual reasonable out-of-pocket cost for all Work performed (including equipment costs only to the extent permitted by Section 13). This includes mobilization, demobilization and Work done to secure the Project for termination, including reasonable overhead but also accounting for any refunds related to insurance premiums, deposits or similar items, as established to WisDOT's satisfaction. When WisDOT determines the reasonable cost, WisDOT will make deductions for the cost of materials to be retained by the Design-Builder, amounts realized by the sale of materials and other appropriate credits. WisDOT will also make deductions for the cost of damaged materials. When, in WisDOT's opinion, the cost of an item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, WisDOT will allow the estimated reasonable cost of performing that Work in compliance with the Contract Documents requirements, and WisDOT will disallow the excessive actual cost.
2. A fair and reasonable profit on work performed, as determined by WisDOT in its sole discretion. But, if it appears that the Design-Builder would have sustained a loss on the entire Contract had it been completed, WisDOT will not allow profit on the work performed and WisDOT will make an appropriate adjustment by reducing the amount of the settlement to reflect the indicated rate of loss. WisDOT will allow reasonable profit only on the work actually performed, and will not allow loss of anticipated profit on terminated Work not performed.
3. The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2(6). This excludes amounts paid or payable for supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination under the Contract; WisDOT will include those amounts under clause (1) above.
4. The reasonable out-of-pocket cost incurred to preserve and protect property pursuant to Section 15.2(9), and any other reasonable out-of-pocket cost incidental to terminating Work under the Contract. This allowance includes reasonable overhead, and the Design-Builder's reasonable costs of handling material returned to the vendor, delivered to WisDOT or otherwise disposed of as directed by WisDOT. The allowance also includes a reasonable amount for the Design-Builder's administrative costs in determining the amount due to the Design-Builder as the result of the termination of Work under the Contract.
5. If the termination occurs prior to issuance of NTP2, the stipend amount.

15.5.2 Maximum Compensation

The Design-Builder agrees that it will not be entitled to any compensation exceeding the value of the Work performed (determined as provided in Section 15.5.1) plus the Design-Builder's settlement costs. The Design-Builder also agrees that it will not be entitled to recover for items such as unabsorbed overhead and opportunity costs upon termination of the Contract. The Design-Builder will not be entitled to loss of anticipated profit, except as provided in Section 15.5.1 (2). The total amount to be paid to the Design-Builder will not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. The Contract Price may be exceeded, however, due to amounts provided for in Sections 15.5.1 (3), (4), and (4). If the Design-Builder is entitled to any refund of insurance or bond premiums, deposits or similar items which the Design-Builder previously passed through to WisDOT, then the Design-Builder must arrange for that refund to be paid directly to WisDOT, or the Design-Builder must otherwise credit those refunds to WisDOT.

15.5.3 Excluded Items

Except for normal spoilage, and except to the extent that WisDOT will have otherwise expressly assumed the risk of loss, the amounts payable to the Design-Builder under Section 15.5.1 will exclude the fair value, as determined by WisDOT, of equipment, machinery, materials and property which is destroyed, lost, stolen or damaged so as to become undeliverable to WisDOT, or to a buyer pursuant to Section 15.2(10). WisDOT will analyze the amount set forth in the Design-Builder's Proposal as a factor in determining the value of the Work terminated.

15.5.4 Payment of Termination Amount

After the amount of the termination payment has been determined, the parties will amend the Contract to reflect the agreed termination payment, and WisDOT will pay the amount determined.

15.6 Partial Termination

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

15.7 Reduction in Amount of Claim

The amount due the Design-Builder under this Section 15 will be reduced by (a) all unliquidated advance or other payments made to or on behalf of the Design-Builder applicable to the terminated portion of the Contract, (b) the amount of any claim which WisDOT may have against any the Design-Builder-Related Entity in connection with the Contract, (c) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by the Design-Builder or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to WisDOT, (d) amounts that WisDOT deems advisable, in

its sole discretion, to retain to cover any existing or threatened claims relating to the Project including, but not limited to, claims by Utility Owners or claims for which the Design-Builder may be liable under Section 18, (5) the cost of repairing any Nonconforming Work and (6) any amounts due or payable by the Design-Builder to WisDOT.

15.8 Partial Payments

WisDOT may make partial payments for costs incurred by the Design-Builder in connection with the terminated portion of the Contract. Making partial payments is at WisDOT's sole discretion, and will occur only when, in WisDOT's opinion, the aggregate of the partial payments is within the amount the Design-Builder will be entitled to under this Section 15. If the total of such payments exceeds the amount finally agreed upon or determined to be due under this Section 15, upon WisDOT's request the Design-Builder must promptly refund the excess plus interest on that excess as set forth in Section 11.8.

15.9 Inclusion in Subcontracts

The Design-Builder must include a clause in all Subcontracts requiring the Subcontractor to stop Work on the date and to the extent specified in a Notice of Termination from WisDOT in accordance with this Section 15. The Design-Builder must require Subcontractors to insert the same provision in each Subcontract at all tiers. If the Design-Builder fails to include the clause, the Design-Builder is solely responsible for the impacts of failing to add that clause.

15.10 Limitation on Payments to Subcontractor

For the purposes of Sections 15.4.2 and 15.5, upon termination of Work under any Subcontract pursuant to Section 15.2(4), the Design-Builder will not be entitled to reimbursement for that portion of 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.

15.11 No Unearned Profits or Consequential Damages

The Design-Builder will not, under any circumstances, be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to the Design-Builder determined in accordance with this Section 15 constitutes the Design-Builder's sole and exclusive remedy for a termination under this Section 15.

15.12 No Waiver

A termination under this Section 15 does not waive any of WisDOT's rights or claim to damages, and WisDOT may pursue any cause of action related to this Contract. This Section 15.12 takes precedence over any contrary clause in this Contract.

15.13 Dispute Resolution

If WisDOT and the Design-Builder fail to agree on amounts due under this Section 15, then the parties will resolve the dispute in accordance with Section 19.

15.14 Allowability of Costs

All costs claimed by the Design-Builder under this Section 15 must, at a minimum, be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

15.15 Suspension of Work

If WisDOT suspends the Work for more than 180 consecutive Days after issuing NTP1, the Design-Builder may consider the Contract as having been terminated for convenience under this Section 15. If the Design-Builder wishes to exercise this option, the Design-Builder must deliver written notice of termination to WisDOT, specifying its Effective Date. The provisions of this Section 15 will apply if the Design-Builder exercises this option.

15.16 Termination Due to Non-Appropriation of Funds

15.16.1 Availability of Funds

WisDOT's obligation to pay the Design-Builder under this Contract is contingent upon state and federal funds being appropriated, budgeted, allocated and otherwise made available to WisDOT in amounts needed to meet WisDOT's payment obligations for this Contract. The Design-Builder is not obligated to perform Work, and correspondingly is not entitled to any compensation for Work performed, in any fiscal year beyond the amount, if any, appropriated and made available to WisDOT in amounts to meet its funding obligations for the Contract.

15.16.2 Anticipated Appropriations

WisDOT anticipates having sufficient funds to allow WisDOT to meet its payment obligations under this Contract.

15.16.3 Remedy for Failure to Appropriate

WisDOT may stop the Work if the Wisconsin Legislature, federal government, or other funding source, fails to appropriate or otherwise provide necessary funding. The Design-Builder will promptly resume performing the Work without any modification to the terms and conditions of this Contract once funds become available. If Work stops pursuant to this Section 15.16, that stoppage will be considered a suspension for convenience under Section 14.1. Either party may terminate this Contract if WisDOT is unable to secure necessary funding for a period of more than 60 Days.

