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FEDERAL-AID REQUIREMENTS	**C**
INITIAL DESIGNATION OF REPRESENTATIVES	**D**

This Contract ("Contract") is made and entered into as of _____, 2017, by and between the State of Rhode Island and Providence Plantations, by the Division of Purchases, having a principal place of business at One Capitol Hill, Providence, Rhode Island 02908 (the "State"), and INSERT NAME AND ADDRESS OF CONTRACTOR ("Contractor").

Now, Therefore, in consideration of the sums to be paid to Contractor, and the foregoing premises and the covenants and contracts set forth herein, the Parties hereby agree as follows:

SECTION 1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS; STANDARDS

1.1 Contract Documents

The term "Contract Documents" shall mean this Contract, including all exhibits attached hereto and the other documents listed in Section 1.2, and all Change Orders issued by RIDOT. Capitalized terms appearing in the Contract Documents and not otherwise defined shall have the meanings ascribed to them in Exhibit A hereto.

1.2 Order of Precedence

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

1. Contract amendments and approved Change Orders;
2. Approved Design Exceptions;
3. This Contract;
4. RIDOT Standards Specifications for Road and Bridge Construction ("RIDOT Standards"); and
5. Industry Standards, as identified in Exhibit B.

Notwithstanding the foregoing, in the event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including documents referenced therein), or in the event of a conflict pertaining to the order of precedence or other conflict with Contract Documents, RIDOT shall have the right to determine which provision applies.

Contractor shall request RIDOT's determination promptly upon becoming aware of such conflict.

1.3 Referenced Standards

1.3.1 General

Unless otherwise specified, any reference in the Contract Documents to a described publication or other contract affecting any portion of the Work shall be deemed to mean the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Date.

1.3.2 Federal-Aid Requirements

Federal requirements and regulations relative to Federally-aided construction projects ("Federal-Aid Requirements") shall apply to the Work as noted herein. Federal-Aid Requirements not specifically incorporated herein and are identified in Exhibit C.

1.3.3 RIDOT Standards

RIDOT-issued standards and guidelines ("RIDOT Standards") shall apply to the Work, except as otherwise provided herein or as specifically approved in writing by RIDOT.

1.3.4 Industry Standards

Industry Standards and codes ("Industry Standards") shall apply to the Work as applicable and as noted herein, except as may be otherwise provided by RIDOT Standards or as may be specifically approved in writing by RIDOT. Industry Standards include those professional engineering principles and construction practices generally accepted in Rhode Island for the applicable portion of the Work, including, but are not limited to, those listed in Exhibit B.

1.4 Approvals or Consents

In all cases where approvals or consents are required to be provided under the Contract Documents by RIDOT, Contractor or other parties to the Contract Documents, such approvals or consents shall not be withheld unreasonably.

SECTION 2. SCOPE OF WORK/PROJECT DESCRIPTION

The Scope of Work is herby referenced as Volume II – Scope of Work of the RFP 7551188 including all Referenced Information Documents and Addenda.

SECTION 3. INFORMATION SUPPLIED TO CONTRACTOR / ACKNOWLEDGMENT BY CONTRACTOR

3.1 Information Supplied to Contractor

Contractor acknowledges that RIDOT has made available to Contractor information as described in this Contract, and has allowed Contractor access to the Site for purposes of inspection and testing. Exhibit B to this Contract contains the list of Industry Standards and other Reference Documents that have been made available to Contractor.

SECTION 4. QUALITY CONTROL/QUALITY ASSURANCE PROGRAM

4.1 RIDOT Responsibilities

Contractor shall be responsible for the quality of the Work. Contractor shall establish and maintain a Quality Control/Quality Assurance Plan ("QC/QAP") in accordance with the Quality Control/Quality Assurance Program requirements of this SECTION 4. Contractor shall conduct QC/QA activities in accordance with the QC/QAP, including inspection of all Work included in the Contract Documents. RIDOT's role with respect to the Quality Control/Quality Assurance Program includes:

(a) oversight of Contractor's QC/QA activities and Independent Assurance; and

(b) oversight of Contractor's construction management, including but not limited to scheduling, invoicing, document control and construction inspection.

Utility Owners retaining ownership or maintenance responsibility over their respective facilities may conduct their own inspection and testing. Contractor shall fully cooperate and coordinate with these Utility Owners. However, said inspection and testing shall not relieve Contractor of its obligations and responsibilities under this SECTION 4.

4.2 Quality Control/Quality Assurance Plan (QC/QAP)

As a means of ensuring that the performance of the Work fulfills the requirements of the Contract Documents and that the materials, equipment, and all elements of the Work will perform satisfactorily for the purposes intended, Contractor shall provide RIDOT with a detailed QC/QAP within ten (10) Days of Award, and shall at all times comply with the requirements thereof.

4.2.1 QC/QAP Objectives

The QC/QAP objective is to provide a formal structure that enables Contractor to manage the Work and RIDOT to monitor the performance of the Work consistent with RIDOT quality principles.

4.2.2 QC/QAP Requirements

The QC/QAP shall describe the quality control and quality assurance organization. It shall include a chart showing lines of authority and reporting responsibilities. The persons and organizations performing Quality Control and Quality Assurance functions shall have sufficient authority and organizational freedom to identify quality problems and to initiate, recommend, provide and verify the implementation of solutions. Persons performing Quality Control and Quality Assurance functions shall be at an organizational level that ensures that they are not influenced by the potential impact of implementation of the QC/QAP on the Project Schedule, performance or cost.

Contractor may revise any portion of its QC/QAP as may be necessary from time to time.

