

LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES



Toll Collection System Roadside Back Office Component Toll Collection System Contract

DRAFT

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This Toll Collection System Roadside Back Office Component Toll Collection System Contract is made and entered into this ___ day of _____ 2013 between the Commonwealth of Kentucky, acting by and through its agent, the Kentucky Transportation Cabinet, acting in its official capacity and hereinafter referred to as KYTC, as the entity designated to procure this Contract by resolution of the Joint Board in accordance with the Interlocal Agreement, and _____, hereinafter referred to as the Contractor with reference to the Exhibits hereto and the following recitals.

RECITALS

1. The RBOC Component Project generally consists of the design, installation, testing, integration, construction and maintenance of the roadside and back office portions of the toll collection system for the Louisville Southern-Indiana Ohio River Bridges project, a design, construction and reconstruction project of two Ohio River crossings located in Louisville, Kentucky; Prospect, Kentucky; Jeffersonville, Indiana; and Clarksville, Indiana, commonly referred to as the East End Crossing and the Downtown Crossing. The Downtown Crossing is made up of two bridges, the Kennedy Crossing and the New Downtown Crossing.

2. The Indiana Finance Authority has entered into that certain Public Private Agreement East End Crossing Louisville-Southern Indiana Ohio River Bridges Project), dated as of December 27, 2012, for the design, construction, finance, operation and maintenance of the East End Crossing with WVB East End Partners, LLC as the private developer of such project. Said Public Private Agreement provides that the Developer at all times shall coordinate and cooperate, and require its contractors to coordinate and cooperate, with Contractor in connection with its activities relating to the installation and testing of the TCS and the tolling equipment, and the Developer shall make the Project Site available to Contractor for installation and testing of the toll collection system not later than 120 days prior to the anticipated date of substantial completion of the Developer's construction of the East End Crossing. The Public Private Agreement provides that IFA shall commence making availability payments to the Developer, upon such substantial completion date, and that tolling shall commence as soon as the East End Crossing is open to traffic, which is expected to occur upon substantial completion.

3. KYTC has entered into that certain Design Build Contract dated as of December 28, 2012 for the design and construction of the Downtown Crossing with Walsh Construction Company as the design-builder. The Downtown Crossing Design-Build Contract provides that the Design-Builder shall coordinate and cooperate with the Contractor throughout the course of construction. It is currently anticipated that the New Downtown bridge will be substantially complete and open to traffic by April 1, 2016. The entire Downtown Crossing must be substantially complete by no later than December 10, 2016.

4. KYTC issued a three part Request for Proposals on behalf of the Joint Board on April 17, 2013. The three parts of the RFP included: (a) the RBOC Component – Tolling Component One; (b) the Electronic Toll Collection Component – Tolling Component Two; and (c) the Operations Services Component – Tolling Component Three.

5. KYTC received responses to the RFP, including the Contractor's Technical Proposal for the RBOC Component dated _____, 2013 and the Contractor's Price Proposal.

6. The RFP evaluation committee determined that the Proposal was the response to the RFP that provided best value to the Joint Board with respect to the RBOC Component – Tolling Component One.

7. The Joint Board approved the RFP evaluation committee's determination on _____ which ultimately led to the Joint Board awarding this Contract to the Contractor.

8. The parties intend for this Contract to be a lump sum contract obligating the Contractor to perform all work necessary to complete the Project by the Completion Deadlines specified in the Contract Documents for the Construction Price specified as a component of the Contract Price in the Price Proposal, and within the Contract time, subject only to certain specified limited exceptions. To allow the Joint Board to budget for the Project and to reduce the risk of cost overruns, this Contract includes restrictions affecting the Contractor's ability to make claims for an increase to the Contract Price or an extension of the Completion Deadlines. Except for changes expressly allowed under the Contract, the Contractor has agreed in this Contract to assume such responsibilities, risks, and restrictions and has reflected the assumption of such responsibilities, risks, and restrictions in the Contract Price.

9. If Contractor fails to complete the Project by the Substantial Completion Deadline, then the Joint Board will suffer substantial losses and damages, including but not limited to adverse financial consequences to be incurred by IFA under the Public Private Agreement for the East End Crossing, and by KYTC under the Design Build Contract for the Downtown Crossing Design-Build Contract. The Contract Documents therefore provide that Contractor shall pay the Joint Board Liquidated Damages if such Substantial Completion Deadline is not met.

10. The Contract provides for the Contractor to provide a one year warranty of the Work commencing for each Crossing upon the Substantial Completion Acceptance Date for such Crossing and continuing until the first anniversary of such Substantial Completion Acceptance for the Warranty Price for each Crossing and the System as a whole indicated in the Price Proposal.

11. The Contract further provides for Contractor to maintain the entire System for the applicable Maintenance Price throughout the Maintenance Term for the Maintenance Price for each Crossing and the System as a whole indicated in the Price Proposal. The maintenance obligations and Performance Requirements during the Maintenance Term are the same as during the Warranty Period, however the Maintenance Price is intended to take into consideration any factory warranties on equipment that may expire during the Warranty Period.

12. The RBOC Component's accuracy and reliability is of paramount importance to the Joint Board's ability to fulfill its duty to finance the design, construction and reconstruction of the Ohio River Crossings and to operate and maintain such crossings, and the Joint Board will suffer substantial losses and damages if the RBOC

Component does not meet the Performance Requirements. The Contract Documents provide that Contractor shall pay the Joint Board substantial Liquidated Damages if the RBOC Component does not meet the Performance Requirements.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor by the Joint Board, the foregoing promises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

1.0 Contract and Contract Documents

1.1. Certain Definitions

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

1.2. Contract Documents and Order of Precedence

(a) The Contract Documents consist of the following documents, including any exhibits thereto. The Contract Documents are intended to be complementary and describe and provide for a complete contract for design and implementation of the Project. Except as provided below, in the event of any conflict among the Contract Documents, the order of precedence, from highest to lowest, shall be as set forth below.

1. Addenda and modification to this Contract, including Change Orders
2. This Contract and attached exhibits
3. Technical Proposal elements that exceed the requirements of other Contract Documents, including but not limited to those included in Exhibit B (Contractor's Commitments and Clarifications)
4. Request for Proposals issued April 17, 2013 and any amendments or addenda thereto (excluding all Reference Documents)
5. As to Work done on the Kentucky side of the state line, KYTC supplemental specifications dated June 14, 2013
6. As to work done on the Kentucky side of the state line, KYTC standard specifications dated June 15, 2012 and as to work done on the Indiana side of the state line, INDOT 2012 Standard Specifications
7. Any other documents specifically incorporated by reference as a Contract Document
8. The Proposal

The Contract Documents also include the following documents which may be delivered, prepared or issued after the effective date of this Contract:

Notice to Proceed

Contractor's DBE participation plan

The post RFP questions and responses published by KYTC on behalf of the Joint Board shall not be deemed to be part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous. Such responses will not act to alter or contravene the language of the Contract Documents to which they pertain, nor shall they act to relieve the Contractor of its obligation to comply with any laws, regulations or codes, but rather shall be considered clarifications as to the intent of the referenced Contract Document provisions.

(b) Notwithstanding the foregoing order of precedence, in the event and to the extent that Exhibit B expressly specifies that it is intended to supersede specific provisions of the Contract Documents, Exhibit B shall control over the specified provisions. In determining whether a conflict exists between the Proposal and other Contract Documents, to the extent that the Proposal includes any statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms which the Joint Board considers to be more advantageous than the requirements of the other Contract Documents, the Proposal shall not be considered in conflict with the other Contract Documents, and Contractor's obligations hereunder shall include compliance with all such statements, offers and terms.

(c) For installation and construction-related standards, specifications and requirements, the order of precedence set forth in clause (a) shall apply, except that the Final Design Documents shall also be considered Contract Documents and shall be added following the Proposal in the order of precedence, provided that (i) specifications contained therein shall have precedence over plans, and (ii) no conflict shall be deemed to exist between the Final Design Documents and the other Contract Documents with respect to requirements of the Final Design Documents that The Joint Board determines are more beneficial than the requirements of the other Contract Documents; and (iii) any other Deviations contained in the Final Design Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified in the approval.

(d) Portions of the Reference Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The referenced information shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the Contract Document in which the reference occurs.

(e) Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.2, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, the Joint

Board shall have the right to determine, in its sole discretion, which provision applies regardless of the order of precedence of the documents in which such standards are referenced. Contractor shall request in writing the Joint Board's determination respecting the order of precedence involving the referenced standards promptly upon becoming aware of any such conflict. In the event of any conflict, ambiguity or inconsistency between or among provisions in this Contract and any other Contract Document, or any applicable codes in effect at the effective date of this Contract, the provisions that require the most complete scope, highest quality, highest degree of safety or greatest value to the Joint Board shall prevail.

1.3. Coordination and Intent of Contract Documents

It is the intent of the Contract Documents, to describe a functionally complete Project to be designed and constructed in accordance with the Contract Documents. Contractor shall furnish or perform all Work that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result, whether or not specifically called for, at no additional cost to the Joint Board or the States.

Each of the Contract Documents is an essential part of the Contract and what is required by one shall be as binding as if required by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Contractor shall perform all Work required by the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results

Where reference is made in this Contract to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

In case of a discrepancy relative to other Contract Documents, the approved products list, the Indiana approved materials list or the Kentucky list of approved materials shall be regarded the same as supplemental specifications.

1.4. Contractor's Review of Contract Documents

Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents (including those Reference Documents that are referenced in the Contract Documents, and pursuant to Section 1.2(d) above, are considered Contract Documents) and to bring to the attention of the Joint Board any conflicts or ambiguities contained therein. Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in case of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person which prepared them, and,

instead, other rules of interpretation and construction shall be used. The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. The Contractor shall immediately notify the Joint Board upon discovering such an error or omission. Contractor shall promptly report in writing to the Joint Board any conflict, error, ambiguity, or discrepancy in any document prepared by the Joint Board which Contractor discovers and shall obtain a written interpretation or clarification from the Joint Board before proceeding with any work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted work (no matter how extensive) or misdescribed details of the work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 4.

1.5. Latest Version Governs

The Parties agree that except as otherwise specified in the Contract Documents or directed by the Joint Board, the latest version of a particular Contract Document will apply over an earlier version of that Contract Document, and material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Date.

1.6. Computation of Time Periods; Agreement to Change Time Periods

References to "days" contained in the Contract Documents shall mean calendar days unless otherwise specified, provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice "within" specified time period) falls on a non-working day, such act or notice may be timely performed on the next succeeding day which is a working day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and any other requirements for which it is clear that performance is intended to occur on a nonworking day, shall be required to be performed as specified, even though the date in question may fall on a nonworking day. The term "working day" shall mean a day that is not a weekend and that is not an official state holiday in either Kentucky or Indiana. The Parties may mutually agree to increase or decrease any time periods or to otherwise modify any deadline in the Contract Documents.

1.7. Interpretation of Contract Documents

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Codes are to the codified laws of the State; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or

schedules are to this Contract; words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Persons representing Governmental Entities, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the work shall not be deemed all-inclusive. On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.8. Standard for Approvals

In all cases where approvals or consents are required to be provided by the Joint Board or Contractor hereunder, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall not be subject to dispute resolution hereunder.

1.9. Federal Requirements

The Work to be performed under this Contract will be financed in part with federal funds and is, therefore, subject to federal statutes, rules and regulations applicable to work financed with federal funds, including but not limited to the federal requirements set forth in this Contract. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

2.0 Contract Price

The Joint Board shall pay Contractor the Contract Price in current funds for Contractor’s performance of the Contract.

The Contract Price shall be _____ (Spelled) (\$ _____) (Numerically). The Contract Price shall be increased or decreased only by a Change Order issued in accordance with Section 4 or by a Contract amendment. The Contract Price shall be divided according to the Price Proposal form into a Construction Price, a Warranty Price, and a Maintenance Price, to be paid in accordance with the Contract Documents.

3.0 Commencement and Contract Time

3.1. Time of the Essence

Contractor and the Joint Board agree that time is of the essence of this Contract and all Completion Deadlines and milestones of the Project.

3.2. Notice to Proceed; Contract Time; Date of Commencement

Authorization allowing Contractor to proceed with the Work hereunder shall be provided by the Joint Board's issuance of a Notice to Proceed. Subject to the satisfaction of the conditions below, the Joint Board shall issue the Notice to Proceed on or before August 16, 2013. Delay in the issuance of the Notice to Proceed shall entitle the Contractor to a day-for-day extension of the Completion Deadlines as provided in the Contract Documents except to the extent such delay is caused or attributable to the acts, omissions, negligence or misconduct of Contractor or any Contractor-Related Entity .

The following are conditions that must be satisfied by Contractor prior to issuance of the Notice to Proceed

(a) Contractor shall have delivered to the Joint Board the Performance Bond required pursuant to Section 12.2;

(b) Contractor shall have delivered to the Joint Board the Payment Bond required pursuant to Section 12.2;

(c) Contractor shall have delivered to the Joint Board any Guaranty of Contractor's obligations pursuant to the Contract Documents that may be required by the Joint Board;

(d) Contractor shall have provided to the Joint Board the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by the Joint Board to confirm the existence of all the insurance coverages required pursuant to Section 12.1;

(e) Contractor has submitted all EPDs used in connection with the Project, Contractor and the Joint Board shall have jointly reviewed and indexed the same as set forth in Section 16.9.1 and such EPDs are in form and substance satisfactory to the Joint Board ; and

(f) the Source Code Escrow shall be in place pursuant to Section 14.4.4 and shall be in full force and effect.

(g) the Contractor shall have obtained the Joint Board's written approval of the Contractor's initial submittals required pursuant to Section 3.12.3.1 of the RFP.

The Joint Board shall have no obligation to Contractor for any compensation whatsoever until the issuance of the Notice to Proceed, except for nonrefundable portions of insurance and bond premiums. Except as required to obtain the Joint Board's approval of the initial submittals required pursuant to Section 3.12.3.1 of the RFP, the Contractor shall perform no work prior to the Notice to Proceed.

3.3. Completion Deadlines

3.3.1. Field Ready Deadline

The Contractor acknowledges that the Substantial Completion Acceptance Deadlines established below in Section 3.3.2 depend upon the Design Builder's progress in completing construction of the Downtown Crossing, and the Developer's progress with respect to the East End Crossing. To account for this variability, Contractor shall be Field Ready by the Field Ready Deadline. It shall be Contractor's sole responsibility to coordinate its design efforts with the Design Builder, the Developer, Joint Board Member Contractors, and any Other Joint Board Contractor(s) so that Contractor is Field Ready by the Field Ready Deadline.

3.3.2. Substantial Completion Acceptance Deadline(s)

Contractor shall achieve Substantial Completion Acceptance of the Work at the Operations Center on or before the Operations Center Substantial Completion Acceptance Deadline, Substantial Completion Acceptance of the Work at a Walk-in Center on or before the Walk in Center Substantial Completion Acceptance Deadline applicable to a Walk-in Center, Substantial Completion Acceptance of each Crossing on or before the applicable Substantial Completion Acceptance Deadline for such Crossing, and Substantial Completion Acceptance of the entire System on or before the System Substantial Completion Acceptance Deadline. The Substantial Completion Acceptance Deadlines are as follows:

(a) Operations Center Substantial Completion Acceptance Deadline: 3 months prior to the date that the East End Crossing is scheduled to open to traffic as shown on the Developer's critical path schedule as of the Field Ready Deadline, or 3 months prior to the date that the Downtown Crossing Initial Configuration is scheduled to open to traffic as shown on the Design Builder's critical path schedule as of the Field Ready Deadline, whichever is earlier.

(b) Walk-in Center Substantial Completion Acceptance Deadline: 3 months prior to the date that the East End Crossing is scheduled to open to traffic as shown on the Developer's critical path schedule as of the Field Ready Deadline, or 3 months prior to the date that the Downtown Crossing Initial Configuration is scheduled to open to traffic as shown on the Design Builder's critical path schedule as of the Field Ready Deadline, whichever is earlier.

(c) East End Crossing (Toll Zones EEC-1 and EEC-2) Substantial Completion Acceptance Deadline: 120 days from the Tolling Infrastructure Turnover Date for the East End Crossing as defined in the Public-Private Agreement,

(d) The Downtown Crossing Initial Configuration (Toll Zones DB-1, R-1, R-2 and KB-1) Substantial Completion Acceptance Deadline shall mean the earlier to occur of the following dates:

- i) 120 days from the Downtown Crossing Temporary Tolling Configuration Infrastructure Mobilization Date for the New Downtown Crossing.

OR

- ii) the East End Crossing Substantial Completion Acceptance Deadline, provided that if the New Downtown Crossing is not ready to open to traffic by the East End Crossing Substantial Completion Acceptance Deadline for a reason other than Contractor's failure to complete its Work with respect to the New Downtown Crossing, then the Downtown Crossing Initial Configuration Substantial Completion Acceptance Deadline initially shall apply only to Toll Zone KB-1, and all other Downtown Crossing Initial Configuration Toll Zones (DB-1, R-1 and R-2) shall achieve Crossing Substantial Completion in the initial configuration by the date that the Design Builder has completed all of its work required to open the New Downtown Bridge to traffic, other than any work that it cannot complete due to delay by Contractor. For purposes of clarification, regardless of the date that tolling commences on any bridge, the Contractor shall have achieved Substantial Completion Acceptance of the Kennedy Crossing (Toll Zone KB-1) in an initial configuration at such time as Contractor achieves Substantial Completion Acceptance of either the East End Crossing, or the New Downtown Crossing in its initial configuration, whichever occurs first.

The Contractor shall be notified of the anticipated Tolling Infrastructure Handover Date for the East End Crossing, and the anticipated Downtown Crossing Temporary Tolling Configuration Infrastructure Mobilization Date(s) for the Downtown Crossing, at least 30 days prior to each such date.

Regardless of whether or not any of the Tolling Infrastructure Turnover for the East End Crossing, and/or the Downtown Crossing Temporary Tolling Configuration Infrastructure Mobilization Date for the New Downtown Crossing, has occurred, Contractor shall be responsible for working closely with the Design Builder and the Developer during the design and installation phases of the Project to ensure that tolling gantries, cabinet/concrete slabs, all conduit, and commercial power runs are in proper locations, and terminations are made in accordance with Contractor's requirements. Contractor acknowledges and agrees that the references to the Tolling Infrastructure Turnover for the East End Crossing and/or the Downtown Crossing Temporary Tolling Configuration Infrastructure Mobilization Date for the New Downtown Crossing, are for purposes of defining the Crossing Substantial Completion Acceptance Deadlines, and shall not be construed as a limitation or restriction on Contractor's performance of Work prior to such dates. In all cases, Contractor shall coordinate with the Design Builder or the Developer, as the case may be, to achieve Crossing Substantial Completion by the date each Crossing is otherwise ready to open to traffic, even if such date occurs prior to the relevant Crossing Substantial Completion Acceptance Deadline.

(e) Downtown Crossing Final Configuration (Toll Zones DB-1, R-1, R-2 and KB-1) Substantial Completion Acceptance Deadline: 120 days from the date the Design-Builder notifies KYTC that it is 120 days away from achieving Substantial Completion of the Downtown Crossing (including both the Kennedy Crossing and the New Downtown Crossing) as required in Section 8.1.2 of the Design Build Contract.

(f) System Substantial Completion Acceptance Deadline: 30 days after the Substantial Completion Acceptance Date for the later to occur of East End Substantial Completion Acceptance or Downtown Crossing Final Configuration (Toll Zones DB-1, R-1, R-2 and KB-1) Substantial Completion Acceptance.

Each such deadline, as it may be extended hereunder, is referred to herein as a Substantial Completion Acceptance Deadline.

3.3.3. Punch List Acceptance Deadline

Contractor shall achieve Punch List Acceptance of the Operations Center on or before the Operations Center Punch List Acceptance Deadline, Punch List Acceptance of each Walk-in Center on or before the applicable Walk-in Center Punch List Acceptance Deadline, Punch List Acceptance of each Crossing on or before the Punch List Acceptance Deadline for such Crossing and Punch List Acceptance of the System on or before the Punch List Acceptance Deadline for the System. The Punch List Acceptance Deadline for each element of the Work that has a Substantial Acceptance Completion Deadline shall be 30 Days after the applicable Substantial Completion Acceptance date.

Formal Acceptance Deadline

The Formal Acceptance Deadlines for the Operations Center, each Walk-in Center each Crossing and the System are as specified below.

Contractor shall achieve Formal Acceptance of the Operations Center on or before 3 months after Substantial Completion Acceptance of the Operations Center.

Contractor shall achieve Formal Acceptance of each Walk-in Center on or before 3 months after the Substantial Completion Acceptance of such Walk-in Center.

Contractor shall achieve Formal Acceptance of each Crossing on or before 60 days after Substantial Completion Acceptance of such Crossing.

The Formal Acceptance Deadline for the System shall be 180 days after the later of the East End Crossing (Toll Zones EEC-1 and EEC-2) Substantial Completion Acceptance Date or the Downtown Crossing Final Configuration (Toll Zones DB-1, R-1, KB-1 and R-2) Substantial Completion Acceptance Date.

Each such deadline for achieving Formal Acceptance, as it may be extended hereunder, is referred to herein as a Formal Acceptance Deadline.

3.3.4. No time Extensions

Except as otherwise specifically provided in Section 4, the Joint Board shall have no obligation to extend a Completion Deadline and Contractor shall not be relieved of its obligation to comply with the Project Schedule and to achieve Substantial Completion

Acceptance, Punch List Acceptance and Formal Acceptance by the applicable Completion Deadlines for any reason.

3.3.5. Waiver of Statute of Limitations

To the extent the statute of limitations on any claims against the Contractor begins to run at Substantial Completion Acceptance, the Contractor agrees to waive these rights and begin calculating the statute of limitations from the time of System Formal Acceptance.

3.4. Liquidated Damages

Failure by Contractor to meet the Completion Deadlines shall entitle the Joint Board to liquidated damages as specified in Section 8 of this Contract.

3.5. Scheduling of Design, Construction and Payment

3.5.1. Project Schedule

Work shall be undertaken and completed in accordance with the Project Schedule. The Project Schedule shall be used by the parties for planning and monitoring the progress of the Work and as the basis for determining the amount of payments to be made to Contractor. Contractor shall incorporate the project milestones and the Completion Deadlines into its proposed Project Schedule. Contractor shall have no right to receive payments until such time as Contractor has prepared and the Joint Board has approved the Project Schedule.

3.5.2. Float

All Float contained in the Project Schedule, as initially approved or generated thereafter, shall be considered a Project resource available to either party or both Parties as needed to achieve schedule milestones, interim completion dates and/or Completion Deadlines. All Float shall be shown as such in the Project Schedule on each affected schedule path. Identification of (or failure to identify) Float on the Project Schedule shall be examined by the Joint Board in determining whether to approve the Project Schedule. Once identified, Contractor shall monitor, account for and maintain Float in accordance with Critical Path methodology.

3.6. Prerequisites for Start of Construction

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

The Joint Board shall have issued the Notice to Proceed.

The Joint Board shall have approved the Project Schedule.

The Joint Board shall have provided written acceptance of the updated construction quality control plan, and if hazardous materials are identified in connection with the Project, the Contractor must develop a hazardous materials management plan relating to such work. Any hazardous materials plan must be consistent with those plans submitted by the Design Build Team and the Developer.

All requirements of the construction quality program and quality management program, which are a condition to construction and installation, shall have been met.

The Joint Board shall have approved all applicable Design Documents and received all Construction Documents relating to such work.

All Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals, which are a prerequisite to commencement of such construction, shall have been performed and satisfied.

All insurance policies, bonds and letters of credit required to be delivered to the Joint Board hereunder prior to commencement of construction shall have been received and approved by the Joint Board and shall remain in full force and effect.

All necessary rights of access for such portion of the Project shall have been obtained.

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

Contractor shall have coordinated its schedule with the Design Builder, the Developer, and any relevant Other Joint Board Contractors or Joint Board Member Contractors, as the case may be, to ensure that its Work will not interfere with the work of such other contractors. As provided in Section 3.3.2, Contractor shall be solely responsible for coordinating its efforts with the Design Builder, the Developer and Other Joint Board Contractors or Joint Board Member Contractors to ensure that Contractor meets all Completion Deadlines, and Contractor shall not be entitled to an increase in price or extension of any Completion Deadline due to action or inaction of the Design Builder, the Developer or the Other Joint Board Contractors or Joint Board Member Contractors (unless arising from causes which otherwise give rise to a right to a Change Order).

3.7. Recovery Schedule

If at any time, the Work on any Critical Path item is delayed, other than solely for a reason for which Contractor is entitled to a time extension pursuant to Section 4, for a period which exceeds the greater of either 30 days in the aggregate or that number of days in the aggregate equal to 5% of the days remaining until a Completion Deadline, then Contractor shall prepare and submit to the Joint Board for review and approval with the next Monthly Progress Report a Recovery Schedule demonstrating Contractor's proposed plan to regain lost schedule progress and to achieve the original contractual

milestones in accordance with this Contract, including Substantial Completion Acceptance by the applicable Substantial Completion Acceptance Deadline, Punch List Acceptance by the applicable Punch List Acceptance Deadline and Formal Acceptance by the applicable Formal Acceptance Deadline.

The Joint Board shall notify Contractor within 14 Days after receipt of each such Recovery Schedule whether the Recovery Schedule is deemed accepted or rejected. Within 7 Days after any rejection by the Joint Board of the Recovery Schedule, Contractor will resubmit a revised Recovery Schedule incorporating the Joint Board's comments. When the Joint Board accepts Contractor's Recovery Schedule, Contractor shall, within five Days after the Joint Board's acceptance, incorporate and fully include such schedule into the Project Schedule, deliver the same to the Joint Board and proceed in accordance with the approved Recovery Schedule. The Contractor shall continue Work during the Recovery Schedule approval process.

All costs incurred by Contractor in preparing, implementing and achieving the Recovery Schedule shall be borne by Contractor and shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Section 4.

If Contractor fails to provide an acceptable Recovery Schedule as required herein, Contractor shall have no right to receive Milestone Payments until such time as Contractor has prepared and the Joint Board has approved such Recovery Schedule.

4.0 CONTRACT CHANGES

This Section 4 sets forth the requirements for obtaining all Change Orders under this Contract. Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the work for the Project, subject only to those exceptions specified in this Section 4, and that the Joint Board is subject to constraints limiting its ability to increase the Contract Price or extend any Completion Deadline. Contractor unconditionally and irrevocably waives the right to any claim for a time extension or for any monetary compensation in addition to the applicable Price and other compensation specified in this Contract, except in accordance with this Section 4. To the extent that any other provision of this Contract expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 4.

The Contract may be amended or modified only by (1) a Change Order (which upon execution by the Joint Board shall become a supplemental agreement), or (2) a Construction Change Directive. Adjustments of the Contract Price on account of changes in the work may be determined by either an agreed upon Change Order, which upon execution by the Joint Board shall become a supplemental agreement as provided in Section 4.1, or a Construction Change Directive as provided in Section 4.2.

4.1. Change Orders Generally

A Change Order is a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 4. The Joint Board may, at any time

and from time to time, without notice to any Surety, authorize and/or require changes in the Work within the general scope of this Contract pursuant to a Change Order. For the purpose of this Section 4, any direction to perform work shall be considered within the general scope of this Contract if it is related to the Project; any direction to delete or modify work shall be considered within the general scope unless as a result this Contract would no longer be considered a design-build contract for the Project of the nature described in the RFP. Contractor shall have no obligation to perform any work outside the general scope of this Contract, except on terms mutually acceptable to the Joint Board and Contractor. The Joint Board may issue a unilateral Change Order as specified in Section 4.3. Change Orders may be requested by the Contractor only pursuant to Section 4.4. A Change Order shall not be effective for any purpose unless signed by the Joint Board. Change Orders may be issued for the following purposes (or combination thereof):

1. a change in the Work;
2. adjustment in the Contract Price;
3. adjustment in a Completion Deadline;
4. revision of other terms and conditions of the Contract Documents.

The change order document shall be prepared by the Joint Board and executed by the Contractor. Once executed by the Contractor, the change order document will be presented to the Joint Board to execute. Upon execution by the Joint Board, the Change Order shall be considered a supplemental agreement to the Contract and only then a Contract Document.

If the Joint Board requests a proposal for a change in the work from the Contractor and subsequently elects not to proceed with the change, a Change Order shall be processed to reimburse the Contractor for any costs it reasonably incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents, as provided in Section 4.3.

Methods used in determining adjustments to the Contract Price may include those listed in Section 4.2.

Adjustments to a Completion Deadline or milestone deadline, if any, shall also be included in any Change Order along with the adjustment to the Contract Price. In order to warrant an extension of a Completion Deadline, the Contractor must show that the work affected by the change was on the Critical Path of the Contractor's current schedule.

The Contractor must provide the Joint Board with Kentucky's form TC63-32 within ten (10) days of becoming aware of any item of work the Contractor considers extra work, over and above what is described in the Contract Documents or for any other item the Contractor feels warrants a Change Order affecting either the Contract Price or a Completion Deadline or milestone deadline, and before performing said work, as discussed more fully in Section 4.4.2. Kentucky Form TC63-32 shall also be provided

within ten (10) days when the Joint Board issues a Construction Change Directive, if the Contractor has not already submitted Kentucky Form TC63-32 for the same item. Submission of the TC63-32 form shall be considered an absolute condition precedent to maintaining a claim for extra work.

Failure to provide Form TC63-32 within ten (10) days of the Contractor becoming aware of the changed work shall be deemed a waiver by the Contractor to any claim for an increase in the Contract Price or extension of a Completion Deadline associated with the changed work.

4.2. Quantity Overrun, Under-run Adjustments

The Contractor shall be responsible for the calculation of various quantities necessary to design and construct the Project. Therefore, adjustment to the Contract Price due to quantity overrun or under-run shall not be permitted.

The Contractor further agrees that the Contract Price provides full and complete compensation for the under-run or overrun quantities, including any and all unreimbursed expenses, loss of expected reimbursement, loss of anticipated profits, delay, inefficiency, and all other costs.

This Project shall be constructed using English Units. The Contractor is directed to use only those Reference Drawings and Standard Specifications that are in English Units. No additional compensation or payment shall be made for any work that may be required to convert from Metric Units to English Units or to provide a substitute equivalent material.

4.3. Joint Board-Initiated Change Orders

This Section 4.3 concerns (a) Change Orders issued by the Joint Board following a Request for Change Proposal, and (b) Change Orders unilaterally issued by the Joint Board.

4.3.1. Request for Change Proposal

4.3.1.1. If the Joint Board desires to issue a Joint Board-Directed Change or to evaluate whether to initiate such a change, then the Joint Board may, at its discretion, issue a Request for Change Proposal. A Construction Change Directive may also constitute a Request for Change Proposal.

4.3.1.2. Within five working days after Contractor's receipt of a Request for Change Proposal, or such longer period as may be mutually agreed to by the Joint Board and Contractor, the Joint Board and Contractor shall consult to define the proposed scope of the change. Within five working days after the initial consultation, or such longer period as may be mutually agreed to by the Joint Board and Contractor, the Joint Board and Contractor shall consult concerning the estimated cost and time impacts.

4.3.1.3. Within five working days after the second consultation described in Section 4.3.1.2, the Joint Board shall notify Contractor whether the Joint Board (a) wishes to issue a Change Order, (b) wishes to request Contractor to provide a cost and schedule proposal on KYTC Form TC63-32 as discussed at the meeting, (c) wishes to request Contractor to prepare a modified work plan for the change and a cost and schedule proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. The Joint Board may at any time, in its sole discretion, require Contractor to provide two alternative cost and schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

4.3.1.4. If so requested, Contractor shall, within ten working days after receipt of the notification described in Section 4.3.1.3, or such longer period as may be mutually agreed to by the Joint Board and Contractor, prepare and submit to the Joint Board for review and approval by the Joint Board a cost and schedule proposal (in the format provided by the Joint Board) for the requested change, complying with all applicable requirements of this Section 4, and incorporating and fully reflecting all requests made by the Joint Board. Contractor shall bear the cost of developing the cost and schedule proposal, including any modifications thereto requested by the Joint Board, except that costs of design work required for preparation of plans or exhibits necessary to the cost and schedule proposal, as pre-authorized by the Joint Board, may be included in the Change Order as reimbursable items. If the Change Order is approved, such design costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

4.3.1.5. If Contractor and the Joint Board agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or Completion Deadlines, the Joint Board may, in its sole discretion, order Contractor to proceed with the performance of the work in question notwithstanding such disagreement. Such order may, at the Joint Board's option, be in the form of: (a) a Force Account Change Order as provided in Section 4.6.6 or (b) a Change Order Directive under Section 4.3.2.

4.3.2. Unilateral Change Orders - Construction Change Directives

The Joint Board may issue a unilateral Change Order at any time, regardless of whether it has issued a Request for Change Proposal.

A Construction Change Directive is a written order signed by the Joint Board directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The Joint Board may by Construction Change Directive, at any time, without invalidating the Contract, and without notice to or releasing the surety, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other alterations or revisions. A Construction Change Directive developed by the Joint Board shall include a description of the change in Work, will

state the basis for determining compensation, if any, and will state the Joint Board's proposed changes in the Contract Price and Contract Time, if any.

If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum price that is properly itemized by sufficient substantiating data to permit evaluation on an open book basis, which may be based on the pricing contained in the EPDs, where applicable, as well as Subcontractors' bid prices;
2. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
3. as provided below in Section 4.6.

Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed as directed in the Construction Change Directive pending execution of a formal Change Order (or if the Construction Change Directive states the work is within Contractor's original Scope of Work, Contractor shall proceed with the work as directed but shall have the right pursuant to Section 4.4 to request that the Joint Board issue a Change Order with respect thereto by delivery of a Potential Change Order (PCO) Notice. Contractor shall advise the Joint Board of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

Contractor shall not be entitled to additional compensation or time extension for any Work performed prior to receipt of a Construction Change Directive or Change Order, and Contractor acknowledges that it will be at risk if it elects to proceed with Work in advance of receipt of the same. In addition to provisions of a PCO Notice and subsequent Change Order request pursuant to Section 4.4, receipt of a Construction Change Directive from the Joint Board shall be a condition precedent to Contractor's right to make a Claim that a Joint Board-Directed Change has occurred. The fact that a Construction Change Directive was issued shall not be considered evidence that in fact a Joint Board-Directed Change occurred. The determination whether a Joint Board-Directed Change in fact occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Construction Change Directive in fact constituted a change in those requirements.

For contract adjustments that reduce the Scope of Work, anticipated profits on the eliminated Work shall be deducted from the Contract Price along with the cost adjustment for the revised Work. Before performing the changed work, the Contractor shall reach agreement with the Joint Board concerning the basis for the Contract Price adjustment. Absent an agreement, the Joint Board will pay for the changed Work on a force account basis as described below in Section 4.6.

4.4. Contractor-Requested Change Orders

4.4.1. Eligible Changes

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

- (a) Force Majeure Events;
- (b) Joint Board-Caused Delays;
- (c) delays relating to discovery of Hazardous Materials, and/or Changes in Law, to the extent permitted by Section 4.8; and
- (d) delays relating to Necessary Basic Configuration Changes, to the extent permitted by Section 4.7.

Contractor may request a Change Order to increase the Contract Price only for increased costs of performance of the work as follows:

- (a) additional costs directly attributable to additional Work resulting from the Joint Board-Directed Changes and the Joint Board-Caused Delays for which the Joint Board has not submitted a Change Order or a Request for Change Proposal;
- (b) additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 4.7 ;
- (c) additional costs relating to Hazardous Materials, and Force Majeure Events, to the extent provided in Section 4.8 ; or
- (d) additional costs directly attributable to uncovering, removing and restoring work, to the extent provided in Section 7.1.

Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 4 and furthermore is subject to Contractor's compliance with all notification and other requirements identified herein. Contractor shall initiate the Change Order process by delivery of a PCO Notice as described in Section 4.4.2, followed by submittal of a Request for Change Order and supporting documentation to the Joint Board.

4.4.2. Procedures

The requirements set forth in this Section 4.4.2 constitute conditions precedent to Contractor's entitlement to request and receive a Change Order except those involving a Request for Change Proposal. Contractor understands that it shall be forever barred from recovering against the Joint Board under this Section 4 if it fails to give notice of any act, or failure to act, by the Joint Board or any of its representatives or the

happening of any occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section 4.4.

4.4.2.1. Delivery of PCO Notices

Contractor acknowledges the importance of providing prompt notification to the Joint Board upon occurrence of anything entitling Contractor to a Change Order under Section 4.4.1. Among other things, such notification allows the Joint Board to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through a PCO Notice as described in Section 4.4.2.

4.4.2.2. PCO Notices

The term "PCO Notice" shall mean a notice delivered by Contractor, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 4.4.1 and stating which subsection thereof is applicable. The first notice shall be labeled "PCO Notice No. 1" and subsequent notices shall be numbered sequentially.

The PCO Notice shall: (a) include a copy of completed Kentucky Form TC63-32 submitted in accordance with Section 4.1, (b) state in detail the facts underlying the anticipated Request for Change Order, the reasons why Contractor believes additional compensation or time will or may be due and the date of occurrence, (c) state the name, title, and activity of each project management consultant and Joint Board representative knowledgeable of the facts underlying the anticipated Request for Change Order, (d) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order, (e) state in detail the basis for necessary accelerated schedule performance, if applicable, (f) state in detail the basis that the work is not required by this Contract, if applicable, (g) identify particular elements of Contract performance for which additional compensation may be sought under this Section 4.4.2, (h) identify any potential Critical Path impacts, and (i) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

If the Request for Change Order relates to a decision which this Contract leaves to the discretion of a Person or as to which this Contract provides that such Person's decision is final, the PCO Notice shall set out in detail all facts supporting Contractor'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.

Any adjustments made to this Contract shall not include increased costs or time extensions for delay resulting from Contractor's failure to timely provide requested additional information under this Section 4.4.2.2.

4.4.2.3. Waiver

4.4.2.3.1 Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Contractor shall be deemed to have waived (a) the right to collect any costs incurred prior to the date of delivery of the PCO Notice, and (b) the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path which accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any hazardous material condition or material, Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the Joint Board is not afforded the opportunity to inspect such material or condition before it is disturbed.

4.4.2.3.2 In addition to the limitations set forth in Section 4.4.2.3.1, Contractor's failure to provide a PCO Notice within 60 days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Contractor from any relief, unless Contractor can show, based on a preponderance of the evidence, that (a) the Joint Board was not materially prejudiced by the lack of notice, or (b) the Joint Board's designated representative specified in accordance with Section 17.1 had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that Contractor believed it was entitled to a Change Order with respect thereto.

4.4.2.4. Delivery of Request for Change Order

Contractor shall deliver all Requests for Change Order under this Section 4.4 to the Joint Board within 30 days after delivery of the PCO Notice, or such longer period of time as may be allowed in writing by the Joint Board. The Joint Board may require design and construction costs to be covered by separate Requests for Change Order. If Contractor requests a time extension, then the Joint Board, in its sole discretion, may require Contractor to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Contractor believes that the costs associated with such a recovery are prohibitive, then Contractor shall recommend a date to be shown in the alternative Change Order form.