TEMPLATE

16 Default

16.1 Default by the Design-Builder

16.1.1 Events of Default

The Design-Builder will be in breach of Contract if any one or more of the following events or conditions occur:

1. The Design-Builder fails to promptly begin the Work under the Contract Documents after WisDOT issues a Notice to Proceed authorizing such work;
2. The Design-Builder fails to perform the Work with sufficient resources to ensure the Work is completed promptly;
3. The Design-Builder fails to execute remedial action in accordance with the Quality Manual and Book 2, Section 5;
4. The Design-Builder fails to perform the Work in accordance with the Contract Documents;
5. The Design-Builder refuses to remove and replace rejected materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by WisDOT under Section 7.4.3;
6. The Design-Builder stops prosecuting the Work (unless due to one of the following: [i] WisDOT suspends or terminates the Work, [ii] a Force Majeure event occurs, or [iii] WisDOT fails to pay the Design-Builder undisputed sums);
7. The Design-Builder fails to resume performing Work which has been suspended or stopped, within 30 Days after receipt of notice from WisDOT;
8. The Design-Builder breaches any other agreement, representation or warranty contained in the Contract Documents;
9. The Design-Builder fails to perform any other obligation under the Contract Documents, including, without limitation, EEO and DBE requirements;
10. The Design-Builder fails to provide and maintain the required insurance;
11. The Design-Builder fails to provide and maintain the required payment and performance bonds;
12. The Design-Builder assigns or transfers the Contract Documents or any right under the Contract Documents, except as expressly permitted under Section 23.4.2;
13. The Design-Builder fails to make undisputed payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law;

14. The Design-Builder fails to comply with any Governmental Rule or Governmental Approval; or fails reasonably to comply with the instructions of WisDOT consistent with the Contract Documents;
15. The Design-Builder fails to discharge or obtain a stay within 10 Days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order will be deemed an effective stay);
16. The Design-Builder has become insolvent, generally not paying the Design-Builder's debts as they become due, or admitting in writing that the Design-Builder is unable to pay its debts, or making an assignment for the benefit of creditors;
17. The Design-Builder is the subject of any voluntary or involuntary insolvency, receivership, reorganization, or bankruptcy proceedings, and the Design-Builder fails to have those proceedings dismissed within 60 Days;
18. WisDOT determines that any representation or warranty made by the Design-Builder or any Guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents was false or materially misleading when made;
19. The Design-Builder or any Guarantor is a party to fraud;
20. Any Guarantor revokes or attempts to revoke its obligations under the Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect; or
21. Any Guarantor has become insolvent, generally not paying its debts as they become due, admitting in writing that Guarantor is unable to pay its debts, or making an assignment for the benefit of creditors.

16.1.2 Right to Cure

WisDOT may, at any time, notify the Design-Builder in writing that the Design-Builder is in breach of contract pursuant to Section 16.1.1. After WisDOT gives written notice, the Design-Builder will have 1510 Days to cure the identified breach before WisDOT declares an Event of Default. There are two exceptions to the notice provisions and the right to cure: (1) the cure period will only be 3 Days for a breach under Section 16.1.1(10) and (2) no notice and opportunity to cure is required for any breach which by its nature cannot be cured including, without limitation, the breaches described in Sections 16.1(11), (16), (18), and (20). If a breach for which a 15-Day cure period is provided is curable but by its nature cannot be cured within 15 Days, as determined by WisDOT, WisDOT will not declare an Event of Default if the Design-Builder commences the cure within the 15-Day period and thereafter diligently prosecutes the cure to completion. No cure period exceed will 60 Days in total. If WisDOT believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, WisDOT may rectify the condition at the Design-Builder's cost without giving notice or providing

any cure period. Public Safety is paramount for WisDOT; the Design-Builder will be liable for the costs to correct the danger to the public health or safety even if WisDOT was under a mistaken belief that the occurrence of a breach or default required WisDOT to take such action.

WisDOT's good faith determination of the existence of such danger will be deemed conclusive in the absence of clear and convincing evidence to the contrary. If the Design-Builder fails to cure any curable breach in accordance with this Section 16.1.2, then WisDOT may exercise the remedies in Section 16.2.

16.2 Remedies

16.2.1 Rights of WisDOT

If an Event of Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under the Contract or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the surety bonds required hereby, any Guaranty and/or other performance security, WisDOT will have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Design-Builder from any obligations, and the Design-Builder will have the following obligations (as applicable):

1. WisDOT may order the Design-Builder to suspend or discontinue the Work or any portion of the Work;
2. WisDOT may terminate the Contract or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 must apply;
3. If and as directed by WisDOT, the Design-Builder will withdraw from the Site; and must remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Design-Builder-Related Entity in the performance of the Work;
4. The Design-Builder must deliver to WisDOT possession of any or all facilities of the Design-Builder located on the Site as well as any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents, that WisDOT deems necessary for completion of the Work;
5. The Design-Builder must confirm the assignment to WisDOT of the Subcontracts requested by WisDOT, and the Design-Builder must terminate, at its cost, all other Subcontracts;
6. WisDOT may deduct from any amounts payable by WisDOT to the Design-Builder such amounts payable by the Design-Builder to WisDOT, including Liquidated Damages or other damages payable to WisDOT under the Contract Documents;

7. WisDOT will have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;
8. WisDOT, without incurring any liability to the Design-Builder, will have the rights (i) to take the performance of all or a portion of the Work from the Design-Builder (either with or without the use of the Design-Builder's materials, equipment, tools and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) to use such other methods, as in the opinion of WisDOT, will be required for the completion of the Project; and/or
9. If WisDOT exercises any right to perform any obligations of the Design-Builder, in the exercise of such right WisDOT may, but is not obligated to, among other things:
 - (i) perform or attempt to perform, or cause to be performed, such work;
 - (ii) spend such sums as WisDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and the Design-Builders and obtain materials and equipment as may be required for the purpose of completing such work;
 - (iii) execute all applications, certificates and other documents as may be required for completing the Work;
 - (iv) modify or terminate any contractual arrangements;
 - (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and
 - (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 Liability of the Design-Builder

16.2.2.1 Occurrence of an Event of Default

If an Event of Default has occurred, the Design-Builder and Surety will be jointly and severally liable to WisDOT for all costs WisDOT reasonably incurs to complete the Work or to have the Work completed by others. This liability is in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable under the Contract Documents. Costs of completing the Work includes, but is not limited to, re-procurement costs, costs of design and construction, throw away costs for unused portions of the completed Work, and increased financing costs. If an Event of Default has occurred, WisDOT will be entitled to withhold all or any portion of further payments to the Design-Builder until WisDOT determines the amount (if any) that WisDOT still owes to the Design-Builder. WisDOT will promptly notify the Design-Builder in writing of the amount due to the Design-Builder from WisDOT, or due to WisDOT from the Design-Builder. WisDOT will deduct all costs and charges incurred by WisDOT, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work, under the Contract Documents, from any sum due (or which may become due) to the Design-Builder. If the amount due WisDOT exceeds the amount which would have been payable under the Contract, then the Design-Builder and its Surety(ies) and any Guarantor will be liable for the difference, and must promptly pay the difference to WisDOT.

16.2.2.2 Assurance of Future Performance

A default under Section 16.1.1(6) or (7) could impair or frustrate the Design-Builder's performance of the Work. If any such default occurs, WisDOT may request adequate assurance that the Design-Builder or its successor in interest, will perform the remainder of the Work in accordance with the terms and conditions of the Contract Documents. the Design-Builder must respond to WisDOT's request for adequate assurance no later than 10 Days after WisDOT delivers the request. If the Design-Builder fails to provide adequate assurance (Acceptable to WisDOT in its sole discretion), then WisDOT may terminate the Contract and exercise all accompanying rights as set forth in this Section 16. If the Design-Builder suspends performing the Work before WisDOT receives and Accepts adequate assurances, then WisDOT may proceed with the Work with its own forces or with other Design-Builders on a time and material or other appropriate basis, the cost of which will be credited against and deducted from WisDOT's payment obligations under the Contract Documents. This will be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract, any Guaranty and Payment and Performance Bond.