4.2.3 QC/QAP Procedures

The QC/QAP shall be developed to ensure that construction of the Project shall be performed in accordance with RIDOT and Industry Standards and meet all requirements of the Contract Documents. In addition to the requirements of Section 4.2.2, the QC/QAP shall describe and include the following:

(a) specific QC/QA procedures for preparing and checking all plans, specifications, calculations, reports and other items to ensure that they are independently checked and back-checked in accordance with generally accepted engineering practices and the approved QC/QAP;

(b) measures to ensure that purchased materials, equipment, and services conform to the Contract Documents. These measures shall include provisions for source evaluation and selection, objective evidence of quality furnished by Subcontractors, inspection at the manufacture or vendor source, and examination of products upon delivery;

(c) procedures for identification and control of materials, equipment and elements of the Work. These procedures shall ensure that identification of the item is maintained by appropriate means, either on the item or on records traceable to the item, as necessary, throughout fabrication, erection, installation and use of the item;

(d) procedures to ensure that materials, equipment, or elements of the Project that do not conform to requirements are not used or installed. These procedures shall include procedures for identification, documentation, segregation, disposition and

notification to RIDOT and, if appropriate, affected Utility Owners, as well as procedures for RIDOT to review nonconforming work;

(e) a program recognizing RIDOT's intention to inspect and test the Work. Examinations, measurements and tests of materials or elements of the Project shall be performed for each operation where appropriate to assure quality;

(f) a program to ensure performance of all quality assurance testing to demonstrate that all materials, equipment and elements of the Project will perform satisfactorily for the purposes intended and meet the standards specified in the Contract Documents. The QC/QAP shall require test results to be documented and evaluated to ensure that test requirements have been satisfied;

(g) procedures to indicate, by the use of markings such as stamps, tags, labels, routing cards or other suitable means, the status of inspections and tests performed upon individual items; and

(h) a system of periodic audits to be carried out to determine the effectiveness of the program. Audit results shall be documented, reviewed, and acted upon by Contractor. Follow-up action, including re-audit of deficient areas, shall be taken where necessary.

SECTION 5. PROJECT DESIGN

5.1 Design Documents

Contractor shall prepare Design Documents in a format and in accordance with the Contract Documents. The Design shall consist of revised plans, reports, specifications (special provisions), calculations and, as required, supporting documentation. The Design shall be developed in a manner consistent with the overall quality and performance required by the standards referenced in this Contract.

5.1.1 Format of Documents

The Design Documents (including, but not limited to, designs, plans and specifications) shall be prepared in English Units and submitted to RIDOT in hard copy as well as in computer format. Contractor shall maintain design and construction Project files, including indexing requirements.

Plan sets and sheet types for partial construction work elements, or early start of construction, prior to a completed final design shall be coordinated with the QC/QA process and RIDOT oversight.

5.1.2 Project Coordination

Throughout the duration of the Project, and except for those coordination activities specifically reserved for RIDOT pursuant to this Contract, Contractor shall be responsible for coordination with Governmental Approval agencies, utilities and other entities. The Work shall be completed in conformance with all current engineering and policy directives, and other correspondence normally available and distributed to design consultants by RIDOT.

5.1.3 Design Exceptions

Design Exceptions are deviations to the Design from applicable RIDOT Standards, Industry Standards, or other standards referenced in this Contract.

Contractor shall obtain the written approval of RIDOT for all Design Exceptions from Design standards and criteria set forth herein. Contractor shall document and make available to RIDOT a record of all Design Exceptions. Contractor acknowledges that RIDOT may withhold approval of any and all Design Exceptions in its sole discretion. Contractor shall allow sufficient time in its schedule for review and response by RIDOT, allowing for the possibility that the Design Exception may not be approved.

Contractor shall use engineering judgment in applying Design criteria in situations where strict adherence to these criteria is not possible. If deviation from the criteria is required, Contractor shall submit a specific written request for approval of the Design Exception to RIDOT. The variance of standards shall be issued as a “special provision”.

Contractor shall prepare all documentation required to request Design Exceptions from Design standards and criteria set forth herein. A single report, combining all Design Exceptions from mandatory standards for the Project, shall be prepared by Contractor.

5.1.4 Design Notes

In addition to documentation required elsewhere in the Contract Documents, Contractor shall submit to RIDOT for review all design notes, sketches, worksheets, calculations and computations to document the design conclusions reached during the value engineering of the Design.

Design notes and computations shall be recorded on 8-1/2” x 11” computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced for submittal to 8-1/2” x 11” size. The data shall be bound in a hard-back folder for submittal to RIDOT.

5.2 Design Reviews and Submittals

Design reviews shall be conducted by RIDOT, as applicable, in accordance with the terms of this Contract. All Design Reviews shall be accompanied by five (5) complete hard copy sets of Design Documents and one (1) copy in electronic format.

5.2.1 RIDOT Reviews

Oversight reviews by RIDOT will consist mainly of checks to ensure that the Contract requirements and design criteria are being followed and that the QC/QA activities are following Contractor's approved QC/QAP. The reviews may, at RIDOT's discretion, include review of Design Documents, electronic files, calculations, reports, specifications, geotechnical data, and other relevant Design information.

Contractor acknowledges that, in addition to the Design review procedures set forth herein, RIDOT may inspect the Design throughout the Design process at its sole discretion in accordance with RIDOT Standards. RIDOT's project manager shall review the Design for the purpose of assuring its compliance with the Contract, and will sign plans acknowledging acceptance thereof; provided however, that such review and acceptance shall in no event relieve Contractor from its entire responsibility for the Design, including its responsibility for any errors or omissions in the Design or for the adequacy thereof.