Contractor shall furnish, when requested by the Joint Board or its designee, such further information and details as may be required to determine the facts or contentions involved. Contractor agrees that it shall give the Joint Board or its designee access to any and all of Contractor's books, records and other materials relating to the work, and shall cause its Subcontractors to do the same, so that the Joint Board or its designee can investigate the basis for such proposed Change Order. Contractor shall provide the Joint Board with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the Joint Board, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. The

Joint Board may reject the Request for Change Order at any point in the process. The Joint Board's failure to respond to a complete Request for Change Order within 15 working days of delivery of the request shall not be deemed an acceptance of such request, and the Contractor shall have the burden of following up with the Joint Board on the status of any such Request for Change Order.

4.4.2.5. Review of Subcontractor Claims

Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of Contractor's analysis of all Subcontractor claims components and shall include a certification signed by Contractor's Project Manager stating that Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 16.9.1, and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Request for Change Order involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

4.4.3. Performance of Disputed Work

If the Joint Board refuses to issue a Change Order based on Contractor's request, Contractor shall nevertheless perform all work as specified by Change Order Directive, and shall have the right to submit the issue to Dispute Resolution pursuant to Article 13. Contractor shall maintain and deliver to the Joint Board, upon request, contemporaneous records, meeting the requirements of Section 4.9, for all work performed which Contractor believes constitutes extra work (including non-construction work), until all disputes regarding entitlement or cost of such work are resolved.

4.5. Contents of Change Orders

4.5.1. Form of Change Order

Each Cost and Schedule Proposal and Request for Change Order shall be prepared in form acceptable to the Joint Board, and shall meet all applicable requirements of this Section 4. Where practical, Change Orders shall be on a lump sum basis.

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

Contractor shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 4.5.2 for each cost and schedule proposal and Request for Change Order.

4.5.2.1. Scope of Work

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

4.5.2.2. Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment and markups for overhead and profit, unless the Joint Board agrees otherwise. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Contractor's estimate. No markup shall be allowed in excess of the amounts allowed under Sections 4.6.1 and 4.6.7. Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

4.5.2.3. Delay Analysis

If Contractor claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to the Joint Board, which compares the proposed new schedule to the current approved Project Schedule. If the Joint Board, its members, or another Joint Board or member contractor is the sole source of the delay to the Contractor's prosecution of the work, the Contractor shall be entitled to an adjustment in the Contract Time, provided that the affected portion of Contractor's Work is shown as a Critical Path task on the Contractor's most recent schedule. In such cases, the Contractor shall also be entitled to an increase in the Contract Price to compensate the Contractor for its extended on-site overhead for the period of delay caused solely by the Joint Board, its members or another Joint Board or member contractor, as well as the Contractor's costs for idle equipment and idle manpower, provided that such costs cannot be mitigated, such as by use of such manpower and equipment elsewhere on the Project or on other projects. Such overhead shall be measured by the Contractor's cost-loaded CPM schedule as last approved by the Joint Board. The Contractor shall make no claims for any other types of delay damages, and shall not be entitled to an adjustment in the Contract Price, for lost productivity during ongoing Work or disruptions in the Work. A claim for damages due to delays caused solely by the Joint Board, its members, or another Joint Board or member contractor must be made in accordance with Section 4.4.2 above, including submission of the Kentucky TC 63-32 form within ten days of the start of such delay. Failure to timely submit the required written notice shall be a waiver of any such claim. The remedies discussed above for delays due to the sole fault of the Joint Board, its member, or an Agency Contractor shall not be available if a concurrent delay, caused by the Contractor's own actions, or those for whom the Contractor is responsible, is experienced by the Contractor for the same time period. However, any concurrent delay

caused by the Contractor shall only nullify the Contractor's recovery rights as to the actual period of overlap with an otherwise compensable delay caused solely by the Joint Board.

4.5.2.4. Other Supporting Documentation

Contractor shall provide such other supporting documentation as may be required by the Joint Board.

4.5.3. Justification

All Requests for Change Orders shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 4 which permit a Change Order to be issued, and describing the data and documents which establish the necessity and amount of such proposed change.

4.5.4. Contractor Representation

Each Change Order shall be accompanied by a certification under penalty of perjury, in form acceptable to the Joint Board, executed by Contractor and stating that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate and current. Each Change Order involving work by a Subcontractor for which pricing data is required to be provided under Section 16.9.1 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification by the Subcontractor that the information is complete, accurate and current.

4.6. Pricing and Force Account; Certain Limitations

4.6.1. Detailed Cost Proposal

Contractor may be required to submit a detailed cost proposal: (a) showing all impacts on this Contract from Work additions, deletions and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made. When the Change Order adds Work to Contractor's scope, the increase in the Contract Price shall be negotiated based on estimates or actual costs of labor, material and equipment. When the Change Order deletes Work from Contractor's scope, the amount of the reduction in the Contract Price shall be based upon an estimate including a bill of material, a breakdown of labor and equipment costs, on an Open-Book Basis, and to the extent applicable, the pricing in the EPDs and Subcontractor bid prices. Markup for profit and overhead consistent with Section 4.6.7 shall apply for added and deleted Work Change Orders

4.6.2. Identification of Conditions

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

4.6.3. Contents

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

4.6.4. Unit Priced Change Orders

Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, the Joint Board will issue a modified Change Order setting forth the final adjustment to the applicable Price.

4.6.5. All-Inclusive Change Orders

All Change Orders submitted by Contractor shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule.

4.6.6. Force Account Change Orders

If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Price, the method and the adjustment shall be determined by the Joint Board on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, a reasonable allowance for overhead and profit, subject to the limitations in this Section 4.6. In such case, all costs associated with the increased portion of the Work shall be priced in accordance with this Section. The Contractor shall keep and present, in such form as the Joint Board may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs allowable for the purposes of this Section shall be limited as indicated in Section 4.6.7.

4.6.7. Force Account Work

When the Contractor and the Joint Board cannot agree to a lump sum price for extra work, the Joint Board may direct the Contractor to perform such work on a force account basis. The Joint Board will pay for extra work on a force account basis as outlined hereinafter, only when all items of work are agreed to in writing before the Contractor begins the work.

4.6.7.1. Labor

For all labor and for foremen in direct charge of the specific operations, the Joint Board will pay the Contractor:

1. The actual cost of wages paid, but at rates not to exceed those for comparable labor currently employed on the Project, as the Joint Board Representatives determine;
2. An amount equal to the sum of the products of established labor burden percentages and the actual cost of wages. The amounts determined by the established labor burden percentages constitute full compensation for the cost of workers' compensation insurance, social security taxes, unemployment compensation insurance, public liability insurance; and any other taxes or insurance which are added to labor costs; and
3. An amount equal to 25 percent of the actual cost of wages and the other costs identified above. This amount is full compensation for office overhead and general superintendence.

4.6.7.2. Professional Services

For any change-order related direct costs involving professional services performed by Contractor's own employees, the Joint Board will pay the costs of such additional work using the hourly professional services rates utilized in the Contractor's Proposal, without additional markup.

4.6.7.3. Materials

For all materials that the Contractor incorporates into the work and the Joint Board Representatives accept, the Joint Board will pay the actual cost of such material, including transportation charges and sales taxes, to which the Joint Board will add a sum equal to 15 percent.

4.6.7.4. Equipment and Tools

For any machinery or special equipment that the Joint Board Representatives have authorized for use and the Contractor has used, the Joint Board will pay the rental rate stated on the rental company invoice for the actual agreed time and rate that such equipment is required on the work and will add an amount equal to 15 percent of the rental sum as full compensation for fuel, lubricants, and filters.

The Joint Board will pay for equipment that the Contractor is already using on the Project, and which is not obtained specifically for the force account work based on an hourly rate. The Joint Board will determine the hourly rate by taking the Blue Book monthly rental rate, adjusted for age and geographic region, dividing it by 176 and adding the Blue Book estimated operational cost. The Joint Board will pay rental rates for equipment required to be on standby at one half the normal rate, excluding

operational cost, and pay for standby time for a maximum of eight hours per day and 40 hours per week.

The Joint Board Representatives will measure the rental of equipment by time in hours of actual working time and the necessary traveling time of the equipment within the limits of the Project, unless the Joint Board Representatives have ordered special equipment in connection with force account work, in which case the Joint Board Representatives will also include travel time and transportation to the Project.

Joint Board will not pay rental rates or percentages for the use of small tools and manual equipment.

4.6.7.5. Subcontracted Work

To the extent that any Change Order is intended to compensate Contractor for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to (1) the actual cost to Contractor of such work (which shall be charged by the Subcontractor on a force account basis in accordance with this Section 4.6, unless otherwise approved in writing by the Joint board), plus (2) 5% of such cost. The 5% markup for subcontracted work shall not apply to (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

4.6.7.6. Other Direct Costs

For any justified change-related direct cost not covered by the categories of costs contained in Sections 4.6.7, Contractor shall accept as full payment therefor an amount equal to the actual cost to Contractor for such direct cost item. Without additional mark-up, back-up documentation supporting each cost item for this category shall be provided by Contractor in writing to the Joint Board prior to any payment authorization being granted.

4.6.7.7. Bonds.

The Joint Board will pay an amount equal to the actual cost of any increase in the cost of the bond to the Contractor..

4.6.7.8. Records and Statements.

The Contractor shall compare all records of force account work with the Joint Board Representatives at the end of each day. The Contractor shall prepare all force account records on suitable forms that the Joint Board Representatives will provide for this purpose. The contents of records of force account work shall comply with Section 4.9.

When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

Pending final determination of the total cost of a Construction Change Directive to the Joint Board, amounts not in Dispute for such changes in the Work shall be included in applications for payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Joint Board shall make an interim determination for purposes of payment for those costs. That determination of cost shall adjust the Contract Price on the same basis as a Change Order, subject to the right of the Contractor to disagree and assert a claim in accordance with Section 4.5.

When the Joint Board and the Contractor reach agreement concerning the adjustments in the Contract Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

4.6.8. Limitation on Price Increases

Any increase in the Contract Price allowed hereunder shall exclude: (a) costs caused by the breach of contract or fault or negligence, or act or failure to act by any Contractor-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the work or to other activities unrelated to the work; and (c) costs for remediation of any Nonconforming Work. Costs incurred for the purpose of mitigating damages as described in clause (b) above, and not otherwise disallowed hereunder, would be reimbursable.

4.6.9. Limitation on Delay and Disruption Damages

4.6.9.1. Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the Joint Board as an alternative to allowing an extension of a Completion Deadline as contemplated by Section 4.4.1 and 4.5.2.3. Other delay and disruption damages shall be compensable hereunder only in the case of delays which qualify as the Joint Board-Caused Delays entitling Contractor to an extension of a Completion Deadline. Without limiting the generality of the foregoing, costs of rearranging Contractor's work plan to accommodate the Joint Board-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

4.6.9.2. Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 4.6.9.1 and markups thereon in accordance with Section 4.6.7 and any additional field office and jobsite overhead costs incurred by Agreement or directly attributable to such delays. In addition, before Contractor may obtain any increase in a Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, Contractor shall have demonstrated to the Joint Board's satisfaction that:

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

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

(c) the delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (provided that the Joint Board has agreed to reimburse Contractor for additional costs reasonably incurred in connection with such reallocation or redeployment); and

(d) the delay for which compensation is sought is not concurrent with any delay for which Contractor is responsible hereunder; and

(e) Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the Joint Board.

4.6.10. Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path, (b) was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity, (c) is concurrent with any other unrelated delay to a Critical Path that is Contractor's responsibility hereunder, or (d) could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the work (provided that if the request for extension involves a Joint Board-Caused Delay, Contractor shall be entitled to a time extension unless the Joint Board shall have agreed, if requested to do so, to reimburse Contractor for its costs incurred, if any, in resequencing, reallocating or redeploying its forces). Contractor shall be required to demonstrate to the Joint Board's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity (i.e. consumed all available Float and extended the time required to achieve Substantial Completion Acceptance, Punch List Acceptance or Formal Acceptance beyond the applicable Completion Deadline).

4.7. Necessary Basic Configuration Changes

4.7.1. Notwithstanding the fact that this Contract generally obligates Contractor to undertake all Work necessary to complete the Project without an increase in the Contract Price, this Section 4.7 provides for an increase in the Contract Price to be made in conjunction with Necessary Basic Configuration Changes, and such changes

shall be considered a Joint Board-Directed Change for which the Joint Board has not submitted a Change Order or a Request for Change Proposal. If Contractor commenced any construction work affected by the change prior to delivery of an appropriate PCO Notice, the Change Order shall allow the Joint Board a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

4.7.2. Contractor shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path resulting from changes in requirements and obligations of Contractor due to Errors in the Owner Design Documents other than those which require a Necessary Basic Configuration Change. In such event, no change in the Work shall be deemed to have occurred and no Change Order shall be issued for any such cost increases and/or delays.

4.8. Change Orders for Force Majeure Events and Hazardous Materials

4.8.1. Force Majeure Events

Subject to the limitations contained in, and upon Contractor's fulfillment of all applicable requirements of, this Section 4, the Contractor shall be entitled to relief for its failure to perform its contract obligations if such failure is due to certain circumstances or events that are beyond Contractor's control. These include but are not limited to Acts of God (which includes floods as provided below, fires, earthquakes, tornados, or other natural disasters), wars, hostilities (regardless of whether war is declared), terrorist activities, strikes that materially impact the work, or interruption or failures of critical utilities that are not wholly or partially attributable to the Contractor or its consultants, Subcontractors, or lower-tier subconsultants or Subcontractors and Suppliers.

If the Contractor asserts a Force Majeure Event as an excuse for failure to perform its obligations, then the Contractor must prove that it took reasonable steps to minimize the delay or damages caused by the foreseeable events flowing from the Force Majeure Event, substantially fulfilled all non-excused obligations, and that the Joint Board was timely notified of the likelihood or actual occurrence of the Force Majeure Event.

In the event of a Force Majeure Event, the Contractor shall be entitled only to an extension of the Contract Time associated with the Force Majeure Event and to additional costs incurred arising directly from Force Majeure Events (excluding Acceleration Costs or delay and disruption damages other than for any Force Majeure Events which are included in the definition of Joint Board-Caused Delay), In order for the Contractor to be granted an extension of the Contract Time or a change in the Contract Price for additional costs, the Contractor must follow the Change Order procedures in Section 4, and prove that the Force Majeure Event delays activities are on the Critical Path and that it is not possible to work around the problem.

The Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delays within the control of the Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor.

The Joint Board will not allow any extension of time for weather or resulting conditions, except for delays caused by those weather events described in this Section 4.8.1.

If the Contractor asserts that a flooding event is an excuse for failure to perform its obligations, the Contractor shall employ all measures to minimize or eliminate Project delays due to high water. Work which is most susceptible to high water shall be scheduled during time frames when low water levels in the river can be reasonably expected.

The Contractor shall notify the Joint Board immediately when the mean water elevation rises above 425 Feet (ORD) as measured at the upper gage of the McAlpine Lock and Dam and these conditions materially affect the prosecution of the Work. The Joint Board Representatives will promptly review the Project conditions and Contractor Work underway to determine whether the day should be designated as a "Flood Day." The Joint Board will only consider an extension of time if the Contractor clearly demonstrates that the number of Flood Days exceeds 60 calendar days for the life of the Project.

4.8.2. Hazardous Materials Management

If compensation is payable to Contractor pursuant to Section 18.3 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or 100% of the Reimbursable Hazardous Materials Costs for the Work in question, subject to the limitations set forth in this Section 4.8.3. Contractor shall not be entitled to a Change Order for additional compensation or extension of time with respect to the Hazardous Materials Management responsibilities set forth in Sections 18.3.3, 18.3.4 and 18.3.5.

Entitlement to compensation or a time extension shall be limited to work performed pursuant to Contractor's Hazardous Materials Management Plan, and plans and reports regarding Site investigation for such Hazardous Materials as approved by the Joint Board, in writing. These plans shall not conflict or interfere with the similar plans submitted by the Design-Builder or the Developer. No compensation or time extension shall be allowed with respect to (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques (which design modifications or construction techniques would have been consistent with applicable Law), (c) any costs that could have been avoided, or (d) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Project Site.

4.8.2.1. Determination of Reimbursable Amount

Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if the Joint Board is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the Joint

Board's ability to ascertain, based on a site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, Contractor may take such limited actions as are required by Law without advance notice to the Joint Board, but shall provide such notice immediately thereafter (which in no event shall be more than 2 hours after the incident by phone and 24 hours after the incident by written notice).

In cases involving reimbursement for Hazardous Materials Management under this Section 4.8.3, allowable costs shall be limited to the incremental costs incurred after completion of the testing process to determine whether Hazardous Materials are present, associated with the Hazardous Materials at issue (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing are included in the Contract Price and Contractor shall not be entitled to additional compensation therefor. Contractor shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that Contractor demonstrates to the Joint Board's reasonable satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) Contractor's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Contractor shall provide the Joint Board with such information, analyses and certificates as may be requested by the Joint Board in order to enable a determination regarding eligibility for payment.

4.8.2.2. Time Extensions

Contractor shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Hazardous Materials, regardless of the total quantities. If Contractor encounters Hazardous Materials within the ROW Limits which, due to no fault of Contractor, results in delays to its Critical Path, then the Joint Board shall bear the risk of such delay (excluding those conditions for which Contractor has agreed to be responsible as described in Section 11.1.1(7)).

4.8.2.3. Limitations on Change Orders

Contractor shall have no right to receive any compensation for any Hazardous Materials Management resulting from a situation described in Section 11.1.1(7).

4.8.2.4. Insurance Proceeds

If the cost of any Hazardous Materials Management is covered by the insurance described in Article 12, Contractor shall be entitled to reimbursement of its costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Contractor's responsibility. To the extent that such proceeds are available, Contractor shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

4.9. Change Order Records

Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and the costs of other operations. Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) separate daily occurrence logs, together with all other data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Project Schedule is in dispute. Such data shall be provided to any dispute resolvers, the Joint Board and its Authorized Representatives as directed by the Joint Board, on forms approved by the Joint Board. The cost of furnishing such reports is included in Contractor's predetermined overhead and profit markups.

4.9.1. Daily Work Reports and Data Collection

Contractor shall furnish the Joint Board completed daily work reports for each day's Work which is to be paid for on a Force Account basis. The daily Force Account Work reports shall be detailed as follows:

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

4.9.2. Supplier's Invoices

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

4.9.3. Execution of Reports

All Force Account Change Order reports shall be signed by Contractor's Project Manager.

4.9.4. Adjustment

The Joint Board will compare its records with the completed daily Force Account Work reports furnished by Contractor and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit. Contractor's cost records pertaining to work paid for on a Force Account basis shall be open, during all regular business hours, to inspection or audit by representatives of the Joint Board during the life of this Contract and for a period of not less than five years after the Formal Acceptance Date, and Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Contractor, Contractor shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of the Joint Board on the same terms and conditions as the cost records of Contractor. Payment for such costs may be deleted if the records of such third parties are not made available to the Joint Board's representatives. If an audit is to be commenced more than 60 days after the System Formal Acceptance Date, Contractor will be given a reasonable notice of the time when such audit is to begin.

4.10. Matters Not Eligible for Change Orders and Waiver

Contractor acknowledges and agrees that no increase in a Price or extension of a Completion Deadline is available except in circumstances expressly provided for herein, that such price increase and time extension shall be available only as provided in this Section 4 and that Contractor shall bear full responsibility for the consequences of all other events and circumstances. Matters which are Contractor's exclusive responsibility include the following:

- (a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Owner Design Documents, subject only to the right to a Change Order to the extent permitted by Sections 4.7 or 4.8);
- (b) any design changes requested by the Joint Board as part of the process of approving the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals and/or applicable Laws;
- (c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);
- (d) action or inaction of Contractor's employees, any member of the Contractor-Related Entity or Subcontractors (unless arising from causes which otherwise give rise to a right to a Change Order);
- (e) action or inaction of adjoining property owners, the Design Builder, the Developer or the Other Joint Board Contractors, or Joint Board Member Contractors (unless arising from causes which otherwise give rise to a right to a Change Order);

- (f) groundwater levels or subsurface moisture content;
- (g) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except to the extent resulting from a Force Majeure Event;
- (h) any costs covered by insurance proceeds received by (or on behalf of) Contractor;
- (i) correction of Nonconforming Work and review and acceptance thereof by the Joint Board (including rejected design submittals);
- (j) failure by any Contractor-Related Entity to comply with the requirements of the Contract Documents, Governmental Approvals or Laws;
- (k) delays not on a Critical Path;
- (l) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Contractor, any failure to obtain such Governmental Approval, and compliance with the terms and conditions of all Governmental Approvals;
- (m) any situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in this Contract or arise out of the nature of the Work;
- (n) fluctuations and changes in the price of labor, materials, equipment, Hardware, Software, machinery or any other item required to perform and complete the Work; and
- (o) all other events beyond the control of the Joint Board for which the Joint Board has not expressly agreed to assume liability hereunder.

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

CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE

WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

CONTRACTOR FURTHER AGREES THAT THE JOINT BOARD, THE JOINT BOARD MEMBERS, JOINT BOARD CONTRACTORS, AND CONSULTANTS EMPLOYED BY THE JOINT BOARD OR THE JOINT BOARD MEMBERS SHALL NOT BE LIABLE TO THE CONTRACTOR FOR ANY CLAIMS, COSTS, LOSSES, OR DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) SUSTAINED BY THE CONTRACTOR ON OR IN CONNECTION WITH ANY OTHER PROJECT OR ANTICIPATED PROJECT.

4.11. Changes Not Requiring Change Order

Changes in the Work which have no net cost effect on the Contract Price may be approved in writing by the Joint Board as a Deviation, and in such event shall not require a Change Order. The Joint Board shall have authority to order minor changes in the Work not involving adjustment in the Contract Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly. Any other change in the requirements of the Contract Documents shall require either a Construction Change Directive or a Change Order.

4.12. No Release or Waiver

No extension of time granted hereunder shall release Contractor's Surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of this Contract and this Contract shall be and shall remain in full force and effect during the continuance and until Formal Acceptance unless formally suspended or terminated by the Joint Board in accordance with the terms hereof. Permitting Contractor to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Contractor after such date, shall not constitute a waiver on the part of the Joint Board of any rights under this Contract.

Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by this Contract after a Completion Deadline, shall be deemed to be a waiver by the Joint Board of its right to terminate this Contract for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

No course of conduct or dealings between the parties or express or implied acceptance of alterations or additions to the Work, and no claim that the Joint Board has been unjustly enriched shall be the basis for any claim, request for additional compensation

or extension of a Completion Deadline. Further, Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, the Joint Board may require Contractor to remove or otherwise undo any such work, at Contractor's sole cost.

5.0 Value Engineering Change Proposals

5.1. Description

A Value Engineering Change Proposal (VECP) is a cost reduction plan that is initiated, developed, and submitted by the Contractor to the Joint Board for modifying the Contract requirements after award.

A VECP requires changes in the Contract that result in savings to the Joint Board without impairing essential functions and characteristics of the facility while maintaining and meeting all design and Joint Board policies, environmental requirements, and project commitments. Essential functions and characteristics include but are not limited to service life, reliability, economy of operation, ease of maintenance, standardized features, safety, satisfaction of customer needs, and special design requirements. Contractor, when developing a VECP, must address environmental requirements and similar concerns as part of the VECP.

The "direct cost savings" is the difference of the "construction savings" generated by implementing the VECP minus reasonable "design costs" associated with the VECP. The "construction savings" is the difference between what it would cost to complete all the Contract work without implementing the VECP and the cost to complete all the Contract work if the VECP is implemented. This includes any changes to quantities or unit prices across the entire Contract if affected by the VECP. If the estimated cost to complete all the Work without implementing the VECP differs from the estimated cost included in the Proposal Price, supporting documentation to explain the variance shall be provided. Reimbursable "design costs" are specific to engineering changes (examples: design changes, plan sheet revisions, and quantity estimating). Expenditures toward proposal preparation (examples: scheduling, documentation, cost analysis, material research, etc.) are not reimbursable.

Indirect cost savings (time, user delay, railroad force account costs, inspection costs, etc.), although considered when reviewing the merits of the VECP, are not reimbursed. A VECP may alter the Project Schedule and milestone dates, which, in turn, could affect time-related Contract provisions.

VECPs that reduce the time to complete the Project, and only result in indirect cost savings, may be accepted based on the mutual benefit derived.

The provisions of this Article 5 will not apply unless the Contractor identifies the submission as a VECP.

5.2. Conceptual Value Engineering Change Proposal (CVEC)

The Contractor may submit for review a Conceptual Value Engineering Change Proposal (CVECP) provided that it contains enough information to clearly define the work involved and the benefits to be realized. The CVECP should outline the general technical concepts associated with the VECP and the estimated direct cost savings which may result. The CVECP should contain sufficient information to provide concept evaluation and review. The conceptual VECP should include the following, at a minimum:

1. Conceptual plans;
2. An initial estimate of costs which should include sufficient information to determine the reasonableness of the CVECP;
3. The most recently approved Project Schedule showing the impact of the VECP on the Project Schedule. The Project Schedule shall include the time required to: develop a formal VECP, if required; approve the Change Order to incorporate the required changes into the Contract; order, fabricate, and deliver long lead material; and obtain or modify any Environmental Approvals or other required approvals. In addition, the Contractor must indicate the latest date that the CVECP and the VECP Change Order must be approved to not affect the currently approved Project Schedule. Should the Joint Board find that insufficient time is available for review and processing, it may reject the CVECP solely on such basis. If the Joint Board fails to respond to the CVECP by the date specified, the Contractor shall consider the CVECP rejected and will have no claims against the Joint Board as a result thereof.
4. A description of any previous use or testing of the CVECP on another project of the Joint Board or elsewhere and the conditions or results therewith. The Contractor shall submit the technical aspects of the CVECP in sufficient detail as to enable reviewers to determine the suitability of the VECP from an engineering perspective. If the technology is new, test information must be provided to the Joint Board's satisfaction.

Written notification by the Joint Board that the review has been completed and that the CVECP appears favorable merely indicates that the engineering and plan development may continue for submittal of the formal VECP and is not authorization for any construction work associated with the CVECP (including the purchase of any materials unique to the CVECP) to begin.

5.3. Value Engineering Change Proposal (VECP)

5.3.1. Documentation

VECPs will be processed in the same manner as prescribed for any other alteration of the Contract requiring a Change Order or supplemental agreement. At a minimum, the following information shall be submitted by Contractor with each VECP:

1. A detailed description of the difference between the existing Contract requirements and the proposed changes and the comparative advantages and disadvantages of each including considerations of service life, economy of operation, ease of maintenance, traffic flow, safety, desired appearance, and increase or reduction of environmental impacts.

2. A complete set of plans and construction details when necessary, showing proposed revisions to the existing Contract requirements.

3. A detailed cost estimate for performing the work under the existing Contract and under the proposed change. The Contractor shall include items, units, and quantities. The Contractor shall include in the price all costs for labor, materials, supplies, equipment, tools, and all incidentals required for the complete incorporation of the option into the work. The Contractor shall present the direct cost savings to be achieved from the proposed changes.

4. An engineering analysis including Plans, computations, and other documents necessary for evaluation by the Joint Board;

5. A description of any previous use or testing of the CVECP on another project of the Joint Board or elsewhere and the conditions or results therewith. The Contractor shall submit the technical aspects of the CVECP in sufficient detail as to enable reviewers to determine the suitability of the VECP from an engineering perspective. If the technology is new, test information must be provided to the Joint Board's satisfaction.

6. A statement of the deadline for adopting the VECP in order to obtain the maximum cost reduction during the remainder of the Contract noting any effect on project milestones or other Completion Deadlines and any other schedule impacts.

7. A prediction of any effects the proposed changes would have on items such as maintenance of traffic, conformance with environmental commitments, and Joint Board costs other than construction, such as future maintenance, operating costs, and life cycle costs.

8. A statement of the effect the VECP would have on the Contract Time.

In preparing VECPs, the Contractor must perform an independent examination of the affected Project Site. The Joint Board shall rely exclusively upon the accuracy of the engineering data upon which the VECP is based. The Joint Board is not required to perform additional investigations, cross checks, or Site examinations. Adoption of a Contractor's VECP shall not be construed to alleviate or reduce the Contractor's full and absolute liability if the VECP upon implementation fails to satisfactorily perform because of the Contractor's use of inaccurate or incomplete engineering data or because of the Contractor's failure to adequately investigate and examine the affected Project Site.

5.3.2. Submission and Review

VECPs submitted by the Contractor will be processed as expeditiously as possible; however, the Joint Board will not be liable for any delay in acting upon VECPs submitted. The Contractor may withdraw, wholly or in part, any VECP not accepted by the Joint Board within the time specified in Section 5.2(3).

The Joint Board will determine the acceptability of a VECP and the estimated net cost savings to be realized from adoption of all or any part of the VECP. Within 45 calendar days after receipt of the required minimum information, as specified in Section 5.3.1, the Joint Board will review and provide notification of whether the VECP is accepted or rejected. The Joint Board reserves the right to reject any VECP. The approval of the CVECP in no way obligates the Joint Board to accept the formal VECP. If a VECP is rejected, the Contractor will be required to complete the Contract in accordance with the Contract Documents

The Contractor acknowledges the following:

1. The Contractor has no claim to additional costs or delays, including development costs; loss of anticipated profits; or increased material or labor costs if the VECP is rejected.
2. The Joint Board has sole authority in determining the acceptance of any VECP.
3. The Joint Board reserves the right to reject all unacceptable work resulting from an approved VECP and can require that rejected work be removed and re-constructed under the original contract.
4. The VECP will be disqualified if requests for additional information are not immediately met.

5.3.3. Acceptance

The decision of The Joint Board to accept or reject a VECP shall be final and will not be subject to the provisions of Article 13, Dispute Resolution, or any other remedy. The Joint Board reserves the right not to consider any VECP. An informal meeting with the Joint Board may be requested by the Contractor. The Contractor acknowledges that no claim may be made arising from rejection of a VECP.

5.3.4. Notification

The Contractor will be notified in writing of the Joint Board's decision to accept or reject each VECP submitted under these provisions. If a VECP is accepted in whole or in part, such acceptance will be by letter from the Joint Board. If the approval is conditional, the letter will note those conditions. If a VECP is accepted, the Joint Board will execute a supplemental agreement that incorporates the necessary contract modifications. The Joint Board reserves the right to include in the supplemental agreement any conditions it deems appropriate for consideration, approval, and implementation of the VECP. The Contractor shall perform all work according to the existing terms of this Contract until the Joint Board executes a supplemental agreement.

The Joint Board's approval of a VECP voids any restrictions that the Contractor had imposed on the use or disclosure of the information that the Contractor included in the VECP, and the Joint Board then has the right to use, duplicate, and disclose, in whole or in part, any data necessary to implement any portion of the VECP on this project and all other Joint Board projects.

5.3.5. Contract Time

The Joint Board may adjust the Contract Time for any time savings realized by implementing a VECP in accordance with the statement provided by the Contractor pursuant to Section 5.3.1(8) or as otherwise agreed to by the Joint Board and the Contractor. The Joint Board may grant additional Contract Time when specified in a Supplemental Agreement which accepts a VECP.

5.3.6. Measurement

The Joint Board will measure the quantities for all revised Work specified in the Change Order or supplemental agreement in accordance with Section 109 of the Kentucky Standard Specifications for Road and Bridge Construction, 2012 Edition. For purposes of this reference, where the Standard Specifications refer to the "Engineer," it shall mean the Joint Board Representatives.

Third party review costs incurred by the Joint Board, when substantiated by invoice, shall be subtracted from the computed net savings of the VECP.

5.3.7. Payments

Any changes to the Contract Price and Contract Time by virtue of the supplemental agreement accepting a VECP shall be immediately incorporated by the Contractor into its Project Schedule. The Joint Board will make payment for all completed and accepted revised work specified in the change order or supplemental agreement as provided in Article 6.

The Joint Board and the Contractor will share the savings from a VECP with half for the benefit of the Joint Board and half for the benefit of the Contractor. If the Joint Board accepts a VECP, the Contract Price shall be adjusted in accordance with the following:

For VECPs which reduce the Contractor's costs, the Contract Price shall be reduced by an amount equal to the sum of: (a) 100% of any additional costs incurred by the Joint Board, including the costs incurred in reviewing the VECP and any impact the VECP may have on Project revenue, but excluding the amounts due to the Contractor resulting from the VECP (excluding any impact on the Contract Price itself), plus (b) 50% of estimated net savings. For such VECPs, the term "estimated net savings" shall mean: (i) the difference between the cost of performing the work according to the Contract Documents and the actual cost to perform the work, as modified by the VECP, less (ii) the actual costs of studying and preparing the VECP as substantiated by Contractor and approved by the Joint Board in writing in accordance with the change procedures set forth herein, less (iii) the costs in clause (a) above. Design-Builder's profit shall not be considered part of the cost.

For VECPs that result in an increase in the Contractor's costs, the Contract Price shall be increased by an amount equal to the sum of: (a) 100% of any additional costs incurred by Contractor and approved by the Joint Board, plus (b) 50% of estimated net savings. For such VECPs, the term "estimated net savings" shall mean (i) the amount of any savings in the Joint Board's costs resulting from the VECP (taking into

consideration the costs incurred in reviewing the VECP and any impact the VECP may have on project revenue), less (ii) the actual costs of studying and preparing the VECP as substantiated by Contractor and approved by the Joint Board in writing in accordance with the Order-on-Contract procedures set forth herein, less (iii) the costs in clause (a) above. Contractor's profit shall not be considered part of the cost.

Contractor is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in the Joint Board's costs of operation resulting from the VECP, including costs of maintenance by the Joint Board or any third party, logistics, the Joint Board-furnished property and future costs associated with the Project. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VECP submitted by Contractor.

In the event that Contractor proceeds with a Contractor-requested Change Order that the Joint Board believes should be characterized as a VECP, and it is later determined through the Dispute resolution process that the change meets the technical qualifications for a VECP, the Contract Price shall be reduced by an amount equal to the sum of: (a) 100% of any additional costs incurred by the Joint Board resulting from the VECP plus (b) 75% of estimated net savings.

The Joint Board's Project Manager will be the sole judge of the estimated net savings in construction cost and costs incurred by the Joint Board resulting from the adoption of all or any portion of a VECP.

The Contractor's share will be considered full compensation to the Contractor for effecting all changes pursuant to the supplemental agreement stemming from the VECP.

In the event of the Joint Board's acceptance of a direct cost savings CVECP, and the Contractor is directed to proceed with the VECP implementation steps, and acceptance of the formal VECP is not reached, reimbursement of the implementation costs will be limited to 50%.

A cost reduction plan that is initiated and developed by the Joint Board shall not result in a sharing of savings with the Contractor. However, the Joint Board will reimburse the Contractor for actual additional design costs incurred by the Contractor relating to studying or pricing possible value engineering measures not originating with the Contractor and requested by the Joint Board in an amount agreed to by Change Order.

6.0 Payments

The following process shall apply to invoicing and payment:

6.1. Milestone Payments

Based upon applications for payment submitted to KYTC by the Contractor as provided in this Article 6, KYTC will forward the invoice to the Joint Board Representatives for

review and approval. After approval, KYTC and IFA shall make payments in accordance with the Schedule of Values after the Contractor completes milestones. The Contractor shall accept payments from both KYTC and IFA.

6.1.1. Schedule of Values

Within 60 days of the award of the Contract, the Contractor shall submit a Schedule of Values establishing values for each Project milestone. This Schedule of Values will be reviewed and approved by the Joint Board. No payment applications by the Contractor shall be considered until the Contractor's proposed Schedule of Values has been approved in writing by the Joint Board.

Upon the Joint Board's approval of the Schedule of Values, the Contractor shall place these milestones in the Project's cost loaded schedule. The Contractor shall evenly disperse overhead and profit to each milestone over the duration of the Project. The total of all cost loaded milestones, shall total to 100 percent of the Contract Price excluding Warranty Price and Maintenance Price.

Each cost loaded milestone shall have a detailed breakdown of the quantities necessary for testing frequency purposes for each of the various kinds of work and the units of measure. Entries are informational only and are non-calculating. Quantities shall be entered for each activity under a column heading "Quantities." Units of measure shall be entered for each activity under a column heading "Units of Measure."

6.1.2. Applications for Payment

When the Contractor believes it has completed a project milestone as defined in RFP Price Proposal Table VI.1 as such milestones are defined in the general Scope of Work of the RFP and the Schedule of Values, the Contractor shall prepare an Application for Payment. Contractor may submit an application for milestone payments not more frequently than monthly. To request a milestone payment, Contractor shall deliver to KYTC one hard original copy and one electronic copy of an Application for Payment in the form attached hereto as Exhibit C and meeting all requirements specified herein except as otherwise approved in writing by Joint Board. Each Application for Payment shall be executed by a designated and Authorized Representative of Contractor appointed by Contractor to have such authority in accordance with this Contract. Contractor acknowledges that the Joint Board may obtain funding for portions of the Work from the federal government, local agencies and other third parties, and Contractor agrees to segregate Applications for Payment for all such Work in a format reasonably requested by the Joint Board and with detail and information as reasonably requested by the Joint Board. Each Application for Payment shall be organized to account for applicable reimbursement requirements, including an allocation for any reimbursements with respect to applicable insurance and/or bonds, and to facilitate the reimbursement process.

Concurrent with its submittal of an Application for Payment to the Joint Board, Contractor shall submit to KYTC at the address specified in the Scope of Work a

complete copy of the Application for Payment, and an invoice of the total amount specified in the Application for Payment.

After receiving a complete Application for Payment, KYTC will forward the Application for Payment to the Joint Board Representatives, who will review the application and determine whether to approve the Application for Payment based upon the work being complete and of sufficient quality. If approved for payment both KYTC and IFA will each generate a check to the Contractor for 50% of the total amount of the Application for Payment approved for payment.

6.1.2.1. Contents of Application for Payment

Each Application for Payment must contain the following items:

- (a) Application for Payment cover sheet;
- (b) Description of the status of all completed Milestones, as of the date of the Application for Payment;
- (c) Payments which are then due in accordance with the Milestone Payment Structure in Price Sheets, as of the date of the Application for Payment;
- (d) A monthly progress report(s) as of the date of the Application for Payment in accordance with RFP Section 3.12.3.1.
- (e) Certification by the Contractor that all work which is the subject of the Application for Payment fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;
- (f) A report of personnel hours since the prior Application for Payment (including a list setting forth all Key Personnel and the hours which they worked during this period);
- (g) Application for Payment data sheet(s) and supporting documents, as required by the Joint Board to support and substantiate the amount requested (based on quantities and unit prices for unit priced work), and based on labor, equipment and materials for force account Change Orders,
- (h) DBE utilization report in a format reasonably satisfactory to the Joint Board;
- (i) An approved and updated Project Schedule;
- (j) A list of all Software and related work product that has been completed during the relevant time period and Certification by the Contractor that such documents have been deposited in the Source Code Escrow as provided in Section 14.4.4; and
- (k) Such other items as the Joint Board reasonably requests.

(l) In addition, no Application for Payment shall be considered complete unless it: (1) describes in detail the status of completion as it relates to the Project; (2) sets forth in detail the related payments which are then due in accordance with the Project Schedule, as of the end of most recent prior Application for Payment, including detailed itemization for any payments with respect to applicable insurance and/or bonds; (3) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (4) in the case of amounts invoiced on a Force Account basis, includes supporting documentation; and (5) sets forth in detail the amounts paid to Subcontractors (including Suppliers and sub-Subcontractors) from the payments made by the Joint Board to Contractor with respect to the most recent prior Application for Payment, including executed unconditional waivers of claims with respect to all amounts so paid.