16.2.2.3 Alternative to Terminating the Contract and Completing the Work

Instead of exercising the other provisions of this Section 16.2 for terminating the Contract and completing the Work, WisDOT may pay the Design-Builder for the portions of Work already done in accordance with the Contract Documents and may eliminate the remaining portions of the Work and treat the remaining portions as if they had never been included or contemplated by the Contract. If WisDOT exercises this option, the Design-Builder will have no claim this for prospective profits on, or any other compensation relating to, Work the Design-Builder did not complete.

16.2.2.4 Termination Deemed to Constitute a Termination for Convenience

If WisDOT terminates the Contract for grounds which are later determined not to justify a termination for default, then the termination will be deemed a termination for convenience pursuant to Section 15.

16.2.2.5 Damages Resulting from the Design-Builder's Breach or Failure to Perform

If WisDOT suffers damages because the Design-Builder failed to perform an obligation under the Contract Documents, then WisDOT will be entitled to recover those damages from the Design-Builder regardless of whether the breach or failure that caused the damages ripens into an Event of Default.

16.2.2.6 Cumulative Remedies

All remedies related to breaches of this Contract are cumulative. If WisDOT exercises or begins to exercise, any one or more rights or remedies under this Section 16.2, WisDOT will not be precluded from simultaneously or later exercising any or all other rights or remedies.

16.2.2.7 Continued Liability of Design-Builder and Surety

The Design-Builder, any Guarantor and Surety will not be relieved of liability for continuing Liquidated Damages because WisDOT has declared an Event of Default, or taken other actions under this Section 16.2.

16.3 Right to Stop Work If Undisputed Payment Is Not Made

The Design-Builder has the right to stop Work if WisDOT fails to make an undisputed payment no later than 30 Days after WisDOT receives written notice of nonpayment from the Design-Builder. If the Design-Builder stops Work under this Section 16.3, that stoppage will be considered a suspension under Section 14.1. The Design-Builder will not have the right to terminate the Contract for default if WisDOT fails to make an undisputed payment when due, but the Design-Builder will have the right to declare a termination for convenience under Section 15 upon meeting the requirements of Section 15.15.

16.4 Notice and Opportunity to Cure Other Types of WisDOT Breaches

If WisDOT breaches the Contract (other than by failing to make payments to the Design-Builder), the Design-Builder must provide a written notice to WisDOT describing the breach. WisDOT will have 30 Days from the date WisDOT received the notice to cure the breach. The 30-Day cure period is extended for any breach which is capable of cure but by its nature cannot be cured within 30 Days – in that case WisDOT will have an additional period of time as may be reasonably necessary to cure the breach so long as WisDOT commences the cure within the 30-Day period and diligently proceeds to cure the breach. The Design-Builder will have no right to exercise any remedies to which it may be entitled at law or in equity until (1) the Design-Builder has given the required notice and (2) the cure period has lapsed and WisDOT has not cured the breach.

17 Damages

17.1 Liquidated Damages and Disincentives

17.1.1 Failure to Meet Completion dates

If the Design-Builder fails to complete the Work in accordance with the Contract Documents, WisDOT will suffer substantial losses and damages. The Design-Builder will be liable for all such losses and damages. The Design-Builder acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Wisconsin State highway system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to WisDOT and the public if the Design-Builder fails to achieve Substantial Completion, meet an Intermediate Completion date and/or achieve Final Acceptance by the applicable Completion dates. Therefore, the Design-Builder and WisDOT have agreed to stipulate the amount payable by the Design-Builder for its failure to meet any Completion date. Liquidated Damages are intended to compensate WisDOT solely for the Design-Builder's failure to meet the Completion dates, and will not excuse the Design-Builder from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that WisDOT has agreed to Accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion date will not preclude WisDOT from exercising its other rights and remedies concerning the delay set forth in Section 16.2, other than the right to collect other damages due to the delay. WisDOT agrees not to exercise these other rights and remedies however, if the Design-Builder diligently performs the Work in accordance with the schedule.

If the Design-Builder fails to achieve Substantial Completion, Final Acceptance, or perform Work required to meet an Intermediate Completion date by the applicable Completion date, the Design-Builder agrees to pay WisDOT Liquidated Damages in the following amounts:

1. \$ _____ per Day for the Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Date, until the date the Design-Builder achieves Substantial Completion.
2. \$ _____ per Day for the Design-Builder's failure to perform all Work required to meet the Intermediate Completion date, until the date the Design-Builder performs all Work required to meet the Intermediate Completion date requirements. *{Use as applicable}*
3. \$ _____ per Day for the Design-Builder's failure to perform all Work required to meet the Final Acceptance Deadline, until the date the Design-Builder achieves Final Acceptance.
4. \$ _____ per Day for the Design-Builder's failure to meet any specified completion or opening date proposed by the Design-Builder in the Design-Builder's Proposal, until the

date the Design-Builder performs all Work required to meet the completion or opening date requirements. *{Use as applicable}*

5. \$ _____ per Day for the Design-Builder's failure to meet any intermediate completion deadline and/or restricted periods proposed by the Design-Builder in the Design-Builder's Proposal, until the date the Design-Builder performs all Work required to meet those proposed Intermediate Completion dates or restricted periods. *{Use as applicable}*

17.1.2 Reasonableness of Liquidated Damage Amounts

The Design-Builder understands and agrees that any Liquidated Damages payable in accordance with this Section 17.1 are in the nature of liquidated damages and not a penalty, and that the sums are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. The Design-Builder further acknowledges and agrees that Liquidated Damages may be owed even though no Event of Default has occurred.

17.2 Monetary Deductions

The Design-Builder agrees to pay WisDOT the following Monetary Deductions:

1. Book 2, Section 2, includes Monetary Deductions. The monetary deduction will be assessed by the hour or day or incident as defined in Book 2, Section 2 until the Design-Builder is compliant.
2. Book 2, Section 5 includes Monetary Deductions. The monetary deduction will be assessed by the hour or day or incident as defined in Book 2, Section 5 until the Design-Builder is compliant.
3. Book 2, Section 17 includes Monetary Deductions for fiber optic damage and testing. The monetary deduction will be assessed by the hour or day as defined in Book 2, Section 17 until the Design-Builder is compliant.
4. Book 2, Section 18, includes Monetary Deductions. The monetary deduction will be assessed by the hour or day or incident as defined in Book 2, Section 18 until the Design-Builder is compliant.

17.3 Offset; Waiver

17.3.1 Offset

WisDOT will have the right to deduct any amount owed by the Design-Builder to WisDOT from any amounts owed by WisDOT to the Design-Builder.

17.3.2 Waiver of Liquidated Damages

WisDOT does not waive its right to receive Liquidated Damages or to exercise any other rights or remedies if WisDOT permits or requires the Design-Builder to continue and finish the Work or any part of the Work after a Completion date. WisDOT does not forfeit the right to recover Liquidated Damages from the Design-Builder or the Design-Builder's Sureties by taking over the Work, or by Termination or Default of the Contract.

17.4 Payment of Liquidated Damages

Liquidated Damages, to the extent not paid as provided in Section 17.3, will be payable by the Design-Builder to WisDOT within 10 Days after the Design-Builder's receipt of an invoice for the damages from WisDOT.