5.2.2 Over-the-Shoulder Reviews

Over-the-shoulder reviews are examinations by RIDOT of Design Documents during the Design Process. The over-the-shoulder reviews will be conducted, as appropriate, in either Contractor's office (including its designer) or at RIDOT's offices and in the presence of Contractor's personnel with the intent to minimize disruption of on-going design work. Formal assembly and submittal of drawings or other documents may not be required. The review may be of progress prints, computer images, draft documents, working calculations, draft specifications or reports, or other design documents. If mutually agreed for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between Contractor's designer and RIDOT.

5.2.3 In-progress Design Workshops

RIDOT may, at its discretion, make periodic visits to the designer's offices to discuss and verify design progress and the QC/QAP. Throughout the Design process, Contractor may request oversight visits by RIDOT to discuss and verify Design progress and to assist Contractor in resolving Design questions and issues. Contractor shall give RIDOT not less than two (2) Days notice of its requested oversight visit.

5.2.3.1 Design Submittals

The purpose of Design Submittals is to ensure that the Design is completed in accordance with the requirements of the Contract Documents. Design Submittals shall ensure that existing field conditions have been properly identified and addressed and that Contractor has properly coordinated the various Design disciplines and elements of the Project.

Design Submittals shall consist of detailed construction drawings, including plans, evaluations, sections, details, and specifications, a completed drainage design, together with supporting reports and calculations consistent with the Contract Documents.

5.2.3.2 Final Design

The Final Design shall consist of detailed, complete and fully checked drawings, reports, and specifications necessary for construction of the applicable portion of the Project. Approval of the Final Design Documents will be in the form of a designation of "Approved for Construction." All documentation relating to Design Exceptions from design standards shall be provided with the Final Design Submittal.

Within two (2) Days after Design Documents receive designation as "Approved for Construction," Contractor shall, at a minimum, provide RIDOT with four (4) sets of signed and sealed Design Documents. In addition, Contractor shall provide RIDOT with one set of mylars of all signed and sealed Plans, along with a copy in electronic format.

5.2.3.3 File Transfer Protocol Site

In addition to submittal requirements outlined above, Contractor shall also establish and maintain a File Transfer Protocol (FTP) site to facilitate electronic transfer of documents.

5.3 Release for Construction/Approval

When Contractor has completed the Design for an item or segment and wishes to proceed with construction thereof, the QA Manager shall certify that (i) the Design meets all applicable requirements; (ii) the Design has been checked in accordance with Contractor's approved QC/QAP; (iii) said item or segment is ready for construction; and (iv) Contractor has obtained all required Governmental Approvals.

Construction of any item, segment or phase covered by the QA Manager's statement approving construction shall only progress to the extent covered by the Design Documents included in that statement. Prior to construction progressing further, Contractor shall complete the next phase of the Design or complete the Final Design. Any subsequent phases of the Work to be released for construction shall be checked and approved by the QA Manager in the same manner as indicated above for the initial item or segment of Work.

5.4 As-Built Drawings

As a condition of Final Acceptance, Contractor shall provide RIDOT with As-Built Drawings. All As-Built Drawings shall be consistent with RIDOT Standards. Submission shall be made both by hard copy and electronic format in accordance with RIDOT Standards. Operation and maintenance manuals and instructions shall be provided for all systems and equipment.

SECTION 6. ENVIRONMENTAL

6.1 Environmental Approvals

6.1.1 RIDOT's Responsibility to Obtain Environmental Approvals

Notwithstanding any other requirements specified in the Contract Documents, Contractor shall not commence final design or any construction activities at any Toll Point prior to RIDOT obtaining the necessary environmental approvals as per FHWA Order 6640.1A FHWA Policy on Permissible Project-Related Design Activities During the NEPA Process. (http://www.fhwa.dot.gov/legsregs/directives/orders/66401a.cfm)

6.1.2 Contractor's Responsibility to Obtain Environmental Approvals

If it is necessary to obtain a new environmental approval for any reason other than a Force Majeure Event (as defined by RIDOT Standards "Blue Book") or a RIDOT-Directed Change, Contractor shall be fully responsible, at its sole cost and expense, for obtaining the new environmental approval and any other environmental clearances that may be necessary, and for all requirements resulting therefrom, as well as for any litigation arising in connection therewith.

If any new environmental approval is necessitated by a RIDOT-Directed Change or Force Majeure Event, Contractor shall be responsible for obtaining such new environmental approval and/or performing any additional mitigation requirements of such new environmental approval only if directed to do so by a Change Order. RIDOT shall cooperate with Contractor and support its efforts to obtain any such new environmental approval. Any Change Order covering a RIDOT-Directed Change or Force Majeure Event shall include compensation to Contractor for additional costs incurred by Contractor to obtain the new environmental approval and to implement any changes in the Work (including performance of additional mitigation measures which are Contractor's responsibility) resulting from such new environmental approvals, as well as any time extension necessitated by the RIDOT-Directed Change or Force Majeure Event, subject to the conditions and limitations contained in the Scope of Work.

6.1.3 Coordination between Contractor, RIDOT and Regulatory Agencies

RIDOT will be designated as the applicant for all Environmental Approvals. All applications for Environmental Approvals to be obtained by Contractor will be prepared by Contractor. Through its authorized representative, RIDOT will review the applications, sign as the applicant and submit the application to the Governmental Person with jurisdiction.

Contractor will serve as liaison between RIDOT and the Regulatory Agencies. Contractor is encouraged to establish a working relationship with RIDOT and the Regulatory Agencies. Contractor is not authorized to negotiate with Regulatory Agencies on behalf of RIDOT.

Contractor shall provide fully executed copies of all Environmental Approvals to RIDOT prior to commencement of any work authorized under such Approvals.

6.1.4 Duty of Compliance

Contractor is responsible at all times for complying with (a) all applicable Environmental Laws; (b) all conditions and schedules in any Environmental Approvals, whether obtained by RIDOT or Contractor; and (c) all obligations of this Contract with respect to environmental matters. Contractor shall be responsible for any and all costs, liability, penalties, expenses, damages, including economic, property, natural resource and personal injury, or delays resulting from any non-compliance with Environmental Approvals.