6.1.2.2. Application for Payment Cover Sheet Contents

The Application for Payment cover sheet shall include the following:

- (a) Project number and title;
- (b) Request number (numbered consecutively starting with "1");
- (c) Total amount earned to date for the Project; and
- (d) Authorized signature, title of signer, and date of signature.

6.1.2.3. Certification by QC Personnel

Each Application for Payment shall include a certificate in the form included in Exhibit C, certifying that:

- (a) All work, including that of designers, Subcontractors, including Suppliers and fabricators, which is the subject of the Application for Payment has been checked and/or inspected by the Contractor's Quality Manager (with respect to all work);
- (b) Except as specifically noted in the certification, all work which is the subject of the Application for Payment conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Laws;
- (c) The Quality Control Plan and all of the measures and procedures provided therein is functioning properly and are being followed in all respects;
- (d) The percentages identified for completion of construction and System integration percentages indicated are accurate and correct; and
- (e) The milestone to which the Application for Payment relates has been achieved.

6.1.2.4. Warranty Price Payments

The Warranty Price for the Operations Center shall be paid in arrears, in equal monthly installments commencing upon Substantial Completion Acceptance. The Warranty Price for each Crossing shall be paid in arrears, in equal monthly installments. Payment of the Warranty Price for the East End Crossing shall commence upon Substantial Completion Acceptance of the East End Crossing and end on the first anniversary of such date. Payment of the Warranty Price for the Downtown Crossing shall commence upon Downtown Crossing Final Configuration (Toll Zones DB-1, R-1, R-2 and KB-1) Substantial Completion Acceptance of such Crossings, and payment of the Warranty Price for such Crossings shall continue until the first anniversary of Substantial Completion Acceptance of the Downtown Crossing. In all cases, payment of the Warranty Price for the System shall be subject to any amounts withheld pursuant to the Contract Documents.

6.1.2.5. Maintenance Price Payments

The annual Maintenance Price shall be paid in arrears, in equal monthly installments, commencing for each Crossing (on a per lane/per month basis as indicated in the Price Proposal) upon expiration of the Warranty Period for such Crossing, and for the System as a whole, on the expiration of the Warranty Period for any components of the System not accepted as part of a Crossing Substantial Completion Acceptance and continuing for the duration of the Maintenance Term, as it may be extended by the Joint Board's exercise of any Maintenance Term Option, subject to any amounts withheld pursuant to the Contract Documents.

6.1.2.6. Delivery of Maintenance Price Application for Payment

Within 30 days of the last day of each month, Contractor shall deliver to the Joint Board one copy of a Maintenance Price Application for Payment in the form attached hereto as Exhibit D and meeting all requirements specified herein except as otherwise approved in writing by the Joint Board. Each Maintenance Price Application for Payment shall be executed by a designated and Authorized Representative of Contractor appointed by Contractor to have such authority in accordance with this Contract. Contractor acknowledges that the Joint Board may obtain funding for portions of the work from the federal government, local agencies and other third parties, and Contractor agrees to segregate Maintenance Price Application for Payments for all such work in a format reasonably requested by the Joint Board and with detail and information as reasonably requested by the Joint Board. Each Maintenance Price Application for Payment shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

6.1.2.7. Contents of Maintenance Price Application for Payment

Each Maintenance Price Application for Payment must contain the following items:

- (a) Maintenance Price Application for Payment cover sheet;
- (b) Monthly Maintenance Reports as required pursuant to RFP Appendix B Section B.23;

(c) Certifications in form acceptable to the Joint Board by the Project Manager and Maintenance Manager that the work conforms to the approved and updated (if applicable) Maintenance Plan;

(d) Monthly report of personnel hours (including a list setting forth all Key Personnel and the hours which they worked during this period);

(e) Maintenance Price Application for Payment data sheet(s), documents and summary that support and substantiate the Performance Requirements have been met;

(f) Submitted and approved System updates, As-Built Documents and changes to the maintenance RBOC maintenance manual if applicable; and

(g) A list of all Software and related work product that has been completed during the relevant time period and Certification by the Contractor that such documents have been deposited in the Source Code Escrow as provided in Section 14.4.4.

6.1.2.8. Report of Personnel Hours

With each Application for Payment and Maintenance Price Application for Payment, Contractor shall report the total monthly labor hours for design, construction and maintenance personnel used in connection with the Work which is the subject of the Application for Payment or Maintenance Price Application for Payment.

6.1.2.9. Application for Payment and Maintenance Price Application for Payment Data Sheets

Application for Payment and Maintenance Price Application for Payment data sheets shall be subdivided into Contractor designated Project elements and shall be attached to a Project wide report and Application for Payment/Maintenance Price Application for Payment data sheet. It is the Joint Board's intent to base payments for Work other than Maintenance Work on the achievement of milestones as provided in the Milestone Payment Structure (except as expressly set forth in this Contract), except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. Contractor shall present the format of the Application for Payment/Maintenance Price Application for Payment data sheets for the Joint Board approval at least 20 working days prior to the submittal of the first Application for Payment and Maintenance Price Application for Payment. Once the Application for Payment format has been approved by the Joint Board, the format shall not change without the Joint Board's prior written approval. Upon commencement of the Maintenance Term, the annual price for Maintenance Work will be paid in equivalent monthly installments; provided, however, that the Joint Board intends to pay the annual cost of the Warranty Bond, the Maintenance Payment Bond, the Maintenance Performance Bond and insurance premiums incurred for the relevant year of the Maintenance Term during such year of the Maintenance Term on an actual cost basis as incurred, without markups, profit or overhead, provided, however, that Contractor shall not be entitled to reimbursement for any increase in the actual cost of bond or insurance premiums attributable to claims or loss experience of any Contractor-Related

Entity, whether under an insurance policy or bond required for the Project or in connection with any unrelated work or activity of Contractor-Related Entities. Contractor shall bear the burden of proving that increases in such costs are not the result of adverse changes in Contractor's financial condition, Contractor risk rating or experience or the acts, omissions, negligence or misconduct of Contractor or any member of the Contractor-Related Entity.

6.1.3. Timing of Applications and Payments

The Contractor shall submit an Application for Payment within 30 days from the date that it believes it has completed a Project milestone. The Contractor agrees that the conditions regarding the date on which an application is timely and properly submitted satisfy prompt payment requirements of the Kentucky Fairness in Construction Act and all such other laws as may be applicable. Within fifteen working days after the Joint Board's receipt of a complete Application for Payment or Maintenance Price Application for Payment, the Joint Board Representatives will review the Application for Payment or Maintenance Price Application for Payment, as applicable, and all attachments and certificates thereto for conformity with the requirements of the Contract Documents, and shall notify Contractor and each of KYTC and IFA of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Application for Payment or Maintenance Price Application for Payment. Contractor may include such disapproved amounts in the next month's Application for Payment after correction of the deficiencies noted by the Joint Board and satisfaction of the requirements of the Contract Documents related thereto. Within 15 working days after the Joint Board's approval of an Application for Payment or Maintenance Price Application for Payment, as applicable, but in any event not later than 30 working days after the Joint Board's receipt of a complete Application for Payment or Maintenance Price Application for Payment, as applicable, KYTC and IFA each shall pay Contractor 50% of the amount approved for payment in respect of such request, less 50% of any amounts which the Joint Board is otherwise entitled to withhold or deduct. With respect to any Change Order Work to be performed on a Force Account basis, in no event shall Contractor be entitled to (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit priced work), or (b) aggregate payments hereunder in excess of the overall completion percentage for the Project times the Contract Price (for non-unit-priced Work).

6.1.4. The Joint Board Reliance on Information Supplied by the Contractor

In taking action on the Contractor's applications for payment, the Joint Board (and each of KYTC and IFA) shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to have made a detailed examination, audit, or arithmetic verification of the documentation submitted; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Joint Board, will be performed by the Joint Board's accountants or the accountants of the States' Parties, acting in the sole interest of the Joint Board.

6.2. No Retainage Withheld

KYTC and IFA will not withhold retainage from the Contractor as a percentage of the milestones completed to date. The Contractor likewise shall not withhold retainage on any Subcontractors and shall provide contractual language sufficient to ensure that no lower-tier Subcontractors withhold retainage on contractors and Suppliers.

The Contractor shall include the amount specified for mobilization in its Price Proposal in Contractor's proposed Schedule of Values for milestone payments. The total value for mobilization in the cost loaded schedule shall not exceed 5% of the total lump sum bid. The Contractor will be paid \$_____ of this value in the first milestone payment. The remaining amount will be paid out over subsequent milestones until the total project payout equals 10% of the project lump sum amount, excluding the Warranty Price and the Maintenance Price. These mobilization payments will be prorated according to the amount paid for each of the milestones.

6.3. Deductions, Exclusions and Limitations on Payment; Payment for Certain Items

6.3.1. Deductions

The Joint Board may deduct from any payment due and payable by it to the Contractor under this Contract the following:

(a) Any Joint Board or third party Losses for which Contractor is responsible hereunder or any Liquidated Damages which have accrued as of the date of the Application for Payment or which are anticipated to accrue based on the Substantial Completion, Punch List Acceptance and Formal Acceptance dates shown in the current Project Schedule or the applicable submission deadline, as the case may be;

(b) If a notice to stop payment, claim or Lien is filed with the Joint Board due to the Contractor's failure to pay for labor or materials used in the work, money due for such labor or materials will be withheld from payment to the Contractor;

(c) Any sums expended by or owing to the Joint Board as a result of Contractor's failure to maintain the as-built drawings,

(d) Any sums expended by the Joint Board in performing any of Contractor's obligations under this Contract which Contractor has failed to perform, and

(e) Any other sums which the Joint Board is entitled to recover from Contractor under the terms of this Contract, including, without limitation, pursuant to Section 11.1.

The failure by the Joint Board to deduct any such amounts from any payment due and payable by it to Contractor under this Contract shall not constitute a waiver of the Joint Board's right to such amounts.

All amounts owing by Contractor to the Joint Board under this Contract shall earn interest from the date on which such amount is owing at the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

6.3.2. Unincorporated Materials

The Joint Board will not pay for materials not yet incorporated in the work other than precast concrete, reinforcing steel, structural steel, precast concrete members, stone, gravel, sand or other non-perishable materials that will be permanently incorporated in the work unless all of the following conditions are met:

Material shall be (1) delivered to the Project Site, (2) delivered to Contractor and promptly stored by Contractor in bonded storage at a location approved by the Joint Board in its sole discretion, or (3) stored at a Supplier's fabrication site, which must be a bonded commercial location approved by the Joint Board, in its sole discretion. Contractor shall submit certified bills for such materials with the invoice, as a condition to payment for such materials. The Joint Board shall allow only such portion of the amount represented by these bills as, in its sole opinion, is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by the Joint Board, Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the Joint Board by any state or subdivision thereof on account of such storage of such material.

All such materials so accepted shall be and become the property of the Joint Board or its designee(s). Contractor at its own cost shall promptly execute, acknowledge and deliver to the Joint Board proper bills of sale or other instruments in writing in a form acceptable to the Joint Board conveying and assuring to the Joint Board title to such material included in any invoice, free and clear of all Liens. Contractor, at its own cost, shall conspicuously mark such material as the property of the Joint Board, shall not permit such materials to become commingled with non-Joint Board-owned property and shall take such other steps, if any, as the Joint Board may require or regard as necessary to vest title to such material in the Joint Board free and clear of Liens.

The cost and charges for material included in an invoice but which is subsequently lost, damaged or unsatisfactory may be deducted from succeeding invoices if the Joint Board, in its sole discretion, determines that is appropriate after considering the availability of insurance coverage and Contractor's actions to replace the lost, damaged or unsatisfactory items.

Payment for material furnished and delivered as indicated in this Section 6.3.2 will not exceed the amount paid by Contractor as evidenced by a bill of sale supported by paid invoice.

6.3.3. Payments for Bond and Insurance Premiums and As-Built Documents

With respect to the NTP, the portion of the Contract Price allocable to bond and insurance premiums (for the insurance policies required to be in place following the NTP through Formal Acceptance) shall be payable to reimburse Contractor for bond and

insurance premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Proposal. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following Substantial Completion Acceptance. Insurance premiums for the insurance policies required for the Warranty Period and the premiums paid for the four-year Maintenance Performance Bond and the Maintenance Payment Bond shall be payable to reimburse Contractor for the bond premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Proposal. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following expiration of the first two years of the Maintenance Term.

Except as set forth in this Section 6.3.3, payment to reimburse Contractor for bond and insurance premiums shall be made for costs actually incurred by Contractor, without markup, profit or overhead; provided, however, that the Joint Board shall not be responsible for the payment of any increases or adjustments in bond or insurance premiums resulting from adverse changes in Contractor's financial condition, Contractor's risk rating or experience or the acts, omissions, negligence or misconduct of Contractor or any member of the Contractor-Related Entity.

The amount payable for as-built documents acceptable to the Joint Board shall equal 1% of the Contract Price. Contractor shall not be entitled to payment for the last 1% of the Contract Price until acceptable as-built documents have been delivered to the Joint Board.

6.3.4. Equipment

With the exception of work done on a Force Account basis, the Joint Board shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 6.2, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 6.1.4.

6.4. Final Payment

6.4.1. Within 180 days after the Joint Board has completed final inspection and made System Formal Acceptance of the Work, the Contractor shall submit a final Application for Payment for the Project, showing the final cost of all Work performed, and all deductions from the final amount for Liquidated Damages and any other deductions provided for in this Contract and any amounts owing from Change Orders. In addition to meeting all other requirements for Applications for Payment hereunder, the Final Application for Payment shall list all outstanding PCO Notices, stating the amount at issue associated with each such notice. A Final Application for Payment shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against Contractor or against the Joint Board, (b) consent of any Guarantors and Surety to such Final Payment, (c) such other documentation as the Joint Board may reasonably require; and (d) the release described in Section 6.4.4, executed by Contractor. Prior applications and payments shall be subject to correction in the Final Application for Payment. PCO Notices filed

concurrently with a Final Application for Payment must be otherwise timely and meet all requirements under Sections 4 and 13.

6.4.2. If the Final Application for Payment shows no existing or threatened claims, Liens and stop notices of Subcontractors, Utility Owners, railroads or laborers against Contractor or against the Joint Board, and provided such Final Application for Payment has been approved, the Joint Board, in exchange for an executed release meeting the requirements of Section 6.4 and otherwise satisfactory in form and content to the Joint Board, will pay the entire sum found due on the approved Final Application for Payment, less the amount of any Losses that have accrued as of the date of the Final Payment of the Contract Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 6.3.1 and 6.3.2 above.

6.4.3. If a Final Application for Payment lists any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, or Utility Owners or railroads against Contractor or against the Joint Board, or if any is thereafter filed, the Joint Board may withhold from the payment of the amounts set forth on the approved Final Application for Payment such amount as the Joint Board deems advisable to cover any amounts owing or which may become owing to the Joint Board by Contractor, including the amount of any Losses that have accrued as of the date of the Final Payment of the Contract Price and any other deductions permitted under Section 6.3.1 and 6.3.2 above, the costs to complete or remediate uncompleted Work or Nonconforming Work, and the amount of any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and railroads against Contractor or against the Joint Board.

6.4.4. The executed release from Contractor shall be from any and all claims arising from the Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any PCO Notices listed as outstanding in the Final Application for Payment. The release shall be accompanied by an affidavit from Contractor certifying that:

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

(b) Contractor has resolved any claims made by Subcontractors, Utility Owners, laborers, railroads and others against Contractor, the Joint Board or the Project;

(c) Contractor has no reason to believe that any Person has a valid claim against Contractor, the Joint Board or the Project which has not been communicated in writing by Contractor to the Joint Board as of the date of the certificate;

(d) all required guarantees, letters of credit, Warranties, insurance, and the Payment Bond and the Performance Bond are in full force and effect; and

(e) complete, accurate and current copies of all documents that are required to be in the Software Source Code Escrow have been delivered to the Software Source Code Escrow Holder.

Each release and the affidavit shall survive a Final Payment.

6.4.5. All prior Application for Payments shall be subject to correction in the Final Application for Payment.

6.4.6. The Joint Board will review Contractor's proposed Final Application for Payment, and changes or corrections will be forwarded to Contractor for correction within 20 working days. The Joint Board shall pay any undisputed amounts, less any Losses that have accrued as of the date of the Final Payment of the Contract Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 6.3.1 and 6.3.2 above, within 30 Days after its approval of such amounts on the application for Final Payment of the Contract Price, but not earlier than the date of Formal Acceptance.

The Contractor's acceptance of the Final Payment constitutes a release to the Joint Board and a waiver of any and all claims against the same, except those previously made in writing and identified by the Contractor as unsettled at the time of Final Application for Payment.

6.5. Payment as Full Compensation

Contractor acknowledges and agrees that, subject only to Contractor's rights under Section 4, the Contract Price includes (a) all designs, equipment, materials, Hardware, Software, labor, insurance, bond premiums, home office, jobsite and other overhead, profit and services relating to Contractor's performance of its obligations under the Contract Documents (including all work, equipment, Hardware, Software, supplies, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals; (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Laws to the extent applicable to the Project; (e) payment of any taxes, duties, permit and other fees and/or royalties imposed with respect to the work and any equipment, materials, labor or services included therein; and (f) compensation for all obligations, risks and contingencies assigned to Contractor under the Contract Documents. The Contractor shall receive and accept the compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract, including changes in work, materials, or plans as provided herein, in a complete and acceptable manner; for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof; and for all expenses incurred in consequence of the suspension or discontinuance of the Work as specified under the Contract. The Joint Board's payment of any application for payment does not relieve the Contractor of any obligation to make good any defective work or material.

6.6. Final Payment of Maintenance Price

Final Maintenance Payment will be made as follows:

On or about the date that the Maintenance Term terminates, Contractor shall prepare and submit a proposed Final Maintenance Price Application for Payment to KYTC for the Final Maintenance Payment, showing the proposed total amount due Contractor, including any amounts owing from Change Orders and the portion of the Maintenance Price identified as the price for "End of Term Maintenance Activities". In addition to meeting all other requirements for Maintenance Price Application for Payments hereunder, the Final Maintenance Payment Application for Payment shall list all outstanding PCO Notices, stating the amount at issue associated with each such notice. A Final Maintenance Price Application for Payment shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against Contractor or against the Joint Board, (b) consent of any Guarantors and Surety to such Final Maintenance Payment, (c) a list of any System equipment that has unexpired warranty records, accompanied by the service records with respect to such equipment; (d) such other documentation as the Joint Board may reasonably require; and (e) the release described in Section 6.4 executed by Contractor. Prior applications and payments shall be subject to correction in the Final Maintenance Payment Application for Payment. PCO Notices filed concurrently with a Final Maintenance Payment Application for Payment must be otherwise timely and meet all requirements under Sections 4 and 13.

The provisions of Sections 4.4.2 and 6.4, above, shall apply with respect to the Final Maintenance Payment.

The Final Maintenance Payment shall also be subject to Contractor's certification in the release required by Section 6.4 that Contractor has satisfied all the conditions to the end of the Maintenance Term set forth in Section B11.8 of the Scope of Work. The Joint Board will review Contractor's proposed Final Maintenance Price Application for Payment, and changes or corrections will be forwarded to Contractor for correction within 20 working days. The Joint Board shall pay any undisputed amounts, less any Losses that have accrued as of the date of the Final Maintenance Payment, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 6.4 above, within 30 Days after its approval of such amounts on the application for the Final Maintenance Payment, but not earlier than the end of the Maintenance Term.

6.7. Administration of Payment

After the Joint Board Representatives have approved an Application for Payment from the Contractor, they will forward their approval of the application for payment to a KYTC designee and an IFA designee and each State shall pay 50% of the amount approved as provided in Section 6.1 .

If either state fails to pay the designated amount within 30 days from the date the application for payment is received the Contractor shall notify both states, in writing immediately.

Upon Contractor's written request of not less than 30 days and approval by the Joint Board Representatives, the States may forward the Contractor's payment checks directly to any person or entity designated by the Contractor or include any person or entity as a joint payee on the Contractor's payment checks, however, in no event shall such approval and action obligate the Joint Board to anyone other than the Contractor and the Contractor shall remain responsible or fulfillment of all Contract obligations.

6.8. Fund Availability

Financial obligations of the Joint Board are contingent upon the funds for that purpose being appropriated, budgeted, allocated, and otherwise made available by the State of Indiana and the Commonwealth of Kentucky. The Contract is funded in part with federal funds. The Contract is, therefore subject to and contingent upon the continuing availability of federal funds.

If funds to effect payment are not available, the Joint Board shall provide written notification to the Contractor. If the Contract is terminated due to an unavailability of funding it shall be deemed a termination for convenience pursuant to Section 10.2. Contractor agrees to take back any affected deliverables not yet delivered, terminate any services supplied to the Joint Board, and relieve the Joint Board of any further obligation. The Joint Board shall remit payment for deliverables and services accepted prior to the date of the aforesaid termination notice in conformance with the payment terms established above.

6.9. Payment to Subcontractors

No later than 10 Days after receipt of payment from the Joint Board, Contractor shall promptly pay each Subcontractor, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, and any other offsets and deductions provided in the Subcontract or by law. No later than 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, Contractor shall return all moneys withheld in retention from the Subcontractor. Such payment shall be made promptly following satisfaction of the foregoing requirements, even if Work to be performed by Contractor or other Subcontractors is not completed and has not been accepted. Each Subcontract shall require the Subcontractor to make payments to sub-Subcontractors and Suppliers in a similar manner.

For the purpose of this Section 6.8, satisfactory completion shall have been accomplished when:

(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(b) the Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents and the final quantities of the Subcontractor's work have been determined and agreed upon.

The inspection and approval of a Subcontractor's work does not eliminate or impair the Contractor's responsibility for the Work. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by the Joint Board. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors in a similar manner. The Joint Board shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. Interest on late payments to Subcontractors shall be Contractor's responsibility, and shall not be a part of the Contract Price.

6.10. Cost Principles

If applicable, in order to be reimbursed with federal funds, Contractor shall comply with the cost principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

6.11. Disputes

Failure by the Joint Board to pay any amount in Dispute shall not alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract Documents, including Contractor's obligation to achieve Formal Acceptance and all Work in accordance with the Contract Documents, and Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any Dispute regarding such payment shall be resolved pursuant to Section 13. Contractor shall proceed as directed by the Joint Board pending resolution of the dispute. Upon resolution of any such dispute, each party shall promptly pay to other any amount owing.

7.0 Prosecution, Control, and Inspection of the Work

7.1. Authority of Joint Board Personnel

7.1.1. Joint Board Representatives

The Joint Board will, within a reasonable time, decide all questions regarding the quality and acceptability of materials furnished, work performed, manner of performance and the rate of progress of the work; all interpretation of the Contract Documents; and the acceptable fulfillment of the work performed by the Contractor. The Joint Board shall designate two individuals ("Joint Board Representatives") that shall be the only two individuals with authority to approve a Change Order or Construction Change Directive. These individuals may seek expert advice as needed to make such approvals.

The Joint Board Representatives will determine whether Project milestones have been met that the Joint Board will pay for under the Contract, and such decision and estimate will be final and conclusive. The Contractor may appeal the decision of the Joint Board

Representatives by procedures outlined in Article 13. The Joint Board Representatives will answer any questions as to the meaning of this Contract, or any ambiguity as to the wording of this Contract and give all directions and explanations necessary to make definite any of the provisions of this Contract, or necessary to complete or give them due effect. Because the Contractor is charged with both design and construction of the Project, the Joint Board Representatives' acceptance of any materials or work performed shall not remove from the Contractor the responsibility for the adequacy of the Project's design. The references in this section to the Joint Board Representatives' answering of any questions as to the meaning of this Contract refer only to Contractor's responsibilities under this Contract. Neither the Joint Board nor the Joint Board Representatives are responsible for the soundness or competency of the design as performed by the Contractor, or the means and methods of construction planned or utilized by the Contractor. Review of the Contractor's design shall only be in the limited context of reviewing conformance of the design to the Contract Documents.

The Contractor may request and the Joint Board Representatives will provide written instructions concerning any significant item's conformance to the Project Scope of Work.

7.1.2. Authority of Inspectors

Inspectors employed or contracted by the Joint Board are authorized to inspect all work performed and materials furnished and performance of verification testing.

The inspector will:

1. Keep the Joint Board Representatives informed as to the progress of the Work and the manner in which it is being done; and
2. Report whenever it appears that the materials furnished and the work performed fail to fulfill the requirements of the Contract Documents;

Any failure by the inspector to call attention to Contractor's failure to comply with Contractor's own design shall not give rise to any liability by the Joint Board Representatives or the Joint Board.

Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials furnished. Such inspection shall not relieve the Contractor from any obligation to furnish acceptable materials or to perform all work strictly in accordance with the requirements of the Contract Documents. The inspector is not authorized to alter or waive provisions of the Contract. The inspector is not authorized to issue instructions contrary to this Contract or to act as foreman for the Contractor. Any advice that inspectors may give the Contractor shall not be construed as binding the Joint Board in any way or as releasing the Contractor from the fulfillment of the terms of the Contract.

However, the inspector has the authority to reject work or materials until any questions at issue are referred to and as the Joint Board Representatives decide.

7.1.3. Inspection of Work and Owner Verification Testing

The Contractor shall provide the Joint Board Representatives and the Joint Board's inspectors' access to all materials and each part or detail of the Work and furnish the Joint Board Representatives with such information and assistance as required to make a complete and detailed inspection. Such inspection may include preparation and manufacture of the materials at the plant and verification testing.

Contractor shall inform the Joint Board in writing of any part of the work which is about to be covered and offer a full and adequate opportunity to the Joint Board to inspect and test such part of the work before it is covered. The Contractor shall remove or uncover such portions of the finished work as directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. When any unit of government or political subdivision or any railroad corporation pays a portion of the cost of the work covered by this Contract or is otherwise authorized to inspect the work, the Contractor shall provide access to its respective representatives to inspect the work. Such inspection in no way makes any unit of government or political subdivision or any railroad corporation a party to this Contract and in no way interferes with the rights of either party hereunder. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Contractor's cost and Contractor shall not be entitled to any time extension. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by the Joint Board (if applicable) or without inspection in accordance with RFP Sections 3.12.4.6 and 4.1.12.3 may be ordered uncovered, removed or restored at Contractor's cost and without a time extension, even if the work proves acceptable and conforming after uncovering. Except with respect to work done or materials used as described in the foregoing sentences of this Section 7.1.3, if Work exposed or examined under this Section 7.1.3 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a Joint Board-Caused Delay, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby. Refer to Section 7.2 for provisions regarding payments owing by Contractor to the Joint Board if the Joint Board agrees (in its sole discretion) to accept certain Nonconforming Work.

7.2. Conformity with Plans and Specifications

The Contractor shall perform all Work and furnish all materials in conformity with the material requirements of the Contract Documents. Where definite tolerances are specified in this Contract by the Joint Board, the Joint Board will use such tolerances to establish the limits of reasonably close conformity. Where tolerances are not specified in this Contract, the Joint Board Representatives shall determine the limits of conformity in each individual case.

When the Joint Board Representatives find that the materials, or the finished product in which the materials are used, are not within conformity with the requirements of the Contract Documents, but finds that reasonably acceptable work has been produced,

they shall then make a determination whether to accept the work in place. If the Joint Board agrees to accept any Nonconforming Work without requiring it to be fully corrected, the Joint Board shall be entitled to reimbursement of a portion of the Contract Price in accordance with Section 7.12.

Acceptance of the work in place shall not be construed as binding the Joint Board in any way or as releasing the Contractor from any terms of the Contract Documents. When the Joint Board Representatives find that either the materials, the finished product in which the materials are used, or the work performed are not in conformity with this Contract and have resulted in an inferior or unsatisfactory product, the Contractor shall remove, replace, or correct the work and materials at no additional expense to the Joint Board as provided in Section 7.3.

The values and standards indicated in the Contract Documents are to be considered as the requirements to be complied with in the performance of the Work. The purpose of any specified tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of the material and the performance of the work shall not be preponderantly of borderline quality or dimension.

When referenced standards, such as those promulgated by AASHTO, ASTM, or other recognized organizations, or the Joint Board's or KYTC's or INDOT's own Specifications, Reference Drawings, or similar documents are revised subsequent to the date of the advertisement for RFP, the Contractor shall furnish materials or perform work conforming to the latest edition at the time the work is done. If the material or work is deemed to be equal to or better than originally required. This revision shall be viewed as an authorized change. Such revisions shall not be deemed to warrant a Change Order except pursuant to the process outlined in Section 4 herein. In the event of any dispute, the Joint Board will select the referenced standard current at the date of advertisement for RFP or the standard specifically referenced in this Contract to determine the dispute.

7.3. Removal of Defective and Unauthorized Work

The Contractor shall remedy, or remove and replace in an acceptable manner, at no expense to the Joint Board, all work that has been rejected or does not conform to the requirements of the Contract Documents. The Joint Board will consider any work done contrary to instructions, or any work performed beyond the lines and grades specified in the Plans or as given, except as herein provided, or any work performed without a change order being issued by the Joint Board Representatives, as unauthorized and at no expense to the Joint Board.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the formal acceptance of the work, shall be removed immediately and replaced in an acceptable manner by the Contractor such that it complies with the requirements of the Contract Documents.

Should the Contractor decline or neglect to begin the removal and the replacement of any defective work or remove any unauthorized work within the amount of time stated in a written notice to do so, the Joint Board may retain all monies due or which may become due the Contractor in relation to the defective work or in relation to the costs of its correction, until the requirements of these Contract Documents have been met. When deemed best by the Joint Board Representatives, the Joint Board shall employ the necessary labor to make good or remove such defective or unauthorized work and deduct the cost from any monies due or to become due the Contractor.

7.4. Cooperation by the Contractor

The Contractor shall maintain copies of the construction documents at the site of the work at all times and furnish copies to superintendents, foremen, and inspectors. The Contractor shall require each superintendent and foreman to have with him on the Site, at all times, a copy of that part of the Contract Documents applying to the work he is directing. The Contractor shall be present or have a representative present on the Project at all times, when construction is in progress, to receive and carry out such instructions as the Joint Board Representatives may give. The superintendent must be capable of reading and understanding the plans and specifications and be experienced in the type of work being performed. This Authorized Representative or superintendent shall have full authority to execute orders or directions without delay and shall promptly supply such materials, equipment, tools, labor, and incidentals as may be required.

Such superintendence shall be furnished irrespective of the amount of work sublet. The Contractor shall provide reasonable facilities to enable the Joint Board Representatives to inspect the workmanship and materials entering into the work and cooperate in setting and preserving survey stakes, bench marks, etc., and in all other things necessary to satisfactorily complete the work as contemplated.

Where new work is to be fitted to old work or with work provided by the Design-Build Contractor or the Developer, the Contractor shall check all dimensions and conditions in the field prior to ordering material and assume responsibility for fit of new Work to other work.

Contractor is required to complete a weekly survey to collect feedback from all designated staff to form a holistic view of the project. Contract shall submit the project schedule as a .csv file with format to be provided for collection of operational project data.

The Contractor recognizes that other contractors employed by the Joint Board members or other entities, including but not limited to the Design-Build Contractor and the Developer, must perform work in the Project right of way during the period of this Contract. The Contractor is responsible for being familiar with the terms of the Public-Private Agreement and the Design-Build Contract, and shall plan its work and coordinate its effort to be consistent with the terms applicable to the Developer's and the Design-Build Contractor's efforts under such agreements. The Contractor shall

coordinate with the Joint Board with regard to work being performed by other contractors within the Project limits so as to prevent any delay to Design-Build Contractor's schedule, the Developer's schedule, or the Contractor's Project Schedule. When the Joint Board lets separate contracts within the limits of any one project or for adjacent projects, the Contractor shall conduct the Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. The Contractor shall cooperate with contractors working on the same project or adjacent projects. In case of a dispute with other contractors, the Joint Board Representatives (or their designees) shall referee and make a final and binding decision. In refereeing disputes related to a particular Crossing, the Joint Board shall be represented by the designated representative of the IFA for disputes with respect to the East End Crossing, and by the designated representative of KYTC for disputes with respect to the Downtown Crossing. The Contractor consents, at KYTC's option, to join the dispute resolution proceedings as outlined in the Design-Build Contract and the Public Private Agreement when disputes involve the Contractor and are initiated by IFA or the Developer under the Public-Private Agreement or are initiated by KYTC or the Design-Build Contractor under the Design-Build Contract, as applicable.

As far as possible, the Contractor shall arrange the work and place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same project or on adjacent projects.

The Contractor shall join the work with that of the other contractors, the Design-Builder, and the Developer in an acceptable manner and perform it in proper sequence with the work of the other contractors.

7.5. The Joint Board Review and Inspection Generally

The Work shall be performed in accordance with the Contract Documents and the designs prepared by the Contractor and approved by the Joint Board during the design phases of the Project pursuant to Article 14 and Article 15 hereof.

It is Contractor's responsibility to provide work of such a nature to develop a finished product in accordance with the Contract Documents, the design and construction documents and specifications developed by the Contractor after review and comment by the Joint Board. The Contractor shall verify all dimensions in the field before developing the design documents and be responsible for the satisfactory quality and completion of the Work regardless of the level of the Joint Board inspection or concurrence.

The Work shall be subject to the Joint Board's review and written comments before its implementation, and shall not be thereafter amended or altered without the prior approval of the applicable Joint Board Representatives and subsequent review and written comment by the Joint Board.

The Contractor shall not be relieved of its obligation to perform the work in accordance with the Contract Documents, or any of its other obligations under the Contract

Documents, by oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals by any persons, or by any failure of any person to take such action. The oversight, spot checks, audits, reviews, tests, inspections, acceptances and approvals by any person do not constitute Formal Acceptance of the particular material or work, or waiver of any legal or equitable right with respect thereto. The Joint Board may reject or require the Contractor to remedy any Nonconforming Work and/or identify additional work which must be done to bring the Project into compliance with Contract requirements, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by any Person. The Joint Board's review of design documents for construction as described in the Contract Documents shall constitute review and comment only, and not be deemed to relieve the Contractor of liability for the design.

7.6. Final Inspection and Formal Acceptance of Work

The Joint Board will not consider the work on a Crossing complete and will not make final payment with respect to a Crossing, the Operations Center or a Walk-in Center until the Contractor clears the right-of-way and all ground the Contractor occupies in connection with the work of all rubbish, equipment, excess materials, and temporary structures. The Contractor shall place rubbish and all waste materials of whatever nature, other than hazardous materials, on either public or private property in a location out of view from the roadway and in a manner acceptable to the Joint Board that does not present an unsightly appearance. The Contractor shall restore in an acceptable manner all property, both public and private, that was damaged in the prosecution of the work. The Contractor shall leave all space under structures unobstructed and in such condition that drift shall not collect and induce scouring.

The Contractor shall follow the procedures for Substantial Completion in Section 9.1. Following the attainment of Substantial Completion Acceptance for a Crossing, the Operations Center or a Walk-in Center, the Contractor shall proceed with the completion of punch list and other items such as striping, seeding, tree planting and any remaining work necessary for final completion of such Crossing, Operations Center or Walk-in Center, and shall notify the Joint Board Representatives when the Project work for a Crossing, the Operations Center or a Walk-in Center is near final completion. The Joint Board Representatives will then advise in writing all punch list or other items that remain unsatisfactory. When these items are complete to the Joint Board Representative's satisfaction, the Joint Board Representatives will call the Project complete with respect to such Crossing, Operations Center or Walk-in Center and issue a project completion notice.

The Joint Board and other appropriate agencies, such as FHWA, will complete final inspections on all items of work for Formal Acceptance of the Crossing in accordance with Section 9.3 within 90 calendar days of the date of the Joint Board Representative's issuance of the project completion notice. The Joint Board will make individual final inspections on particular groups of work items such as structures, electrical, grade and drain, and surface. The Joint Board may, at its election, make final inspections before the Project is called complete on items of work that have been completed. The Joint

Board Representatives will issue written final inspection reports for items of work upon completion of each final inspection. The reports will include a list of all uncompleted work and required corrective work. The Joint Board Representatives will issue a comprehensive final inspection report that will include all inspection reports. The Contractor shall complete all items of uncompleted work and all required corrective work listed in the final inspection reports within 90 calendar days of receiving the comprehensive final inspection report.

The Contractor shall submit required as-built drawings, project documentation, and required information on materials and equipment incorporated into the Project, considering them as uncompleted work or required corrective work. The Contractor shall deposit any additional Software Source Code and other required documents in the Source Code Escrow and provide the Joint Board with an inventory of such deposit.

If there is a dispute regarding any of the items listed as uncompleted work or required corrective work on any of the final inspection reports, the Contractor shall submit in writing a letter of dispute to the Joint Board Representatives within 30 days of receipt of the report. The Joint Board will respond back in writing to the letter of dispute within 21 days of receiving the letter.

If there is still a dispute, proceed according to Section 13. When the dispute does not apply to all items of Work in the report, complete the items not in dispute as specified herein. Subject to Section 16.8, the Joint Board will make Formal Acceptance of the Project when the Joint Board determines that the Contractor has met all of the conditions to Formal Acceptance in Section 9.3. Formal acceptance shall not be construed as a waiver by the Joint Board of any legal rights should the Contractor's performance of the design and construction duties performed under this Contract be found to be defective.

7.7. Intentionally Omitted

7.8. Limitations of Operations

The Contractor shall limit operations so that its efforts do not unduly interfere with the work of the Design-Build Contractor and the Developer. The Contractor shall take care not to cause undue inconvenience to the traveling public. In the prosecution of the Work, the Contractor shall confer with the Joint Board Representatives regarding the points for the start of operations. If the Contractor is not conducting ongoing, active work in areas which have been blocked to traffic, notwithstanding any monetary amounts assessed to the Contractor under the Contract Documents for such restriction of traffic, the Joint Board Representatives may instruct the Contractor to modify the points in which those portions of Contractor's operations occur, so as to minimize traffic congestion or interruption. When operations have temperature or seasonal limitations, the Contractor shall schedule the work to comply with any specification, manufacturer, or Supplier requirements, taking into account obligation to coordinate efforts with the Developer and the Design-Builder, and schedule work consistent with the requirements of the Public-Private Agreement and the Design-Build Contract. When ordered by the

Joint Board, the Contractor shall open any or all sections to travel, whether the Work is completed or not.

As identified in the Contract Documents, the Contractor must at all times restrict its lane closures so as to provide for two lanes of traffic, at minimum, in each direction on all Interstates involved in the Project. See RFP Appendix N and Section 8.4.1 for additional details and the requirement that Contractor pay Liquidated Damages with respect to certain lane closures.

7.9. Character of Workers, Methods, and Equipment

7.9.1. General.

The Contractor shall employ, at all times, sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract.

The Contractor shall employ workers that have sufficient skill and experience to properly perform the work assigned to them. The Contractor shall employ workers engaged in special work or skilled work that have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

If the Joint Board representatives judge that any person employed by the Contractor does not perform the work in a proper and skillful manner or is intemperate or disorderly, at the written request of the Joint Board Representatives, the Contractor shall remove such person from the Project and shall not employ such person again in any portion of the work without the approval of the Joint Board Representatives. Should the Contractor fail to remove such person or persons as directed, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Joint Board Representatives may suspend the work by written notice until the Contractor complies with such orders.