18 Indemnification

18.1 Indemnifications by the Design-Builder

18.1.1 General Indemnities

Subject to Section 18.1.3, the Design-Builder must release, indemnify and hold harmless WisDOT and its agents, 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 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 Design-Builder-Related Entity;
2. The failure or alleged failure by any Design-Builder-Related Entity to comply with any applicable Environmental Laws or other Governmental Rules (including Governmental Rules regarding handling, generation, treatment, storage, transportation and disposal of Contaminated Materials) 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 WisDOT or another Indemnified Party pursuant to the Contract; provided that this indemnity will not apply to any infringement resulting from WisDOT’s failure to comply with specific written instructions regarding use provided to WisDOT by the Design-Builder;
4. The alleged negligent act or omission or willful misconduct of any Design-Builder-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 Design-Builder or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any Design-Builder-Related Entity;
6. Any and all stop work 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 work notice or Lien, provided that WisDOT is not in default in payments owing to the Design-Builder with respect to such Work;

7. Any spill or release or threatened spill or release of a Contaminated Material [i] attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related Entity, or [ii] which was brought onto the Site by any Design-Builder-Related Entity; and/or
8. The claim or assertion by any Design-Builder of inconvenience, disruption, delay or loss caused by interference by any Design-Builder-Related Entity with or hindering the progress or completion of work being performed by other Design-Builders as described in Standard Specification 105.5.2, or failure of any Design-Builder-Related Entity to cooperate reasonably with other Design-Builders in accordance therewith.

18.1.2 Design Defects

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

18.1.3 Losses Due to Negligence of Indemnified Parties

The Design-Builder's indemnity obligation under Sections 18.1.1 and 18.1.2 will 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 Design-Builders who are directly responsible to such Indemnified Party (in other words, a comparative negligence standard will apply).

18.1.4 Claims by Employees

In claims by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 will not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.5 Reliance on Design-Builder's Performance

The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review, Acceptance and/or Approval by WisDOT and/or others hereunder will not relieve the Design-Builder 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.

18.2 Responsibility of WisDOT for Certain Contaminated Materials

18.2.1 Pre-Existing Site Contamination

It is recognized that WisDOT may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Contaminated Materials which may currently be present on the Site. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Contaminated Materials under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that the Design-Builder be exposed to any such liability to the extent arising out of (a) pre-existing Site contamination, whether known or unknown, except as otherwise provided in Section 18.1.1(7), (b) the performance not attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related Entity in the handling of such Contaminated Materials, and/or (c) the activities of any Persons not described in clause (b) above, including WisDOT.

The Design-Builder will not be entitled to a Change Order for Work dealing with Contaminated Materials for which the Design-Builder has agreed to be responsible as described in Section 18.1.1(7).

18.2.2 Generator Number for Hazardous Waste Materials

Except for Contaminated Materials for which the Design-Builder is responsible as described in Section 18.1.1(7) and without contradiction of any assertion by WisDOT of third-party liability:

1. The Design-Builder will not be required to execute any hazardous waste manifests as a "generator"; and
2. Contaminated Materials encountered in the performance of the Work will be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by, and carried in the name of, WisDOT or another Person designated by WisDOT.

18.3 No Effect on Other Rights

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

18.4 CERCLA Agreement

Without limiting their generality, the indemnities set forth in Section 18.1.1(7) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the Indemnified Parties.

18.5 Intent of Indemnity for Breach of Contract

The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(1) is intended to provide protection to WisDOT with respect to third party claims associated with such breach. It is not intended to provide WisDOT with an alternative cause of action for damages incurred directly by WisDOT with respect to such breach.

19 Partnering, Claims for Adjustment and Disputes

19.1 Partnering

The Design-Builder, WisDOT, and stakeholders will enter into a procedure for Partnering as identified within this Section 19. The use of a third-party facilitator is not required.

Within seven Days after NTP1, the Design-Builder must arrange a Partnering meeting between the Design-Builder, WisDOT, and key stakeholders. This meeting will establish:

- Communication procedures
- A dispute resolution process, similar to WisDOT CMM Section 253
- A partnering checklist to be reviewed at project meetings (if applicable). The checklist should contain items such as quality, communication, issue resolution, team and work relationships, and schedule

The partnering process will continue as part of the regularly scheduled project meetings or at events that require additional partnering sessions. These meetings should include primarily Project-level personnel with frequent visits from both WisDOT and the Design-Builder middle management. The meetings should review the partnering checklist and identify actions that need to be escalated up the dispute resolution ladder. All costs associated with partnering will be incidental.

If the Design-Builder and WisDOT determine that a third-party facilitator would enhance the Partnering process, the Design-Builder must make all arrangements to hire a Partnering facilitator and provide a suitable meeting location for the workshops. The length of time devoted to the workshop, along with the content for the workshop, will be determined by a cooperative effort between the Design-Builder and WisDOT. WisDOT and the Design-Builder will mutually select the Partnering facilitator. All costs associated with the Partnering workshops using a Partnering facilitator will be shared equally between WisDOT and the Design-Builder. No additional allowance will be provided to the Design-Builder for the cost associated with paying these bills and submitting the bills to WisDOT for later partial reimbursement.

19.1.1 Partnering Participants

This Contract will require a full-time partnering effort involving Executive Management, Project Management, Project Task Force and others. Participation is required by the agencies involved. Partnering between WisDOT and the Design-Builder has proven to improve the probability of meeting each party's Project goals. The parties will attempt to resolve disputes through partnering between appropriate representatives of WisDOT and the Design-Builder (including, where appropriate, any Subcontractor) at the following levels:

1. Project Task Force Teams

- a. WisDOT chief inspectors and project engineers/supervisors
 - b. The Design-Builder's and subcontractors' project supervisors and technical area supervisors
 - c. Utilities and other third parties
 - d. Permitting and government agencies
2. Project Management Team
- a. WisDOT's Project Manager, deputy project managers
 - b. Project manager, deputy project managers and design manager
 - c. Utilities and other third parties
 - d. Permitting and government agencies
3. Executive Management Team
- a. WisDOT's Project Manager, Assistant District Engineer, and other WisDOT staff as needed.
 - b. Design-Builder and major subcontractor management
 - c. FHWA Division Administration

Team members at each level will be established at the Initial Partnering Meeting. The levels listed above are meant to be broad descriptions of the required levels needed for effective issue resolution. Additional levels or specific task force teams can be added, as appropriate.

To resolve issues in a timely and effective manner, representatives of the parties will meet regularly and explore resolution for each issue at the lowest level possible (i.e., Project Task Force Team first, Project Management Team next, and Executive Management Team last). If both parties determine, in good faith, that effective resolution is not possible at the current level, then the issue will be elevated to the next level in the partnering process. If both parties make such a determination during partnering at the Executive Management Team level, then the dispute will be elevated in accordance with Section 19.2.

19.1.2 Partnering Workshops

19.1.2.1 Initial Partnering Meeting

The initial partnering meeting will occur within 30 Calendar Days of NTP1. This meeting will be facilitated by the Partnering Facilitator. At this session, all representatives from each party at each level must attend. The participants will develop the teams at each level, develop the list of goals for the Project, establish a dispute resolution ladder and process, and develop project goals evaluation tools.

19.1.2.2 Project Goals Evaluation

The Project Goals determined at the initial partnering meeting will be evaluated on a monthly basis. This evaluation will be sent to participants at all levels in the Partnering Process. The evaluation will ask each participant to rate how effective the teams are in meeting each of the project goals. The rating system will be determined by the parties in conjunction with the Partnering Facilitator. Space will be provided on the evaluation form to allow participants to include additional written comments and details about the effectiveness of meeting the project goals. The evaluations will be submitted, compiled and the results distributed by the Partnering Facilitator. The participants will determine whether the evaluations will be anonymous at the initial partnering meeting.

19.1.2.3 Project Task Force Team Meetings

Informal partnering sessions without the facilitator will be required frequently during the duration of the Project at the Project Task Force level. These sessions will involve members of the Project Task Force teams and/or members of the Project Management teams. These sessions can be in the form of weekly Project update meetings or field reviews by team members. The goal of these meetings should not only provide an update on the Project, but include discussions on Quality, Communication, Issue Resolution, Team and Work Relationships, and Schedule. Each meeting should review outstanding issues discussed at previous partnering sessions.