6.2 Oil and Hazardous Materials (OHM)

6.2.1 OHM Investigation and Planning

6.2.1.1 Information Provided

RIDOT does not make any representations or warranties with respect to the presence, nature or extent of any OHM in the Project area.

6.2.2 Management of Soil and Contaminated Media

Soils on the Project will be regulated by the Rhode Island Department of Environmental Management ("RIDEM") Office of Waste Management in accordance with the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("RIDEM's Remediation Regulations.") All OHM encountered during the Project shall be managed in accordance with applicable Environmental Laws, Environmental Approvals, the Contract Documents, RIDEM Standards and the OHM Management Plan and other plans prepared under this Section 6.2.

6.2.2.1 Contractor's Optional Investigation Workplan

If Contractor desires, Contractor may conduct, with the prior approval of RIDOT, additional investigations, surveys, testing and analyses as necessary to develop and implement

suitable plans for timely performance of all environmental avoidance, mitigation and protection measures. In such event, Contractor shall prepare a detailed Environmental Investigations Workplan ("Workplan") presenting the proposed scope, location and schedule for environmental investigations. The Workplan shall be consistent with all applicable Environmental Laws including, without limitation, R.I.G.L. c. 23-19.1. Qualified and licensed professionals shall prepare the Workplan.

Such Workplan shall contain, at a minimum, Contractor's plan and schedule for characterization of all areas of the Site and Project activities where OHM may reasonably be expected to be encountered, including a Sampling and Analysis Plan describing sampling locations and methods; media to be sampled; laboratory analyses, methods and quantification limits; investigation schedule; site security measures; location and layout of work zones, storage areas, and decontamination areas; management of investigation derived waste and QC/QA procedures.

The cost of preparing and implementing the Workplan is included in the Price; the Price shall be adjusted upwards or downwards as appropriate to reflect changes in scope required by RIDOT pursuant to this section.

6.2.2.2 OHM Management Plan

Contractor shall prepare an OHM Management Plan (the "OHMMP") that provides RIDOT with a uniform, cost-effective, time-sensitive and environmentally sound methodology for the management of OHM. The OHMMP shall be sufficient in scope to support Project design and construction requirements and to optimize compliance with applicable Environmental Laws. The OHMMP shall be consistent with all applicable Environmental Laws, including, without limitation, R.I.G.L. c. 23-19.1 and RIDEM's Remediation Regulations. Qualified and licensed professionals shall prepare the OHMMP.

The OHMMP shall incorporate the following goals and objectives:

(a) minimize the generation of OHM requiring off-site management. Establish a cost-effective waste management hierarchy for the beneficial reuse, recycling, or treatment of contaminated media requiring off-site management;

(b) maximize the reuse of excavated soils within the limit of work;

(c) establish cost-effective environmental compliance with R.I.G.L. c. 23-19.1 and RIDEM's Remediation Regulations for releases of OHM. This compliance approach shall strive to eliminate the Condition of Significant Risk, achieve a Permanent Solution, and include the completion of a Response Action Outcome where feasible while enhancing the project design and construction objectives and schedule;

(d) provide effective control of additional costs required for OHM characterization through construction-driven, time-sensitive, on-site field environmental characterization methodologies suitable to support response actions; and

(e) provide effective control of costs associated with off-site management of contaminated media by maximizing the recycling or beneficial reuse of material.

The cost of preparing the OHMMP is included in the Price. The cost of implementing the OHMMP shall also be included within the Price, except for costs of OHM Management payable under Section 6.2.3.2.

6.2.2.3 Schedule for Submittal of Workplan and OHMMP

Within ten (10) days after Award, Contractor shall submit a schedule that sets forth the time frames for completion of the Workplan and the OHMMP.

6.2.3 Discovery and Management of OHM

In the event Contractor discovers through implementation of the Workplan or otherwise encounters OHM within the Site, Contractor shall (a) promptly notify RIDOT and (b) undertake all actions consistent with the goals, objectives and other requirements of the OHMMP set forth in Section 6.2.2.2 above and with all applicable Environmental Laws in coordination with RIDOT, including, without limitation, all actions required to achieve a Permanent Solution at the Site. All Response Actions shall be implemented under the direction of qualified and licensed professionals engaged by Contractor.

During construction of the Project, Contractor shall undertake all reasonable steps consistent with the OHMMP, including design modifications and/or revisions to construction techniques, to avoid excavation or dewatering in areas with OHM. Contractor shall afford RIDOT the opportunity to inspect sites containing OHM before any action is taken that would inhibit RIDOT's ability to ascertain the nature and extent of the OHM.

6.2.3.1 Qualifications and Protection of Personnel Responsible for Handling OHM

Contractor shall have a qualified and licensed professional available to the Project at all times who is responsible for the management of OHM. No environmental investigation shall be conducted outside the limit of work without specific written authorization of RIDOT.

All Contractor personnel handling hazardous and harmful materials shall be trained, experienced, certified and enrolled in a medical surveillance program typically required for workers handling OHM. Contractor shall ensure that all certifications, licenses, authorizations and Environmental Approvals are current and valid through the duration of this Contract.

Contractor shall make all workers on-Site aware of the potential OHM to which they may be exposed, shall limit exposure to OHM and provide all necessary equipment to protect them from exposure. Contractor shall maintain records of all incidents and notify RIDOT and appropriate state authorities in a timely manner.