The Contractor shall use only equipment of sufficient size and in such mechanical condition as to conform to the requirements of the work and to produce a satisfactory quality of work. The Contractor shall use equipment that does not harm the roadway, adjacent property, or other highways.

When a weight or weight range is specified for compaction equipment, the Contractor shall use equipment that has a plate or sign attached showing its weight, or minimum and maximum weights when applicable. In lieu of the plate or signs, the Contractor may weigh the equipment on scales certified by the Division of Weights and Measures before using the equipment on the Project.

When the methods and equipment that are used to accomplish the construction are not prescribed in the Contract, the Contractor shall use any methods or equipment that will to the satisfaction of the Engineer, accomplish the Contract work in a manner conforming to the Contract.

When the Contract specifies certain methods and equipment, the Contractor shall use such methods and equipment unless the Joint Board Representatives authorize others. The Contractor shall request approval from the Joint Board Representatives to use a method or type of equipment other than those specified in the Contract. The Contractor shall make the request in writing and include a full description of the methods and equipment proposed and an explanation of the reasons for desiring to make the change. If the Joint Board Representatives' approval is granted, the Contractor is fully responsible for producing Work according to the Contract. If, after trial use of the substituted methods or equipment, the Joint Board Representatives determine that the work produced does not conform to the Contract, Contractor shall discontinue the use of the substitute method or equipment and complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Joint Board Representatives may direct, at no expense to the Joint Board. The Joint Board Representatives shall not change the basis of payment or the Contract time for the construction items involved as a result of authorizing a change in methods or equipment.

7.10. Subcontracting

The Contractor shall not subcontract, sell, transfer, assign, or otherwise dispose of this Contract or any portion of this Contract, or of the right, title, or interest therein, without the Joint Board's written consent. When the Joint Board gives such consent, the Joint Board will allow the Contractor to subcontract a portion of the Work. Subcontractors may, with the Joint Board's consent, subcontract a portion of the Work to lower tiered Subcontractors. However, the Contractor shall remain responsible for all work and shall maintain a supervisory role over the entire Work and Project. Except for Work elements for which no prequalification requirement exists, all Subcontractors shall be prequalified to perform the Work subcontracted to them as provided in the Construction Procurement and Professional Services sections of the Joint Board's website, as applicable to such Subcontractor.

The Joint Board's written consent to subcontract, assign, or otherwise dispose of any portion of this Contract does not, under any circumstances, relieve the Contractor of its liabilities and obligations under the Contract Documents. The Joint Board will make transactions only with the Contractor. The Joint Board will recognize Subcontractors only in the similar capacity of employees or workers of the Contractor who are subject to the same requirements as to character and competence as specified in Section 7.9.

The Contractor shall be fully responsible to the Joint Board for all acts and omissions of the Subcontractors, Suppliers, joint-venturers, partners, consultants and other individuals or entities performing or furnishing any of the Work (sometimes referred to herein as the "Contractor-Related Entities") just as the Contractor is responsible for Contractor's own acts and omissions. The retention of Subcontractors by Contractor will not relieve Contractor of its responsibility hereunder or for the quality of the Work or materials provided by it. Contractor will at all times be held fully responsible to the Joint Board for the actions, omissions, negligence, willful misconduct, or breach of applicable

Law or contract by its Subcontractors and persons employed by them and no Subcontract entered into by Contractor will impose any obligation or liability upon the Joint Board to any such Subcontractor or any of its employees. Nothing in this Contract will create any contractual relationship between the Joint Board and any Subcontractor of Contractor.

Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide, in terms and in form and substance satisfactory to the Joint Board that: (a) the rights of Contractor under such instrument are assigned to the Joint Board contingent only upon delivery of written request from the Joint Board or its successor or assign following default by Contractor or termination or expiration of this Contract; and (b) all warranties (express and implied) of such Subcontract shall inure to the benefit of the Joint Board.

Contractor shall provide the Joint Board with a list of all Subcontracts with each monthly update, shall allow the Joint Board access to all Subcontracts and records regarding Subcontracts and shall deliver to the Joint Board, within 10 Days after execution, copies of all Major Subcontracts and, within 10 Days after receipt of a request from the Joint Board, copies of all other agreements or documents as may be requested.

The Contractor shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers, and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, Suppliers, and such other individuals and entities performing or furnishing any of the Work to communicate with the Joint Board through the Contractor.

All work performed for the Contractor by a Subcontractor or Supplier will be pursuant to an appropriate subcontract between the Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the Joint Board, with the only exceptions being that the Contractor may require lesser insurance coverage limits and/or the absence of surety bond requirements equal to those the Joint Board requires of the Contractor. The following specific requirements shall apply to all Subcontracts:

(a) Contractor shall, prior to soliciting any bids for performance of work or labor or rendering of services relating to the design or construction of any portion of the Project or for special fabrication, assembly and installation of any portion of the Work, submit to the Joint Board for its review and approval a procedure for the conduct of the bidding and approval process applicable to Subcontracts. Contractor shall not enter into any Subcontracts except in accordance with the foregoing procedure. Once Contractor has entered into any Subcontract, Contractor shall not have the right to make any substitution of such Subcontractor except with the Joint Board's prior written approval.

(b) As soon as Contractor has identified a potential Subcontractor, but in no event less than 30 Days prior to the scheduled initiation of work by such proposed

Subcontractor, Contractor shall notify the Joint Board in writing of the name, address, phone number and contact name of such Subcontractor.

(c) Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with the requirements of the Contract Documents, and shall include those terms that are specifically required by the Contract Documents to be included therein. All Subcontracts, including Subcontracts with Suppliers, shall incorporate terms substantially similar to those contained in this Contract, specifically including an agreement by the Subcontractor to participate in any dispute proceeding pursuant to Section 13, if such participation is requested by either the Joint Board or Contractor, and a requirement to allow audits by the Joint Board.

Each Subcontract shall:

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

(b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.

(c) Include a covenant to maintain all licenses required by applicable Law, and set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale.

(d) Be fully assignable without cost to the Joint Board, such assignability to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility and include express requirements that: (i) it will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof by Contractor, and provide progress reports to Contractor appropriate for the type of work it is performing sufficient to enable Contractor to provide the reports it is required to furnish the Joint Board under this Contract; and (iii) allow the Joint Board to assume the benefit of Contractor's rights with liability only for those remaining obligations of Contractor accruing after the date of assumption by the Joint Board. No such assignment shall release or relieve Contractor from its obligations or liabilities under the assigned Subcontract.

(e) Not be assignable by the Subcontractor to any party other than the Joint Board (or its assignee) without Contractor's prior written consent.

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between Contractor and such Subcontractor for the same Fiscal Year, is in excess of \$250,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Contractor and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the

actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

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

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

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

Contractor shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of the Joint Board. All Subcontracts with Affiliates shall be on terms no less favorable (as determined by the Joint Board) to Contractor than to non-Affiliates of the Subcontractor. Contractor shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

7.11. No Estoppel

Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty, maintenance or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. Subject to statutory limitations on liability, the Joint Board shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Formal Acceptance and payment therefor, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, the Joint Board shall not be precluded or estopped from (a) correcting such measurement, estimate or certificate and (b) recovering from the Contractor and the surety(ies) the damages the Joint Board may sustain by reason of Contractor's failure to comply with the terms of the Contract Documents, including recovery of any overpayment sustained due to such failure. In addition, any waiver by the Joint Board of any breach by the Contractor shall not be held to be a waiver of any other or subsequent breach.

7.12. Acceptance of Nonconforming Work

Contractor acknowledges and agrees that the Joint Board shall have sole discretion regarding acceptance or rejection of Nonconforming Work and shall have sole discretion with regard to the amount payable in connection therewith, provided, however, that the Joint Board may in its sole discretion reject any civil construction Work that the Engineer for each Crossing determines is Nonconforming. Subject to the foregoing, the Joint Board may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In certain events, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, without limiting the foregoing, Contractor's failure to perform such items during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at the Joint Board's election, an amount equal to the greater of (a) 100% of Contractor's cost savings associated with its failure to perform the work in accordance with the Contract requirements, or (b) the amount of the Contract Price allocated to such Work, plus (c) the amount deemed appropriate by the Joint Board to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. Such reimbursement shall be payable to the Joint Board within 10 Days after Contractor's receipt of an invoice therefor.

7.13. Key Personnel

RFP Section 4.1.12.5 identifies certain job categories of Key Personnel for the Project. Contractor shall not change, or permit any change in, any Key Personnel without the prior written consent of the Joint Board.

Contractor acknowledges and agrees that the award of this Contract by the Joint Board to Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Contractor's commitment that such individuals would be available to undertake and perform the work. Contractor 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.

[If Key Personnel are not available for the Work and do not maintain active involvement in the prosecution and performance of the Work, Contractor acknowledges that the Joint Board, the Work and the Project will suffer significant and substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to the Joint Board in such event. Therefore, if certain Key Personnel are not available or not actively involved in the prosecution and performance of the work, as determined by the Joint Board, in its sole discretion, Contractor agrees to pay the Joint Board a liquidated amount as indicated in RFP Section 4.1.12.5, provided, however, that the Joint Board shall provide the Contractor with 10 days prior notice and opportunity to cure before assessing such Liquidated Damages.

Contractor understands and agrees that any damages payable in accordance with this Section 7.13 and RFP Section 4.1.12.5 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. The Joint Board shall have the right to deduct or draw upon any amount owed by Contractor to the Joint Board hereunder from any amounts owed by the Joint Board to Contractor, including from any bond held by the Joint Board under this Contract. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction or draw. Notwithstanding the foregoing, Contractor shall not be liable for Liquidated Damages under this Section 7.13 if (i) Contractor removes or replaces such personnel at the direction of the Joint Board; (ii) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable Contractor-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding Liquidated Damages), or (iii) such individual is unavailable due to the Joint Board's failure to issue the NTP by August 16, 2013 for a reason other than the fault, act or omission of any Contractor-Related Entity; provided, however, in such case, Contractor shall promptly propose to the Joint Board a replacement for such personnel, which individual shall be subject to the Joint Board's review and written consent, and shall replace such personnel as approved by the Joint Board. If the NTP has not been issued by the specified date, Contractor shall have 30 Days after issuance of the NTP to identify any change in Key Personnel without incurring any Liquidated Damages. Following any Joint Board-approved substitution or replacement of a Key Personnel pursuant to the terms hereof, the new individual shall be considered a Key Personnel for all purposes under this Contract, including the provisions of this Section 7.13 relative to Liquidated Damages.

Contractor acknowledges and agrees that the Key Personnel positions are of critical importance to The Joint Board and the Project. In addition to the approval rights of the Joint Board set forth in this Section 7.13 and the Liquidated Damages set forth in this Section 7.13 and RFP Section 4.1.12.5, if an individual in certain Key Personnel positions delineated on Exhibit E leaves that position for a reason other than as set forth in RFP Section 4.1.12.5 the Joint Board shall have the unilateral right to terminate this Contract without further liability to Contractor, except for payment for such work that has been completed and accepted as of the date of termination, unless Contractor provides the Joint Board a replacement acceptable to the Joint Board within 30 Days after the earlier of (i) the date on which such individual has left his/her position; or (ii) Contractor or the Joint Board becomes aware that such individual intends to leave his/her position. In connection with a termination under this Section 7.13, Contractor shall not be entitled to any payment of profit, overhead or any settlement costs, but shall only be entitled to the payment of Contractor's actual costs incurred and not previously paid for by the Joint Board in connection with work which has been completed and accepted as of the termination date.

Any position on the Contractor's Project organizational chart or within the Contractor's organization structure that is above that of a Key Personnel position for which Liquidated Damages may apply will be deemed to be a Key Personnel position and, for purposes of Liquidated Damages under this Section 7.13, shall be at the level which is immediately higher than the Key Personnel immediately below that position (e.g., an

individual that reports to the Maintenance Manager level but is higher than the other Key Personnel level would be considered a Maintenance Manager for this purpose).

8.0 Liquidated Damages

8.1. Reasonable Approximations of Damages

The Joint Board and the Contractor agree that time is of the essence of this Contract, and that there will be sustained by the Joint Board considerable monetary damages in the event of failure or delay in the completion of the Work, which damages will be impracticable and extremely difficult to definitely ascertain or establish. Contractor further understands and agrees that if Contractor fails to submit a Performance Audit Report in accordance with RFP Appendix B Section 23, fails to perform the Work in a manner that prevents unscheduled closure of traffic lanes, or otherwise fails to meet the Performance Requirements specified in RFP Appendix B Section 23, the Joint Board will suffer substantial Losses that will be impracticable and extremely difficult to definitely ascertain or establish. Therefore, the Joint Board agrees to accept, and the Contractor agrees to pay, Liquidated Damages in the amounts specified herein as compensation for damages associated with any delay in meeting a Completion Deadline, Delay Reporting Liquidated Damages as compensation for any Losses associated with any damages associated with delay in submitting a performance audit, and the sums stated below and in the other Contract Documents as Liquidated Damages for lane closures and failures to meet Performance Requirements, all of which are hereby agreed upon by the parties as reasonable approximations of such damages.

8.2. Liquidated Damages for Delays in Achieving Completion

The Joint Board will rely upon toll revenues from the completed Downtown Crossing and the East End Crossing for the funding for this Project. The Contractor shall be liable to the Joint Board for Liquidated Damages for each and every calendar day after a Deadline that Contractor fails to reach Substantial Completion Acceptance, Punch List Acceptance and/or Formal Acceptance of a Crossing or the System, in the following amounts:

- 1) \$3,000.00 per day for failure to achieve Substantial Completion Acceptance of the Operations Center by the Operations Center Substantial Completion Acceptance Deadline.
- 2) \$1,000.00 per day for failure to achieve Substantial Completion Acceptance of a Walk-in Center by the applicable Walk-in Center Substantial Completion Deadline.
- 3) \$76,000 per day for failure to achieve East End Crossing (Toll Zones EEC-1 and EEC-2) Substantial Completion Acceptance by the East End Crossing (Toll Zones EEC-1 and EEC-2) Substantial Completion Deadline, \$1,000 per day for failure to achieve East End Crossing (Toll Zones EEC-1 and EEC-2) Punch List Acceptance by the East End Crossing (Toll Zones EEC-1 and EEC-2) Punch List Acceptance Deadline,

and \$1,000 per day for failure to achieve East End Crossing (Toll Zones EEC-1 and EEC-2) Formal Acceptance by the East End Crossing (Toll Zones EEC-1 and EEC-2) Formal Acceptance Deadline.

- 4) \$40,000 per day for failure to achieve Downtown Crossing Initial Configuration Substantial Completion Acceptance (Toll Zones DB-1, R-1, R-2, and KB-1) by the Downtown Crossing Initial Configuration Substantial Completion Acceptance Deadline (Toll Zones DB-1, R-1, R-2, and KB-1), \$1,000 per day for failure to achieve Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Initial Configuration Punch List Acceptance by the Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Initial Configuration Punch List Acceptance Deadline; and \$1,000 per day for failure to reach Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Initial Configuration Formal Acceptance by the Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Initial Configuration Formal Acceptance Deadline.
- 5) \$ 80,000 per day for failure to achieve Downtown Crossing (Toll Zones DB-1, R-1 and R-2) Final Configuration Substantial Completion Acceptance by the Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Final Configuration Substantial Completion Acceptance Deadline, \$1,000 per day for failure to reach Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Final Configuration Punch List Acceptance by the Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Final Configuration Punch List Acceptance Deadline; and \$1,000 per day for failure to reach Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Final Configuration Formal Acceptance by the Downtown Crossing (Toll Zones DB-1, R-1, R-2, and KB-1) Final Configuration Formal Acceptance Deadline.
- 6) \$ 150,000 per day for failure to achieve System Substantial Completion Acceptance by the System Substantial Completion Acceptance Deadline.

Said amounts shall in no event be considered a penalty or otherwise than as Liquidated Damages. The Contractor agrees that any accrued Liquidated Damages may be deducted from any current or final estimate after the day said Liquidated Damages begin to accrue. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction. Said Liquidated Damages shall continue with respect to each Crossing and the System until the Contractor achieves the relevant Completion Acceptance Deadline as determined by the Joint Board. If during any period the Contractor has failed to meet multiple deadlines with respect to a Crossing or the System subject to liquidated damages under this Section 8.2, the Liquidated Damage amounts specified above with respect to such Crossing or with respect to the System shall not be considered cumulative. In such event Liquidated Damages shall be assessed at the highest relevant daily rate.

8.3. Delay Reporting Liquidated Damages

8.3.1. Delay Reporting Liquidated Damages Generally

Contractor acknowledges and agrees that the Delay Reporting Liquidated Damages are intended to compensate the Joint Board solely for Contractor's failure to submit performance reports in accordance with RFP Appendix B Section B23 and shall not excuse Contractor from liability from any other breach of requirements of the Contract Documents, including any failure of the System to meet Performance Requirements. Contractor shall not be liable for actual damages in addition to the Delay Reporting Liquidated Damages for Contractor's failure to submit a performance report in accordance with RFP Appendix B Section B23.1.36, 23.2.22 and/or 23.2.23. The fact that the Joint Board has agreed to accept Delay Reporting Liquidated Damages as compensation for its damages associated with any delay in meeting such report submission requirements shall not preclude the Joint Board from exercising its other rights and remedies respecting the delay set forth elsewhere in this Contract, other than the right to collect other damages due solely to the delay.

8.3.2. Amount of Delay Reporting Liquidated Damages

Contractor acknowledges and agrees that because of the unique nature of the Project, and the fact that the continual performance auditing of the System is essential to the Joint Board's ability to ensure performance of the System in conformance with Performance Requirements, it is not possible to ascertain and determine the actual Losses which would accrue to the Joint Board and the public from such failure. Therefore, commencing upon the date immediately following the submission deadline for the performance audit reports set forth in RFP Appendix B Section B23, Contractor shall pay to the Joint Board Delay Reporting Damages in the dollar amounts specified in RFP Appendix B, Section B23.1.36, B23.2.22 and B23.2.23 as damages for delay in providing certain reports. It is understood and agreed by Contractor that any Delay Reporting Liquidated Damages payable in accordance with this Section 8.3 and the RFP are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Contractor further acknowledges and agrees that Delay Reporting Liquidated Damages may be owing even though no Event of Default has occurred.

8.4. Liquidated Damages for Lane Closures and Toll Lane Closures

8.4.1. Liquidated damages shall be assessed for lane closures and toll lane closures, whether occurring before or after Substantial Completion or Formal Acceptance, as follows:

- 1) For any lane closure caused by any defect in the Work or action or failure to act by Contractor that provides fewer open lanes than the number specified in "Lanes Required to be Maintained for Traffic Control" in RFP

Appendix N for each Crossing, liquidated damages will be assessed as follows:

- a) East End Crossing including approaches thereto: \$5,000 per 30 minute period or any fraction thereof.
- b) Downtown Crossing including approaches thereto:
 - (i) Kennedy Crossing: \$5,000 per 30 minute period or any fraction thereof
 - (ii) New Downtown Crossing: \$5,000 per 30 minute period or any fraction thereof

In no event shall a lane closure indicated above occur during the weekday peak hours as defined by Section 8.4.2.

- 2) Once tolling has commenced, for inability to collect electronic tolls during weekday peak hours as a result of any action or failure to act by the Contractor or any Subcontractor (that is, electronic tolling capability is entirely shut down on all toll lanes in a Toll Zone), liquidated damages will be assessed as follows:

- a) East End Crossing:
 - (i) Toll Zone EEC-1: \$30,000 per hour or any fraction thereof.
 - ii) Toll Zone EEC-2: \$30,000 per hour or any fraction thereof.
- b) Downtown Crossing:
 - (i) Toll Zone R-1: \$25,000 per hour or any fraction thereof.
 - (ii) Toll Zone R-2: \$25,000 per hour or any fraction thereof.
 - (iii) Toll Zone DB-1 or DB-R1: \$25,000 per hour or any fraction thereof.
 - (iv) Toll Zone KB-1 or KB-R1: \$25,000 per hour or any fraction thereof.

- 3) Once tolling has commenced, for inability to collect electronic tolls during weekday nonpeak hours and weekend days as a result of any action or failure to act by the Contractor or any Subcontractor (that is, electronic tolling capability is entirely shut down on all toll lanes on a Crossing), Liquidated Damages will be assessed as follows:

- a) East End Crossing:

- (i) Toll Zone EEC-1: \$10,000 per hour or any fraction thereof.
- ii) Toll Zone EEC-2: \$10,000 per hour or any fraction thereof.
- b) Downtown Crossing:
 - (i) Toll Zone R-1: \$7,500 per hour or any fraction thereof.
 - (ii) Toll Zone R-2: \$7,500 per hour or any fraction thereof.
 - (iii) Toll Zone DB-1 or DB-R1: \$7,500 per hour or any fraction thereof.
 - (iv) Toll Zone KB-1 or KB-R1: \$7,500 per hour or any fraction thereof.

8.4.2.

For purposes of calculating liquidated damages for toll-revenue impacts under items 2 and 3 of Section 8.4.1, weekdays are defined as Monday through Friday, excluding holidays, and peak hours are defined as 6:00 a.m. to 11:00 a.m, and 3:00 p.m. to 7:00 p.m. A five minute grace period will be allowed before Liquidated Damages are assessed for toll revenue impacts under items 2 and 3 of this Section 8.4; but the grace period shall not apply in determining whether the impact period exceeds one hour, so that two hours of Liquidated Damages will apply if the impact lasts more than 60 minutes.

Ramp and lane closure time is specified in calendar days. The Joint Board Representatives will charge every calendar day, beginning with the calendar day following the date of the beginning of work, including all Saturdays, Sundays, holidays, and non-working days, to the Contract

The fact that the Joint Board has agreed to accept Liquidated Damages as compensation for its damages associated with subparagraphs 1 through 3 above shall not preclude the Joint Board from exercising any of its rights and remedies respecting such breach under the Contract, other than the right to collect damages for such breach.

In the event of a toll lane closure and assessment of the Liquidated Damages specified in this Section 8.4, such Liquidated Damages shall be in lieu of any other Liquidated Damages that may be specified for the particular Performance Requirement failure specified in RFP Appendix B, Sections 23.1 or 23.2. that may give rise to such closure.

8.5. Other Liquidated Damage Provisions

Except as specified in Section 8.4, the damages provided in this Section shall be in addition to and independent of those amounts charged to the Contractor pursuant to other sections of the Contract, including but not limited to those specified in RFP Appendix B, Section B.23 and Section B.24. The Joint Board and the Contractor

hereby agree to the specific standards and Performance Requirements set forth in the Contract Documents. Contractor further agrees to pay the Liquidated Damages specified in RFP Appendix B, Sections B23.1 and B23.2 for failure to meet the Performance Requirements, and that such Liquidated Damages are a reasonable approximation of the Losses that the Joint Board is likely to incur in the event of such failures.

The Contractor shall not be liable for Liquidated Damages when, in the opinion of the Joint Board, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. If the Joint Board elects not to impose Liquidated Damages in a particular instance said decision shall not be construed as a waiver of the Joint Board's right to pursue future assessments for failure to meet project milestones or Performance Requirements, nor construed to limit any additional remedies available to the Joint Board.

8.6. Disputes Relating to Liquidated Damages

There are multiple contractors working for the Joint Board and the Joint Board members both on the toll collection system and to design and construct the Crossings and roadways, and the Operations Center and Walk-in Centers. In the event that Liquidated Damages are assessed against the Contractor and the Contractor believes that these damages should instead be assigned to a different contractor on the project, or the Contractor in some other way disputes an assessment of Liquidated Damages, those disputes shall be resolved pursuant to Section 13. The Contractor shall pay the assessed amount pursuant to Section 8. In the event it is determined, through the dispute resolution procedures, that Liquidated Damages were wrongly assessed, the Joint Board shall return the Liquidated Damages payment to the Contractor.

If another contractor is assessed liquidated damages but asserts, through the dispute resolution process that the Contractor should have been assessed these damages instead, the Contractor shall participate in the dispute resolution process. If through that process, it is determined that the Contractor was responsible for the liquidated damages, the Contractor shall immediately pay the assessed damages pursuant to Section 8.

8.7. No Waiver of Additional Damages except as Specifically Stated

The Liquidated Damages described above shall be the Joint Board's agreed compensation for damages incurred for the specified failures to perform. The Joint Board reserves its rights as to other damages for any other breach of the Contract by the Contractor, and specifically for direct damages. In the event that Liquidated Damages are disallowed for any reason, the Joint Board shall be entitled to actual damages including any and all consequential or incidental damages.

8.8. [Reserved.]

8.9. Payment ; Offset; Reduction; Waiver

When Liquidated Damages are assessed pursuant to any section of this Contract, regardless of any pending disputes regarding the assessment, the Contractor, at the written direction of the Joint Board, shall pay the indicated amounts within 15 days after Contractor's receipt of an invoice therefor from the Joint Board. Amounts due the Joint Board as Liquidated Damage , if not paid within 15 days of notification of assessment, may be deducted by the Joint Board from any money payable to the Contractor pursuant to this agreement, and/or by tendering or drawing upon the Performance Bond, Warranty Bond or Maintenance Performance Bond provided pursuant to Section 12.2. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction or draw.

Permitting or requiring Contractor to continue and finish the work or any part thereof after a Completion Deadline, notwithstanding any failure to meet the Performance Requirements, or after a submission deadline, as applicable, shall not act as a waiver of the Joint Board's right to receive Liquidated Damages or Delay Reporting Liquidated Damages hereunder or any rights or remedies otherwise available to the Joint Board.

8.10. No Waiver of Additional Damages Except as Specifically Stated

The Liquidated Damages described above shall be the Joint Board's agreed compensation for damages incurred if the Contractor breaches the Contract in the particular ways listed. The Joint Board reserves its rights as to other damages for any other breach of this Contract by the Contractor, and specifically for direct damages.

8.11. Limitation of Contractor's Liability

To the extent permitted by applicable Law, the Joint Board will not seek to recover damages (including actual, indirect, special, consequential, multiple or punitive damages) from Contractor resulting from breach of this Agreement (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of (a) all those costs reasonably incurred by the Joint Board or any party acting on the Joint Board's behalf in completing or correcting the Work or having the Work completed or corrected by another Person, plus (b) an amount equal to total Contract Price (which amount shall specifically include any Liquidated Damages and Delay Reporting Damages paid pursuant to this Section 8); plus (c) any amounts paid by Contractor which are covered by insurance proceeds; plus (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or willful misconduct on the part of any Contractor-Related Entity; and plus (e) work required or arising under the Warranties; plus (e) Contractor's indemnification obligations under Section 11.

9.0 Completion and Acceptance

9.1A Field Ready

9.1A.1 General Requirements

Field Ready is the stage in the progress of the Work for a Crossing when Contractor has purchased all equipment and other System components that it is required to purchase to achieve System Substantial Completion, all such equipment and other System components and Software have been tested and, passed all tests, to the extent feasible without access to on-Site testing, that are a prerequisite to installation as required by the Scope of Work, all such equipment and other System components are in secure storage at a location within [xx] miles of Contractor's local Project office, Software Source Code and other documentation is deposited with the Software Source Code Escrow Holder in compliance with Section 14.4.4 and the Software Source Code Escrow Agreement, Contractor has secured the services of all personnel (including subcontractors and suppliers) necessary to complete the Project by the Substantial Completion Acceptance Deadline for each Crossing, and Contractor is able to mobilize to meet each of the Crossing Substantial Completion Acceptance Deadlines upon not less than 30 days prior written notice of the Tolling Infrastructure Turnover Date for the East End Crossing as defined in the Public-Private Agreement, and upon not less than 30 days prior written notice of the Downtown Crossing Temporary Tolling Configuration Mobilization Date as defined in this Contract.

9.1A.1.1 Initial Notice

The Contractor shall include the Field Ready Deadline on its schedule, and shall update the schedule periodically to indicate the date that Contractor anticipates that it will be Field Ready. Approximately 30 days from each date when the Contractor anticipates that it will be Field Ready, the Contractor shall prepare and submit to the Joint Board a comprehensive list of items to be completed or corrected in order to be Field Ready.

Upon receipt of Contractor's list, the Joint Board shall make a preliminary inspection to determine items to be completed or corrected in order to be Field Ready. The Joint Board shall provide to the Contractor within 10 days following the date Contractor's list is presented, the Joint Board's list of items that must be completed to be Field Ready.

9.1A.1.2 Field Ready Notice

Contractor shall provide written notice to the Joint Board when it is Field Ready. The Field Ready Notice shall include Contractor's certification that:

- (a) Contractor has purchased all equipment and other System components that it is required to purchase to achieve System Substantial Completion;
- (b) all such equipment and other System components required for the System and Software have been tested and, passed all tests, to the extent feasible without access to on-Site testing, that are a prerequisite to installation as required by the Scope of Work;

(c) all such equipment and other System components are in secure storage at a location within [xx] miles of Contractor's local Project office, and Software Source Code and other documentation is deposited with the Software Source Code Escrow Holder in compliance with Section 14.4.4 and the Software Source Code Escrow Agreement;

(d) Contractor has secured the services of all personnel (including subcontractors and suppliers) necessary to complete the Project by the relevant Substantial Completion Acceptance Deadline for each Crossing; and

(e) Contractor is able to mobilize to meet each of the Crossing Substantial Completion Acceptance Deadlines upon not less than 30 days prior written notice of the Tolling Infrastructure Turnover Date for the East End Crossing as defined in the Public-Private Agreement, and upon not less than 30 days prior written notice of the Downtown Crossing Temporary Tolling Configuration Mobilization Date as defined in this Contract.

The Joint Board will then conduct such inspections, verifications, surveys and/or testing as it deems desirable. If such inspections, verifications, surveys and/or tests disclose that any Field Ready requirement is not met, the Joint Board will promptly advise Contractor as to deficiencies necessary to be corrected as a condition to being Field Ready. Upon correction of the deficiencies identified as a prerequisite to being Field Ready, Contractor shall provide written notification to the Joint Board, and the Joint Board will conduct additional inspections, verifications, surveys and/or testing as it deems desirable. This procedure shall be repeated until the Joint Board finds that all prerequisites to Contractor being Field Ready have been met. Upon such determination, the Contractor shall prepare a Field Ready Certificate for the Joint Board's execution which will establish the date on which the Contractor is deemed to be Field Ready.

9.1. Substantial Completion

9.1.1. General Requirements

9.1.1.1. Operations Center and Walk-in Center Substantial Completion

Substantial Completion of the Operations Center and/or a Walk-in Center is the stage in the progress of the Work at the Operations Center or Walk-in Center when (i) the Work related to the Operations Center or the Walk-in Center is sufficiently complete that all elements may be used for the intended purpose, (ii) Substantial Completion testing of the Work is successfully completed, (iii) no further Work remains in order to permit the Operations Center or the Walk-in Center to open to the public for business, (iv) and the System installed at the Operations Center or Walk-in Center functions accurately and reliably.

9.1.1.2. Crossing and System Substantial Completion

Substantial Completion is the stage in the progress of the Work on the Bridge or Crossing when the Project is sufficiently complete in accordance with the Contract Documents so that the Joint Board can occupy or use all elements of the Project as it pertains to such Crossing for its intended use, including commencing tolling of the Crossing, and the stage of Work on the System where the System can be operated continuously in compliance with the Performance Requirements without interruption. For this Project, Substantial Completion shall be deemed to occur with respect to a Crossing, and such use possible when (i) all required Substantial Completion testing of the Work for such Crossing is successfully completed, (ii) the Work related to such Crossing is completed, (iii) no further Work remains to be performed by the Contractor in order that the Project Site for such Crossing safely may be opened to public and private vehicular traffic, and (iv) such Project Work for such Crossing functions accurately and reliably in accordance with the Performance Requirements. For purposes of the Downtown Crossing, Substantial Completion may be achieved for one or more interim configurations before the Contractor achieves Downtown Crossing Final Configuration (Toll Zones DB-1, R-1, R-2 and KB-1) Substantial Completion Acceptance. Substantial Completion of the System shall be deemed to occur when Substantial Completion Acceptance has occurred for all of the Crossings, and the entire System may be operated as an integrated System on a continuous basis without interruption in compliance with the Performance Requirements.

9.1.2. Notice and Inspection

9.1.2.1. Initial Notice

The Contractor shall include on its schedule the Substantial Completion Deadline for the Operations Center, each Walk-in Center, each Crossing and the System, and shall update the schedule periodically to indicate the date that Contractor anticipates that each such Substantial Completion will be achieved. Approximately 30 days from each date when the Contractor anticipates that the Work will be substantially complete for the Operations Center, each Walk-in Center, each Crossing (or initial configuration) and the System, the Contractor shall prepare and submit to the Joint Board a comprehensive list of items to be completed or corrected in order to achieve Substantial Completion for the relevant portion of the Work, as appropriate. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Upon receipt of Contractor's list, the Joint Board shall make a preliminary inspection to determine items to be completed or corrected in order to achieve Substantial Completion. The Joint Board shall provide to the Contractor within 10 days following the date Contractor's list is presented, the Joint Board's list of items that must be completed or corrected in order to achieve Substantial Completion.

9.1.2.2. Notice of Substantial Completion

Contractor shall provide written notice to the Joint Board when all of the following have occurred with respect to the Operations Center, a Walk-in Center, or a Crossing:

(a) Contractor has completed all Work except for Punch List items, final cleanup and other items included in the requirements for Formal Acceptance;

(b) Contractor has ensured that all such Work has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

(c) The Project may be operated without damage to the System or any other property on or off the Project Site, and without injury to any Person;

(d) The Work has been installed such that the Project can be safely opened to public use;

(e) All remaining Punch List work can be completed with no impact to other contractors and traffic;

(f) Contractor has furnished to the Joint Board (i) the necessary preliminary as-built drawings associated with completed Work, (ii) the as-built drawings and documents required for conducting inspections and/or testing, and (iii) the applicable as-built drawings and documents for maintenance and operations;

(g) Contractor has furnished to the Joint Board a certification from Contractor's Quality Manager, in form and substance satisfactory to the Joint Board, certifying conformity of the construction with the Design Documents;

(h) Contractor has acquired all spare parts, components and equipment as described in RFP Appendix B Section B.2.2 and listed in the Tolling Component One RBOC Price Sheets; and

(i) Contractor has completed all inspection, testing and verification as described in Scope of Work Sections 3.12.4 and 3.12.5_, including any additional inspection and testing following any repairs, modifications and/or replacements required thereunder and has provided the Joint Board with all documentation and other items required by Scope of Work Appendix B.

The Joint Board will then conduct such inspections, verifications, surveys and/or testing as it deems desirable. If such inspections, verifications, surveys and/or tests disclose that any of work does not meet the requirements of the Contract Documents, the Joint Board will promptly advise Contractor as to any Errors in the Work necessary to be corrected as a condition to Substantial Completion Acceptance for the particular Operations Center, Walk-in Center, Crossing or the System, and as to any Errors which may be corrected as Punch List items. Upon correction of the Errors identified as a prerequisite to Substantial Completion Acceptance, Contractor shall provide written notification to the Joint Board, and the Joint Board will conduct additional inspections, verifications, surveys and/or testing as it deems desirable. This procedure shall be repeated until the Joint Board finds that all prerequisites to Substantial Completion Acceptance of the Project for the relevant Crossing or the System have been met.

9.1.2.3. Certificate of Substantial Completion

After providing a notice of Substantial Completion Joint Board, and after the Joint Board inspects the Work, the Contractor shall prepare for the Joint Board's signature a Certificate of Substantial Completion with respect to the relevant Crossing or the System which, when signed by the Joint Board, shall establish (1) the date of Substantial Completion of the Work for such Crossing or System, (2) responsibilities between the Joint Board and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Contractor shall finish all items necessary for final completion on the Punch List accompanying the acknowledgement. If the Joint Board determines that the Work is not Substantially Complete, the Joint Board shall notify the Contractor in writing of those items necessary to achieve Substantial Completion Acceptance. When the Joint Board determines that (a) all conditions set forth in Section 9.1.2.2 have been satisfied; (b) all Errors identified as prerequisites to Substantial Completion Acceptance have been corrected; (c) all inspection and testing as described in Scope of Work Section 3.12.4 have been completed; (d) the Contractor and the Joint Board have agreed upon a Punch List; and (e) any other conditions precedent to Substantial Completion Acceptance expressly set forth in this Contract have occurred, the Joint Board shall sign the Certificate of Substantial Completion for the relevant Crossing or System. Warranties required by the Contract Documents shall commence for each portion of the Work on the Substantial Completion Acceptance Date for such portion of the Work, and on the System Substantial Completion Acceptance Date, for components of the System that are not already under warranty as part of another Substantial Completion Acceptance, unless otherwise provided in the Certificate of Substantial Completion.

In the event of a Dispute regarding whether the Contractor's Work is substantially complete, the Dispute shall be resolved pursuant to Section 13.

9.2. Punch List Acceptance

9.2.1. Requirements

Contractor shall provide written notice to the Joint Board when all of the items of work listed on the Punch List for Crossing or for the System, as applicable, have been completed.

9.2.2. Certificate of Punch List Acceptance

The Joint Board will issue a Certificate of Punch List Acceptance for the Operations Center, a Walk-in Center, a Crossing or for the System as soon as reasonably practicable after: (a) Contractor has delivered to the Joint Board the relevant written notice described in Section 9.2.1 ; (b) all inspection and testing of Punch List Work as described in RFP Appendix B shall have been completed; and (c) the Joint Board finds that all Errors identified as prerequisites to Punch List Acceptance have been corrected.

9.3. Formal Acceptance

Promptly after Substantial Completion Acceptance of the Operations Center, a Walk-in Center, a Crossing and of the System, Contractor shall perform all of the work, if any, which was deferred in connection with the Substantial Completion of such Crossing or System, and shall satisfy all of its other obligations under the Contract Documents, the Governmental Approvals and applicable Laws, including ensuring that all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested. Contractor shall proceed with the completion of punch list items and other remaining work necessary for final completion and Formal Acceptance. The Joint Board will issue a Certificate of Formal Acceptance as soon as reasonably practicable after it finds that all of the following conditions be been satisfied:

(a) The Joint Board has issued a Certificate of Substantial Completion and a Certificate of Punch List Acceptance for the relevant Operations Center, Walk-in Center, Crossing or the System;

(b) The Joint Board has received all Design Documents, As-Built Documents, surveys, maintenance manuals, electronic files, test data, Software licenses, and other deliverables required under the Contract Documents and a Source Code Escrow has been established for any Software Source Code, executables and other documents that are required to be deposited into a Source Code Escrow pursuant to Section 14.4.4 and such Source Code has been deposited;

(c) All special tools, equipment, furnishings, Hardware, Software and supplies purchased and/or used by Contractor as provided in the Contract Documents (provided, however, that prior to expiration of this Contract, Contractor may retain possession of any such items that may be used in connection with the Maintenance Work) shall have been delivered to the Joint Board free and clear of Liens;

(d) All personnel, construction supplies, equipment, waste materials, rubbish and temporary facilities of each Contractor-Related Entity shall have been removed from the Project Site, Contractor shall restore and repair all damage or injury to public or private property arising from the Work with respect to the relevant Operations Center, Walk-in Center, or Crossing and/or such removal to the satisfaction of the Joint Board, the Project Site shall be in good working order and condition;

(e) Contractor shall have delivered to the Joint Board a certification representing that there are no outstanding claims of Contractor or claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or railroads with respect to the Work on such Operations Center, Walk-in Center, Crossing or the System, other than any previously submitted unresolved claims of Contractor and any claims, Liens or stop notices of a Subcontractor, laborer, Utility Owner or railroad being contested by Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by the Joint Board and, with respect to all Subcontractor, laborer, Utility Owner and railroad claims, Liens and stop notices, shall include a representation by Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the

enforcement or collection of the same). For purposes of such certificate, the term “claim” shall include all matters or facts which may give rise to a claim;

(f) Contractor shall have satisfactorily completed all additional inspection and testing following any repairs, modifications and/or replacements required;

(g) The Punch List items for the relevant Operations Center, Walk-in Center, Crossing or the System shall have been completed to the satisfaction of the Joint Board, all of Contractor’s other obligations under the Contract Documents, the Governmental Approvals and applicable Laws, other than obligations which by their nature are required to be performed after such Final Acceptance, shall have been satisfied in full or waived in writing by the Joint Board;

(h) Contractor shall have completed the items set forth as conditions to Formal Acceptance of the Operations Center, Walk-in Center, Crossing or the System in the Scope of Work; and

(i) Contractor shall have finalized and closed out all Governmental Approvals for the Operations Center, Walk-in Center, Crossing or the System, as applicable.