19.1.2.4 Project Task Force Team Meetings

Informal partnering sessions without the facilitator will be required frequently during the duration of the Project at the Project Management level. These sessions will involve members of the Project Management teams. These sessions can be in the form of weekly Project update meetings or field reviews by team members. The agenda of these meetings will include discussion of issues that have been agreed to be raised from the Project Task Force Team level. These meetings should not only provide an update on the Project, but include discussions on Safety, Quality, Communication, Issue Resolution, Team and Work Relationships, and Schedule. Each meeting should review outstanding issues discussed at previous partnering sessions.

19.1.2.5 Executive Management Team Meetings

Formal partnering sessions at the Executive Management level without the facilitator will be held monthly during the duration of the Project. These sessions will involve members of the Executive Management teams. The Agenda for these will be agreed upon by both parties prior to each meeting. The Agenda for each meeting will include discussion of issues that have been agreed to be raised from the Project Management Team level. The goal of these meetings should not only provide an update on the Project, but include discussions on Safety, Quality, Communication, Issue Resolution, Team and Work Relationships, and Schedule. Each meeting

will review outstanding issues discussed at previous partnering sessions. Each meeting will also include a review and discussion of the monthly project goals evaluations.

19.1.2.6 Quarterly Partnering Workshops

Formal facilitated partnering workshops will be conducted at quarterly intervals throughout the Project and at the times of critical events (as agreed upon by each party). The workshops will include all Project Task Force, Project Management and Executive Management Teams. The partnering workshops will include the Partnering Facilitator to guide the partnering process.

Each partnering session will review the major topics related to the Project. Topics should include: Quality, Communication, Issue Resolution, Team and Work Relationships, Schedule and any other topics that the teams feel are important to the success of the Project. Each meeting will also include a review and discussion of the monthly project goals evaluations. The Partnering Facilitator will prepare minutes of the meetings and circulate for comments, revisions, and/or Approval of all parties.

Both WisDOT and the Design-Builder will submit agenda items to the facilitator in advance of each quarterly partnering workshop. The agenda will generally include the following:

1. Opening remarks by WisDOT, FHWA and the Design-Builder Executive Management.
2. A description by the Design-Builder of Work accomplished since the last meeting, current status of the current Monthly Progress Update, schedule for future Work, potential issues and status of past issues.
3. Discussion by WisDOT of the Work schedule as WisDOT views it, potential issues, and status of past issues.
4. Review of monthly project goals evaluations.
5. Discussion regarding the major topics on the Agenda or raised at the meeting.
6. Setting date for next meeting.

All issues discussed during the Partnering Workshop will be documented in the minutes. Any issue not resolved at the Workshop must have an agreed-upon issue resolution timeline. For each of these issues identified for resolution, the participants from each affected party required to resolve the issue and the schedule to resolve the issue will be determined and recorded to ensure the issue is resolved in an effective and timely manner. These participants will report on the issue resolution at the next quarterly partnering workshop.

19.2 Claims for Compensation Adjustment and Disputes

If issue resolution efforts through Partnering are not successful, disputes must be resolved through WisDOT Standard Specification 105.13.

20 Acceptance of Project

20.1 Substantial Completion

20.1.1 Notice by the Design-Builder

The Design-Builder must Provide written notice to WisDOT when all of the following have occurred with respect to the Project:

1. The Design-Builder has completed all Work (except for Punch List items and other items only included in the requirements for Final Acceptance);
2. The Design-Builder has ensured that the Work has been performed in accordance with the requirements of the Contract Documents;
3. The Design-Builder has received all applicable Governmental Approvals required for Project use;
4. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Design Manager, in form and substance satisfactory to WisDOT, certifying conformity of the Design Documents with the requirements of the Contract Documents;
5. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Project Manager, in form and substance satisfactory to WisDOT, certifying conformity of the construction with the Design Documents;
6. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Construction Quality Manager, in form and substance satisfactory to WisDOT, certifying that there are no outstanding nonconformances other than those identified on the Punch List;
7. The Design-Builder has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person;
8. The Design-Builder has obtained all applicable third-party approvals relating to the Work (including Utility Owners as required under any applicable utility agreements and Section 6 of Book 2), and all third parties have completed all Work that involves obligations by the Design-Builder (including Utility Owners under any utility agreements and Section 6 of Book 2);
9. The Design-Builder has ensured that the Project is fully opened to traffic and that no further Work is required which would involve any lane or shoulder closure except for the following: Nighttime lane closures in accordance with Book 2, Section 18 may be allowed, at WisDOT's sole discretion, for Punch List, bridge and retaining wall painting, maintenance, final cleanup and turf establishment items. Shoulder closures may be allowed (except on Working Days from 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m.), at

WisDOT's sole discretion, for Punch List, bridge and retaining wall painting, maintenance, final cleanup and turf establishment items; and

10. Quality Manager certifies Work is completed in accordance with the requirements

20.1.2 Correction of Defects

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

20.1.3 Notice of Substantial Completion

WisDOT will issue a Notice of Substantial Completion when:

1. WisDOT determines that all conditions set forth in Section 20.1.1 have been satisfied;
2. WisDOT determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected; and
3. The Design-Builder has prepared and WisDOT has Approved a Punch List.

20.2 Final Acceptance

20.2.1 Conditions to Final Acceptance

20.2.1.1 Performance of Work after Substantial Completion

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

20.2.1.2 *Conditions to Affidavit of Final Completion*

The Design-Builder will Provide to WisDOT an executed sworn Affidavit of Final Completion in accordance with Section 20.2.1.3 when all of the following have occurred:

1. All requirements for Substantial Completion have been fully satisfied;
2. WisDOT has received all Released for Construction Documents, Design Documents, As-Built Documents, right-of-way record maps, surveys, material certifications, test data and other deliverables required under the Contract Documents;
3. All special tools, equipment, furnishings and supplies purchased by and/or used by the Design-Builder as provided in the Contract Documents have been delivered to WisDOT and all replacement spare parts have been purchased and delivered to WisDOT free and clear of Liens;
4. All the Design-Builder's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Site, the Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of WisDOT and the Site is in good working order and condition;
5. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Design Manager, in form and substance satisfactory to WisDOT, certifying conformity of the Design Documents with the requirements of the Contract Documents;
6. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Project Manager, in form and substance satisfactory to WisDOT, certifying conformity of the construction with the Design Documents;
7. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Construction Quality Manager, in form and substance satisfactory to WisDOT, certifying that there are no outstanding nonconformances;
8. The Design-Builder has delivered to WisDOT a notice of completion for the Project in recordable form and meeting all statutory requirements;
9. The Punch List items have been completed to the satisfaction of WisDOT;
10. All the Design-Builder's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by WisDOT) have been satisfied in full or waived in writing by WisDOT; and
11. The Design-Builder has identified a single point of contact to address the Warranty requirements of Section 21 throughout the duration of the Project Warranty term. The Design-Builder has furnished to WisDOT certifications from the Design-Builder's Contract Environmental Compliance Officer (CECO), in form and substance satisfactory to WisDOT, certifying Work is completed in accordance with the environmental requirements including the completion of the Environmental Management Plan (Project Green Sheet).

20.2.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Section 20.2.1.2 must include the following statement:

To the best of the Design-Builder's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed Work under the Contract, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued thereunder for said undisputed Work; there are no outstanding claims, Liens or stop work notices relating to the Project, including claims by Utility Owners; there is no existing default by the Design-Builder under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or Event of Default under any Utility Agreement; and upon receipt of final payment, the Design-Builder and Subcontractors acknowledge that WisDOT and any and all employees of WisDOT 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 Design-Builder is unable to provide the affidavit in the above form, the affidavit will certify that all such outstanding matters are set forth in an attached list which will describe the outstanding matters in such detail as may be requested by WisDOT. The affidavit will include a representation of the Design-Builder that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and will provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

20.2.2 Inspection and Issuance of Notice of Final Acceptance

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

20.2.3 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent WisDOT from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from the Design-Builder, the Surety(ies) and/or any Guarantor, the amount of any overpayment sustained due to failure of the Design-Builder to fulfill the obligations under the Contract. A waiver on the part of

WisDOT of any breach by the Design-Builder will not be held to be a waiver of any other or subsequent breach. Final Acceptance will not relieve the Design-Builder from any of its continuing obligations hereunder, or constitute any assumption of liability by WisDOT.