6.2.3.2 Compensation for OHM Management

Compensation for OHM Management will not be allowed unless Contractor demonstrates to RIDOT's satisfaction that the costs incurred in management of OHM were (a) consistent with the goals and objectives of the OHMMP; (b) could not have been avoided by reasonable design modifications or construction techniques; and (c) managed utilizing the most cost-effective approach to OHM Management. Upon such demonstration, Contractor shall be entitled to compensation in accordance with the RIDOT Standard Specifications for Extra Work and Differing Site Conditions. Contractor shall only be compensated for disposal costs of contaminated materials. Contractor shall not be compensated for any handling of materials or trucking of materials for disposal off-site except beyond sixty (60) miles from the Project site.

Notwithstanding any other provision of this Contract to the contrary, no compensation for OHM Management shall be allowed for costs that arise out of or are related to management of materials containing OHM at concentrations below concentrations requiring reporting under law; any such cost shall be included within the Price. Furthermore, any compensation for OHM Management shall be reduced by the savings to the Contractor for avoided work that would otherwise have been compensated under the Price. For example, if compensation for one ton of off-site disposal of OHM is allowed under this Section 6.2.3.2, then the payment for that one ton of off-site disposal shall be reduced by the avoided cost to the Contractor of off-site disposal of one ton of material, the removal of which is not compensable under this Section 6.2.3.2.

6.2.3.3 OHM Releases Caused by Contractor

OHM Management costs, including assessment, containment and remediation expenses that result from (a) release(s) of OHM attributable to the negligence, willful misconduct, or breach of contract of Contractor or of any of its officers, agents, employees, subcontractors, and visitors; or (b) release(s) of OHM arranged to be brought onto the Site or elsewhere by Contractor or any of its officers, employees, agents, or subcontractors regardless of the cause of the release of OHM, shall not be included in the Price and shall not be recoverable.

6.2.4 Environmental Approvals Relating to OHM Management

It is the responsibility of RIDOT to obtain all Environmental Approvals relating to OHM Management, including federal and state surface water and groundwater discharge permits and permits for recycling or reuse of OHM. Contractor shall provide RIDOT with complete materials required by Environmental Agencies necessary to support any application for approval (including, but not limited to plans, details and supporting documentation). Contractor shall be solely responsible for compliance with such Environmental Approvals and applicable Environmental Laws, including those governing the preparation of waste profiles, waste

manifests and bills of lading. RIDOT assumes no responsibility for time associated with regulatory agency review and approval.

RIDOT shall be considered the generator of OHM on the areas of the Site, except as specified in the following sentence. Contractor shall be considered the generator of any OHM which result from (a) release(s) of OHM attributable to the negligence, willful misconduct, or breach of contract of Contractor or any of its officers, employees, agents, subcontractors, or visitors; and (b) release(s) of OHM arranged to be brought onto the Site or elsewhere by Contractor, or of any of its officers, agents, employees, subcontractors, and visitors, regardless of the cause of the Release.

6.2.5 Materials Brought to the Site by Contractor

Contractor shall be solely responsible for (a) compliance with all Laws applicable to OHM brought onto the Site by it or of any of its officers, agents, employees, subcontractors, and visitors; (b) use, containment, storage, management, transport and disposal of all OHM in accordance with this Contract and all applicable Environmental Laws and Environmental Approvals; and (c) payment of all penalties, expenses, costs, damages (including to natural resources, property or persons), and liability arising out of or related to such OHM.

SECTION 7. UTILITIES

7.1 General Statement

The completion of the Work will affect both existing and proposed Utilities and require connections to Utilities to serve equipment installed as part of the Project. Contractor shall complete the Utility Work so as to ensure that Utilities are properly identified and that all necessary relocations occur so as to enable Contractor to achieve completion of the Project in accordance with the requirements of this Contract. Utility Work shall include arranging for Utility service connections; the identification of Utilities requiring relocation or replacement; notifications to, and negotiation of design and construction contracts with, Utility Owners; and coordination and completion of design and construction efforts for the Utility Work. Contractor may permit others to complete portions of the Utility Work, as may be agreed to by the appropriate Utility. Utility Work shall be deemed to be part of the Work.

7.2 Contractor Responsibilities

Contractor shall be primarily responsible for the completion of all Utility Work. Costs for the Utility Work shall be considered part of the Price.

Contractor shall give written notice to all public service corporations or officials having charge of publicly or privately owned Utilities of its intention to commence operations affecting

such Utilities in accordance with R.I.G.L. c. 39-1.2-5, and Contractor shall at that time file a copy of such notice with RIDOT.

Contractor shall be responsible for verifying that the Utility Work, as designed and constructed, is compatible with and interfaces properly with the Project. Contractor shall also be responsible for confirming that all appropriate Governmental Approvals have been obtained by each Utility Owner that may be performing any Utility Work and for verifying that such Utility Work complies with the requirements of the applicable Governmental Approvals. Contractor shall immediately notify RIDOT if Contractor has reasonable cause to believe that any Utility Owner has not obtained, or is in violation of, any Governmental Approval.

Contractor shall carry out the Utility Work, and shall support and secure same, so as to avoid damage to any Utilities. Flow in drains and sewers shall be satisfactorily maintained. Unless otherwise directed by the Utility Owner, Contractor shall not relocate or remove any Utility without the Utility Owner's prior written consent. At the completion of the Work, the condition of all Utilities shall be as safe and permanent as before. If any Utilities are damaged by Contractor, Contractor shall notify the affected Utility Owners, and such damage shall be repaired at Contractor's expense.

7.3 Ascertaining the Location of Utilities

Contractor bears full responsibility for ascertaining, at its own expense, the existence and exact location and size of any Utility to be relocated, replaced, or otherwise impacted on either a temporary or permanent basis as a result of the Project. If a surface inspection of any area to be affected by the Project shows the existence of, or gives Contractor cause to suspect the existence of, any previously unidentified Utility, or Contractor for any other reason has cause to suspect that other previously unidentified Utilities may exist, then Contractor shall undertake all appropriate investigations as necessary to verify the existence, location and size of such Utilities including, but not limited to, contacting Utility Owners, consulting public records, and conducting field investigations.