(j) For System Formal Acceptance, the System shall have satisfied all of the conditions for “Final Acceptance” as defined in the RFP.

Formal Acceptance will not prevent the Joint Board from correcting any measurement, estimate, or certificate made before or after completion of the Work nor shall it prevent the Joint Board from recovering from Contractor, its Surety(ies) or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Contractor to fulfill the obligations under the Contract Documents. A waiver on the part of the Joint Board of any breach of any part of the Contract by Contractor shall not be held to be a waiver of any other or subsequent breach. The occurrence of Formal Acceptance of the Operations Center, a Walk-in Center, a Crossing or the System shall not relieve Contractor of any of its continuing obligations under the Contract Documents, including Warranty and maintenance obligations, or constitute any assumption of liability by the Joint Board.

9.4. End of Maintenance Term Acceptance

9.4.1. Requirements

In connection with the expiration of the Maintenance Term, Contractor shall provide written notice to the Joint Board when all of the following have occurred:

(a) Contractor has supplied and the Joint Board has accepted revised As-Built Documents reflecting any and all changes and modifications that may have occurred during the Maintenance Term;

(b) Contractor has supplied and the Joint Board has approved and accepted the complement of spare parts and tools required to properly maintain the System;

(c) Contractor has supplied and the Joint Board has approved and accepted maintenance manuals revised as necessary to reflect any and all changes and modifications that may have been made to the System since the manuals were originally provided;

(d) Contractor has supplied and the Joint Board has approved and accepted completed Maintenance Records and Maintenance Reports;

(e) All punch list items relating to the end of the Maintenance Term have been corrected by Contractor and approved and accepted by the Joint Board;

(f) A System Performance Audit and all other end of Maintenance Term requirements have been successfully completed to the Joint Board's satisfaction in accordance with RFP Section B.11.8.3;

(g) If not already located on the relevant States' property and if requested by the Joint Board, Contractor has delivered and installed, and the Joint Board has approved and accepted, all MOMS Software and Hardware at a location designated by the Joint Board; and

(h) Contractor has trained the Joint Board's designated maintenance staff to the Joint Board's satisfaction.

9.4.2. Certificate of End of Maintenance Term Acceptance

The Joint Board will issue a Certificate of End of Maintenance Term Acceptance as soon as reasonably practicable after: (a) the Joint Board finds that all conditions set forth in Section 9.4.1 have been satisfied; (b) the Joint Board finds that all Errors identified as prerequisites to End of Maintenance Term Acceptance have been corrected; (c) all inspection and testing as described in the Scope of Work shall have been completed; and (d) any other conditions precedent to End of Maintenance Term expressly set forth in this Contract have occurred.

9.5. Assignment of Causes of Action

Contractor shall assign to the Joint Board all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services, equipment, Hardware, Software or materials pursuant to the Contract Documents or any Subcontract. This assignment shall be made and become effective at the time the Joint Board tenders the applicable Final Payment of the Contract Price with respect to the Operations Center, a Walk-in Center, a Crossing or the System, as appropriate, to Contractor, without further acknowledgment by the Parties.

9.6. Final Completion and Final Payment

The Project shall be considered finally complete when Formal Acceptance of the entirety of the Project has been made in accordance with Section 9.3. Upon System

Formal Acceptance, the Joint Board shall certify final completion and process Contractor's final payment application in accordance with Section 6.

10.0 Suspensions, Termination for Convenience, and Default

10.1. Suspensions

10.1.1. Suspensions for Convenience

The Joint Board may, at any time and for any reason, by written notice, order the Contractor to suspend all or any part of the work required under the Contract Documents for the period of time that the Joint Board deems appropriate for the convenience of the Joint Board. The Contractor shall comply with any such written suspension order. The Contractor shall immediately recommence the work upon receipt of written notice from the Joint Board directing the Contractor to resume work. Contractor's sole remedy for such suspensions cumulatively totaling 30 days or less, shall be an extension of the Substantial Completion Deadline, but only to the extent that the suspensions delay the Critical Path and the Contractor has properly notified the Joint Board in writing. Adjustments of the Contract Price and the Substantial Completion Deadlines shall be available for any such suspensions cumulatively totaling more than 15 days, but only to the extent that such suspensions delay the Critical Path, the Contractor has properly notified the Joint Board in writing as required by Section 4.4.2.1 and such suspensions are not caused or attributable to the acts, omissions, negligence or misconduct of Contractor or any Contractor-Related Entity. Any adjustment to the Contract Price shall be limited to actual direct costs reasonably incurred and not any delay and disruption damages.

The Contractor will not be entitled to an adjustment in the Contract Price or Substantial Completion Deadline to the extent that the performance would have been suspended or delayed by any other cause, or for which an adjustment is provided under any other term of this Contract.

10.1.2. Suspensions for Cause

The Joint Board has the authority to suspend the work by written order, wholly or in part, for Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or the general public;
2. Comply with any Governmental Approval, governmental rule or otherwise carry out the requirements of the Contract Documents;
3. Carry out appropriate orders of the Joint Board;
4. Supply sufficient skilled workers or suitable materials or equipment;
5. Furnish or perform the work in such as way that the completed work will conform to the Contract Documents;
6. Comply with requirements for developing and implementing the designs and plans required by the Contract Documents;

7. Remove and replace unsuitable personnel as reasonably directed by the Joint Board;
 8. Provide proof of required insurance coverage and performance security;
- or
9. Comply with environmental requirements.

The Contractor shall comply with any such written suspension order. The Contractor shall recommence the work upon receipt of written notice from the Joint Board directing the Contractor to resume the work. Except as provided in Section 10.1.3 below, the Contractor shall not be entitled to an adjustment of the Contract Price or Contract Time for suspensions for cause. However, if the Joint Board orders suspension of work on one of the foregoing grounds but it is finally determined under the dispute resolution procedures of this Contract that such grounds did not exist, it shall be treated as a suspension for the Joint Board's convenience under Section 10.1.1.

The Joint Board's right to suspend the work will not give rise to any duty on the part of the Joint Board to exercise this right for the benefit of the Contractor or any other party.

10.1.3. Responsibilities of the Contractor during Suspension Periods

During periods that work is suspended, the Contractor shall continue to be responsible for the work and shall prevent damage or injury to the Project, provide for drainage and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. Additionally, the Contractor shall continue other work that has been or can be performed during the period that work is suspended. The Contractor shall be entitled to reimbursement for the cost of any temporary structures, signs or other physical facilities required to maintain the Project if such suspension is for the Joint Board's convenience.

10.2. Termination for Convenience

10.2.1. Contingent on Funding

This Contract is contingent upon the continued availability of appropriated funding. If the funding for the Project becomes unavailable for any reason, including the Indiana or Kentucky General Assembly's failure to appropriate the funding, by operation of law or as a result of a reduction in Federal funding, this Contract may be terminated, the Project may be cancelled, the timeline may be extended or the scope of the Project may be amended by the Joint Board, either in whole or in part. Project cancellation, extension, or amendment because of an interruption in the appropriated funding shall not be a default or breach of this Contract by the Joint Board nor may such cancellation, extension, or amendment give rise to any claim against the Joint Board except for payment as provided in this Section 10.

10.2.2. No Obligation to Issue NTP

The Contractor acknowledges and agrees that notwithstanding the date for issuance of the Notice to Proceed specified in Section 3.2 hereof, the Joint Board has no obligation to issue a Notice to Proceed hereunder, and further agrees that unless and until a

Notice to Proceed is issued, the Joint Board shall have no liability to the Contractor hereunder except any non-refundable portions of insurance or payment and performance bond premiums the Contractor was required to provide through the date of termination.

10.2.3. Notice of Termination or Partial Termination

The Joint Board may, at any time, terminate this Contract and the performance of the work by the Contractor in whole or in part, if the Joint Board determines, in its sole discretion, that a termination is in the Joint Board's best interest, regardless of the availability of funding. The Contractor waives any claim that a termination must be made in "good faith", or in the alternative, to the extent that "good faith" is required, acknowledges that any termination made in the Joint Board's general interest is in good faith.

The Joint Board shall terminate by delivering to Contractor a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this Contract shall not relieve any surety of its obligation for any claims arising out of the work performed.

10.2.4. Transition Plan

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

10.2.5. Contractor's Responsibilities after Receipt of Notice of Termination

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by the Joint Board, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 10:

1. Stop work as specified in the notice;
2. Notify all affected Subcontractors that this Contract is being terminated and that their subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by the Joint Board;

3. Place no further subcontracts or orders for materials, services or facilities except as necessary to complete the continued portion of the work, if any, or for mitigation of damages;

4. Unless instructed otherwise by the Joint Board, terminate all subcontracts to the extent they relate to the work terminated;

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

6. Subject to the prior written approval of the Joint Board, settle all outstanding liabilities and all termination settlement proposals arising from termination of subcontracts;

7. No later than 30 days from the effective date of termination, unless extended in writing by the Joint Board upon written request of the Contractor within this 30-day period, provide the Joint Board with an inventory list of all materials, supplies, equipment, Hardware and Software previously produced, purchased or ordered from Suppliers for use in the work and not yet used in the work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to the Joint Board, and such other information as the Joint Board may request; and transfer title (or, with respect to any third party licensed Software, assign to the Joint Board all of Contractor's and any Contractor-Related Entity's license to such Software, or obtain a direct license in the name of the Joint Board for such software on the same terms) and deliver to the Joint Board through bills of sale or other documents of title, assignment or license, as applicable, as directed by the Joint Board, (a) the work in process, completed work, supplies, equipment, any Hardware, Software and other material produced or acquired for the work terminated, and (b) the design documents, construction documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to the Joint Board if the work had been completed;

8. Complete performance in accordance with the Contract Documents of all work not terminated;

9. Take all action that may be necessary, or that the Joint Board may direct, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the work and (c) equipment, machinery, materials, Hardware, Software and property related to the Project that is in the possession of the Contractor and in which the Joint Board has or may acquire an interest;

10. As authorized by the Joint Board in writing, use its best efforts to sell at reasonable prices any property of the types referred to in Section 10.2.5(7); provided, however, that the Contractor (a) is not required to extend credit to any purchaser, and (b) may acquire the property under the conditions prescribed and at prices accepted by the Joint Board. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Joint Board under the Contract Documents or paid in any other manner directed by the Joint Board;

11. If requested by the Joint Board, withdraw from the portions of the Project Site designated by the Joint Board and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, the Contractor and any Subcontractor in the performance of the work as the Joint Board may direct; and

12. Take other reasonable actions directed by the Joint Board.

10.2.6. Responsibility after Notice of Termination

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

1. Contractor's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the Joint Board Representatives certify that those materials have been stored in the manner and at the locations directed by the Joint Board. The Joint Board shall make its assessment of whether the materials have been stored in the manner and at the locations as directed by the Joint Board, and provide such certification or notice of the reason that it will not make such certification, within 30 days of receipt of notice from the Contractor that the Contractor has stored the materials in the manner and at the locations directed by the Joint Board,

2. Contractor's responsibility for damage to materials purchased by the Joint Board subsequent to the issuance of the notice that this Contract is to be terminated shall terminate when title and delivery of those materials has been taken by the Joint Board.

10.2.7. Acceptance of Completed Work by the Joint Board

When the Joint Board Representative determines that the Contractor has completed the work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, the Joint Board Representatives will recommend that the Joint Board formally accept such work, and immediately upon and after the acceptance by the Joint Board, the Contractor will not be required to perform any further work thereon and shall be relieved of the contractual responsibilities for injury to persons or property which occurs after the formal acceptance of such work by the Joint Board.

10.2.8. Settlement Proposal

After receipt of a notice of termination for convenience or notice of partial termination for convenience, the Contractor shall submit a final termination settlement proposal to the

Joint Board in the form and with the certification prescribed by the Joint Board. The Contractor shall submit the proposal no later than 120 days from the effective date of termination unless the Contractor has requested a time extension in writing within such 120-day period and the Joint Board has agreed in writing to allow such an extension. Contractor's termination settlement proposal shall then be reviewed by the Joint Board and acted upon, returned with comments, or rejected. If the Contractor fails to submit the proposal within the time allowed, the Joint Board may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the Contractor the amount so determined and Contractor shall be bound by the Joint Board's determination.

10.2.9. Amount of Negotiated Termination Settlement

The Contractor and the Joint Board may agree, as provided in Section 10.2.8, upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work for convenience pursuant to this Section 10.2.

Such negotiated settlement shall include a reasonable allowance for profit solely on work which has been completed as of the termination date and subsequently inspected and accepted by the Joint Board. The Contractor shall not be entitled to overhead or profit on work not performed. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and the Contract Price of work not terminated. Upon determination of the settlement amount this Contract will be amended accordingly, and the Contractor will be paid the agreed amount as described in this Section 10.2.9. Nothing in Section 10.2.10, prescribing the amount to be paid to the Contractor in the event that the Contractor and the Joint Board fail to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section 10.2, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Section 10.2.9. The Joint Board's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed work, relieve the Contractor from its obligations with respect thereto, including warranties, or affect the rights of the Joint Board or the Contractor's obligations under the performance bond and payment bond as to such completed or nonterminated work.

10.2.10. Determination of Settlement Amount if Negotiations Fail

If the Contractor and the Joint Board fail to agree upon the whole amount to be paid the Contractor by reason of the termination of work for convenience pursuant to this Section 10, the amount payable (exclusive of interest charges) shall be determined by the Joint Board in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 10.2.8 and 10.2.9:

1. The Joint Board will pay the Contractor the sum of the following amounts for work performed prior to the date of the termination for convenience or partial termination for convenience as set forth in the Notice of Termination for Convenience or Notice of Partial Termination for Convenience, as the case may be:

(a) All amounts due for work completed by the Contractor and accepted by the Joint Board on the basis of agreed prices for the activities completed as defined in the Schedule of Values approved for the Project, plus reasonable costs and jobsite overhead for and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to the Joint Board's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work.

Deductions will also be made, when this Contract is terminated as the result of a Force Majeure Event, for the cost of materials damaged by the "occurrence." When, in the opinion of the Joint Board Representative, the cost of a Contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed. No profit or overhead shall be allowed for unperformed portions of the work.

(b) The cost of settling and paying claims arising out of the timely termination of work under subcontracts, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of termination for Convenience or Notice of Partial Termination for Convenience of work under the Contract, which amounts shall be included in the cost on account of which payment is made under clause (a) above;

(c) The reasonable out-of-pocket cost (including reasonable jobsite overhead) of the preservation and protection of property incurred pursuant to Section 10.2.9 and any other reasonable out-of-pocket cost (including jobsite overhead) incidental to termination of work under this Contract, including the reasonable cost to the Contractor of handling material returned to the vendor, delivered to the Joint Board or otherwise disposed of as directed by the Joint Board, and including a reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of this Contract.

2. The Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the work performed (determined as provided in Section 10.2.10(1)) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon total or partial termination of this Contract. The total amount to be paid to the Contractor, exclusive of costs described in Sections 10.2.10(1)(b) and (c), may not exceed the total Contract Price less the amount of payments previously made.

Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to the Joint Board by the Contractor (and paid by KYTC and IFA as provided herein), such refund shall be paid in equal amounts directly to KYTC and IFA as directed by the Joint Board, or otherwise credited to the Joint Board as directed by the Joint Board. Except for normal spoilage, and except to the extent that the Joint Board will have otherwise

expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Section 10.2.10(1), the fair value, as determined by the Joint Board, of equipment, machinery, materials and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Joint Board, or sold pursuant to Section 10.2.5.10. Upon determination of the amount of the termination payment, this Contract shall be amended to reflect the agreed termination payment, the Contractor shall be paid the agreed amount, and the Contract Price shall be reduced to reflect the reduced scope of work.

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

4. The amount otherwise due the Contractor under this Section 10.2 shall be reduced by (a) the amount of any claim which the Joint Board may have against any Contractor-Related Entity in connection with the Contract, (b) the agreed price for, or the proceeds of sale, of property, materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Section 10.2, and not otherwise recovered by or credited to the Joint Board, (c) all unliquidated advance or other payments made to or on behalf of the Contractor applicable to the terminated portion of the work or Contract, (d) amounts that the Joint Board deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, liens and stop notices relating to the Project, (e) the cost of repairing any Nonconforming Work and (f) any amounts due or payable by the Contractor to the Joint Board.

5. The Joint Board may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract, whenever in the opinion of the Joint Board the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 10.2, such excess shall be payable by the Contractor to the Joint Board upon demand together with interest as provided in this Contract.

6. Provisions shall be included in each subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 10.2.

7. Each Major Subcontract shall provide that, in the event of a termination for convenience by the Joint Board, the Subcontractor will not be entitled to any anticipatory or unearned profit on work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

10.2.11. No Waiver; Release

Anything contained in the Contract Documents to the contrary notwithstanding, a termination under this Section 10.2 shall not waive any right or claim to damages which the Joint Board may have and the Joint Board may pursue any cause of action which it may have by law, in equity or under the Contract Documents.

The Joint Board's payment to the Contractor of the amounts required under this Section 10.2 shall constitute full and final satisfaction of, and upon payment the Joint Board shall be forever released and discharged from, any and all claims, causes of action, suits, demands and losses, known or unknown, suspected or unsuspected, that the Contractor may have against the Joint Board arising out of or relating to the terminated work. Upon such payment, the Contractor shall execute and deliver to the Joint Board all such releases and discharges as the Joint Board may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

Under no circumstances shall Contractor be entitled to anticipatory or unearned profits or consequential, special, indirect or other damages as a result of a termination or partial termination under this Section 10. The payment to Contractor determined in accordance with this Section 10 constitutes Contractor's exclusive remedy for a termination hereunder.

10.2.12. Dispute Resolution

The failure of the Parties to agree on amounts due under this Section 10.2 shall be a dispute to be resolved in accordance with Section 13.

10.3. Default

10.3.1. Events of Default By the Contractor

The Contractor shall be in breach under this Contract upon the occurrence of any one or more of the following events or conditions:

1. The Contractor fails to promptly begin the work under the Contract Documents following issuance of a Notice to Proceed authorizing such work;
2. The Contractor fails to perform the work with sufficient resources to ensure the prompt completion thereof;
3. The Contractor fails to perform the work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming Work or unacceptable work, fails to remove and replace workers as directed by the Joint Board, fails to achieve Substantial Completion Acceptance of the Operations Center, a Walk-in Center, a Crossing or the System within at least 30 days following the relevant Substantial Completion Acceptance Deadline, or to achieve Formal Acceptance within at least 30 days following the relevant Formal Acceptance Completion Deadline;
4. The Contractor discontinues or suspends, ceases, stops or abandons the prosecution of the work, as a whole or for an individual Crossing, or fails to continuously

and diligently prosecute the work as a whole or for the Operations Center, a Walk-in Center, or an individual Crossing (exclusive of work stoppage due to (i) termination by the Joint Board, (ii) compliance with stoppage requirements due to contaminated materials, or (iii) a Force Majeure Event or suspension by the Joint Board;

5. The Contractor fails to resume performance of work which has been suspended or stopped, within a reasonable time after receipt of notice from the Joint Board to do so or (if applicable) after cessation of the event preventing performance;

6. The Contractor materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, warranty, obligation, term or condition required to be observed or performed by the Contractor under the Contract Documents;

7. The Contractor fails to obtain, provide and maintain in full force and effect any insurance, bonds or guarantees as and when required under this Contract for the benefit of the relevant parties, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same;

8. The Contractor fails to obtain, provide and maintain in full force and effect the required payment bond and performance bond as and when required under this Contract;

9. The Contractor makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of the Contract Documents or any right or interest therein;

10. Subject to the Joint Board paying the Contractor pursuant to Section 6, the Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable Law, fails to comply with any law or Governmental Approvals; or fails reasonably to comply with the instructions of the Joint Board consistent with the Contract Documents;

11. The Contractor 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 or the filing of an appeal with respect to such judgment or order shall be deemed an effective stay);

12. The Contractor does not comply with public safety and public convenience requirements of this Contract or fails to correct any safety hazards promptly;

13. The Contractor or any Contractor-Related Entity shall have become insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

14. Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Contractor or any major Contractor-related entity and not dismissed within 60 days;

15. Any representation or warranty made by the Contractor in the Contract Documents or in any certificate, schedule, instrument or other document delivered as

part of the proposal or pursuant to the Contract Documents shall have been false or materially misleading when made or becomes inaccurate in any material respect during the contract term;

16. The Contractor is a party to fraud in any way relating to the Project; or

17. Any final judgment is issued holding Contractor or any Guarantor liable for an amount in excess of \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act; or

18. Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any of Contractor's partners, members or joint venturers, any material Subcontractors, or any Surety, Guarantor or letter of credit Bank; or

19. A Persistent Breach occurs; or

20. Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is not longer in full force and effect; or

21. The Contractor otherwise materially fails to comply with the terms of the Contract Documents.

10.3.2. Right to Cure

Except for a breach declared under Section 10.1.3(20), the Joint Board agrees to allow the Contractor and surety 15 days written notice and opportunity to cure any breach before declaring an Event of Default, provided that the notice and cure period shall only be three days for a breach under Sections 10.3.1(7), 10.3.1(8) and 10.3.1(12) and that there shall be no such notice and opportunity to cure for any breach which by its nature cannot be cured. 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 the Joint Board, the Joint Board agrees not to declare an Event of Default provided that the Contractor commences such cure within such 15-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed 60 days in total. Notwithstanding the foregoing, if the Joint Board believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, the Joint Board may, without notice and without awaiting lapse of any cure period, rectify the condition at Contractor's cost, and so long as the Joint Board undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the Joint Board to liability to the Contractor, except in the case of the Joint Board's gross negligence, recklessness, willful misconduct or bad faith, and shall not entitle the Contractor to any other remedy, it being acknowledged that the Joint Board has a paramount public interest in providing

and maintaining safe public use of and access to the Project. The Joint Board's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

With respect to a breach declared under Sections 10.3.1(19), the Joint Board may declare an anticipatory breach under Section 10.3.1(2), (3) or (15), in which case the provisions of Section 10.3.3 shall apply.

10.3.3. Rights of the Joint Board

If an Event of Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under this Contract or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the Payment Bond, Performance Bond, Maintenance Payment Bond, Maintenance Performance Bond, Warranty Bond and/or other performance security, the Joint Board shall have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Contractor from any obligations, and the Contractor shall have the following obligations (as applicable):

1. The Joint Board may order the Contractor to suspend or discontinue the work or any portion of the work;
2. The Joint Board may terminate this Contract or a portion thereof, including the Contractor's rights of entry upon, possession, control, operation and maintenance of the Project, in which case, the provisions of Section 10.2 shall apply;
3. If and as directed by the Joint Board, the Contractor shall withdraw from the Project Site; and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Contractor-Related Entity in the performance of the work;
4. The Contractor shall deliver to the Joint Board possession of any or all of Contractor's facilities located on the Project 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, Hardware, Software, electronic files and other documents, and facilities related to the Project that the Joint Board deems necessary for completion of the work;
5. If the Joint Board requests the Contractor to assign to the Joint Board specific Subcontracts, the Contractor shall confirm the assignment of those Subcontracts to the Joint Board and shall terminate, at its cost, all other Subcontracts;
6. The Joint Board may deduct from any amounts payable by the Joint Board to the Contractor such amounts payable by the Contractor to the Joint Board, including reimbursements owing, Liquidated Damages, an amount the Joint Board deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, or Utility Owners against Contractor or against the Joint Board, the amount of any Losses that have accrued, the cost to complete or remediate uncompleted work or Nonconforming Work or other amounts or damages that the Joint

Board has determined are or may be payable to the Joint Board under the Contract Documents, and the Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction;

7. The Joint Board shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;

8. The Joint Board, without incurring any liability to the Contractor, shall have the rights (i) to take the performance of all or a portion of the work from the Contractor (either with or without the use of Contractor's materials, equipment, tools and instruments) and enter into an agreement with another entity for the completion of such work; or (ii) to use such other methods, as in the opinion of the Joint Board, will be required for the completion of the Project; and/or

9. If the Joint Board exercises any right to perform any obligations of the Contractor, in the exercise of such right the Joint Board may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as the Joint Board deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment, Hardware and Software 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.

10. The Joint Board shall also have the right, but not the obligation, to require the Contractor to comply with the obligations in Section 10.2.5.

10.3.4. Liability of the Contractor/Occurrence of an Event of Default

If an Event of Default has occurred, the Contractor and surety and each Guarantor shall be jointly and severally liable to the Joint Board (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages that have already been paid hereunder) for all costs reasonably incurred by the Joint Board or any party acting on the Joint Board's behalf in completing the work or having the work completed by another entity (including any re-procurement costs, throw away costs for unused portions of the completed work, increased financing costs and increased costs payable to the Design-Build contractor and Developer). The preceding sentence shall expressly include all Warranty Work, Maintenance Work and work to be performed during the Warranty Period and Maintenance Term. Upon the occurrence of an event of default, the Joint Board shall be entitled to withhold all or any portion of further payments to the Contractor until such time as the Joint Board is able to determine how much (if any) remains owing to the Contractor. Promptly upon such determination, the Joint Board shall notify the Contractor in writing of the amount, if any, that the Contractor shall pay the Joint Board or that the Joint Board shall pay the Contractor with respect thereto. All costs and charges incurred by the Joint Board, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the work under the Contract Documents, will be deducted from any moneys due or which may become due to the Contractor. The Joint Board shall notify

the Contractor promptly of any determination by the Joint Board to make such deduction. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and its surety(ies) shall be liable and shall pay to the Joint Board the amount of such excess. If the Surety or Guarantor fails to pay such amount immediately upon the Joint Board's demand, then the Joint Board shall be entitled to collect interest from the Surety or Guarantor on the amounts the Joint Board is required to pay in excess of the remaining balance of the Contract Price. The interest rate which the Surety and each Guarantor shall pay shall be the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law. The interest rate shall accrue on all amounts the Joint Board has had to pay excess of the remaining balance of the Contract Price from the date of the Joint Board payment.

10.3.5. Assurance of Future Performance

It is recognized that if a breach or Event of Default occurs, such event could impair or frustrate Contractor's performance of the work.

Accordingly, upon the occurrence of any such event, the Joint Board is entitled to request the Contractor, or its successor in interest, to provide adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 days of the Joint Board's delivery of the request shall entitle the Joint Board to terminate the Contract. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Joint Board shall be entitled to proceed with the work with its own forces or with other contractors on a Force Account or other appropriate basis, the cost of which will be credited against and deducted from the Joint Board's payment obligations hereunder. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract, the Payment Bond, the Performance Bond, the Maintenance Bonds and the Warranty Bonds.

10.3.6. Alternative to Terminating the Contract and Completing the work

In lieu of the provisions of this Section 10.3 for terminating this Contract and completing the work, the Joint Board may pay the Contractor for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Contract. No claim under this provision will be allowed the Contractor for prospective profits on, or any other compensation relating to, work uncompleted by the Contractor.

10.3.7. Termination Deemed to Constitute a Termination for Convenience

If this Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 10.2.

10.3.8. Damages Resulting From Contractor's Breach or Failure to Perform

If the Joint Board suffers Losses or other damages as a result of Contractor's breach or failure to perform an obligation under the Contract Documents, then the Joint Board shall be entitled to recovery of such Losses and other damages from the Contractor regardless of whether the breach or failure that gives rise to the Losses and other damages ripens into an Event of Default.

10.3.9. Cumulative Remedies

The exercise or beginning of the exercise by the Joint Board of any one or more rights or remedies under this Section 10.3 shall not preclude the simultaneous or later exercise by the Joint Board of any or all other rights or remedies, each of which shall be cumulative.

10.3.10. Continued Liability of the Contractor and Surety

The Contractor and surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by the Contractor hereunder or by the Joint Board's declaration of an Event of Default, or by actions taken by the Joint Board under this Section 10.3.

10.3.11. Contractor's Right to Stop Work If Undisputed Payment Is Not Made

The Contractor shall have the right to stop work if the Joint Board fails to make an undisputed payment due under this Contract within 45 days after receipt of notice of nonpayment. Any such work stoppage shall be considered a suspension. The Contractor shall not have the right to terminate this Contract for default as the result of any failure by the Joint Board to make an undisputed payment due hereunder, but the Contractor shall have the right to declare a termination for convenience if such nonpayment continues for more than 150 days after the Joint Board's receipt of written notice of nonpayment from Contractor.

10.3.12. Notice and Opportunity to Cure Other Types of the Joint Board Breaches

In the event of any breach of this Contract by the Joint Board other than a failure to make payments to the Contractor, the Contractor shall provide to the Joint Board a written notice describing the breach and the opportunity to cure such breach. The Joint Board shall be entitled to 60 days to cure any such breach from the date it receives the notice; provided that if such breach is capable of cure but by its nature cannot be cured within 60 days, the Joint Board shall have a reasonable period of time as may be reasonably necessary under the circumstances to cure the breach so long as the Joint Board commences such cure within such 60-day period and thereafter diligently prosecutes such cure to completion. The Contractor shall have no right to exercise any remedies to which it may be entitled at law or in equity until the foregoing notice is delivered and the foregoing cure period lapses without cure of the breach.

10.4. Anticipatory Breach

Contractor recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous breaches or failures to perform by Contractor, even if individual

instances are not material or are eventually cured, will undermine the confidence and trust essential to the success of this Contract and will have a material, cumulative adverse impact on the value of this Contract to the Joint Board. Contractor acknowledges and agrees that the measures for determining the existence of such a pattern or practice described in the definition of Persistent Breach are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

Accordingly, in the event the Joint Board issues a notice under Section 10.3.2 with respect to a breach under Section 10.3.1(19) for a Persistent Breach, the Joint Board shall have the right to declare an anticipatory breach of this Contract by Contractor. So long as the circumstances under the definition of Persistent Breach have occurred, any such declaration of anticipatory breach shall be valid, conclusive and binding, and such breach shall be deemed material even if such items comprising the Persistent Breach shall have been cured.

Contractor shall have a reasonable period of time, in no event to exceed the time period for each stated below (measured from the date the Joint Board issues notice of anticipatory breach), to fully and completely deliver all, and not less than all, of the following assurances of performance, which Contractor agrees and acknowledges are (i) the minimum necessary to tender adequate assurance of performance and (ii) reasonable, fair and appropriate to bring to a halt the pattern and practice of continuing, repeated and numerous breaches and failure to perform:

(a) Full and complete cure of all outstanding Contractor defaults, to be completed no later than 60 Days (provided, however, that the foregoing shall not modify or limit the Joint Board's rights to declare an Event of Default or exercise rights and remedies with respect thereto or to other breaches under Section 10.3 that have no or a shorter cure period than 60 Days);

(b) Any new Key Personnel, to the extent required by the Joint Board, each replacement to be acceptable to the Joint Board in its sole discretion, to be completed no later than 60 Days;

(c) A revised and restated Quality Management Plan meeting best industry standards and practices, in form and content acceptable to the Joint Board in its good faith discretion, to be completed and delivered no later than 60 Days. As part of the revised plans, the Joint Board may, in its sole discretion, increase the level of the Joint Board involvement and oversight, at the sole cost and expense of Contractor and such involvement shall not be cause for any relief or rights on the part of Contractor under the Contract Documents or otherwise; and

(d) Replacement of each Subcontractor that the Joint Board reasonably determines is or was a material source of any continuing, repetitive or chronic breach or failure to perform (including any Subcontractor with responsibility for quality assurance or quality control), with a substitute Subcontractor acceptable to the Joint Board in its good faith discretion, to be completed no later than 60 Days; and

If for any reason Contractor fails to complete any element of the assurances of performance described in this Section 10.4 within the applicable time period, the same shall constitute an uncured material Event of Default. Thereupon, the Joint Board, without further notice and cure period, shall be able to exercise all rights and remedies under Section 10.3 and otherwise under this Contract, at law or in equity.

Nothing contained in this Section 10.4 shall modify, alter, discharge or release Contractor from any obligations to pay Liquidated Damages or other compensation under this Contract

11.0 Indemnification

11.1. Indemnifications by the Contractor

11.1.1. General Provisions

Subject to Section 11.1.3, the Contractor shall release, defend, indemnify and hold harmless the Commonwealth of Kentucky, KPTIA, KYTC, the Louisville/Jefferson County Metro Government, the State of Indiana, Clark County, Indiana, INDOT, Indiana Finance Authority, the Bridges Authority, the Tolling Body and the Joint Board, and all their respective officers, agents, consultants, and employees, their successors and assigns, and their respective board members, council members, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, Losses, costs, penalties, fines, damages, losses, liabilities and response costs, including any injury to or death of persons or damage to or loss of property, and including penalties, fines, attorneys', accountants' and expert witness fees and costs incurred in connection with the enforcement of this indemnity, arising out of, relating to or resulting from the following, (each an "Indemnified Claim"):

1. The breach or alleged breach of any of the Contract Documents by any Contractor-Related Entity; and/or
2. The failure or alleged failure by any Contractor-Related Entity to comply with the Governmental Approvals, any applicable environmental laws or other governmental rules (including governmental rules regarding hazardous materials management); and/or
3. Any actual or 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, Software, designs, information, or other items furnished or communicated to the Joint Board or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement directly resulting from a method, process or design specifically required by the Contract Documents and by the Joint Board's failure to comply with specific written instructions regarding use provided to the Joint Board by the Contractor, and further provided that if infringement can be avoided by modification to the allegedly infringing article, the Joint Board agrees to allow such modification, at Contractor's sole cost and expense, unless

the form, fit or function of the allegedly infringing article or the System is, in the Joint Board's sole determination, adversely affected; and/or

4. Actual or alleged act, error, omission, negligence, breach or misconduct of any Contractor-related entity in or associated with performance of the work; and/or

5. Any and all claims by any governmental entity or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of the Contractor 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 Contractor-related entity; and/or

6. Any and all stop notices and/or liens filed in connection with the work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or lien and any other liability to Subcontractors for failure to pay sums due for their work or services, provided that the Joint Board is not in default in undisputed payments owing to Contractor with respect to such work; and/or

7. Any actual or alleged spill or release or threatened spill or release of a Hazardous Material (i) which was brought onto the Site by any Contractor-Related Entity, or (ii) attributable to the negligence, willful misconduct, or breach of contract, Governmental Approval or governmental rule by any Contractor-Related Entity; and/or

8. Any claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors, or failure of any Contractor-Related Entity to cooperate reasonably with other contractors in accordance therewith; and/or

9. Any actual or alleged Contractor-Related Entity's breach of or failure to perform an obligation that the Joint Board owes to a third person, including governmental entities, under law or under any agreement between the Joint Board and a third person, where the Joint Board has delegated performance of the obligation to the Contractor under the Contract Documents or (ii) the acts or omissions of any Contractor-Related Entity which render the Joint Board unable to perform or abide by an obligation that the Joint Board owes to a third person, including governmental entities, under any agreement between the Joint Board and a third person, where the agreement was expressly disclosed to the Contractor; and/or

10. Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Contractor-Related Entity to comply with good industry practices, requirements of the Contract Documents, project management plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Contractor-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any Contractor-Related Entity.

11.1.2. Errors in Owner Design Documents and/or Reference Documents

Subject to Section 11.1.3, Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Losses, claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs

penalties, fines, damages, losses, liabilities and response costs, including any injury to or death of persons or damage to or loss of property, and including penalties, fines, attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Project and/or System design, installation, integration or construction, regardless of whether such errors, omissions, inconsistencies or defects were also included in any Joint Board design documents or reference documents. Contractor hereby acknowledges and agrees that it is Contractor's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Contractor's performance of such obligation. Contractor further agrees that any certificate, review and/or approval by the Joint Board and/or others hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 11.

11.1.3. Restrictions on Indemnities

The following restriction shall apply to the indemnities set forth in Sections 11.1.1 and 11.1.2: With respect to any loss, damage or cost which is not of the type covered by insurance to be provided hereunder, Contractor's indemnity obligation shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the active negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

Such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Contractor for the active negligence of the Joint Board, or to relieve the Joint Board of liability for such active negligence.

11.1.4. Not Limited by Workers' Compensation, Disability, or Employee Benefits Laws

In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 11.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

11.2. Defense and Indemnification Procedures

11.2.1. The Joint Board's Notice of Indemnified Claim

If any of the Indemnified Parties receives notice of a claim, action, suit or other matter covered under Section 11.1 or otherwise has actual knowledge of an Indemnified Claim that it believes is within the scope of the indemnities under Section 11.1, the Joint Board shall by writing as soon as practicable after receipt of the Indemnified Claim: (a) inform the Contractor of the Indemnified Claim, (b) send to the Contractor a copy of all written materials the Joint Board has received asserting such Indemnified Claim, and (c) notify

the Contractor that should no insurer accept defense of the Indemnified Claim, the Indemnified Party will conduct its own defense unless the Contractor accepts the tender of the Indemnified Claim in accordance with Section 11.2.3. As soon as practicable after the Contractor receives notice of an Indemnified Claim or otherwise has actual knowledge of an Indemnified Claim, it shall tender the Indemnified Claim in writing to the insurers under all potentially applicable insurance policies. The Joint Board and other Indemnified Parties also shall have the right to tender such Indemnified Claims to such insurers.

11.2.2. Cooperation in the Insured Defense

If the insurer under any applicable insurance policy accepts the tender of defense, of any claim, action or suit or other matter covered under Section 11.1 or otherwise covered under such policy, the Indemnified Party and the Contractor shall cooperate in the defense as required by the insurance policy.

11.2.3. Rejection of Defense By Insurer/Reservation of Rights by Insurer

If the insurer(s) under potentially applicable insurance policy(ies) refuses to provide defense of any claim, action, suit or other matter covered under Section 11.1 or otherwise, then Section 11.2.4 shall apply. If the insurer(s) under potentially applicable insurance policy(ies), agree(s) to provide a defense of any claim, action, suit or other matter covered under Section 11.1 or otherwise, or that the insurer(s) accept(s) the defense subject to a "reservation of rights," Section 11.2.2 shall apply until such time that the insurer(s) may subsequently deny further defense coverage for such claim, action, suit or other matter, whereupon Section 11.2.4 shall apply.