20.3 Opening of Sections of Project to Traffic

20.3.1 Plan for Opening to Traffic

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

20.3.2 Direction to Open Following the Design-Builder Failure to Perform

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

20.3.3 No Waiver

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

20.4 Assignment of Causes of Action

The Design-Builder hereby offers and agrees to assign to WisDOT 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 will be made and become effective at the time WisDOT tenders final payment to the Design-Builder, without further acknowledgment by the parties.

21 Warranties

21.1 Warranties by Design-Builder

WisDOT to determine if any warranties are needed for the project. If none, this section will be noted as Not Used.

21.1.1 Project Warranties

The Design-Builder warrants that:

1. all design Work furnished pursuant to the Contract Documents will meet the professional standard of care and conform to all Professional Engineering principles generally accepted as industry standards in the State;
2. the Project must be free of defects in design, materials, and workmanship. The Design-Builder will not be responsible for defects to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, unless (i) the Design-Builder has actual or constructive knowledge of such defects and (ii) the Design-Builder fails to request that WisDOT change those prescriptive specifications;
3. materials and equipment furnished under the Contract Documents will be of good quality and be new when installed;
4. the Work will meet all of the requirements of the Contract Documents;
5. the specifications and drawings selected or prepared for use during construction will be appropriate for their intended use; and
6. the Project will be fit for use for the intended function.

21.1.2 Project Warranty Term

Subject to extensions under Section 21.2, the Warranty term starts at Substantial Completion of the Project, except that a Warranty for a specific element owned by a third party may start at the date the third party accepts that specific element if (1) that date is prior to Substantial Completion, and (2) WisDOT and the Design-Builder have documented the earlier Warranty start date. The Warranty ends as follows:

- TBD

21.1.3 Additional Warranty Requirements

Additional Warranty requirements are set forth in Exhibit C. If WisDOT determines that any of the Work has not met the standards set forth in this Section 21.1 at any time within the Warranty

period, then the Design-Builder must correct the Work as specified below, even if the performance of the corrective Work extends beyond the stated Warranty period.

21.1.4 Corrective Work

WisDOT and the Design-Builder will conduct a walkthrough of the Site together within 60 Days of the end of the applicable Warranty period. WisDOT may require additional Site visits with the Design-Builder in the event WisDOT identifies Warranty Work that needs immediate resolution. On each walkthrough or Site visit, WisDOT will produce a punch list of items requiring Warranty Work. In addition, WisDOT reserves the right at any time during the Warranty period to identify Work that fails to meet the Warranty.

The Design-Builder may also monitor the Site using non-destructive testing for any Warranty Work required during the Warranty period. The Design-Builder must provide advance notice to WisDOT of all monitoring dates and times.

WisDOT will notify the Design-Builder of any failure of any of the Work that is the Design-Builder's, or any Subcontractor's, responsibility to correct under the terms of the Warranty. The Design-Builder must correct any areas which exceed the Warranty threshold limits established for the Project. WisDOT may require corrective actions at any time within the Warranty period, or defer corrective action until the end of the initial Warranty period.

For all corrective actions required, the Design-Builder must provide a written proposal for performing Warranty Work within 10 Working Days after receiving notice from WisDOT that corrective Work is required. The Design-Builder must also provide a written proposal for performing the corrective Work if the Design-Builder elects to perform this Work based on the Design-Builder's assessment of the Site.

The proposal must include, as a minimum:

1. The proposed construction remedy;
2. The proposed schedule for prosecution and completion of the Work; and
3. The proposed Traffic Management Plan

WisDOT will respond as to the adequacy and suitability of the proposal within 10 Working Days after WisDOT receives the Design-Builder's submittal. WisDOT may agree to Accept Nonconforming Work in accordance with Section 5.7.2.

During the Warranty period, the Design-Builder will not be held responsible for distresses caused by identifiable factors unrelated to materials and workmanship. Upon written request from the Design-Builder and on a case-by-case basis, WisDOT will consider other factors that appear to be beyond the control of the Design-Builder and may relieve the Design-Builder from particular Warranty obligations.

The Design-Builder must begin corrective action Work within 30 Calendar Days after WisDOT's notice of Acceptance of the written plan for Warranty Work. If the Work cannot be started then

because of seasonal limitations, the Design-Builder must notify WisDOT of this circumstance in writing and submit a schedule for completion of the corrective action Work for WisDOT's approval. If the Design-Builder does not use its best efforts to perform that corrective action Work within the agreed time, or if the Design-Builder and WisDOT fail to reach an agreement, WisDOT, after notice to the Design-Builder, will have the right to perform the Warranty Work itself or have the Warranty Work performed by third parties. The Design-Builder will be responsible for the costs of performance by WisDOT or third parties. The Design-Builder will also be responsible for the inspection and testing of the Warranty Work.

If WisDOT determines that emergency repairs are necessary for public safety, WisDOT may perform this Warranty Work. WisDOT's Project Manager, or his/her representative, must authorize in advance WisDOT's performance of the emergency repairs. Before performing the emergency repairs, WisDOT will (1) document the basis for the emergency action; and (2) preserve evidence of the defective condition. Examples of evidence are photographs or videotapes. WisDOT will coordinate emergency repairs with the Design-Builder when possible. The Design-Builder is responsible for all costs associated with the emergency repairs that are covered by the Warranty.

21.1.5 Costs of Correction of Work

All costs of correcting rejected Work, including additional testing and inspections, will be deemed included in the Contract Price. The Design-Builder must reimburse WisDOT and pay WisDOT's expenses made necessary by the correction of rejected Work within 10 Days after the Design-Builder's receipt of invoice for those expenses. The Design-Builder will be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

21.2 Warranty of Corrected Work

The Warranties will apply to all Work redone, repaired, corrected or replaced under the terms of the Contract. The Warranties as to each redone, repaired, corrected or replaced element of the Work must extend beyond the original Warranty period if necessary to provide at least a one-year Warranty period after Acceptance of the Work element by WisDOT, or by the appropriate Person who will own the Work element.

21.3 Subcontractor Warranties

21.3.1 Assignment

The Design-Builder must obtain from all Subcontractors appropriate representations, warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by Subcontractors, including the representations, warranties, guarantees and obligations that Subcontractors are required to furnish under Book 2. The

Subcontractor representations, warranties, guarantees and obligations must expressly extend to WisDOT. The Subcontractor representations, warranties, guarantees and obligations in no way undermine the Design-Builder's own representations, warranties, guarantees, and obligations, including the Design-Builder Warranties. All representations, warranties, guarantees and obligations of Subcontractors must (a) expressly survive all WisDOT and the Design-Builder inspections, tests and Approvals, and (b) run directly to and be enforceable by the Design-Builder and/or WisDOT and their respective successors and assigns. The Design-Builder assigns to WisDOT all of the Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable Warranty period that are received by the Design-Builder from any of its Subcontractors.

21.3.2 Enforcement

Upon receipt from WisDOT of notice of a failure of any of the Work to satisfy any Subcontractor Warranty, representation, guarantee, or obligation, the Design-Builder must enforce or perform the representation, Warranty, guarantee or obligation, in addition to the Design-Builder's other obligations under this Section 21. WisDOT's rights under this Section 21.3.2 begin at the time the representation, Warranty, guarantee or obligation is furnished, and must continue until the expiration of the Design-Builder's relevant Warranty (including extensions under Section 21.2). Until expiration, the Design-Builder will be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and the Design-Builder must replace or repair defective equipment, material or workmanship furnished by any Subcontractor.