7.4 Commencement of Utility Work

Contractor is responsible for causing the Utility Work to be completed in order to permit construction of the Project according to the Project Schedule.

7.5 Meetings and Cooperation with Utility Owners

Contractor shall be responsible for all coordination with the affected Utility Owners that may be necessary to accomplish the Utility Work (including obtaining information, coordination of scheduling, design review, inspections, approvals and acceptances). Contractor shall notify RIDOT at least two (2) Business Days in advance of each meeting with a Utility Owner or

Utility Owner's representative scheduled by Contractor, and shall allow RIDOT the opportunity to participate in each such meeting. Contractor shall also provide RIDOT with copies of all correspondence between Contractor and any Utility Owner within seven (7) Days after receipt or sending, as applicable.

7.6 Inspection of Utility Work

Contractor shall permit Utility Owners to inspect the Utility Work.

7.7 Contracts between Contractor and Utility Owners

Contractor shall not enter into any contract with any Utility Owner that purports to bind RIDOT in any way, nor shall any such contract be deemed to modify the terms of this Contract.

7.8 Policy of Avoiding Relocations

Contractor shall abide by the following requirements: (a) avoid Relocations to the extent practicable; (b) if a Relocation is not reasonably avoidable, protect the Utility in place to the extent practicable; and (c) otherwise minimize the potential costs and delays to the Project relating to Relocations to the extent practicable.

7.9 Scheduling and Cost Risks

Contractor shall assume all cost risks and risk of delays to the Project Schedule associated with the Utility Work.

7.10 Utility Diaries/As-Builts

Contractor shall maintain "utility diaries" and a set of As-Built utility maps of a quality acceptable to RIDOT. The standards for preparation of all Design Documents relating to Utilities and final As-Built Drawings shall conform to all applicable RIDOT Standards.

7.11 Utility Services

Contractor shall arrange for establishment and installation of new utility service connections as required for the Facility. Contractor shall be responsible for all Utility charges and costs relating to installation and activation of such services and for all service charges so as to permit the Facility to be placed into Revenue Service prior to Final Acceptance; provided that Contractor may recover for any back charges required by any Utility in accordance with Section

15.1. Contractor shall be responsible for all costs relating to temporary utility services required for design, construction, and testing of the Facility.

SECTION 8. PROJECT SCHEDULE REQUIREMENTS

8.1 Project Schedule

The Project shall be undertaken and completed in accordance with the Project Schedule as set forth in this Contract and approved by RIDOT, as revised and updated by Contractor on a monthly basis. The Project Schedule shall be used by Contractor and RIDOT for planning and monitoring the progress of the Work and as the basis for determining the amount of Milestone Payments to be made to Contractor in accordance with the Payment Schedule referenced in Section 14.2. The Project Schedule shall also include interim completion milestones and a proposed date for Substantial Completion, each of which shall be a "Completion Milestone," and a date for Final Acceptance of the Project.

The Project Schedule shall respect the following Completion Milestones:

PROJECT PHASE	MILESTONE COMPLETION DEADLINE
Phase I – Initial System Implementation Commencement of Revenue Collections	6 Months from NTP
Phase II – Final System Implementation	
Final Commencement of Revenue Collection (All Toll Points Complete)	18 Months from NTP
Individual Toll Point Commencement of Revenue Collection	Per Contractor's Approved Schedule
Final System Acceptance	90 Days from Final Commencement (All Toll Points)
Phase III – Operations and Maintenance	10 years from Final System Acceptance

8.2 Project Schedule Submittals

8.2.1 Project Schedule Submittals

The Initial Project Schedule shall be due to RIDOT within ten (10) Days of the Award, shall be consistent with the Payment Schedule, and shall divide the Work into activities with

appropriate logic ties to show Contractor's overall approach to the planning, scheduling and execution of the Work. The Initial Project Schedule shall recognize the requirement to submit Payment Milestones as set forth in SECTION 14.

The Initial Project Schedule Submittal shall be cost loaded and shall clearly define the progression of the Work from NTP to completion of the Work by using separate activities for (i) all significant Work components, including Design Work; (ii) material and equipment procurement and delivery to the Site or storage locations; (iii) Contractor milestones; and (iv) Substantial Completion and Final Acceptance.

Contractor shall use standard activity identification numbers, descriptions and codes in the Initial Project Schedule and all subsequent schedule submittals, in a manner acceptable to RIDOT. Unspecified milestones and the use of activity durations, logic ties and/or sequences deemed unreasonable by RIDOT shall not be used in the Initial Project Schedule.

8.2.2 Project Schedule Revisions

Upon review and acceptance by RIDOT of proposed Change Orders and/or schedule recovery plans, such activities shall be incorporated into the current Project Schedule submittal as a Project Schedule revision submittal. Project Schedule revision submittals shall be due within five (5) Business Days of RIDOT's acceptance of proposed Change Orders and/or schedule recovery plans.

Project Schedule revision submittals shall be cost loaded and shall include a comprehensive listing of all activities added to or deleted from the Project Schedule, as well as a complete listing of all logic and activity changes that have been made. Any change in the allocation of the Price among Project activities shall also be reflected in the Project Schedule revision submittals. All changes in the Project Schedule revision submittal must be fully described in an accompanying narrative.