11.2.4. Tender of Defense to the Contractor

If the defense is tendered to the Contractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that the Contractor:

1. Accepts the tender of defense and confirms that the Indemnified Claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;
2. Accepts the tender of defense but with a "reservation of rights" in whole or in part; or
3. Rejects the tender of defense based on a determination that it is not required to indemnify against the Indemnified Claim under the terms of this Contract.

11.2.5. Acceptance of Tender/Control of Defense by the Contractor

If the Contractor accepts the tender of defense under Section 10.2.4(1), the Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and the Contractor shall otherwise control the defense of such Indemnified Claim, including settlement, and bear the fees and costs of defending and settling such Indemnified Claim. During such defense:

1. The Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

2. The Indemnified Party shall fully cooperate in said defense, provide to the Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and the Contractor concerning such defense.

11.2.6. Control of Defense by Indemnified Party

If the Contractor responds to the tender of defense as specified in Section 11.2.4(2) or 11.2.4(3), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such Indemnified Claim, including settlement.

11.2.7. Control of Defense if Conflict

The Indemnified Party may assume its own defense by delivering to the Contractor written notice of such election and the reasons therefore, if the Indemnified Party, at the time it gives notice of the Indemnified Claim or at any time thereafter, reasonably determines that:

1. A conflict exists between it and the Contractor which prevents or potentially prevents the Contractor from presenting a full and effective defense;

2. The Contractor is otherwise not providing an effective defense in connection with the Indemnified Claim; or

3. The Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

11.2.8. Reimbursement of Expenses

If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of an Indemnified Claim for which it is entitled to indemnification, the Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

1. In the case of a defense conducted under Section 11.2.4(1), it shall have the right to settle or compromise the Indemnified Claim with Contractor's prior written consent, which shall not be unreasonably withheld or delayed;

2. In the case of a defense conducted under Section 11.2.4(2), it shall have the right to settle or compromise the Indemnified Claim with Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to the Contractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by the Contractor; and

3. In the case of a defense conducted under Section 11.2.4(3), it shall have the right to settle or compromise the Indemnified Claim without Contractor's prior

consent (but with prior notice to the Contractor) and without prejudice to its rights to be indemnified by the Contractor.

11.2.9. Management of Claim Involving Shared Responsibility

The Parties acknowledge that while Section 11.1 contemplates that the Contractor will have responsibility for certain Indemnified Claims and liabilities arising out of its obligations to indemnify, defend and hold harmless, circumstances may arise in which there is no insurance coverage and in which there may be shared liability of the Parties with respect to such Indemnified Claims and liabilities. In such case, where either Party believes an Indemnified Claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the Indemnified Claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of this Section 11.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the Indemnified Claim.

11.2.10. Additional Factors Regarding Defense of Suits

In determining responsibilities and obligations for defending suits pursuant to this Section 11.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the Indemnified Claim.

11.3. No Effect on Other Rights

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

No rights of the Joint Board described in Section 11.1.1 above, no exercise or failure to exercise such rights, and no certificates or statements by the Joint Board regarding completion or acceptance, shall:

- (a) relieve Contractor of its responsibility for the selection and the competent performance of all Contractor-Related Entities;
- (b) relieve Contractor of any of its obligations or liabilities under the Contract Documents;
- (c) be deemed or construed to waive any of the Joint Board's rights and remedies under the Contract Documents, applicable Law or in equity; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by the Joint Board.

12.0 Insurance and Bonding Requirements

12.1. Insurance

12.1.1. General Insurance Requirements

Without limiting Contractor's indemnification of the Indemnified Parties, and prior to commencement of Work, Contractor shall obtain, at its own expense, and continuously maintain in full force and effect, the insurance coverages specified in this Section 12.1. Coverage shall be maintained through Completion of the Work, or such longer or shorter time as may be specifically provided in this Section 12.1.

All insurance required hereunder shall be procured from insurance companies with an A.M. Best and Company rating level of A-: VI or better and authorized or approved to do business in the States of Kentucky and Indiana, or as otherwise approved by KYTC. All limits of insurance set forth below are in U.S. dollars. Each policy of insurance of the type and amounts described below shall in a form satisfactory to KYTC.

12.1.2. Workers Compensation and Employer's Liability Insurance

During all phases of the Project, Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers' compensation statutory benefits and employer's liability in conformance with the laws of the States of Kentucky and Indiana. Employer's liability limits shall be no less than \$1 million each accident, each employee, and policy limit, if scheduled under the excess or umbrella liability policies to reach a total of \$25,000,000. The workers' compensation policies shall provide the following:

1. A waiver of subrogation in favor of the Indemnified parties;
2. A provision extending coverage to all states operations;
3. A voluntary compensation endorsement;
4. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act, as appropriate, by adding a Longshore and Harbor Workers' Compensation Act coverage endorsement (WC 00 01 06);
5. Coverage for liability under Title 46 of the United States Code § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and
6. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

12.1.3. Commercial General Liability Insurance

Contractor shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury and advertising injury.

Coverage shall be written on an occurrence form that shall provide coverage at least as broad as the coverage provided by Insurance Services Office (ISO) form CG 00 01.

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

The commercial general liability insurance coverage shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute either through continuous maintenance of completed operations coverage in Contractor's corporate insurance program, including an endorsement providing completed operations coverage for additional insureds, or by purchase of extended completed operations coverage.

12.1.4. Automobile Liability Insurance

Contractor shall obtain and maintain and shall require all subcontractors of all tiers to obtain and maintain a business auto liability policy or policies. Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance, or use of all vehicles connected with performance of the Work, including loading and unloading. Contractor auto liability policies shall cover "any auto" (symbol 1) or shall be specifically endorsed to include liability coverage on an excess basis for vehicles owned or operated by Contractor's subcontractors. Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the Indemnified Parties. For any contractor of any tier, including Contractor, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles, pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) with a sublimit of no less than \$1,000,000.

Contractor's automobile liability coverage shall have a combined single limit per policy period of not less than \$25,000,000 and may be scheduled under the excess or umbrella liability policies to achieve the desired limit. Excess or umbrella policies shall cover "any auto" (symbol 1) or shall be specifically endorsed to include liability coverage on an excess basis for vehicles owned or operated by Contractor's subcontractors.

12.1.5. Umbrella Or Excess Liability Insurance

Contractor shall obtain and maintain an umbrella or excess liability insurance policy to provide a total liability limits of not less than \$25,000,000, that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above including commercial general liability and employer's liability in excess of the amounts set forth above.

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

1. Policies shall contain a drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;
2. Policies shall provide coverage at least as broad as found in the underlying primary policies; and
3. There shall be no “contractors limitation” endorsements that have not been reviewed and approved by the Indemnified Parties or their representatives.

The Indemnified Parties shall be included as insureds on the excess policy including coverage extension to all insureds for completed operations.

12.1.6. Pollution Liability Insurance

If the Work includes excavation, utility relocation, or similar types of construction activity, Contractor shall obtain and maintain contractor’s pollution liability (CPL) insurance with a total limit of liability of no less than \$5,000,000 per loss and \$5,000,000 in the aggregate.

The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. The CPL shall provide for a minimum 3-year extended reporting period upon completion of the Work.

The CPL policy shall include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other contamination to the extent required by environmental laws caused by pollution conditions resulting from covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by construction operations. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway.

Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials.

The Indemnified Parties shall also be insureds. The policy shall not contain any provision or exclusion (including any so-called “insured versus insured” exclusion or “cross-liability” exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

12.1.7. Professional Liability Insurance

During all phases of the Project, Contractor shall obtain and maintain or cause others, as appropriate, to obtain and maintain professional liability insurance for design professional services covering professional services performed in connection with this Agreement, with limits not less than \$5,000,000 per claim and in the aggregate.

No self-insured retention for Contractor shall exceed \$250,000 without prior written approval from KYTC, in its good faith discretion. Coverage shall apply specifically to professional activities performed under the Contract Documents. The policy(ies) shall have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which the RFP was issued.

Contractor agrees to maintain this required coverage for a period of no less than three years after Substantial Completion or to purchase an extended reporting period for no less than three years after Substantial Completion.

12.1.8. Railroad Protective Liability Insurance

Contractor shall provide any coverage as may be required by any railroad as a condition of the railroad's consent for entry into railroad facilities or property. Such policy shall be effective during the period any Work is being performed within 50 feet of any railroad right of way.

12.1.9. Watercraft Liability Insurance

If appropriate, Contractor shall provide, or cause to be provided, liability insurance covering the ownership, use, maintenance, loading or unloading of watercraft related to the performance of Contractor's Work or any other operations contemplated under this Agreement. Policies shall provide a limit of not less than \$10,000,000 per occurrence or higher limits as may be required by KYTC, in all cases where any watercraft is used on the Project that is owned, leased, hired, or chartered by any Contractor-Related Entity. Coverage may be provided through any combination of commercial general liability, marine general liability, or protection and indemnity insurance provided that all watercraft operation is covered, regardless of watercraft size. Such coverage may be arranged in any combination of primary and excess policies, all of which shall include the Indemnified Parties as insureds and shall explicitly waive subrogation against the Indemnified Parties.

12.1.10. Cyber Liability Insurance

"Cyber liability" insurance, including privacy liability coverage and business income coverage, with limits of not less than \$10,000,000 per incident and in the aggregate. If written on a "claims made" basis, policy shall include prior acts at least as far in the past as the effective date of this agreement. Coverage shall apply to both electronic and physical breaches and to employee data as well as customer data. Information in the care, custody, or control of vendors shall be covered, including coverage for "cloud" systems or for data transferred by a third party. Coverage shall apply to accidental

losses as well as breaches perpetrated by outsiders or employees. Regulatory fines and penalties shall be covered. The policy shall contain no requirement that all data be encrypted. Any business interruption coverage waiting period shall be no greater than 12 hours.

12.1.11. Crime Insurance

Crime (Blanket Fidelity) with limits of not less than \$5,000,000 covering Employee Dishonesty, Forgery and Alteration.

12.1.12. Property Insurance (Course of Construction)

Upon commencement of construction and with approval of KYTC, Contractor shall obtain and maintain a policy of property insurance for the Project as specified below. Coverage may be provided on a builder's risk or contractor's installation form. The policy may be provided under a corporate master program policy or a stand-alone policy as long as all of the requirements of this are met. The insureds shall be Contractor, all Subcontractors (excluding those solely responsible for design Work) of any tier, KYTC, and the Indemnified Parties. Coverage extended to KYTC and the Indemnified Parties shall NOT be limited by use of the phrase "as their interests may appear."

The course of construction property insurance policy shall be written on an "all risk" basis. Such insurance shall be on a replacement cost basis using a completed value form reasonably acceptable to KYTC to ensure adequacy of terms and sublimits.

The policy shall cover all property, materials, supplies, machinery and equipment that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and materials, and including items intended for incorporation into the work. The policy shall not cover tools or equipment used by any contractor to perform their work. Such tools and equipment are the sole responsibility of the contractor who owns or uses such tools.

The policy shall provide a "severability of interests provision," or "multiple insured's clause" or similar wording that the policy shall apply to each insured as if a separate policy had been issued to each insured except as to limits.

The policy shall not contain any coinsurance provision. The policy may include a "waiting period" deductible of no more than 60 days. No liquidated damages shall be deducted from the insurance recovery unless such damages are actually collected. Coverage shall include payment for expenses incurred for the purpose of reducing any loss amount to the extent such loss amount is actually reduced. Coverage shall include.

The policy shall include coverage for:

1. any ensuing loss from faulty workmanship, nonconforming work, error, omission or deficiency in design or specifications;

2. machinery accidents and operational testing, if applicable;
3. removal of debris, with a sub-limit of 20% of the loss and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;
4. transit, including ocean marine coverage (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item;
5. sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site;
6. loss of revenue resulting from delayed opening and expense to reduce loss;
7. collapse;
8. terrorism;
9. plans, blueprints and specifications;
10. demolition and increased cost of construction as required by law or ordinance;
11. loss caused by action of civil authority following loss due to an insured peril;
12. soft costs expense (including costs of governmental approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof); and
13. delay coverage, with no sublimit, for loss of revenue due to physical damage to the Project, which shall apply only for the benefit of the Indemnified Parties. Valuation shall be based on estimated lost toll revenues, with no policy sublimit, with a period of indemnity limited to a period of no less than one year commencing on the date Formal Acceptance would have occurred absent the loss occurrence.

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

12.1.13. General Requirements, Conditions, And Agreements Pertaining To Insurance

12.1.13.1. Premiums, Deductibles and Self-Insured Retentions.

Contractor shall be responsible for payment of premiums for all insurance required under this Section 12.1. KYTC and the Indemnified Parties have no obligation to pay any premium. Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Contractor is responsible hereunder, Contractor shall be solely responsible for all deductibles or self-insured retentions. Any self-insured retentions maintained by Contractor over \$250,000 must be declared and approved by KYTC. At the option of KYTC, the insurer shall either reduce or eliminate such self insured retentions with respect to KYTC, and the other Indemnified Parties; or KYTC in its good faith discretion, may require posting of collateral by Contractor guaranteeing payment of losses and related investigations, claims administration and defense expenses.

12.1.13.2.Evidence of Insurance.

Concurrently with Contractor's execution hereof or on such later date on which coverage is required to be provided hereunder, Contractor shall deliver to KYTC evidence of coverage required to be provided by Contractor under this Section 12.1, including any certificates of insurance and endorsements, such as additional insured endorsements, used to satisfy the terms of this Section 12.1. KYTC shall have no duty to pay or perform under the Contract until such evidence of insurance, in compliance with all requirements of this Section 12.1 has been provided.

12.1.13.3.Enforcement of Contract Provisions (non estoppel).

Contractor acknowledges and agrees that any actual or alleged failure on the part of KYTC to inform Contractor of non-compliance with any requirement imposes no additional obligations on KYTC nor does it waive any rights hereunder.

12.1.13.4.Renewal Policies.

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

12.1.13.5.Policy Endorsements and Waivers

All insurance policies required hereunder shall contain, or be endorsed to comply with, the following provisions:

1. For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an Indemnified Party, their

directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it.

2. Liability insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. If Contractor's liability policies do not contain the standard Insurance Services Office separation of insureds provision, or a substantially similar clause, such policies shall be endorsed to provide cross-liability coverage.
3. Policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days prior written notice has been given to KYTC by Contractor or its insurance broker or insurer.
4. All endorsements adding insureds to required commercial general liability policies shall provide additional insureds with coverage for "completed operations," or a separate endorsement providing such coverage must be added to the policy.
5. Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability or cyber liability) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time except as specified for pollution liability policies.

12.1.13.6. Waivers.

Contractor waives all rights against the Indemnified Parties and each of their agents and employees and their respective members, directors, officers, employees, agents and. Contractor shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Workers' compensation/employers liability policies shall include by endorsement or otherwise, a waiver of any right of subrogation against the Indemnified Parties.

12.1.13.7. Changes in Insurance Requirements.

KYTC shall notify Contractor in writing of any changes in the requirements applicable to insurance to be provided by Contractor. Except as set forth otherwise in this Agreement, any additional cost from such change shall be paid by the Joint Board and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

12.1.13.8. No Recourse.

There shall be no recourse against the Indemnified Parties for payment of premiums or other amounts with respect to the insurance to be provided by Contractor hereunder.

12.1.13.9. Non-Limitation of Insurance Requirements.

The insurance coverage provided and limits required hereunder are minimum requirements and are not intended to limit Contractor's indemnification obligations under

this Section 12.1, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this Section 12.1 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. With the exception of any insurance required by a railroad, liability coverage will not be limited to the specific location designated as the Site. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

12.1.13.10. Commercial Unavailability of Required Coverages.

If, through no fault of Contractor, any of the coverages required in this Section 12.1 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, KYTC will consider in good faith alternative insurance packages and programs proposed by Contractor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. Contractor must demonstrate to KYTC's satisfaction that it has used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise KYTC of the specific results of those efforts. Contractor shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. KYTC shall be entitled to a reduction in the Contract Price if KYTC, in its sole discretion, agrees to accept alternative policies providing less than equivalent coverage.

12.1.13.11. Notice and Prosecution of Claims.

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

Contractor shall immediately notify KYTC, and thereafter keep KYTC fully informed, of any incident, potential claim, claim or other matter of which Contractor becomes aware that involves or could conceivably involve an Indemnified Party as a defendant.

Contractor will cooperate with KYTC, and shall require its liability insurers to agree in writing to work with KYTC to assure compliance with all regarding timely response to claims.

KYTC agrees to promptly notify Contractor of incidents, potential claims against an Indemnified Party, and matters of which KYTC is actually aware which may give rise to an insurance claim or to a right of defense and indemnification under this Section 12.1. Delivery of any such notice will constitute a tender of defense of the claim to Contractor and the insurer under any applicable Insurance Policies, subject to KYTC's or an Indemnified Party's rights to control its own defense to the extent provided in this Section 12.1 or by applicable Governmental Rules. The Indemnified Parties shall cooperate with Contractor as necessary for Contractor to fulfill its duties hereunder, including providing Contractor a copy of all written materials an Indemnified Party receives asserting a claim against the Indemnified Party that is subject to defense by an insurer under an Insurance Policy or by Contractor under this Section 12.1.

If, in any instance, Contractor has breached its obligations respecting insurance coverage set forth in the Contract Documents or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining damages resulting from the breach or inability to enforce or collect, on or determining reductions in compensation due from an Indemnified Party to Contractor, Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Contractor performed such obligations or not committed such failure. Nothing in this Section 12.1 shall be construed to treat Contractor as electing to self-insure where Contractor is unable to collect due to the bankruptcy or insolvency of any insurer, which at the time the insurance policy is written meets the rating qualifications set forth in this Section 12.1.

In the event that an insurer providing any of the insurance policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the State of Kentucky or State of Indiana Department of Insurance, Contractor shall exercise best efforts to promptly, and at its sole cost and expense, secure alternative coverage in compliance with the insurance requirements contained in this Section 12.1 so as to avoid any lapse in insurance coverage.

12.1.13.12. Commencement of Work.

Contractor shall not commence Work under this Contract until it has obtained the insurance required under this Section 12.1, has furnished original evidence of insurance for the required coverage as required under this Section 12.1, and such insurance has been approved by KYTC, nor shall Contractor allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by Contractor.

12.1.13.13. Contractor's Failure to Comply.

If Contractor or any Subcontractor fails to provide and maintain insurance as required herein, then KYTC shall have the right but not the obligation, to purchase such insurance or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by KYTC (plus an administrative charge equal to 10% of the cost) shall, at KYTC's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand, plus interest thereon from the date of payment by KYTC to the reimbursement date, at the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules. The Joint Board shall notify the Contractor promptly of any such deduction. Nothing herein shall preclude KYTC from exercising its rights and remedies under this Section 12.1 as a result of the failure of Contractor or any Subcontractor to satisfy the obligations of this Section 12.1.

If on account of Contractor's failure to comply with the provisions of this Section 12.1, any Indemnified Party is adjudged to be responsible for all or any portion of a judgment, loss or settlement (through admission or stipulation by Contractor or court decision) that would have been covered by insurance but for non-compliance with this Section 12.1, then any loss or damage it shall sustain by reason thereof shall be borne by Contractor, and Contractor shall immediately pay the same to the Indemnified Party, upon receipt of written demand therefor and evidence of such loss or damage.

12.1.13.14. Subcontractor Insurance Requirements.

Contractor shall cause each Subcontractor to provide insurance that complies with requirements for Contractor-provided insurance set forth in this Section 12.1 in circumstances where Subcontractor acts or omissions are not covered by Contractor-provided insurance, including automobile liability. Except as otherwise specified in this Section 12.1, Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Contractor shall cause each such Subcontractor to include the Indemnified Parties as additional insureds under such Subcontractor's general liability and excess liability insurance policies. If requested by KYTC, Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. KYTC shall have the right to contact the Subcontractors directly in order to verify the required coverage.

12.1.13.15. Disclaimer.

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

KYTC on behalf of the Joint Board makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried pursuant to this Section 12.1 are adequate to protect Contractor against its undertakings under the Contract Documents or its liability to any third party or preclude KYTC from taking any actions as are available to it under the Contract or otherwise at

law. KYTC shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Contractor arising out of or by reason of failure of Contractor to provide and keep in force the insurance policies required by and on the terms of this Section 12.1, but KYTC shall instead be entitled to recover the full amount of damages available.

12.2. Payment, Performance and Warranty Bonds

As a part of the consideration and to assure the faithful performance of this Contract in every respect, the Contractor shall provide payment, performance and warranty bonds securing Contractor's obligations hereunder, each in an amount set forth herein, and shall maintain such bonds in full force and effect as described below. Such bonds, when approved by the Joint Board, shall be for the use and benefit of the Joint Board, and each person furnishing materials, labor and supplies for use in the performance of this Contract. Upon request, the Contractor shall also provide copies of such bonds to its Subcontractors and other entities providing labor, equipment, or materials on the Project.

12.2.1. When the Contractor delivers the executed Contract to the Joint Board, the Contractor shall also deliver to the Joint Board a performance bond in the form of Exhibit F (a "Performance Bond") for the Work covered by the NTP. Such bond shall be in an amount of 100% of the Contract Price (excluding the Maintenance Price). Subject to Section 12.2.3, the Joint Board will reduce the amount of the Performance Bond by the amount of the Contract Price relating solely to the Operations Center, a Walk-in Center or all Toll Zones within a Crossing, as the case may be (a) upon expiration of the Warranty Period for such Operations Center, Walk-in Center or Crossing, provided that no outstanding claims are then pending or threatened against Contractor hereunder, or (b) upon satisfaction of the conditions in Section 12.2.3.

12.2.2. As a condition to issuance of the NTP, Contractor shall provide, and continuously maintain in place for the benefit of the Joint Board, a payment bond in the form of Exhibit G (a "Payment Bond") for the work covered by the NTP. Such bond shall be in an amount of 100% of the Contract Price. Subject to Section 12.2.3, the Joint Board will reduce the amount of the Payment Bond by the amount of the Contract Price relating solely to the Operations Center, a Walk-in Center, or all Toll Zones within a Crossing, as the case may be (a) upon receipt of (i) evidence satisfactory to the Joint Board that all Persons eligible to file a claim against the bond have been fully paid, and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, (b) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed, or (c) upon satisfaction of the conditions in Section 12.2.3.

12.2.3. After Formal Acceptance of the Operations Center, a Walk-in Center or a Crossing, subject to the requirements herein, Contractor may obtain a reduction in the amount of the Performance Bond by providing a warranty bond, or such other security as is approved by the Joint Board, in its sole discretion, which shall guarantee performance of the work required to be performed during the Warranty Period for such Operations Center, Walk-in Center or Crossing, and which shall also constitute a payment bond guaranteeing payment to Persons performing such work (“Warranty Bond”). The Warranty Bond shall be (i) in an amount equal to 20% of the amount of the Contract Price attributable solely to the Operations Center, Walk-in Center or Crossing, as the case may be, (ii) substantially in the form attached hereto as Exhibit H (with such modifications as the Joint Board approves in writing, in its sole discretion), and (iii) released upon satisfaction of the conditions in Section 12.2.1(a) and Section 12.2.2(a) or (b). Alternatively, subject to the requirements herein, after any Formal Acceptance of the Operations Center, a Walk-in Center or a Crossing, as the case may be, the Contractor may obtain a reduction in the amount of the Performance Bond and the Payment Bond by an amount equal to eighty percent (80%) of the amount of the Contract Price attributable solely to the Operations Center, Walk-in Center or Crossing, as the case may be.

12.2.4. As a condition to Formal Acceptance, Contractor shall furnish the Joint Board with (a) a maintenance performance bond in the form of Exhibit I (with such modifications as the Joint Board approves in writing, in its sole discretion) (a “Maintenance Performance Bond”), and (b) a maintenance payment bond in the form of Exhibit J (with such modifications as the Joint Board approves in writing, in its sole discretion) (a “Maintenance Payment Bond”). The Maintenance Performance Bond shall be in an amount equal to the greater of (i) 100% of the aggregate four (4) year Maintenance Price attributable to the relevant Operations Center, Walk-in Center or Crossing, and (ii) \$_____. The Maintenance Payment Bond shall be in an amount equal to 100% of the aggregate four (4) year Maintenance Price for the relevant Operations Center, Walk-in Center or Crossing. After the initial Maintenance Performance Bond and Maintenance Payment Bond are issued, as a condition precedent to subsequent Final Acceptances, in lieu of providing separate Maintenance Performance Bonds and Maintenance Payment Bonds for each additional Walk-in Center or Crossing, Contractor may provide Riders to the existing Maintenance Performance Bond and Maintenance Payment Bond. Maintenance Performance Bonds (or Riders, as the case may be) shall be in an amount equal to the greater of (i) 100% of the aggregate four (4) year Maintenance Price for the relevant Operations Center, Walk-in Center and/or Crossing, and (ii) \$_____. Maintenance Payment Bonds (or Riders, as the case may be) shall be in an amount equal to 100% of the aggregate four (4) year Maintenance Price. Contractor’s obligation to maintain and provide a current Maintenance Performance Bond and Maintenance Payment Bond shall continue throughout the Maintenance Term, but the Joint Board will accept Maintenance Performance Bonds and Maintenance Payment Bonds with a stated term of at least two (2) years with a statement set forth in the applicable bond that it shall be renewable annually in accordance with the Surety’s customary renewal practices. Provided that

Contractor has paid the Joint Board any applicable Liquidated Damages, compensation for Losses and any other amounts that are payable to the Joint Board under the Contract Documents, the Maintenance Performance Bond shall be released after the satisfaction of all conditions to Final Maintenance Payment pursuant to Section 6 at the end of the Maintenance Term. Upon expiration of the Maintenance Term, the Joint Board will release the Maintenance Payment Bond (i) upon receipt of (A) evidence satisfactory to the Joint Board that all Persons eligible to file a claim against the bond have been fully paid and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed.

12.2.5. Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least AVIII by “Best & Company” or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by the Joint Board in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Contractor shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to the Joint Board in its sole discretion. If a Price is increased in connection with a Change Order, the Joint Board may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond or alternative security. If notice of any change affecting the general scope of the work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor’s responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

12.2.6. No draw under any Performance Bond, Payment Bond, Maintenance Performance Bond or Maintenance Payment Bond shall preclude, inhibit, alter or modify the Joint Board’s rights to exercise any and all other rights and remedies available under the Contract Documents, at law or in equity.

12.3. No Relief of Liability

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

13.0 Dispute Resolution

13.1.1. Dispute Resolution Procedures

Notwithstanding any other available process (which the Contractor hereby waives in consideration of the following resolution procedures provided), all claims between the Joint Board and the Contractor or its Subcontractors relating to this Contract or the

Project that cannot be resolved through the elevated negotiations procedure discussed below shall follow the administrative process outlined below in Section 13.4, as the sole remedy for any claim by the Contractor. The administrative process is based upon 603 KAR 2:015 Sections 9 and 10 and in accordance with KRS Chapter 13B. The Contractor shall continue the work and adhere to the Project Schedule during all disputes or disagreements with the Joint Board. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and the Joint Board may otherwise agree in writing.

Should Contractor's actions be implicated or alleged to be implicated as a causal factor in any claims by Walsh Construction Company on the Downtown Crossing or WVB Partners on the East End Crossing, then Contractor agrees, at the election of the Joint Board, to participate in the dispute resolution process outlined in Article 12 of the DBT Agreement between KYTC and Walsh or Article 19 of the Public-Private Agreement between WVB Partners and IFA. Contractor agrees to be bound by any determinations under Article 12.4 and 12.5 of the DBT Agreement, and/or Article 19.6.4.2 of the Public-Private Agreement that find the Contractor liable or responsible in whole or in part for claims presented to KYTC or IFA by Walsh or WVB Partners. At the request of the Joint Board, in the event of claims by Walsh or WVB as discussed above, Contractor will also participate, at its own expense, in the non-binding Dispute Review Board process found in Article 12.3 of the DBT Agreement, or the non-binding arbitration process found in Article 19.6.4.1 of the PPA Agreement.

13.2. Partnering and Elevated Negotiations

13.2.1. Partnering

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

The Joint Board anticipates a full-time partnering effort involving the executive management, Project management, Project staff and others. Participation is encouraged. Any cost associated with effectuating partnering shall cause no change to the Contract Price.

It is the intent of the parties that the dispute resolution provisions contained in Sections 13.3 and 13.4 shall apply only in the event that the Joint Board's and the Contractor's issue resolution efforts through partnering, and elevated negotiations, are not successful. The dispute resolution provisions set forth in Section 13.3 shall apply to all disputes arising out of the work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

13.2.2. Elevated Negotiations

Both the Joint Board and the Contractor shall designate senior representatives for the purposes of this Section. If a claim cannot be resolved by the Parties' representatives through partnering discussions or via Section 4 above, then, upon the request of either party, the Contractor's senior representative and the Joint Board's senior representative shall meet as soon as conveniently possible, but in no case later than fourteen (14) days after such a request is made, to attempt to resolve such claim. Prior to any meetings between such representatives, the parties will exchange relevant information that will assist the parties in resolving the claim and, if applicable, make available any independent expert opinion. Subject to the requirements of the Kentucky Open Records Act, any statements made or documents or materials prepared by the partnering facilitator shall not be admissible or discoverable in any other dispute resolution proceeding. All negotiations and discussions pursuant to this Section 13.2, including any opinions provided by any technical experts, shall be deemed compromise and settlement negotiations, and therefore inadmissible for the purposes of all evidentiary rules under applicable Law.

13.3. Administrative Claims Process

In the event that the Parties do not resolve their disputes following the elevated negotiations in Section 13.2 above, any claims by the Contractor shall follow the process outlined in this Section 13.3. Claims by the Joint Board may be resolved through litigation in the Franklin County Circuit Court. The following applies to all claims not resolved through elevated negotiations:

1. The Joint Board shall not consider a claim for extra work unless the Contractor has submitted Kentucky form TC 63-32, "Notice of Changed Condition and Disagreement" to the Joint Board Representative before beginning the disputed work. Submittal of such form shall not guarantee that claim for extra work will be granted unless a Change Order or Construction Change Directive is approved pursuant to Section 4.

2. Any other claim not referenced in subsection (1) of this section that a the Contractor shall possess against the Joint Board for compensation shall be submitted in writing on form TC 63-32, "Notice of Changed Condition and Disagreement", to the Joint Board Representatives within ten (10) days of the date of which the Contractor knew or should have known of the existence of said claim. Any claim presented after said ten (10) days shall be waived and not be considered for payment by the Joint Board. After receipt of TC 63-32, "Notice of Changed Condition and Disagreement", the Joint Board shall respond to the Contractor with Kentucky form TC 63-33, "Acknowledgement of Notice of Changed Condition and Disagreement".

3. If a the Contractor has a contract claim or requests relief from the Joint Board, the Contractor shall exhaust the administrative process within the Joint Board as set forth below prior to requesting an administrative hearing.

(a) For claims involving extra work, the Contractor shall submit his claim in writing, setting forth the amount in dispute, the basis of the claim and any supporting

documentation of said claim to the Joint Board Representatives not later than thirty (30) days after receipt of the "Final Inspection and Formal Acceptance Report of Completed Construction", Form TC 63-44. This provision shall not act to relieve the Contractor of its responsibility to comply with any notice requirements of Section 4.2 or 4.3.

(b) For claim disputes involving final quantities and payments, the Contractor shall submit his claim in writing setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the Joint Board Representatives not later than sixty (60) days from the date of the "Final Release" (Form TC 63-34) sent by the Joint Board.

(c) The Joint Board Representatives and the Contractor shall attempt to resolve the dispute. The Joint Board Representatives shall have sixty (60) days from the date of receipt of written notice of a formal claim to resolve the dispute.

(d) Should the claim not be resolved by the Joint Board Representatives, then the claim shall be submitted to the Joint Board, who shall have ninety (90) days to make the final determination.

(e) If the matter is not resolved by the Joint Board Representatives and the Contractor prior to making a final determination on the matter, the Joint Board, shall convene an informal settlement conference with the Contractor for the purpose of either settling the dispute or identifying the issues which need resolution. If the settlement conference is unsuccessful, the Joint Board, shall notify the Contractor in writing of the Joint Board's decision regarding Contractor's claim. Said notification shall inform the Contractor of his rights to an administrative hearing pursuant KRS Chapter 13B.

(f) Should the Joint Board Representatives or the Joint Board, fail to render a decision within the time limits set forth in this administrative regulation, said inaction shall be deemed a denial of the claim by the Joint Board and the Contractor may proceed with the administrative hearing process pursuant to KRS Chapter 13B. Further, should the Joint Board, fail to render a decision in the time frame previously stated, the Joint Board shall bear all costs associated with the hearing officer.

(g) The Contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the notification of the decision by the Joint Board.

(h) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.

(i) If mediation is agreed upon by the parties, the formal administrative process that culminates with a KRS Chapter 13B hearing and all time limits therein shall be stayed until the Joint Board or the Contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.

13.4. Hearing Procedure

(a) A request for an administrative hearing pursuant to the provisions of KRS Chapter 13B shall be in writing and mailed to KYTC, Secretary's Office, 200 Metro Street, Frankfort, Kentucky 40622.

(b) Upon receipt of a request for an administrative hearing, the KYTC shall forward the request to the KYTC Office of General Counsel and Legislative Affairs for proceedings in accordance with the provisions of KRS Chapter 13B. Failure to submit a written request for an administrative hearing to KYTC within thirty (30) days of the date of the decision by the Joint Board, shall be ground to summarily deny the request for hearing and the decision by the Joint Board, shall stand.

(c) If a hearing is commenced, the hearing examiner shall prepare and submit his report with a recommendation to the Kentucky Secretary of Transportation through the Office of General Counsel and Legislative Affairs.

(d) The secretary, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner as set out in a final order pursuant to KRS Chapter 13B.

(e) The Contractor shall be notified by Final Order of the Kentucky Secretary's decision.

(f) The Contractor shall have appeal rights pursuant to KRS Chapter 13B.

(g) The Contractor shall reimburse the Joint Board one-half (1/2) of the expenses of the hearing officer within thirty (30) days after the date of the entry of the final order by the Kentucky Secretary of Transportation. The Joint Board may withhold any sum owed a Contractor on a current or future project that the Joint is owed for the costs and/or expenses of the hearing officer."

After all administrative remedies have been exhausted as outlined above which along with proper written notice of the claim are conditions precedent to any other relief, the Contractor shall have the right of appeal with the Franklin County Circuit Court of the Commonwealth of Kentucky. All questions as to the execution, validity, interpretation, construction and performance of this Contract shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Contract shall be filed in the Jefferson County Circuit Court of the Commonwealth of Kentucky.

13.5. Limitations on Consequential Damages

Under no circumstances shall the Contractor be entitled to consequential damages arising out of the performance (or failure to perform) of the Joint Board, and the Contractor releases the Joint Board from any such liability.

Consequential damages shall be recoverable by the Joint Board only in the following limited categories:

1. Any component of the Liquidated Damages amounts provided in the Contract Documents that may be consequential in nature.

2. Any loss of toll revenues, or damages payable by a States' Party under the Design-Build Contract or the Public-Private Agreement that arises directly as a result of Contractor's negligent or intentional delay of or interference with the Design-Builder's or the Developer's respective performance under the Design-Build Contract and the Public-Private Agreement .

3. Any damage that may be deemed "consequential" but is nonetheless covered by insurance purchased by the Contractor or others on the Project, or for which this Contract requires the Contractor to purchase insurance coverage, is not waived up to the limits of such coverage. However, any consequential damages outside the insurance coverage limits required by this Contract are waived except as provided in this Section 13.5.

4. The Joint Board does not waive consequential damages for any injuries suffered by the Joint Board due to fraud, intentional misconduct, or criminal acts by the Contractor or entities for whom the Contractor is responsible.

The term "consequential damages" shall mean those special, indirect or incidental damages that do not flow directly and immediately from an injurious act but that result indirectly from an action or failure to act, such as revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, loss of bonding capacity, lost opportunity, claims of taxpayers and other indirect damage. Liabilities, costs and losses incurred by either party due to failure by the other to procure and maintain insurance policies required hereunder, as well as any amounts that this Contract expressly states are to be reimbursed from one party to the other (including interest, late charges, fees, penalties, and similar charges), shall be considered direct damages.

This provision shall apply to limit liability under actions brought under any theory of law, including actions in tort (including negligence) as well as in contract. The statute of limitations for any breach of the Contract shall not commence earlier than the date of System Substantial Completion Acceptance. This provision shall not relieve the Contractor of its obligation to timely comply with all notice provisions for claims, nor shall it alter the requirements of the Contractor to comply with Sections 13.1-13.2 or the administrative claims process in Section 13.3 above.

14.0 Responsibility for Design; Information Supplied

14.1. Standard of Care

The standard of care for all design services performed or furnished by the Contractor under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar conditions at the same time and in the same locality.

14.2. Design, Installation and Integration Obligations

As indicated throughout the Contract Documents, Contractor's obligations under this Contract are for the full design, installation, integration and construction of the Project for the Contract Price. While the Joint Board will review and comment on Contractor's design for the Project, such review and comment by the Joint Board is limited only to general conformance with the Joint Board's program requirements for the Project and the requirements of the Contract Documents. The Contractor remains at all times responsible and obligated to the Joint Board for the provision of a complete design which meets the standard of care and complies with all applicable Laws, regulations, and required specifications. Review, comment, or approval of any kind by the Joint Board shall not alter Contractor's responsibility for such design, and the failure by the Joint Board to identify any errors shall not give rise to any liability on the Joint Board's behalf.

14.2.1. Design Review Process and Compliance with Final Design Documents

14.2.1.1. Contractor shall furnish the Design Documents to the Joint Board in accordance with the design review submittal and certification process set forth in RFP Sections 3.12.3.3.

14.2.1.2. The Joint Board will review submittals as required by the Contract Documents. The Joint Board's review of any such submittals as required by the Contract Documents will be only to determine if the items covered by the submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. The Joint Board's review will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto, although the Joint Board may comment on such matters. The review of a separate item as such will not indicate approval of the assembly in which the item functions. The Joint Board's review of submittals shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents.

14.2.1.3. Contractor shall respond to the comments provided by the Joint Board and make modifications to the Design Documents based on such comments in accordance with the design review process in the RFP. Contractor acknowledges that comments may be provided which reflect concerns regarding operability or preferences of the commenter or which otherwise do not directly relate to specific requirements of the Contract Documents. Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments through the review process

described in the RFP. The foregoing shall in no way be deemed to obligate Contractor to incorporate any comments that would result in a significant disruption to its schedule or a significant increase in its costs, except pursuant to a Joint Board-Directed Change.

14.2.1.4. Contractor shall construct, fabricate, assemble, provide, install, integrate, test and verify all aspects of the Project in accordance with the Final Design Documents and Construction Documents. The Final Design Documents may be changed only with prior written approval of the Joint Board in its sole discretion. Contractor may make minor modifications to the Construction Documents without prior written approval of the Joint Board, but must deliver the modifications to the Joint Board in advance of performance of the Work.