21.4 No Limitation of Liability

The warranties described in this Section 21 are in addition to all rights and remedies available under the Contract Documents or applicable law, and will not limit the Design-Builder's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud. Upon expiration of the Warranties, however, the Design-Builder will have no further liability to WisDOT under this Contract for patent construction defects.

21.5 Warranty Beneficiaries

When local agencies or Utility Owners own and control a portion of the work, then these agencies or Utility Owners are intended to be benefitted by and may directly enforce the Warranties and Subcontractor warranties related to that work.

21.6 Remedies for Breach of Warranty

In addition to WisDOT's other rights and remedies under this Contract, at law or in equity, the Design-Builder will be liable for actual damages resulting from any breach of an express or implied Warranty or any defect in the Work.

21.7 Disputes

Any disagreement between WisDOT and the Design-Builder relating to this **Section 21** will be subject to the dispute resolution provisions contained in Section 19. The Design-Builder must proceed as directed by WisDOT pending resolution of the dispute.

TEMPLATE

22 Documents and Records

22.1 Escrowed Proposal Documents

The Design-Builder will contact and coordinate a meeting with WisDOT no later than five Calendar Days following award of the Contract by WisDOT to submit the escrowed proposal documents (EPD). WisDOT will supply a location suitable for sealing and storing the EPD. The location will be locked by WisDOT and the Design-Builder will keep and store the EPD.

The location will be clearly marked "Bid Documentation" and will have entered the Design-Builder's name, the date of submittal, and the State Project Number. Failure to schedule a meeting and submit the EPD may result in cancellation of the Award.

At the scheduled meeting, authorized representatives of WisDOT and the Design-Builder will review the EPD for accuracy and completeness. Should a discrepancy exist between the EPD and the Proposal Price, the Design-Builder will furnish WisDOT with any other needed bid documentation within 3 Working Days. WisDOT, upon determining that the EPD appear to be complete, will immediately place the EPD in a container in the presence of the Design-Builder's representative, and seal the container.

The Design-Builder will retain the EPD. Payment for compilation of the data, cost of verification of the EPD or any other costs that may be incurred by the Design-Builder in fulfilling these requirements will be considered incidental to the Contract. The EPD will be returned to the Design-Builder following Final Acceptance of the Project by the Federal Highway Administration.

22.1.1 Review of EPD

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

22.1.2 Property of the Design-Builder

The EPD are, and will always remain, the property of the Design-Builder, and will remain in the Design-Builder's possession, subject to WisDOT's right to review the EPD as provided herein. WisDOT acknowledges that the Design-Builder considers that the EPD constitute trade secrets or proprietary information. This acknowledgment is based upon WisDOT's understanding that the information contained in the EPD are not known outside the Design-Builder's business, is

known only to a limited extent and by a limited number of employees of the Design-Builder, is safeguarded while in the Design-Builder's possession, and may be valuable to the Design-Builder's business strategies, assumptions and intended means, methods and techniques. WisDOT further acknowledges that the Design-Builder expended money in developing the information included in the EPD and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. WisDOT acknowledges that the EPD and the information contained therein are being provided to WisDOT only because it is an express prerequisite to award of the Contract.

22.1.3 Representation and Warranty

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

22.1.4 Contents of EPD

The EPD will, at a minimum, clearly detail how the components of the Proposal Price were determined and will be adequate to enable a complete understanding and interpretation of how the Design-Builder arrived at the Proposal Price. The EPD provided in connection with quotations and Change Orders will, at a minimum, clearly detail how the total price and individual components of that price were determined and will be adequate to enable a complete understanding and interpretation of how the Design-Builder arrives at its quotation and/or Change Order price. All Work will be separated into subitems as required to present a complete and detailed estimate of all costs. Crews, equipment, quantities and rates of production will be detailed. Estimates of costs will be further divided into the Design-Builder's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs will also be detailed in the Design-Builder's usual format. The Design-Builder's allocation of plant and equipment, indirect costs, contingencies, mark-up and other items to each direct cost item will be clearly identified. The EPD will itemize the estimated costs of the Performance and Lien Bond and the insurance premiums for each coverage required to be provided by the Design-Builder under Section 8 and Section 9. The EPD will include all assumptions, quantity takeoffs, rates of production, the Design-Builder internal equipment rental rates and progress calculations, quotes from Subcontractors (including Suppliers), memoranda, narratives and all other information used by the Design-Builder to arrive at the Proposal Price or Change Order price, as applicable. For each item of Work, the EPD will itemize any related amounts not included in the stated price for such item such as any amount allocated for contingency.

22.1.5 Format of EPD

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

22.1.6 Review by WisDOT

WisDOT may, at any time, conduct a review of the EPD to determine whether it is complete. If WisDOT determines that the EPD are incomplete, WisDOT may request the Design-Builder to supply data to make the EPD complete. The Design-Builder will provide all such data within 3 Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. The Design-Builder will have no right to add documents to the EPD except upon WisDOT's request.

22.1.7 Return of EPD

The Design-Builder will contact WisDOT within 20 days of Final Acceptance, settlement of any and all claims, and final payment to the Design-Builder, to determine a meeting place and time to return the EPD and the container. At the meeting WisDOT will open the container and return the EPD to the Design Builder.

22.1.8 Material Cost Reporting

At the meeting to review the EPD the Design-Builder will provide to WisDOT the estimated quantities and unit prices for concrete pavement, HMA pavement, structural steel, and reinforcement steel. The material quantities and cost information provided by the Design-Builder will be used for reporting purposes only and included in an overall State total (not project specific).

22.2 Subcontractor Pricing Documents

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

22.3 Project Records

22.3.1 Maintenance of Records

The Design-Builder must maintain a complete set of all books, records and documents prepared or employed by the Design-Builder with respect to the Project. The books records, and documents must be maintained at the Design-Builder's Project Manager's office in the state of Wisconsin, or be available for inspection at the Project Manager's office on one Day's notice.

22.3.2 Audit and Inspection Rights

The Design-Builder grants to WisDOT, FHWA, Utility Owners, and other applicable state and federal agencies, the right to audit and inspect books and records relevant to the Project (including all tax returns and supporting documentation filed with any Governmental Persons). Authorized parties may audit and inspect the books and records from time to time in connection with the issuance of Change Orders, the resolution of disputes, or as otherwise needed to comply or verify compliance with the Contract and Governmental Rules. The Audit and inspection rights includes the rights to have convenient access to all paper and electronic records, and to make and save copies of those records.

22.3.3 Audit of Force Account Work

If WisDOT is paying for any Work is on a Force Account basis, then the audit and inspection rights will include all books, records, documents and other evidence and accounting principles and practices sufficient to properly reflect all direct and indirect costs of any nature which the Design-Builder claimed to have been incurred or anticipated to be incurred in performing the Work. If an audit indicates the Design-Builder has been overpaid under a previous progress report or progress payment, that overpayment will be credited against current progress reports or payments.

22.3.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, such Persons and their representatives have the right to examine all books, records, documents and other data of the Design-Builder 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 will extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

22.3.5 Claims Audits

All Claims filed against WisDOT are subject to audit at any time following the filing of the Claim. The audit may be performed by WisDOT employees or by an auditor under contract with WisDOT. No notice is required before commencing any audit before 60 Days after Final Acceptance. Thereafter, WisDOT will provide 20 Days' notice to the Design-Builder, any Subcontractors or their respective agents before commencing an audit. The Design-Builder, Subcontractors or their agents must provide adequate facilities, Acceptable to WisDOT, for the audit during normal business hours. The Design-Builder, Subcontractors and their agents must cooperate with the auditors. If the Design-Builder, Subcontractors or their agents fail to maintain and retain sufficient records to allow the auditors to verify all of the Claim (or a Subcontractor's portion of the Claim) or fail to provide access to the books and records of the Design-Builder, Subcontractors or their agents, then the Claim will be deemed waived and recovery for the Claim will be barred. At a minimum, the following documents must be available to the auditors:

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; and

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.