8.3 Monthly Progress Reports

Within five (5) Days from the start of each month, Contractor shall prepare and submit monthly progress reports detailing the activities that took place during the previous one month period. The progress reports shall discuss activities undertaken, problems/issues arising from activities undertaken, activities planned to start in the coming month, and overall schedule status. The progress reports shall also address in detail the areas of safety, labor harmony, disadvantaged business enterprise attainment, if any, minority and women work force attainment, if any, Utility coordination, submittal status, quality control and quality assurance issues and a listing (including status) of any pending changes, disputes or claims. The monthly project reports shall be submitted as attachments to Contractor's Payment Request as provided in Section 14.2.

8.4 Recovery Schedule

If the Work is delayed on any Critical Path for a period which exceeds the greater of (a) fifteen (15) Days in the aggregate; or (b) that number of Days in the aggregate equal to five percent (5%) of the Days remaining until the Completion Deadline, then Contractor shall include as part of the next Project Schedule revision submittal, a recovery schedule demonstrating Contractor's program and proposed plan to regain lost schedule progress and to achieve Substantial Completion and Final Acceptance by the deadlines specified herein or as approved by RIDOT.

All costs incurred by Contractor in preparing and achieving the Recovery Schedule shall be borne by Contractor and shall not result in a change to the Price, except to the extent that a change in the Price is permitted in accordance with SECTION 14.

If a Recovery Schedule change to the Project Schedule would be required in order to achieve Substantial Completion by the Completion Deadline as the result of an event described in SECTION 14. , RIDOT shall have the right, in its sole discretion, to decide whether to allow a time extension (with no extended overhead or other delay damages payable except as provided in SECTION 14.) or to require implementation of the Project Schedule without such time extension. In such event, Contractor shall submit to RIDOT at least two alternative Change Order proposals, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other which shall provide for an extension of the Completion Deadline without any increase in the Price, except as provided in SECTION 15. . If RIDOT elects to implement the Recovery Schedule instead of a time extension, RIDOT shall issue a Change Order modifying the Price to account for additional Acceleration Costs. If it is not feasible to recover to the then current Completion Deadline or if Contractor believes that the costs associated with such a recovery are prohibitive, then Contractor shall recommend a new Completion Schedule to be shown in the alternative Change Order form.

In the event that a Recovery Schedule is required hereunder, Contractor shall have no right to receive Milestone Payments until such time as Contractor has prepared and RIDOT has approved such Recovery Schedule.

8.5 Substantial Completion and Completion Deadlines

Contractor shall achieve Substantial Completion by the date specified in Section 8.1, and shall otherwise achieve the Completion Milestones as set forth in the Project Schedule. Said deadline for Substantial Completion shall be considered a Completion Deadline, at which point RIDOT shall be deemed to have achieved Beneficial Occupancy of the facility.

8.6 Final Acceptance and Acceptance Deadline

Contractor shall achieve Final Acceptance by the date specified in Section 8.1. Said deadline for Final Acceptance, as it may be extended hereunder, is referred to herein as the "Acceptance Deadline."

8.7 Extension of Date for Substantial Completion or Acceptance Deadline

Except as otherwise specifically provided in SECTION 15. , RIDOT shall have no obligation to extend the date identified for Substantial Completion or the Acceptance Deadline, and Contractor shall not be relieved of its obligation to achieve the Completion Milestones described in the Project Schedule and to achieve Substantial Completion by the dates specified and Final Acceptance by the Acceptance Deadline.

SECTION 9. CONSTRUCTION

9.1 Source of Supply and Quality of Materials

Materials to be used in the Work shall be subject to inspection and replacement as described in the Contract Documents. Quality of all materials shall conform to RIDOT Standards, Industry Standards or Utility Owner requirements as applicable. Contractor shall be responsible for plant inspection (both on-Site and off-Site), material testing (both on-Site and off-Site) and inspection as set forth below.

Manufacturer's test reports may supplement the inspections, sampling, testing and certification provisions. When material that cannot be identified with specific test reports is proposed for use, QA staff may, at their discretion, select random samples from the lot for testing by Contractor, or at Contractor's expense, by another appropriate testing party, as determined by QA staff. The number of such samples and test specimens shall be at the discretion of QA staff.

When requested by RIDOT, Contractor shall furnish to QA staff samples of all materials to be incorporated into the Work. No material that is subject to such a request shall be used prior to approval by QA staff. Manufacturers' warranties, guarantees, instruction sheets, parts lists and other material which are furnished with certain articles or materials incorporated into the Project shall be delivered to QA staff prior to completion of construction.

9.2 Plant Inspection

RIDOT may inspect the production of material or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until RIDOT is assured that Contractor and the producer of the material will fully cooperate with and assist in such inspection. RIDOT shall have free entry at all reasonable times to such parts of the plant as concerns the manufacture or production of materials.

Plant and other inspections by RIDOT shall in no way constitute acceptance of the elements being produced. This responsibility rests with Contractor's QA staff. Any deviations from approved shop drawings during fabrication shall require that revised drawings be submitted to Contractor's design engineers for their approval. The fabricators shall not have the right to make any changes to the Design without approved shop drawings from Contractor's engineer.

9.3 Buy America

Contractor is required to comply with "Buy America" requirements as set forth in 49 U.S.C. s. 5323(j) and the FTA's implementing regulations at 49 CFR Part 661 and in accordance Contractor's certification (Form J – Buy America Certificate).

9.4 Materials on Site

Contractor may use materials such as stone, gravel, sand or other materials found in excavations within the area of construction if such material meets RIDOT Standards. In order to re-use these existing materials, QA staff shall verify independent gradation and other laboratory testing reports that prove the material is in compliance with project specifications. Sufficient samples shall be taken to ensure uniformity and continued compliance with previously submitted testing reports as material gradation and quality can vary significantly within a given natural deposit.

RIDOT reserves the right to audit and perform independent testing of all materials. If requested by RIDOT, Contractor shall collect and transport samples under the direction of RIDOT for laboratory verification. Material that is excavated and does not meet RIDOT Standards shall be removed as excess material from the Site, and shall be disposed of offsite by Contractor at no additional cost.