14.2.2. Contractor Responsibility for Design

Contractor agrees that it has full responsibility for the design of the Project and that Contractor will furnish the design of the Project, regardless of the fact that Owner Design Documents, including, in certain circumstances, a Reference Drawing may be provided to Contractor as a preliminary basis for Contractor's design. Contractor specifically acknowledges and agrees that:

(a) Contractor is not entitled to rely on (i) any Owner Design Documents except as specified in Section 14.2.2, (ii) the Reference Documents or (iii) any other documents or information provided by the Joint Board, except to the extent specifically permitted in the Contract Documents.

(b) Contractor is responsible for correcting any Errors in the Owner Design Documents through the design and/or construction process without any increase in any Price or extension of a Completion Deadline for the relevant Work, subject only to the right to a Change Order with respect to any Necessary Basic Configuration Changes to the extent permitted by Section 14.8.

(c) The Joint Board's liability for Errors in any Owner Design Documents is limited to its obligations relating to Necessary Basic Configuration Changes, and is subject to the requirements and limitations of Section 14.

(d) Contractor's warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the Owner Design Documents.

(e) Contractor is responsible for verifying all technical information contained in the RFP Documents or otherwise provided by the Joint Board.

14.2.3. Owner Design Documents

Contractor may rely on the Basic Configuration elements as shown on any Owner Design Documents as representing a feasible design solution for the Project and that it is feasible to develop the Project within the Schematic ROW limits identified in the Owner Design Documents, and shall have the right to obtain a Change Order for Necessary Basic Configuration Changes as provided in Section 4.7.

Contractor acknowledges that any Owner Design Documents are preliminary and subject to refinement through the Final Design process, and that Contractor's entitlement to an increase in a Price or time extension in connection with any changes in Owner Design Documents is limited to Necessary Basic Configuration Changes.

14.3. Professional Licensing and Registration

Prior to beginning any work on the Project:

1. An Engineer of Record performing work in Kentucky shall be a Licensed Professional Engineer in the Commonwealth and an Engineer of Record performing work in Indiana shall be a Registered Professional Engineer in Indiana. The land surveyor, if any, shall be a Licensed Professional Land Surveyor in the Commonwealth and a Registered Professional Land Surveyor in Indiana.

2. The Joint Board does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of this Contract, the Contractor acknowledges that the Joint Board has no such intent. It is the intent of the Parties that the Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to Contractor's responsibilities or obligations to "perform" the design portions of the work shall be deemed to mean that the Contractor shall "furnish" the design for the Project.

14.4. Use and Ownership of Documents

14.4.1. Ownership of Documents

Upon preparation or receipt thereof the Joint Board (or its designee) shall receive ownership of the property rights, except for copyrights in Software, of all design-related documents, drawings, specifications, Software and Software licenses, electronic data and information prepared, provided or procured by the Contractor, its design partners, as well as all consultants and Subcontractors of any tier, for the Project ("Design Documents"). Construction Documents shall become the Joint Board's property upon delivery to the Joint Board, and other documents prepared or obtained by Contractor in connection with performance of its obligations under the Contract Documents, including studies, manuals, as-built drawings, technical and other reports and the like, shall become the property of the Joint Board upon Contractor's preparation or receipt thereof. The Joint Board may use, reproduce and make derivative works from said Design Documents for subsequent renovation or augmentation of the work. The Contractor grants the Joint Board any permissions or licenses pursuant to copyright or other intellectual property laws to effectuate this transfer of ownership.

Contractor grants the Joint Board and each States' Party and their agencies (as an exception to the transfer and assignment provided in the preceding paragraph of this Section 14.4) , an irrevocable, permanent, nonexclusive, world-wide royalty-free right and license to use, execute, reproduce, display, perform, and distribute internally copies of, and prepare derivative works based upon, the Software, the System design and

technology and/or any other System idea, concept or deliverable, and the right to authorize third parties to do any of the foregoing, subject to the execution of a commercially reasonable non-disclosure agreement by such third party and further subject to the terms of this Agreement and any separate and specific licensing agreement entered into between the Joint Board and the Contractor. The foregoing licenses and rights shall be used solely as needed (i) to operate, maintain and support the System and the Project and at any toll bridge or road or similar or related facilities in which such Software, System design and technology and any other System idea, concept and deliverables are used under or pursuant to this Agreement (whether by the Joint Board, a member State or State agency, a Joint Board Member Contractor, or an Other Joint Board Contractor, including but not limited to the ETC Contractor and the Operations Contractor, including at the toll bridges and roads and in the toll traffic lanes that utilize such System and at the Project Sites specified in this Agreement, and (ii) in the event of an Event of Default or the failure, unwillingness or inability of Contractor to perform its obligations under the Contract Documents; and (iii) in the event of an Event of Default or the failure, unwillingness or inability of Contractor to perform its obligations under the Contract Documents, at any other toll roads, toll traffic lanes or similar or related facilities owned, operated or managed by the Joint Board or a States' Party or its agencies. The foregoing rights and licenses shall survive the expiration or termination of this Contract.

The Joint Board and the States' Parties and their respective agencies may also use, reproduce and make derivative works from the Design Documents (including licensed Software) in connection with the Joint Board's and/or its member States' and their respective agencies design of future projects. The Contractor grants the Joint Board and its member States and their respective agencies any permissions or licenses pursuant to copyright or other intellectual property laws to effectuate this grant of permission. The Joint Board similarly may distribute or make the Design Documents available to third parties who will or may provide services to the Joint Board or its member States and their respective agencies on future projects. The Joint Board's and its' member States and their respective agencies' use of the Design Documents either by itself or by distribution to third parties without Contractor's involvement or on other projects is at the Joint Board's, its member States' and their respective agencies' sole risk.

Subject to any requirements in the Contract Documents for Contractor's delivery of specific documents, not less frequently than monthly, Contractor shall provide the Joint Board with a detailed written list of all Design Documents and Construction Documents prepared or received by Contractor, and Contractor shall furnish the Joint Board with copies of any such Design Documents and Construction Documents immediately upon the Joint Board's written request. Contractor shall maintain all other documents described in this Section 14.4 and shall deliver copies to the Joint Board as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to the Joint Board as a condition to Formal Acceptance.

14.4.2. Commercial Off-the-Shelf Software

The Joint Board's interest in and obligations with respect to any COTS incorporated into the Project or System shall be determined in accordance with the standard license terms applicable to such Software; provided, however, that Contractor shall be solely responsible for all costs associated with such items and in no event shall Contractor change the terms of such agreements without the Joint Board's written approval.

14.4.3. Contractor's License

The Joint Board grants the Contractor a limited, exclusive license to use, reproduce and make derivative works of the Design Documents provided by the Contractor, however, the Contractor shall indemnify and hold harmless the Joint Board from and against any and all claims, damages, losses, costs and expenses arising out of the or resulting from Contractor's use of the Design Documents. A similar exclusive license may be granted to Contractor's consultants and subconsultants.

If this Contract is terminated for convenience pursuant to Section 10, the Joint Board shall receive ownership of the property rights of the Design Documents upon current payment for all work associated with design performed in accordance with this Contract, at which time the Joint Board shall have the right to use, reproduce and make derivative works from the Design Documents to complete the work or as described above.

14.4.4. Source Code Escrow

(a) The Joint Board and Contractor acknowledge that Contractor and/or Contractor's Software Suppliers may not wish to release directly to the Joint Board the Software Source Code, but that the Joint Board must be ensured access to such Software Source Code. Therefore, as a condition to payment of certain payment requests, and Substantial Completion Acceptance, Contractor shall place all the Software Source Code owned by Contractor, licensed to or by Contractor or with respect to which Contractor has a right to use in connection with the System or this Project in a Source Code Escrow with a mutually acceptable Code Escrow Agent engaged in the business of receiving and maintaining escrows of Software Source Code, related documentation, and other technology. With regard to Software and updates developed as part of the Maintenance Work, such disclosure and delivery to the Source Code Escrow shall occur at the earlier of (x) when required in connection with a Maintenance Payment request or (y) such time as the Software and updates are implemented. The terms of the Source Code Escrow shall be as set forth in Exhibit K, provided that the Joint Board shall be to release of the contents of the Software Source Code Escrow at the following times: (i) occurrence of a business failure (including cessation of business, bankruptcy, or insolvency) of the Contractor and/or Software Supplier; (ii) failure of the Contractor and/or Software Supplier to provide or is unable or unwilling to provide the services as necessary to permit continued use of the Software by the Joint Board; the Joint Board Contractor that has acquired the System pursuant to the terms of this Contract) as contemplated by the Contract Documents; (iii) termination of this Contract as a result of a Contractor Event of Default, or expiration of the Term. Contractor shall cause the Software Supplier to keep the Software Source Code up-to-

date by depositing all enhancements and modifications into the Source Code Escrow during the term of its existence as such enhancements and modifications are developed, completed or implemented. The Contractor shall make all deposits into the Source Code Escrow in such manner as to cause all escrowed materials to reflect the current version of well as one (1) prior version of all materials in operation. All versions shall be clearly marked as to “current” versus “prior” version.

(b) For purposes hereof, the “Software Source Code” means the software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architectural standards, describing the data flows, data structures, and control logic of the Software, including but not limited to the Contractor’s version of compilers used in connection with the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation, and such other documentation and executables required to independently maintain the Software, and necessary information to build and replicate any specialized hardware, but excludes source code for Off-the-Shelf Software unless such source code is available to the Contractor. The term “Software Source Code” as it pertains to the documentation required to deposited into the Source Code Escrow means and includes everything necessary to allow a technical verification on the Software and other related assets to verify the Source Code files, executable files, database schema, tables, configuration files, batch files, documentation and directions are identical to that licensed to the Joint Board.

14.4.5. Rights on Termination

If this Contract is terminated for any reason other than convenience pursuant to Article 10, the Joint Board shall receive ownership of the property rights, except for Software copyrights, of the Design Documents, at which time the Joint Board shall have the right to use, reproduce and make derivative works from the Design Documents to complete the work or as described above.

14.4.6. Open Records Laws

The Contractor acknowledges that the Joint Board is subject to Kentucky and Indiana Open Records laws and may be required to produce copies of all Design Documents upon request by the general public. The Contractor waives any and all claims against the Joint Board or its agents in connection with such duty by the Joint Board.

14.4.7. Subcontracts

The Contractor shall obtain from its engineers and architects, as well as their Subcontractors and consultants of any tier, the rights of use that correspond to the rights given by the Contractor to the Joint Board in this Contract.

14.5. Information Supplied

The Joint Board has made available to the Contractor information which is described in the Contract Documents and certain reference documents (which are not included in the Contract Documents) regarding the Project and surrounding areas, and has allowed the Contractor access to the Project Site for purposes of inspection and testing.

14.6. Responsibility for Design

The Contractor agrees that it has full responsibility for preparation and submission of the Design Documents:

1. The Contractor acknowledges its responsibilities to design the Project in conformance with the Project Scope of Work and the other Contract Documents.
2. The Contractor is not entitled to rely on and has not relied on any other documents or information provided by the Joint Board, except to the extent specifically permitted in the Contract Documents, or that the Contractor does so at its own risk.
3. The Contractor is responsible for correcting any errors through the design and/or construction process without any increase in the Contract Price or extension of the Contract Time.

14.7. No Liability Regarding Reference Documents

The Joint Board does not represent or warrant that the information contained in the reference documents is either complete or accurate or that such information conforms with the requirements of the Contract Documents. The Contractor understands and agrees that the Joint Board shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Contractor-related entity by reason of any use of any information contained in the reference documents or any action or forbearance in reliance thereon, except to the extent that the Joint Board has specifically agreed herein that the Contractor shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. The Contractor further acknowledges and agrees that (a) if and to the extent the Contractor or anyone on Contractor's behalf uses any of said information in any way, such use is made on the basis that the Contractor, not the Joint Board, has approved and is responsible for said information, and (b) the Contractor is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Contractor's own risk and at its own discretion.

14.8. Contractor Representations

To induce the Joint Board to enter into this agreement, the Contractor makes the following representations:

1. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the RFP;

2. The Contractor has visited the Project Site and become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Work;

3. The Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.

4. The Contractor has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions relating to existing surface or subsurface structures at the Project Site, if any, that have been identified or made available by the Joint Board and (b) reports and drawings of environmental conditions, if any, at the Project Site that have been identified or made available by the Joint Board.

5. The Contractor is aware of the general nature of work to be performed by the Joint Board and others at the Project Site that relates to the work as indicated in the Contract Documents.

6. The Contractor has considered the information known to the Contractor; information commonly known to contractors doing business in the locality of the Project; information and observations obtained from visits to the Project Site; the Contract Documents; and the Project Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

7. Based on the information and observations referred to above, the Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.

8. The Contractor has given the Joint Board written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Joint Board is acceptable to the Contractor.

9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

14.9. Notification of Third-Party Claims

The Joint Board and the Contractor shall each provide timely written notification to the other Party of the receipt of any third-party claim relating to, arising out of, or connected with Work performed by or on behalf of the Contractor under this Contract.

15.0 Obligations of the Contractor

15.1. Performance Requirements

15.1.1. Performance of Work

All materials, services and efforts necessary to achieve Substantial Completion Acceptance, Punch List Acceptance and Formal Acceptance of the Operations Center, the Walk-in Centers, the Crossings and the System on or before the applicable Completion Deadlines shall be solely Contractor's responsibility, except as otherwise specifically provided in the Contract Documents. The Contractor agrees that the costs of all such materials, services and efforts are included in the Contract Price.

15.1.2. Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, the Contractor shall perform as directed in writing by the Joint Board in a diligent manner and without delay, shall abide by the Joint Board's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Article 13.

15.2. General Obligations of the Contractor

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

1. furnish all design and other services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other persons): (i) to construct the Project and maintain it during construction and installation and during the Maintenance Term in accordance with the Contract Documents, all laws, all Governmental Approvals, good industry practice, and all other applicable safety, environmental, licensing and other requirements of the Contract Documents, including but not limited to the Quality Assurance Plan and any other plans and procedures that Contractor is required to implement to ensure the quality and safety of the Work, so as to achieve Substantial Completion Acceptance, Punch List Acceptance and Formal Acceptance by the applicable Completion Deadlines; (ii) to construct the Project free from material defects except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, unless (a) the Contractor has actual or constructive knowledge of such defects and (b) the Contractor fails to notify the Joint Board of the defect; and (iii) otherwise to do everything required by and in accordance with the Contract Documents;

2. at all times provide Contractor's Project Manager, who (i) will have full responsibility for the prosecution of the work, (ii) will act as agent and be a single point of contact in all matters on behalf of the Contractor, (iii) will be present (or its Approved designee will be present) at the Project Site at all times that work is performed, and (iv) will have authority to bind the Contractor on all matters relating to the Project;

3. obtain all Governmental Approvals, including any revision, modification, amendment, supplement, renewal or extension of Governmental Approvals, required in connection with the Project or the Work;

4. comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including implementation of all environmental mitigation measures required by the Governmental Approvals and Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another party;

5. provide such assistance as is reasonably requested by the Joint Board in dealing with any party and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require the Contractor to provide legal services;

6. comply with any plans or submittals required by the Contract Documents;

7. cooperate with the Joint Board and other governmental entities with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the work;

8. supervise and be responsible to the Joint Board for acts and omissions of all Contractor-Related Entities, as though all such entities were directly employed by the Contractor;

9. mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating or redeploying Contractor's forces to other work, as appropriate;

10. prior to delinquency 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 governmental entities, whether direct or indirect, relating to, or incurred in connection with, the performance of the work; and

11. provide appropriate security for the Project Site, and take all reasonable precautions and provide protection to prevent damage, injury, or loss to the work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by Contractor, the Joint Board or any other Person.

15.3. Representations, Warranties and Covenants

The Contractor represents, warrants and covenants to the Joint Board as described in this Section. The representations, warranties and covenants in this Section shall survive expiration or earlier termination of this Contract.

15.3.1. Maintenance of Professional Qualifications; Qualifications of Employees

The Contractor and its design Subcontractor(s) have maintained, and throughout the term of this Contract and its design Subcontract(s) shall maintain, all required Joint Board, license status, professional ability, skills and capacity to perform the work, and shall perform them in accordance with the requirements of the Contract Documents. If the Joint Board determines, in its sole discretion, that any Person employed by Contractor or any Subcontractor is not performing the work in a proper, desirable and skillful manner or is detrimental to the progress of the work and/or the Project, then, at

the written request of the Joint Board, Contractor shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of the Joint Board.

15.3.2. Evaluation of Constraints

The Contractor has evaluated the constraints affecting delivery of the Project and has reasonable grounds for believing and does believe that the Project can be delivered within such constraints.

15.3.3. Feasibility of Performance

The Contractor has considered the information known to the Contractor; information commonly known to Contractors doing business in the locality of the Project; information and observations obtained from visits to the Project Site; the Contract Documents; and the Project Site-related reports (which are not made a part of the Contract Documents) and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs. The Contractor has evaluated the feasibility of performing the work by the Completion Deadlines and for the Contract Price, and has reasonable grounds for believing and does believe that such performance is feasible and practicable.

15.3.4. Review of Site Information

To the extent the Contractor deems it necessary or advisable for submittal of a Proposal, the Contractor has, prior to submitting its Proposal, in accordance with good industry practice, undertaken appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions that may be discernible from the surface. Said activities have included reasonable inspection and examination of the Project Site and surrounding locations. Based on its review, inspection, examination and other activities, the Contractor is familiar with and accepts the physical requirements of the work, subject to the right to receive a Change Order for only those situations as specified in Article 4. The Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract for the performance of the work, including all design, at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.

15.3.5. Review of Contract Documents

The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work. The Contractor has given the Joint Board written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Joint Board is acceptable to the Contractor.

15.3.6. Governmental Regulations and Approvals

The Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the work. After due consideration of all relevant factors, the Contractor believes that all Governmental Approvals will be granted in due course and will thereafter remain in effect so as to enable the work to proceed in accordance with the Contract Documents.

15.3.7. Organization

The Contractor is a _____ (type of legal entity) duly organized and validly existing under the laws of the State of _____ with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor is duly qualified to do business, and is in good standing, in the Commonwealth of Kentucky and the State of Indiana, and will remain in good standing throughout the term of this Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

15.3.8. Authorization

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

15.3.9. Legal, Valid and Binding Obligation

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

15.3.10. False or Fraudulent Statements and Claims

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

15.3.11. Design Work

Any design Work furnished by Contractor shall be performed by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract

Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared or checked by them.

15.3.12. Scheduling Work

Contractor shall at all times schedule and direct its work to provide an orderly progression of the work to achieve, Substantial Completion Acceptance, Punch List Acceptance and Formal Acceptance by the applicable Completion Deadlines and in accordance with the Schedule, including furnishing such employees, materials, facilities and equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as are permitted by the Contract Documents and which may be necessary to achieve such goal, all at Contractor's sole cost, except as otherwise specifically provided in Section 4.

15.3.13. Rights in Software

With respect to Software, (a) Contractor has and will have sufficient right to assign or grant the rights and/or licenses granted in the Software pursuant to this Contract (and Contractor acknowledges that all Software that is developed in whole or in part for toll collection shall be covered by the licensing requirements of Section 14.4.1, (b) all Software, have not been and will not be used or published under circumstances which have caused or will cause a loss of copyright, patent rights, trademark or other intellectual property right therein and (c) all Software does not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor is any claim (whether or not embodied in an action, past or present) of such infringement pending, been asserted or, to the best of Contractor's knowledge, been threatened against Contractor (or, insofar as Contractor is aware, any entity from which Contractor has obtained such rights). The representations and warranties set forth in this Section 15.3.13 shall survive the Maintenance Term and shall survive the expiration or termination of this Contract

15.3.14. Protection of Customer Information

All customer information and data to which Contractor may have access or which Contractor may obtain in connection with performance of the work hereunder, and other Project information generated in connection with this Contract, is and shall be the sole property of the Joint Board. Contractor shall at all times maintain the strict confidentiality of such information. Contractor shall have no right to sell, transfer, disclose or otherwise use such information for any purpose other than in performance of its duties hereunder. Contractor acknowledges and agrees that privacy of the customers is of paramount importance to the Joint Board and the traveling public and that Contractor will comply with all applicable Laws concerning privacy and confidentiality of personal information obtained in the course of the work performed under this Contract.

15.3.15. No Debarment

Contractor is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Programs under Executive Order 12549 and further certifies that it will not do business with any Person that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. Contractor shall require each Subcontractor to certify its eligibility to receive federal funds and, when requested by the Joint Board, shall promptly furnish a copy of such certification to the Joint Board.

15.3.16. Title

Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the Joint Board for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Project Site shall pass to INDOT and KYTC, collectively, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by the Joint Board to Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until the applicable Formal Acceptance Date, or until Contractor is removed from the Project.

15.4. Design Requirements

15.4.1. Required Approval

Approval by the Joint Board is required prior to commencing any work that would necessitate a modification to the final design documentation or the project description contained in the Contract Documents, regardless of whether the modification is required by a Governmental Approval or is desired by the Contractor for its benefit or for any other reason.

15.4.2. Third Party Design Review Process

The Contractor, working with the Joint Board, shall be responsible for giving and obtaining all design reviews required by utility owners, governmental entities, railroad owners and any other entities other than the Joint Board, as applicable.

15.5. Governmental Approvals and Permits

The Contractor shall procure all permits, licenses, inspections, and memberships; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of the work. The Joint Board or its members may have acquired environmental permits, including, but not limited to, U.S. Army Corps of Engineers Permit, IDNR Certificate of Approval of Construction in a Floodway, IDEM Section 401 Water Quality Certification, or a permit for construction of temporary pavement across a state line. If the Joint Board or its members have acquired one or more of such permits, the restrictions or conditions that were issued with such permits shall be made available

to proposers prior to award. The Contractor shall prosecute the work in accordance with all such restrictions or conditions.

15.6. Design and Engineering Personnel.

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

15.7. Progression of Work

Contractor shall at all times schedule and direct its work to provide an orderly progression of the work to achieve Substantial Completion Acceptance, Punch List Acceptance and Formal Acceptance by the applicable Completion Deadlines, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts and overtime operations) as may be necessary to achieve such goals, all at Contractor's own expense, except as otherwise specifically provided in the Contract Documents.

15.8. Contractor Responsible for Means and Methods

Contractor shall supervise, inspect, and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the work. Contractor shall be responsible to see that the completed work complies fully with the Contract Documents.

15.9. Services, Materials and Equipment

Unless otherwise specified in the Contract Documents, Contractor shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the work.

15.10. Limitation on Use of Site and Other Areas

Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Project Site and other areas permitted by laws or regulations, and shall not unreasonably encumber the Project Site and other areas with construction equipment or other materials or

equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the work. Should any claim be made by any such owner or occupant because of the performance of work, Contractor shall first promptly notify the Joint Board of such claim in writing and then shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the work or adjacent property to stresses or pressures that will endanger it.

15.11. Safety and Protection

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws and regulations. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Project Site or who may be affected by the work;
2. All the work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and
3. Other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

Contractor shall comply with applicable Laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Contractor shall comply with the applicable requirements of Kentucky's and Indiana's safety programs. The Contractor shall inform the Joint Board of the specific requirements of Contractor's safety program applicable to the Joint Board and its employees and representatives must comply while at the Project Site. All damage, injury, or loss to any property referred to in this Section 15.11 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the work is completed and the Joint Board has made Formal Acceptance of the work.

15.12. Safety Representatives

Contractor shall designate qualified and experienced safety representatives located on Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

15.13. Hazard Communications Programs

Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project Site in accordance with laws or regulations.

15.14. Emergencies

In emergencies affecting the safety or protection of persons or the work or property at the Project Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury or loss.

15.15. Related Work at Project Site

The Joint Board and the Joint Board members have contracted with other entities to design and construct the Operations Center, Walk-in Centers and Crossing structures. Additionally the Joint Board and its members may perform other work at the Project Site. The Design-Builder and the Developer will afford the Contractor proper and safe access to the Project Site and a reasonable opportunity for the introduction and storage of materials and equipment. The Contractor shall properly connect and coordinate the Work with other contractors working in the area. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that the Contractor may cut or alter others' work with the written consent of the Joint Board and the others whose work will be affected. The duties and responsibilities of the Contractor under this paragraph are for the benefit of such other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between the Joint Board and such other contractors.

15.16. No Release of the Contractor Obligations

Contractor's obligation to perform and complete the work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the work in accordance with the Contract Documents, or release the Contractor from its duty to correct defects:

1. Observations by the Joint Board;
2. The making of any progress or final payment;

3. The issuance of a certificate of Substantial Completion Acceptance or Formal Acceptance;
4. Use or occupancy of the work or any part thereof by the Joint Board;
5. Any review and approval of a submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective construction by the Joint Board.

15.17. Maintenance During Construction

Contractor shall be responsible for maintenance of the Work and the Project Site at all times prior to Substantial Completion Acceptance of the Operations Center, each Walk-in Center and each Crossing, and prior to System Substantial Completion Acceptance for any Work not included within a Crossing Substantial Completion Acceptance. Contractor shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project that is injured or damaged prior to the date Contractor's maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to the Joint Board, except to the extent that the Joint Board is responsible for such costs in accordance with the express terms of this Contract. Contractor, at its cost, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the ROW whether owned by Contractor, the Joint Board or any other Person.

If insurance proceeds with respect to any loss or damage for which Contractor is responsible for the rebuilding, repair or restoration thereof are paid to the Joint Board, then the Joint Board shall arrange for such proceeds to reimburse Contractor as repair or replacement work is performed by Contractor to the extent that the Joint Board has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Contractor shall not be a condition precedent to Contractor's obligation to perform such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by the Joint Board.

15.18. Maintenance Obligations After System Acceptance

15.18.1. Contractor's Obligation to Maintain and Repair

During the Maintenance Term, Contractor shall be responsible for all maintenance of the Work and the System, and shall keep the same in good working order and condition, performing all preventative maintenance and routine maintenance and making all adjustments, repairs, rehabilitations, reconstructions, and replacements necessary to keep the System in operation in accordance with the System Performance Requirements set forth in RFP Appendix B Section B.23 at all times, including carrying out the approved Maintenance Plan developed pursuant to Section 15.18.2 below, scheduling and completing routine cleaning, inspection and servicing of all System

components, provision and timely replenishment of all spares, supplies and consumables, and performance of scheduled preventative maintenance and corrective maintenance as required in the Contract Documents. Contractor shall maintain, rebuild, repair, restore or replace all work, including Design Documents, Construction Documents, Software, Hardware, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction or operation of the Project that is injured or damaged prior to the date Contractor's maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to the Joint Board, except to the extent that the Joint Board is responsible for such costs in accordance with the express terms of this Contract. Contractor acknowledges and agrees that the maintenance of the civil and structural portions of the System, that are installed or modified by Contractor in connection with the System, and pavement installed or modified by Contractor for the System to the extent that System sensors are located within such pavement are expressly included within its maintenance and repair obligations under this Section 15.18.

The Maintenance Term shall commence for each Crossing upon the expiration of the Warranty Period for such Crossing, and shall continue until the earlier to occur of the date that is four (4) years from the first anniversary of the System Formal Acceptance Date, or the date that is seven (7) years from the first Crossing Substantial Completion Acceptance Date to occur, plus any extension of such period due to the Joint Board's exercise of a Maintenance Option. The Joint Board shall have two Maintenance Options to extend the Maintenance Term for two years with each extension, up to a total of four years, for the Maintenance Option Prices specified in the Contractor's Price Proposal. The Joint Board shall exercise its Maintenance Options, if at all, by delivery of written notice to the Contractor of the Joint Board's election to exercise its Maintenance Option not fewer than 90 days prior to the scheduled expiration date of the then-current Maintenance Term. The Joint Board's failure to exercise the first such Maintenance Option shall constitute waiver of the Joint Board's right to exercise the second such option.

15.18.2. Maintenance Plan and Procedures

Contractor shall prepare and provide the Joint Board with a proposed written standard Maintenance Plan and procedures, including standards of performance with which Contractor and its employees and agents shall strictly comply. The Maintenance Plan shall include and cover all procedures of every kind necessary for the maintenance and repair of the System. Contractor shall develop procedures satisfactory to the Joint Board, in its sole discretion. Each Maintenance Plan shall also include a plan for inventory management and control, including all activities required to maintain an adequate supply of materials, supplies, spares, parts and equipment to maintain the System at all times. Once accepted, such Maintenance Plan shall be subject to change in whole or in part, at any time, at the sole discretion of the Joint Board pursuant to this Section 15.18.2.

Contractor shall furnish to the Joint Board the proposed Maintenance Plan for the Joint Board's review no later than 120 days prior to the Substantial Completion Deadline for the relevant Crossing or the System established pursuant to the then-current Project Schedule. The Joint Board shall conduct its review within 15 Days of receipt thereof. To the extent that the Joint Board objects to parts of the Maintenance Plan or directs changes therein, Contractor shall satisfy such objections and accommodate such change requests. Contractor shall submit the revised proposed Maintenance Plan for the Joint Board's review within 15 Days of receipt of the Joint Board's comments, whereupon the Joint Board shall review the revised Maintenance Plan within 15 Days of receipt thereof. Contractor shall continue to satisfy the Joint Board's objections and accommodate the Joint Board's change requests in similar fashion until the Joint Board accepts the Maintenance Plan. Neither the acceptance of any Maintenance Plan nor any direction of changes to a Maintenance Plan shall shift any liability or risk to the Joint Board for maintenance of the System or Contractor's obligations to comply with the Performance Requirements and the other requirements of the Contract Documents. Failure of the Joint Board to respond during any 15 Day review period shall not constitute acceptance thereof. In such event, Contractor shall deliver a written notice to the Joint Board expressly indicating the Joint Board's failure to respond. Should the Joint Board fail to respond within 15 Days of receipt of such written notice, such failure shall be deemed the Joint Board's acceptance of Contractor's submission.

The accepted Maintenance Plan shall be incorporated in a manual entitled "Maintenance Plan and Procedures, RBOC Toll System." Any changes to the Maintenance Plan approved by the Joint Board, in its sole discretion, shall be documented by changes to the manual. The manual will be kept up-to-date in a single bound volume (to the extent practicable) reflecting all provisions in effect at all times. The Maintenance Plan shall set forth a quality control and quality assurance program that will cause Contractor's maintenance and repair of the System to meet all requirements hereof and will establish the procedures and methods of operation most likely to achieve quality and performance at minimum cost.

15.18.3. Additional Maintenance Responsibilities

Contractor shall perform System Assurance Monitoring by collecting and analyzing data including System assurance data and System Functional Availability data, and perform diagnostic analysis of failures and trend analysis.

Contractor shall report monthly on System activities (and on Crossing activities prior to System Substantial Completion Acceptance), including operating statistics and System accuracy and Functional Availability, inventory, and other information as requested by the Joint Board. Contractor shall keep detailed maintenance records and inventory data to permit the Joint Board to ascertain Contractor's compliance with the Contract Document requirements and shall furnish copies of such documents upon request. The maintenance records shall include a summary of interruptions to normal Functional Availability and accuracy, explaining the duration and cause of such interruption. The procedures and forms for such recordkeeping shall be provided by Contractor and approved by the Joint Board in advance and as a condition to acceptance thereof. At a

minimum, the monthly management reports shall include a summary of the month's activities, highlighting any special events and incidents, a summary of performance achieved, an accuracy and Functional Availability report, and such other information as may be required by the Contract Documents or requested by the Joint Board.

Contractor shall develop a capital asset replacement program, including capital asset condition monitoring and reporting thereon.

Contractor shall monitor the System from a security perspective, respond to emergencies, and report security issues and incidents to appropriate authorities.

Contractor shall train new maintenance and supervisory personnel prior to transition to maintenance of the System by the Joint Board as specified in Section 15.18.5.

Contractor shall be responsible for configuration management activities throughout the Maintenance Term for all System elements, including Hardware, Software and documentation, and support and maintain all System Software.

Contractor shall make no change in the design or configuration of the System as accepted by the Joint Board without the express written consent of the Joint Board, in its sole discretion.

15.18.4. Corrective Action

If the minimum System Availability performance levels defined in the Performance Requirements in RFP Appendix B are not met for any calendar month, or performance records (including any performance audit report) indicate either has not been or will not be met, Contractor shall promptly notify the Joint Board in writing and undertake a study to determine the causes and propose a plan to correct the problem. Contractor shall take immediate corrective action to mitigate the cause at Contractor's sole cost and expense. The foregoing shall not modify, alter, limit or negate any of the Joint Board's rights or Contractor's obligations under Section 8 and RFP Appendix B Section B.23.

In addition to its rights in the preceding paragraph, (i) within 7 days of receipt by Contractor (or such shorter period as specified in the Contract Documents or as reasonably required under the circumstances and specified by the Joint Board in its notice hereunder) of notice from the Joint Board specifying a failure of any aspect of the System or Contractor's failure to perform the Maintenance Work as required under the Contract Documents, or (ii) at any time, in the event of an emergency requiring immediate curative action or a situation which poses a significant safety risk to the public or significant potential revenue loss (as determined by the Joint Board, in its sole discretion), the Joint Board shall have the right, but not the obligation, to perform or have performed by third parties the necessary work, remedy, and the costs thereof shall be borne by Contractor. Alternatively, the Joint Board may deduct the amount of such costs and expenses from any sums owed by the Joint Board to Contractor pursuant to this Contract. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction. The foregoing shall not limit or modify the Joint Board's rights to any Liquidated Damages that may arise out of such failure.

15.18.5. Transfer of Maintenance to the Joint Board at End of Maintenance Term

15.18.5.1. Training and Personnel

Contractor shall provide training of the Joint Board personnel or the personnel of a Joint Board-designated organization to maintain the Project to be initiated at least 6 months prior to the end of the Maintenance Term. Staff numbers and positions and training procedures will be in accordance with Contractor's staffing plan in the Maintenance Plan then in effect. Contractor shall design its classroom and on-the-job training with the objective of providing sufficient maintenance personnel competent to maintain the System. Contractor shall provide qualified instructors who will prepare the course material including the latest modifications, equipment changes, maintenance updates, and any revised maintenance procedures, and may enlist major Subcontractors or Suppliers to augment Contractor's own trainers. Literature, training aids, and equipment used in training shall be turned over to the Joint Board at the termination of the Maintenance Term. The training shall be designed with the objective that within 3 months of the start of the training, but no later than 90 Days prior to the end of the Maintenance Term, there shall be sufficient quantity of personnel trained so that the Project can be completely run without Contractor's personnel. It shall include classroom and hands-on experience.

15.18.5.2. Continued Stocking of Parts

At the end of the Maintenance Term, the spare parts, equipment, expendables and consumables inventory shall be fully stocked and complete (including substitution with suitable alternatives for any such spare parts, equipment and expendables that are obsolete) to the extent required by the Contract Documents, or as may be modified. In the event that such inventory is not fully stocked and complete, an amount equal to the cost of restocking and completing such inventory shall be deducted from any payments, if any, due Contractor. The Joint Board shall notify the Contractor promptly of any such deduction. To the extent that the cost of restocking and completing such inventory incurred by the Joint Board exceeds the payments due Contractor, such differential shall be paid by the Contractor to the Joint Board within 15 Days after the date of termination of the Maintenance Term.

16.0 Miscellaneous Provisions

16.1. Personal Liability of Public Officials

In carrying out any of the provisions of the Contract, or in exercising any power or Joint Board granted to them by or within the scope of the Contract, the Joint Board, the Joint Board members, and the Joint Board Representatives shall have no liability, either personally or as officials of the Commonwealth of Kentucky or of the State of Indiana; in all such matters they act solely as agents and representatives of the Commonwealth of Kentucky or of the State of Indiana.

16.2. No Waiver of Legal Rights

The Joint Board is not precluded or estopped by any measurement, estimate, or certificate made either before or after the completion, acceptance, Formal Acceptance of the work or payment for the work, from showing the true quantity and character of Contractor's work and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that Contractor's work or materials that the Contractor furnishes do not conform to the Contract.

The Joint Board is not precluded or estopped, notwithstanding any such measurement, estimate, or certificate made either before or after the completion, acceptance, or Formal Acceptance of the work or payment for the work from recovering from the Contractor and its surety such damages as it may sustain by reason of Contractor's failure to comply with the terms of the Contract. Neither the Joint Board's acceptance, nor the acceptance of any representatives of the Joint Board, nor the Joint Board's Formal Acceptance, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any the Joint Board possession of the work shall operate as a waiver of any portion of this Contract or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of this Contract does not operate as a waiver of any other or subsequent breach. The Contractor, without prejudice to the terms of the Contract Documents, is liable to the Joint Board for latent defects, fraud or such gross mistakes as may amount to fraud, and the Joint Board's rights under any warranty or guaranty.

16.3. Policies, Procedures and Standards

16.3.1. Documents

The policies, procedures, standards, and forms of INDOT, KYTC, the Joint Board, and FHWA are included herein by reference. Additional policies, procedures, and standards have been noted elsewhere in the Contract Documents.

16.3.2. Jurisdiction

Except as noted, the Joint Board is lead agency for the prosecution of this Project. The individual policies, procedures, and standards shall be determined by the location of the proposed work. Except as specified otherwise in the Scope of Work, any work in the State of Indiana shall be governed by the noted documents as issued by INDOT, and any work in the Commonwealth of Kentucky shall be governed by the noted documents as issued by the Joint Board.

16.4. Conflicts of Interest

The Contractor shall not engage, on a full-time, part-time, or other basis during the Contract Time, professional or technical personnel who are or have been, during the Contract Time, in the employment of the Joint Board, except regularly retired employees, without the written consent of the Joint Board Representatives.

16.5. Laws to be Observed

In all operations connected with the work, the Contractor shall strictly comply with all state, federal, and local ordinances, regulations, Laws, and bylaws controlling or limiting in any way the actions of those engaged in the work. The Contractor shall keep fully informed of federal and state laws; local laws; ordinances; and rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or Joint Board which in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall protect, indemnify, and exculpate the Commonwealth of Kentucky and the State of Indiana and its representatives, in accordance with Article 11, against civil claims or civil liabilities arising from or based on the violation of such Law, ordinance, rule, regulation, order, or decree, whether by itself or its employees.

16.6. Reference Standards

Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of the Joint Board, the Contractor, or any of their Subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Joint Board or its officers, directors, members, partners, employees, agents, consultants, or Subcontractors any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

16.7. No Third Party Beneficiary

Except as provided below as to the States' Parties, the Contract Documents shall not be construed to create a contractual (or third party beneficiary) relationship of any kind between any persons or entities other than the Joint Board and the Contractor, including but not limited to any consultant retained by the Joint Board to prepare or review the Project Scope.

Nothing in the Contract Documents: (1) shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between the Joint Board and any such Subcontractor, Supplier, or other individual or entity; or (2) shall create any obligation on the part of the Joint Board to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

As the States' Parties depend on the revenues from the facility and will be responsible for the operations and maintenance of the Project upon completion by the Contractor of

construction and Substantial Completion Acceptance, the States' Parties may therefore suffer direct damages by any material failure of the Contractor to comply with the terms of this Contract. Notwithstanding any other provision of Section 16.7, Contractor acknowledges and agrees that the States' Parties are intended (and direct) third party beneficiaries of this Contract, and as such, the States' Parties each have an independent right to enforce the terms and conditions hereof by asserting a direct action on this Contract under Kentucky law against the Contractor for all reasonable, and direct losses sustained by the States' Party or States' Parties and caused by the failure of the Contractor to perform its contractual duties. Such losses and damages specifically would include but not be limited to, to the extent allowed by Law, the actual, reasonable costs to repair, replace, redesign and/or reconstruct those portions of the System necessary to restore it to the functional status required initially for Substantial Completion. These duties and obligations are owed directly to each of the States' Parties and can only be waived or released by each individual States' Party itself. Contractor shall be afforded all notice and cure periods relating to any such failure as is set forth in this Contract. A States' Party's action and rights shall not limit, diminish or derogate the rights and remedies of the Joint Board or the other States' Parties under the Contract Documents. The statute of limitations for any cause of action under this Section 16.7 shall not begin to run until completion of construction and Formal Acceptance by the Joint Board, or such other date as may be provided by law, whichever is later.