The Design-Builder's full compliance with the provisions of this Section 22.3.5 is a condition precedent to the Design-Builder's right to seek relief under Section 19. The Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 22.3.

22.4 Retention of Records

The Design-Builder must maintain all records and documents relating to the Contract (including copies of all original documents delivered to WisDOT) indefinitely, unless otherwise notified by WisDOT. The Design-Builder may maintain photographs, microphotographs or other authentic reproductions instead of original records and documents, if approved by WisDOT. The Design-Builder must notify WisDOT of where the Design-Builder will store the records and documents.

The Design-Builder must retain all records relating to Claims being processed or actions brought under the dispute resolution provisions of this Contract, even if the preceding paragraph allows the Design-Builder to discard all those records. The Design-Builder must make those records available to WisDOT and its agents until the parties have finally resolved the Claims and disputes. The Design-Builder must retain all books, records, and other evidence bearing on the Design-Builder's costs and expenses under the Contract Documents. The Design-Builder must make these records and documents available for audit and inspection at the Design-Builder's office, at all reasonable times, and without charge to WisDOT or WisDOT's agents. The Design-Builder must allow WisDOT and WisDOT's agents to make copies of such documents (at no expense to the Design-Builder).

23 Provisions

23.1 Amendments

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

23.2 Waiver

23.2.1 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 (including any agreement by WisDOT to Accept Nonconforming Work under Section 5.7.2) will not in any way limit or waive that party's right to subsequently 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 will 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.

23.2.2 Custom Does not Constitute Waiver

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

23.2.3 Waivers Must Be in Writing

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

23.3 Independent Design-Builder

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

23.4 Successors and Assigns

The Contract Documents will be binding upon and inure to the benefit of WisDOT and the Design-Builder and their permitted successors, assigns and legal representatives.

23.4.1 Assignment by WisDOT

WisDOT may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the Payment and Performance Bond, any Guaranty and any other performance security provided, to any Person with the prior written Approval of the Design-Builder.

23.4.2 Assignment by the Design-Builder

The Design-Builder may collaterally assign its rights to receive payment under the Contract Documents and may subcontract Work in compliance with the requirements of the Contract Documents. The Design-Builder must not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with WisDOT's prior Approval. The Design-Builder's assignment or delegation of any of its Work under the Contract Documents will not relieve the Design-Builder of its responsibility for the Work assigned or delegated, unless WisDOT, in its sole discretion, has Approved such relief from responsibility. Any assignment of money is subject to all proper set-offs and withholdings in favor of WisDOT and to all deductions provided for in the Contract. No partner, joint venturer, member or shareholder of the Design-Builder may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in the Design-Builder without the prior Approval of WisDOT, in WisDOT's sole discretion.

23.5 Designation of and Cooperation with Representatives

23.5.1 Designation of Representatives

WisDOT and the Design-Builder must each designate an individual or individuals who will 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 23.10. The parties may also designate technical representatives who will 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 WisDOT or the Design-Builder.

23.5.2 Cooperation

The Design-Builder will cooperate with WisDOT and all representatives of WisDOT designated as described above.

23.6 Officials not to Benefit

The Design-Builder must not employ any person to perform professional or technical services under the Contract who is currently a State employee or who has been a State employee any time during the time period of the Contract. This clause does not apply to retired State employees, and this clause may be waived by the State, in writing, for other current or former State employees.

The Design-Builder warrants that (1) it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder, to solicit or secure the Contract, and (2) it has not paid or agreed to pay any company or person, other than a bona fide employee working for the Design-Builder, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making of the Contract.

The rights and remedies of WisDOT specified in this Section 23.6 are not exclusive and are in addition to any other rights and remedies allowed by law.

23.7 Survival

The Design-Builder's representations and warranties, the dispute resolution provisions contained in Section 19, and all other provisions which by their inherent character should survive termination of the Contract, will survive the termination of the Contract.

23.8 Limitation on Third-Party Beneficiaries

The parties do not intend for any of the provisions of the Contract Documents to create any third-party beneficiary unless a specific provision (such as the Warranty and indemnity provisions) specifically identifies third parties (such as Utility Owners) and states that they are entitled to benefits under this Contract. Except as otherwise provided in this Section 23.8, the duties, obligations, and responsibilities of the parties to the Contract Documents with respect to third parties must remain as imposed by law. The Contract Documents will not be construed to create a contractual relationship of any kind between WisDOT and a Subcontractor, supplier, or any other Person except the Design-Builder.

23.9 No Personal Liability

WisDOT's authorized representatives are acting solely as agents and representatives of WisDOT when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They will not be liable either personally or as employees of WisDOT for actions in their ordinary course of employment. No agent, consultant, officer, or employee of WisDOT will be personally responsible for any liability arising under the Contract.

23.10 Notices and Communications

23.10.1 Delivery of Notices

Notices under the Contract Documents will be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by via telephone communication followed by a hardcopy 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 Design-Builder will be sent to the Design-Builder's Project Manager or as otherwise directed by such Project Manager. The address for such communications will be:

Attn.: _____

Telephone: _____

Email: _____

FAX: _____

In addition, copies of all notices to proceed and suspension, termination and default notices must be delivered to the following persons:

Attn.: _____

Telephone: _____

Email: _____

FAX: _____

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

Attn.: _____

Telephone: _____

Email: _____

FAX: _____

In addition, copies of all notices regarding disputes, termination and default notices must be delivered to the following persons:

Attn.: _____

Telephone: _____

Email: _____

FAX: _____

23.10.2 Receipt of Notices

Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Central Time and all other notices received after 5:00 p.m. Central Time will be deemed received on the first Working 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.).

23.10.3 Copies of Correspondence to WisDOT

The Design-Builder will copy WisDOT on all written correspondence pertaining to the Contract between the Design-Builder and any Person other than the Design-Builder's Subcontractors, consultants and attorneys.

23.11 Further Assurances

The Design-Builder will promptly execute and deliver to WisDOT all such instruments and other documents and assurances as are reasonably requested by WisDOT to further evidence the obligations of the Design-Builder hereunder, including assurances regarding assignments of Subcontractors contained herein.

23.12 Severability

If any clause, provision, section or part of the Contract is ruled invalid under **Section 19** or otherwise by a court of competent jurisdiction, then the parties will: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which will, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part will not affect the validity or enforceability of the balance of the Contract, which will be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

23.13 Headings

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

23.14 Governing Law

The Contract Documents will be governed by and construed in accordance with the law of the State of Wisconsin, without regard to conflict of law principles.

23.15 Limit of Liability

Notwithstanding anything to the contrary contained herein, the State's liability for payment extends only to the amount actually appropriated for the purpose of the Project.

23.16 Entire Agreement

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

23.17 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed the Contract as of the last date set forth next to signatures of the parties, below:

STATE OF WISCONSIN

SECRETARY OF TRANSPORTATION: Date: _____, 20__ By: _____ Pursuant to Delegation of Authority	SECRETARY OF ADMINISTRATION: Date: _____, 20__ By: _____ Pursuant to Delegation of Authority
	ENCUMBRANCE VERIFICATION SIGNATURE: Date: _____, 20__ By: _____

DESIGN-BUILDER

By: _____	
By: _____ Name: _____ Title: _____ Date: _____, 20____	By: _____ Name: _____ Title: _____ Date: _____, 20____
By: _____	
By: _____ Name: _____ Title: _____ Date: _____, 20____	By: _____ Name: _____ Title: _____ Date: _____, 20____