16.8. Contractor's Responsibility For Work

Until the Joint Board makes Formal Acceptance of the work, the Contractor shall protect against injury or damage to any part of the work by the action of the elements, or from any other cause, whether arising from the execution, or from the nonexecution, of the work. Contractor shall rebuild, repair, and restore any portion of the work damaged by any of the above causes. The Contractor shall bear the expense of such repairs except for damages to the work which the Joint Board determines are due to Force Majeure Events.

16.9. Documents and Records

16.9.1. Escrowed Proposal Documents

Concurrently with the execution of the Contract, the Contractor delivered to the Joint Board one copy of all documentary information used in preparation of its Price Proposal for the Project (the "Escrowed Proposal Documents" or "EPD"), but excluding documents relating to other projects which may have been referenced by the Contractor in determining the Contract Price and the Maintenance Price. The EPD have been transferred to a locked fireproof cabinet in a locked room in the Operations Center, supplied by the Operations Contractor. The cabinet has two locks, with one key held by the Contractor and the other key held by the Joint Board. Concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the Change Order shall be added to the EPD. The EPD will be held in such cabinet or otherwise maintained subject to Section 16.9.2 until all of the following have occurred: (a) 180 days have elapsed after expiration or earlier termination of the

warranties or Maintenance Term, whichever is later, (b) all Disputes regarding this Contract have been settled, and (c) final payment of the Maintenance Price has been made by the Joint Board and accepted by the Contractor.

16.9.1.1. Review of EPD

The EPD shall be available during business hours for joint review by the Contractor and the Joint Board and any Dispute resolver in the resolution of Disputes, in connection with an audit (if the EPD is the subject of an audit) and as described in Section 16.9.7. The Joint Board shall be entitled to review all or any part of the EPD in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. The Joint Board shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the Joint Board has executed and delivered to the Contractor a confidentiality agreement specifying that, except as required by law or court order, all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than the Joint Board's agents, attorneys and experts, other dispute resolvers, and that all copies of such documents (other than those delivered to dispute resolvers) will be either destroyed or returned to the depository (or to the Contractor if the EPD have been returned to it) upon final resolution of the negotiations or disputes. The foregoing shall in no way be deemed a limitation on the Joint Board's discovery rights with respect to such documents. Nothing in this Section 16.9 shall prohibit the Joint Board from producing such documents it believes, in its discretion, it is required to produce in response to a request pursuant to the Kentucky Open Records Act or as otherwise required by law or court order. Nothing in this Section 16.9 shall restrict the Joint Board's rights to use the Design Documents and Technical Proposal Documents as provided in Section 14.5 and elsewhere in the Contract Documents.

16.9.1.2. Property of the Contractor

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

16.9.1.3. Representation and Warranty

The Contractor represents and warrants that the EPD provided concurrently with the Price Proposal documents constitute all of the information used in the preparation of Its Price Proposal and agrees that no other proposal preparation information will be considered in resolving Disputes. The Contractor also agrees that the EPD are not part of this Contract and that nothing in the EPD shall change or modify the Contract.

16.9.1.4. Contents of EPD

The EPD shall clearly itemize the estimated costs of performing the work required by the Contract Documents. All work shall be separated into sub-items as required to present a complete and detailed estimate of all costs. Crews, equipment, quantities and rates of production shall be detailed. Estimates of costs shall be further divided into Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, Expendable Materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Contractor's usual format. Contractor's allocation of plant and equipment, indirect costs, contingencies, markup and other items to each direct cost item shall be clearly identified. The EPD shall include all assumptions, quantity takeoffs, rates of production, the Contractor internal equipment rental rates and progress calculations, quotes from Subcontractors, consultants and Suppliers, memoranda, narratives and all other information used by the Contractor to arrive at the Proposal Price or Change Order price, as applicable.

16.9.1.5. Format of EPD

The Contractor shall submit the EPD in the format actually used by the Contractor in preparing its Price Proposal. It is not intended that the Contractor perform any significant extra work in the preparation of these documents prior to the Contract Price Proposal due date. However, the Contractor represents and warrants that the EPD related to the proposal documents have been personally examined prior to delivery to escrow by an authorized officer of the Contractor and that they meet the requirements of Section 16.9.5 and are adequate to enable a complete understanding and interpretation of how the Contractor arrived at its Proposal Price. The Contractor further represents, warrants and covenants that the EPD related to each Change Order will be personally examined prior to delivery to escrow by an authorized officer of the Contractor and that they meet the requirements of Section 16.9.5 and will be adequate to enable a complete understanding and interpretation of how the Contractor arrived at its Change Order price.

16.9.1.6. Compilation of Index

Within ten working days after the Effective Date (if not performed prior to Contract execution) and within ten working days after approval of any Change Order, representatives of the Joint Board and the Contractor shall review the EPD or supplemental EPD, as appropriate, to determine whether it is complete, and shall organize the EPD or supplemental EPD, as appropriate, and label each page so that it is obvious that the page is a part of the EPD and so as to enable a person reviewing the

page to determine where it can be found within the EPD. The representatives shall also compile an index listing each document included in the EPD or supplemental EPD, as appropriate, and briefly describing the document and its location in the EPD. The Joint Board shall have the right to retain a copy of the Index. In the event that, following the initial organization, the Joint Board determines that the EPD is incomplete, the Joint Board may request the Contractor to supply data to make the EPD complete. The Contractor shall provide all such data within three working days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD Information, and added to the EPD. The Contractor shall have no right to add documents to the EPD except upon the Joint Board's request.

16.9.1.7. Confidentiality

The EPD shall at all times be treated as proprietary and confidential information and shall be used only for purposes described in Section 16.9.1. The Contractor shall label any EPD that the Contractor considers to be exempt from disclosure pursuant to the Indiana and Kentucky open records acts. At Contractor's request, confidentiality agreements shall be executed and delivered to the Contractor by the Joint Board's employees or agents who review or have access to the EPD.

16.9.1.8. Subcontractors

Contractor shall require the principal design Subcontractor, and all Major Subcontractors, to submit to Contractor a copy of all documentary information used in determining its Subcontract price (including the Subcontract Price included in any amendment and/or change order), immediately prior to executing the Subcontract and each change order and Subcontract amendment, to be held in the same manner as the EPDs and which shall be accessible by Contractor and its successors and assigns (including the Joint Board) and any dispute resolver, on terms substantially similar to those contained herein. Each such Subcontract shall contain a representation and warranty of the Subcontractor, for the benefit of Contractor and the Joint Board, that the EPDs include all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in connection with each supplemental set of EPDs, that the information contained therein is accurate, complete and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in determining its Subcontract price and to provide such information to Contractor and the Joint Board in connection with any claim made by such Subcontractor.

16.9.2. Maintenance of, Access to and Audit of Records

The Joint Board and its members or their auditors may conduct an audit or investigation of any entity receiving funds directly under this Contract or indirectly through a Subcontract. Acceptance of funds directly under this Contract or indirectly through a Subcontract acts as acceptance of the authority of such auditors to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the auditor with access to any information the auditor

considers relevant to the investigation or audit, including, without limitation, any information which the Joint Board is entitled to audit under this Section 16.9.2.

Contractor shall maintain at a Project administration office in [specify location] a complete set of all books and records prepared or employed by Contractor in its management, scheduling, cost accounting and other activities related to the work and the Project. Without limiting the provisions of Section 16.9, Contractor shall grant to the Joint Board and the relevant auditor such audit rights and shall allow the Joint Board and the relevant auditor such access to and the right to copy such books and records as the Joint Board or the auditor may request in connection with the issuance of any NTP or with respect to any Change Orders, the resolution of Disputes, and such other matters as the Joint Board or the auditor reasonably deems necessary for purposes of verifying compliance with this Contract and applicable Law.

Where the payment method for any work is on a force account basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such work. If an audit indicates Contractor has been overpaid under a previous progress report or progress payment, the excess payment will be credited against current progress reports or payments.

For cost and pricing data submitted in connection with the Project other than that which is covered by any Change Orders, auditors and their representatives shall have the right to examine all books, records, documents and other data of Contractor related to the negotiation of or performance of such work for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall not apply to pricing 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, in each case, as determined by the Joint Board. Such right of examination shall extend to all documents deemed necessary by the Joint Board and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

All claims filed against the Joint Board shall be subject to audit at any time following the filing of the claim. The audit may be performed by employees of the Joint Board or by an auditor under contract with the Joint Board. No notice is required before commencing any audit before 60 Days after the later of (i) the expiration of the Maintenance Term, or (ii) the termination of this Contract. Thereafter, The Joint Board shall provide 10 days notice to Contractor, any Subcontractors or their respective agents before commencing an audit. Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to the Joint Board, for the audit during normal business hours. Contractor, Subcontractors or their agents shall cooperate with the auditors. Failure of Contractor, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of Contractor, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

At a minimum, the auditors shall have available to them the following documents:

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 work sheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Subcontractors' (including Suppliers) 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. All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and
18. 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.

Contractor shall ensure that each Subcontract shall provide for the same audit rights in connection with such Subcontract as are provided under this Section 16.9.

Full compliance by Contractor with the provisions of this Section 16.9 is a contractual condition precedent to Contractor's right to pursue a formal Dispute under Section 13.

Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 16.9.

16.10. Retention of Records

Contractor shall maintain all records and documents relating to the work, including copies of all original documents delivered to the Joint Board, and the Project at a convenient location within the greater Louisville Metropolitan area until five years after the later of (i) the expiration of the Maintenance Term, or (ii) the termination of this

Contract. Contractor shall notify the Joint Board where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the Dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Contractor's costs under the Contract Documents. Contractor shall make these records and documents available for audit and inspection to the Joint Board, at Contractor's offices in Louisville Kentucky at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to Contractor. If approved by the Joint Board, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents

16.11. Interest

Any interest due or determined to be due to the Contractor, including any pre-judgment interest, shall be at the prime rate as published in the Wall Street Journal at the time the underlying amounts were due.

16.12. Severability

The invalidity in whole or in part of a provision of this Contract shall not void or affect the validity of all other provisions.

16.13. Entire Agreement

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

17.0 Representatives

17.1. The Joint Board's Designated Representative

The Joint Board Representatives are _____ . The Joint Board Representatives shall be authorized to act on the Joint Board's behalf with respect to the Project.

17.2. Contractor's Designated Representative

Contractor's Designated Representative is _____. Contractor's Designated Representative identified above shall be authorized to act on Contractor's behalf with respect to the Project.

17.3. Changing Designated Representative

Neither the Joint Board Representatives nor Contractor's Designated Representative may be changed without ten days written notice to the other party.

18.0 Access to Project Site; Utilities; Environmental Compliance

18.1. Access to Project Site

The Joint Board shall acquire necessary Project right of way. Contractor shall coordinate with the Design Build Contractor and the Developer regarding access to the Project right of way as is necessary to perform the work. To the extent that Contractor has not been provided with access to portions of the right of way ("ROW") prior to the date set forth on the Project Schedule, Contractor shall work around such area with the goal of minimizing delay to the completion of the Project.

All costs and expenses for the acquisition of any temporary right or interest in real property that Contractor determines necessary or desirable for its convenience in performance of the work, such as for work space, contractor laydown areas, materials or storage areas, or for any permanent interest in real property that Contractor may wish to acquire for its convenience which lies outside the ROW, shall be Contractor's sole responsibility, to be undertaken at Contractor's sole cost and expense. The Joint Board shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such rights or interests, and shall not use its powers of eminent domain in connection therewith. Contractor will comply with all applicable Laws in acquiring and maintaining or disposing of any such property rights or interests. Contractor shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that the Joint Board shall have no liability with respect thereto.

18.2. Utilities

The Joint Board will ensure that all necessary Utilities enter the ROW of each Crossing, provided that the Joint Board may, in its sole discretion, require Contractor to perform such activities by including them in a Construction Change Directive. Contractor shall be responsible for verifying the location of all Utilities shown on any utility strip map provided by the Joint Board or otherwise related to any Crossing (including undertaking field inspections and Project Site studies, researching Utility Owner records and confirming Contractor's findings with the Joint Board and the Utility Owners), and for obtaining all Utility installations, hook-ups and service extensions that are required to operate the System, and for coordination with Utility Owners, at Contractor's cost. Contractor shall use its best efforts to minimize costs for which Contractor is entitled to compensation, including avoidance of an unidentified and misidentified Utility where feasible rather than its removal and/or reinstallation in a new location, and to minimize any delay for which Contractor is entitled to an extension in a Completion Deadline pursuant to this Section 18.2.

18.3. Hazardous Materials Management

18.3.1. Procedures and Compensation for Hazardous Materials Management

If during the course of the work, Contractor encounters Hazardous Materials, Contractor shall (a) promptly notify the Joint Board in writing and advise the Joint Board of any obligation to notify State or federal agencies under applicable Law; and (b) take

reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials. Where excavation or dewatering of Hazardous Materials is unavoidable, Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by the Joint Board. Contractor's plan for Hazardous Materials Management shall be subject to the prior written approval of the Joint Board. Wherever feasible and consistent with applicable Law, contaminated soil and groundwater shall not be disposed off-site. All Hazardous Materials shall be managed, handled, remediated, transported (where applicable) and disposed of in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan.

Except where required to take an immediate action required by applicable Law, Contractor shall afford the Joint Board the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the Joint Board's ability to ascertain the nature and extent of the contamination.

Subject to the limitations and exceptions set forth in this and Section 4, Contractor shall be entitled to a Change Order as set forth in Section 4.8 providing for additional compensation and/or a time extension with respect to costs and delays directly attributable to the discovery of Hazardous Materials within the ROW.

18.3.2. Hazardous Material Generator

As between Contractor and the Joint Board, the Joint Board shall be considered the generator of Hazardous Materials on any ROW as of the Effective Date; provided, however, that the foregoing shall not preclude or limit any rights or remedies that the Joint Board may have against third parties and/or prior owners, lessees, licensees and occupants of the ROW. As between Contractor and the Joint Board, Contractor shall be considered the generator of any Hazardous Materials on any ROW which result from (a) Release(s) of Hazardous Material attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any Contractor-Related Entity; and (b) Release(s) of Hazardous Materials arranged to be brought onto ROW or elsewhere by any Contractor-Related Entity regardless of the cause of the Release of Hazardous Materials.

18.3.3. Hazardous Material Releases Caused by Contractor

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to and/or which result from (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Contractor-Related Entity; or (b) Release(s) of Hazardous Materials arranged to be brought onto any ROW or elsewhere by any Contractor-Related Entity shall not be compensable to Contractor, regardless of the cause of the Release of Hazardous Materials.

18.3.4. Hazardous Materials Brought to Final ROW by Contractor

Contractor shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Project Site by any Contractor-Related Entity; (b) use, containment, storage, management, transport and disposal of all Hazardous Materials in accordance with the Contract Documents and all applicable Laws and Environmental Approvals; and (c) payment of all Losses associated with, arising out of or related to such Hazardous Materials.

18.3.5. Environmental Approvals Relating to Hazardous Materials Management

Contractor shall be solely responsible for obtaining all Governmental Approvals relating to Hazardous Materials Management including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials required for performance of the work. Contractor shall be solely responsible for compliance with such Governmental Approvals and applicable Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading.

18.4. Environmental Compliance

Contractor shall be responsible for compliance with all conditions and requirements of the Environmental Approvals and similar Governmental Approvals specifically applicable to the Project, other than the mitigation requirements that are the Joint Board's responsibility in the Contract Documents. The Contract Price includes compensation for Contractor's performance of all environmental requirements and conditions relating to the Project, including mitigation measures.

19.0 Additional Federal and State Provisions

19.1. Certification Regarding Use of Contract Funds for Lobbying

Contractor certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Lobbying Activities," in accordance with its instructions.

3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who makes an expenditure prohibited under 31 U.S.C. § 1352 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. Any person who fails to file or amend a declaration required to be filed or amended under 31 U.S.C. § 1352 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. Contractor shall require that the language of this certification be included in all Subcontracts and that all Subcontractors shall certify and disclose accordingly.

19.2. Civil Rights; Equal Employment Opportunity and Certification

19.2.1. Contractor shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. Contractor shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 21 and 23 CFR Part 200 in the award and administration of FHWA-assisted agreements. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of the Contract Documents or such other remedy as the Joint Board deems appropriate.

19.2.2. Contractor shall include Section 19.2.1 in every Subcontract (including purchase orders and in every subcontract of any Contractor-Related Entity for Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

19.2.3. Contractor confirms for itself and all Subcontractors that Contractor and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Contractor and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. Contractor shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions set forth in Exhibit L, and shall require its Subcontractors to comply with such provisions.

19.2.4. Contractor hereby certifies that it has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

CONTRACTOR ACKNOWLEDGES THAT THE FOREGOING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS IS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE CONTRACTOR AND EACH NON-EXEMPT SUBCONTRACTOR.

19.3. Buy America

The Contractor shall comply with all Buy America requirements, including but not limited to those contained in 23 U.S.C. 313 and 23 CFR 635.410.

19.4. Prevailing Wage Rates

The Contractor shall comply with all applicable prevailing wage requirements, particularly those included in the schedule found in Exhibit M, as updated.

19.5. Civil Rights Act of 1964

The KYTC, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Federal Department of Transportation (49 C.F.R., Part 21), issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the bidder whose proposal provides the best value to the Joint Board without discrimination on the ground of race, color, or national origin.

19.6. Notice To All Bidders

To report bid rigging activities, proposers shall call: 1-800-424-9071.

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities shall use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

19.7. Second Tier Subcontracts

Second Tier subcontracts on federally assisted projects shall be permitted. However, in the case of DBE's, second tier subcontracts will only be permitted where the other subcontractor is also a DBE. All second tier subcontracts shall have the consent of both the Contractor and the Engineer.

20.0 DBE Participation

Disadvantaged Business Enterprises shall have equal opportunity to participate in this Project. The Contractor shall use its best efforts to solicit bids from, and to contract with, DBE subcontractors to perform all types of work on the Project. This project shall have a DBE participation goal of 3%. The Contractor shall comply with Title 49 CFR Part 26 in its efforts to meet the DBE participation goal for this Project. By submitting its Proposal, the Contractor represents that it will achieve the Project DBE participation goal. The

Contractor shall demonstrate on an annual basis throughout the life of the Contract that the Project DBE participation goal is being achieved or that “good faith efforts” have been made to do so as described in 49 CFR 26.53. KYTC shall determine whether the Contractor has put forth adequate good faith efforts pursuant to paragraph_____.

20.1. DBE Participation Plan

The Contractor’s proposal shall include an initial DBE participation plan. The DBE participation plan shall demonstrate how the Contractor will use DBEs to meet or exceed the Project DBE participation goal for the life of the Project. The DBE participation plan shall identify and describe the planned utilization of DBEs in all subcontractor procurements. The Contractor shall include the subcontract DBE participation goals in the procurement documents for those procurements specified in the DBE participation plan. The Contractor shall maintain complete documentation of all procurements assigned DBE subcontractor goals.

20.1.1. Updates to the DBE Participation Plan

Every year, on the Contract award date, until Final Acceptance, the Contractor shall submit a revised DBE participation plan to the Joint Board for review, comment and approval. The Contractor shall also submit a yearly affidavit stating the level of DBE expenditure to date and describing planned efforts to meet the Project DBE participation goal through the duration of the Contract. On an annual basis, the Joint Board will verify that the Contractor has met its cumulative DBE participation goal and that it is complying with its DBE participation plan.

20.1.2. Affidavit

The Contractor’s proposal shall include an affidavit stating that the Contractor will meet or exceed the Project DBE participation goal or shall submit proof of its good faith efforts to do so in compliance with 49 C.F.R. Part 26. It is the responsibility of the Contractor to obtain all required documentation from the DBE subcontractors and to provide the information to the Joint Board.

20.2. Commercially Useful Function

Proposed DBE participation shall not be counted toward the Project goal unless the DBE performs a commercially useful function as described in 49 CFR 26.55. To meet this requirement, DBE’s must perform at least 30 percent of the total cost of its contract with its own work force as provided in 49 CFR 26.55(c)(3). The Contractor shall provide certified payrolls for all of its subcontractors. The certified payrolls for DBE subcontractors will be reviewed by KYTC to ensure that the work in the payroll describes a commercially useful function.

20.3. Monthly Reports of DBE Participation

The Contractor shall also submit monthly reports throughout the duration of the Contract detailing DBE payments to date and payments anticipated for the remainder of the Project. The report shall also include, for the applicable reporting period, any and all

payments the Contractor or any of its non-DBE consultants, subcontractors and/or suppliers have received (regardless of the form or manner) from any DBE for shared equipment, personnel, or facilities. For example, if the Contractor uses a DBE service, such as trucking, to satisfy a part or the Project DBE participation goal, the Contractor shall provide a copy of each canceled check issued to the DBE service provider upon request by the non-DBE contracting entity. DBE participation shall not be credited until documentation is received and approved by the Joint Board.

20.4. Replacement of Non-Performing DBEs

In the event that a DBE fails to perform the subcontracted work, the Contractor shall attempt to replace the non-performing DBE with another DBE. Replacement DBEs shall be given the same or an equivalent scope of work as the original DBE was to perform. A non-performing DBE is one that has been contracted to provide specific goods or perform services, but becomes unable or unwilling to provide the goods or services for which it was contracted. With the prior approval of the Joint Board, the Contractor may remove and replace a nonperforming DBE. The Contractor must submit a request for approval of the planned corrective action from KYTC, The Office for Civil Rights and Small Business Development, 200 Mero Street, 6th Floor West, Frankfort, KY 40622. The request must document the process, progress, and efforts being made or not made by the non-performing DBE. The request will then be submitted to the Joint Board for review.

20.5. Waiver Process for DBE Project Goal

In the event the Contractor is unable to meet a portion of the Project DBE participation goal, the Joint Board will accept requests for partial waivers of the Project goal during the term of the Contract. Requests for partial waivers must include a full accounting of all good faith efforts expended to meet the Project goal and an explanation of the necessity of the waiver. Any such request shall be submitted at the time the Contractor's annual update of the DBE participation plan is due. Waiver requests shall be in writing and shall be submitted to KYTC, The Office for Civil Rights and Small Business Development, 200 Mero Street, 6th Floor West, Frankfort, KY 40622. The requests will then be submitted to the Joint Board, which shall individually evaluate all requests to determine if a waiver of any portion of the Project goal is warranted.

If an item of work subcontracted to a DBE firm is eliminated from the Project by the Joint Board, the Contractor may request a waiver of an equivalent portion of the Project goal. If the Contractor or the Joint Board proposes an alternate scope of work in place of the eliminated work, then the Contractor shall expend good faith efforts to solicit DBE participation for the revised scope of work. If the Contractor is unable to obtain DBE participation for the revised scope of work it may then request a waiver of the equivalent portion of the Project goal.

If requesting a partial waiver of the Project DBE participation goal indicated in the DBE participation plan, the Contractor shall provide the following for Joint Board review and approval:

1. The dollar value and percentage of the Project goal the subcontract in question was intended to meet.
2. The dollar value and percentage of the reduction in the subcontractor DBE participation goal being requested.
3. The executed copy of the subcontract or purchase order between the Contractor/lower tier subcontractor and the non-performing DBE, if any.
4. Copies of all dated communications/solicitations, fax confirmations, personal contact sheets or meeting notes, negotiation summaries, and applicable follow-up communications.
5. Copies of all written communications, faxes, or emails that show that the Contractor or lower tier bidders solicited and provided DBEs with adequate information about the plans, specifications, and requirements of the Contract or subcontract in a timely manner to assist DBEs in responding to the solicitation efforts.
6. Copies of dated written communications, faxes, or emails for each non-competitive DBE quote that includes the dollar value of each item of work for which the DBE provided a quote. Copies of any written communications evidencing the unavailability of DBEs or their general unwillingness to provide a quote for the Project/subcontract opportunity.
7. Documentation of all negotiations with DBEs and reasons for rejecting bids received.
8. Documentation of efforts to utilize KYTC's Office for Civil Rights and Small Business Development or any minority or female business organization or association to meet the subcontractor DBE participation goal.
9. Such other factors the Contractor or its lower tier bidder/subcontractor determine may warrant consideration.

The Joint Board shall review the Contractor's waiver request and attached documentation and issue a written determination within ten business days. The Contractor may request administrative reconsideration of the Joint Board's written determination within ten business days of being notified that the Joint Board denied the waiver request.

The Contractor's efforts to obtain a waiver of DBE expenditure goals shall not be grounds for a change order and shall not affect the Project schedule.

20.6. Subcontractor Agreements

The Contractor shall provide a copy of any DBE subcontract agreement that the Contractor proposes to use to fulfill the Project DBE participation goal or for which the Contractor desires to obtain credit.

DBEs shall not perform services or supply goods, regardless of their lower tier status, unless an executed subcontract agreement or purchase order has been submitted to the Joint Board. The Contractor and lower tier non-DBE subcontractors with DBE

participation responsibilities shall also submit copies of all change orders and contract modifications for their DBE subcontracts to the Joint Board. Each subcontract agreement shall at a minimum include all required federal provisions and the requirement that all lower tier subcontractors must cooperate with all compliance reviews.

20.7. Good Faith Requirements and Noncompliance

As describe above, Contractors shall submit a comprehensive, DBE participation plan describing how they will meet or exceed the DBE expenditure goal with the technical proposal. DBEs shall be utilized in all phases of the Project including consultants, subcontractors, and suppliers. If the written DBE participation plan does not adequately address how the DBE participation will meet or exceed the expenditure goal, or does not adequately document that it made good faith efforts to meet the goal, the Contractor submittal shall be deemed non-responsive.

The Contractor, on an annual basis, shall prepare an updated DBE participation plan consistent with the requirements for the original DBE participation plan, with the addition of demonstrating progress toward meeting or exceeding the Project DBE participation goal or that sufficient good faith efforts were made to meet the Project goal for the prior year. If the Contractor is not on track to meet the Project goal it shall submit an action plan to address shortfalls. Demonstration of good faith effort shall include:

1. Whether the Contractor attended any pre-bid meetings that were scheduled by KYTC or the Joint Board to inform DBEs of subcontracting opportunities;
2. Whether the Contractor provided solicitations through reasonable and available means;
3. Whether the Contractor provided written notice to all DBEs listed in the INDOT and KYTC DBE directories who are prequalified in the areas of work available on the Project;
4. Whether the Contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted area do not provide an intent to quote or no DBEs are prequalified in the subcontracted areas, the Contractor must notify the KYTC Disadvantaged Business Enterprise Liaison Officer of the lack of response;
5. Whether the Contractor selected portions of the work to be performed by DBEs to increase the likelihood of meeting the contract goal. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise perform these work items with its own forces;
6. Whether the Contractor provided interested DBEs with adequate and timely information about the plans, specifications, and requirements of the Contract;
7. Whether the Contractor negotiated in good faith with interested DBEs not rejecting them as unqualified without sound reasons based on a thorough investigation

of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached;

8. Whether quotes were received from interested DBEs, but were rejected as unacceptable and why the quotes were unacceptable. The fact that the DBEs' quote for the work is not the lowest quoted price received will not in itself be considered as a sound reason for rejecting the quote as unacceptable. The fact that the Contractor has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the Contractor to accept unreasonable quotes to satisfy the DBE goal;

9. Whether the Contractor specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be subcontracted includes potential DBE participation;

10. Whether the Contractor made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements of the proposal; and

11. Any other evidence that the Contractor submits that may show that the Contractor has made reasonable good faith efforts to include DBE participation.

12. Where the information submitted includes repetitious solicitation letters, it is acceptable to submit a sample representative letter along with a distribution list of the firms solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed above which KYTC considers in judging good faith efforts. This documentation may include written subcontractors' quotes, telephone log notations of verbal quotes, or other types of quote documentation.

The Joint Board, in consultation with KYTC's Office for Civil Rights and Small Business Development, shall review all DBE participation plan submittals. In the event that the plan submitted does not sufficiently document qualifying good faith efforts, the Joint Board may consider withholding payment for the areas that are documented in the plan for DBE participation until such time the Contractor can demonstrate they are on track to meet or exceed the Project DBE participation goal.

20.7.1. Failure to Meet Good Faith Effort Requirement

Upon Project completion, if the Contractor fails to satisfy the DBE participation or to meet the Project DBE participation goal and the Joint Board determines that the Contractor failed to make sufficient efforts to meet the Project DBE participation goal, the Contractor shall be assessed financial disincentives for failure to obtain sufficient DBE participation. The Joint Board will levy financial disincentives in the contract amount it would have required the Contractor to achieve the goal less what participation was achieved. The Joint Board will deduct this from the Contract or obtain payment through any other lawful method, including the withholding of payments due. The Contractor shall be offered the opportunity to meet in person for administrative reconsideration by submitting a request through KYTC.

20.7.2. Administrative Reconsideration

The Contractor shall be notified of the decision to reject a request for an allowance of good faith effort credit within 30 days. The notification shall be confirmed in writing. The Contractor shall have 30 days to request reconsideration. The reconsideration meeting shall be held within seven business days of the receipt of a request from the Contractor for reconsideration.

20.8. Prompt Payment

The prime contractor will be required to pay the DBE within seven (7) working days after it has received payment from KYTC for work performed or materials furnished.

20.9. Affidavit of Subcontractor Payment

The Joint Board shall monitor and verify that work committed to the subcontractor participation goal within the DBE plan at the time the Contract is awarded is performed by DBEs, pursuant to 49 CFR 26.37(b). The Contractor shall submit an affidavit to the Joint Board stating the payments made to DBE firms. The Contractor shall submit the affidavit to the Joint Board within 10 calendar days of Final Acceptance or within 10 calendar days of when work is completed by a DBE, whichever is sooner. Each DBE firm shall sign the affidavit as well, verifying the amount of payment received. The blank spaces in the affidavit must be filled in correctly, where indicated. Completed and signed affidavit shall be mailed to the KYTC Office for Civil Rights and Small Business Development, 200 Mero Street, 6th Floor West, Frankfort KY 40622.

21.0 Workforce/EEO

The requirements of 41 CFR Part 60 shall apply to this Contract and the Contractor shall submit EEO certification with its proposal. In addition, within 30 days of award of the Contract, the Contractor shall file Standard Form 100 (EEO-1) with KYTC's Division of Construction Procurement, unless the Contractor has submitted the form within 12 months preceding the date of the award.

21.1. Records and Reports

The Contractor shall keep such records as are necessary to determine compliance with the Contractor's EEO obligations within the greater Louisville-Southern Indiana area. The records kept by the Contractor shall be designed to indicate:

1. The number of minority and non-minority group members and women employed in each work classification on the Project;
2. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to Contractors who rely in whole or in part on unions as a source of their work force);
3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

4. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

All records outlined in this subsection shall be retained for a period of three years following Final Acceptance or longer if notice of an additional retention period is provided by the Joint Board. Records shall be available at reasonable times and places for inspection by authorized representatives of the Joint Board and FHWA.

The Contractor shall submit to the Joint Board a monthly report after notice to proceed and for the duration of the Project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on KYTC Form PR 1391.

21.2. Prequalification

KYTC has waived its prequalification requirements for bidders for this project both because of the bi-state nature of the procurement and because it feels that the States and the Joint Board are adequately protected by the short listing process. Reporting participation when payments are made to subconsultants, including material suppliers, firms at all levels (firm, subconsultant, or subcontractor) shall provide KYTC's contract administrator (the addressee for invoices under these contracts) with an accounting of said payments. This information shall be submitted as part of the requests for payments made to the Joint Board.

22.0 Warranties

22.1. Warranties

22.1.1. Warranty

(a) Except for Software, Contractor warrants that (a) all design, installation, integration and maintenance work furnished pursuant to the Contract Documents shall conform to all professional principles generally accepted as standards of the industry in the State, (b) the Project shall be free of defects, including design Errors, except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, (c) the Project shall be fit for use for the intended function, (d) materials, equipment, and Hardware furnished under the Contract Documents shall be of good quality and new, and (e) the work shall meet all of the requirements of, and perform in accordance with, the Contract Documents.

(b) Contractor warrants that (i) all Software shall be prepared in a workmanlike manner and with professional diligence and skill, (ii) all Software will function on the machines and with operating systems for which they are designed, (iii) all Software will conform to the specifications and functions set forth in the Contract Documents; and (iv) any third party software utilized by Contractor in connection with the System, when properly installed, will function together with the Software in an integrated manner to provide the Joint Board with the benefits contemplated by this Contract.

(c) WITH RESPECT TO THE SOFTWARE ONLY, WARRANTIES EXPRESSED IN THE CONTRACT DOCUMENTS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

22.1.2. Warranty Period and Maintenance Term

The Warranty Period that is included in the Warranty Price shall commence upon Substantial Completion Acceptance. The Warranty Price shall be full compensation to the Contractor for the Warranty during the Warranty Period, which shall one year after the Formal Acceptance Date for a Crossing, and the Warranty Period for parts of the System not covered by the Crossing Warranties shall remain in effect until one year after the System Formal Acceptance Date. The Maintenance Term shall commence for each Crossing and the System upon expiration of the applicable Warranty Period. Upon commencement of the Maintenance Term for a Crossing, Contractor's compensation for the Warranty for a Crossing shall be the Maintenance Price applicable to such Crossing, to be paid in equal monthly installments, in arrears, over the Maintenance Term. If the Joint Board determines that any of the work has not met the standards set forth in this Section 22.1.1 at any time prior to the end of the Maintenance Term, then Contractor shall correct such work as specified below, even if the performance of such corrective work extends beyond the end of the Maintenance Term. The Contract Price is deemed to include full compensation to Contractor for all warranty and maintenance obligations hereunder.

22.1.3. Remedy

Within 7 days of receipt by Contractor of notice from the Joint Board specifying a failure of any of the work to satisfy the Warranties or of the failure of any Subcontractor representation, warranty, guarantee or obligation which Contractor is responsible to enforce, Contractor and the Joint Board shall mutually agree when and how Contractor shall remedy such violation; provided, however, that (i) in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Contractor shall implement such action as it deems necessary and shall notify the Joint Board in writing of the urgency of a decision; and (ii) the foregoing 7 day period shall not limit or modify the Joint Board's rights to pursue and obtain Liquidated Damages as set forth in this Contract during such 7 day period. Contractor and the Joint Board shall promptly meet in order to agree on a remedy. If Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Contractor and the Joint Board fail to reach such an agreement within such 7 day period (or immediately in the case of emergency conditions, a situation which poses a significant safety risk or significant potential revenue loss, as determined by the Joint Board, in its sole discretion), the Joint Board shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Contractor. Alternatively, the Joint Board may deduct the amount of such costs and expenses from any sums owed by the Joint Board to Contractor pursuant to this Contract and/or from any bond then held by the Joint Board. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such

deduction or draw. The Joint Board may agree to accept Nonconforming Work in accordance with Section 7.3.

22.1.4. Permits and Costs

Contractor shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with Warranty Work. Contractor shall bear all costs of Warranty Work and Maintenance Work, including additional testing and inspections. In the event the Joint Board determines in its sole discretion that it is experiencing revenue loss necessitating Warranty Work or Maintenance Work, Contractor shall pay to the Joint Board the expenses incurred by the Joint Board for independent quality assurance and/or quality control with respect to the Warranty Work and Maintenance Work and any lost revenue arising from or relating to such Warranty Work and Maintenance Work (provided, however, that Contractor's liability for revenue loss resulting from Warranty Work and Maintenance Work shall be as set forth in Section 8), in each case, within 10 days after Contractor's receipt of invoices therefore. Alternatively, the Joint Board may deduct such amounts from any sums owed by the Joint Board to Contractor pursuant to this Contract and/or from any bond then held by the Joint Board. The Joint Board shall notify the Contractor promptly of any determination by the Joint Board to make such deduction or draw.

22.2. Applicability of Warranties to Re-Done Work

22.2.1. Original Warranty Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of this Contract. Following acceptance by the Joint Board of re-done, repaired, corrected or replaced work, the Warranties as to each re-done, repaired, corrected or replaced element of the work shall extend beyond the original warranty period in order that each element of the Project (including redone, repaired, corrected or replaced work) shall have at least a one year warranty period.

22.2.2. Maintenance Warranty Work

The Warranties shall also apply to all work re-done, repaired, corrected or replaced by Contractor in the performance of its obligation to maintain the Project during the Maintenance Term. The Warranties as to each such re-done, repaired, corrected or replaced element of the Work during the Maintenance Term shall remain in effect until one year after acceptance by the Joint Board of such element of the work.

22.3. Subcontractor Warranties

22.3.1. Warranty Requirements

Without in any way derogating the Warranties and Contractor's own representations and warranties and other obligations with respect to all of the Work, Contractor shall obtain from all Subcontractors and cause to be extended to the Joint Board, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, installation, integration, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All

representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all Joint Board inspections, tests and approvals, and (b) shall run directly to and be enforceable by Contractor and/or the Joint Board and their respective successors and assigns. Contractor hereby assigns to the Joint Board all of Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Contractor from any of its Subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Contractor's negligence in incorporating material or equipment into the work, Contractor shall be responsible for correcting such defect.

22.3.2. Enforcement

Upon receipt from the Joint Board of notice of a failure of any of the work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Contractor shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Contractor's other obligations hereunder. The Joint Board's rights under this Section 22.3.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of Contractor's relevant Warranty (including extensions thereof under Section 22.2). Until such expiration, the cost of any equipment, Hardware, Software, material, labor or shipping shall be for the account of Contractor if such cost is covered by such a representation, warranty, guaranty or obligation and Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors. The foregoing provisions concerning Subcontractor warranties are intended to provide the Joint Board with an additional Person and source in which to seek recourse if work fails to meet the requirements of the Contract Documents. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive the Warranties or Contractor's obligations with respect to the work, and Contractor shall not be entitled to use the existence of Subcontractor warranties as a defense to Contractor's obligations under this Contract and the other Contract Documents.

22.4. No Limitation of Liability

Subject to Section 8, the foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit Contractor's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud; provided, however, that upon expiration of the Warranties, Contractor shall have no further liability hereunder for patent construction defects.

22.5. Damages for Breach of Warranty

Subject to Section 8 and in addition to the Joint Board's other rights and remedies hereunder, at law or in equity, Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the work, including the cost of performance of such obligations by others; provided, however, that

Contractor's liability for revenue loss resulting from the failure of the System to perform in accordance with the Performance Requirements shall be as set forth in Section 8.

This Contract entered into as of the day and year first written above.

KENTUCKY TRANSPORTATION CABINET

BY: _____

Michael W. Hancock, P.E.
Secretary of the Transportation Cabinet

Date _____

APPROVED AS TO FORM AND LEGALITY

BY: _____

Rebecca Goodman
Executive Director of the Office of Legal Services
Transportation Cabinet

Date _____

The Contractor

[Insert Contractor Signature Block]

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 2012.