9.5 Inspection and Testing

Contractor shall perform whatever inspection, sampling and testing Contractor deems appropriate in order to comply with its obligations under the Contract Documents, in accordance with its QC/QAP. At all points in performance of the Work at which specific inspections or approvals by RIDOT is required by the Contract Documents, Contractor shall not proceed beyond that point until RIDOT has completed such inspection or approval or waived its right to inspect or approve, which waiver shall be in writing. Any testing and inspection conducted by RIDOT supplements, but in no way replaces, testing and inspection required of Contractor.

As part of RIDOT's oversight role, all materials and each part or detail of the Work shall also be subject to inspection and testing by RIDOT. When any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives shall have the right to inspect

such work. Such inspection does not make such Person a party to this Contract, nor will it change the rights of the Parties.

At all times before Final Acceptance, Contractor shall remove or uncover such portions of the finished Work as directed by RIDOT. After examination by RIDOT, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Contractor's sole expense. In the event that (i) Contractor provides adequate notice requesting RIDOT to inspect the Work; (ii) RIDOT fails to so inspect; (iii) RIDOT subsequently directs that Contractor remove or uncover such portions of the Work; and (iv) the Work is found to have been completed in accordance with the Contract Documents, then Contractor shall be reimbursed the cost of removal or uncovering the Work. Any Work done or materials used without adequate notice to and opportunity for prior inspection by RIDOT may be ordered uncovered, removed or restored at Contractor's expense, even if the Work proves acceptable to RIDOT after uncovering.

9.6 Nonconforming Work

Nonconforming Work is Work that RIDOT determines does not conform to the requirements of the Contract Documents. Nonconforming Work shall be removed and replaced so as to be in conformity with the requirements of the Contract Documents, at Contractor's sole expense, and Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that RIDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Contractor fails to correct, or to begin correction of, any Nonconforming Work within ten (10) Days of receipt of notice from RIDOT requesting correction, then RIDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due to Contractor and/or obtain reimbursement from Contractor for such cost.

Contractor shall be solely responsible for the costs of remedial actions to correct Nonconforming Work. Contractor will not be entitled to any adjustment to the Price or time extensions due to Nonconforming Work or the remedial actions required.

9.7 Supervision and Construction Procedures

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

Contractor shall be solely responsible for implementing, maintaining and supervising the Health and Safety Plan. Contractor shall take all reasonable precautions and be solely

responsible for the safety of, and shall provide protection to prevent damage, injury or loss to (a) all employees of Contractor and its Subcontractors performing the Work and other persons who are on Site or would reasonably be expected to be affected by the Work; (b) the Work and materials and equipment to be incorporated therein; and (c) all other property on, adjacent to, or near the Site.

Contractor shall provide appropriate security for the Site and shall be responsible for damage or loss to all property at the Site owned by Contractor, RIDOT or any other Person that results from Work or is directly related to Contractor's actions.

Contractor shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom Contractor may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

If Contractor encounters OHM in the Site, Contractor shall notify RIDOT as described in SECTION 6.

In the event of Contractor's discovery of any cultural, historic, archaeological or paleontological resources that have not been identified in the Contract Documents, Contractor shall immediately notify RIDOT thereof. Such notification is to be followed immediately by written notification. Contractor shall immediately stop work in and secure the affected area pending further instructions. In such event, RIDOT shall view the location within 24 hours of receipt of such notification and shall advise Contractor at that time whether Work should be resumed or whether further investigation is required.

RIDOT shall promptly conduct such further investigation as RIDOT deems appropriate. RIDOT shall use reasonable efforts to determine within five (5) Business Days after receipt of such notification whether the resource or condition falls within the scope of the preceding paragraph, and shall immediately notify Contractor of its determination once it is made. RIDOT shall also advise Contractor of any action to be taken regarding the situation. If a paleontological or historic resource is present, the notice shall advise Contractor of RIDOT's intended course of action with respect thereto, and whether the location should be fenced off or otherwise restricted, or whether Work may resume.

RIDOT shall have the right to require Contractor to recommence Work in the location at any time, even though an investigation may still be ongoing. Contractor shall promptly recommence Work in the area upon receipt of notification from RIDOT to do so. On recommencing Work, Contractor shall follow all applicable procedures contained in the Contract Documents and all other legal requirements with respect to such Work, consistent with RIDOT's determination or preliminary determination regarding the nature of the material or condition.

Notwithstanding the foregoing, Contractor shall not be obligated to stop Work upon (a) discovery of any resources or conditions that the Contract Documents indicate are present in the location in question, or (b) where Contractor can take actions pertaining to the resources or

conditions permitted under the terms of a Governmental Approval. Contractor shall provide prompt notice to RIDOT of any such discovery.

9.8 Roles and Responsibilities

RIDOT is the owner of the constructed Facility and, therefore, has an interest and a duty to perform due diligence on behalf of the public to audit the processes and selected elements of the Work. The auditing is necessary and will be accommodated by all members of Contractor's organization and its agents. While RIDOT will be auditing and reviewing aspects of the work, including verification testing, Contractor maintains the sole responsibility for quality, safety, compliance with all applicable Laws, and other components, both direct and indirect, of the Work.

9.9 Commencement of Construction

Contractor shall not commence construction of any portion of the Project prior to written approval of RIDOT.

Any start of construction shall be at the sole and complete risk of Contractor, and any changes, reconstruction, removals and Schedule delays required for compliance with the final approved Design Documents shall be at Contractor's sole cost and expense. If the approved Design Documents for the Project require changes to the Work previously performed, Contractor shall make such changes to the Work at its sole cost and expense, and with no contract time extension.

9.10 Utility Crossings – Location, Protection, and Relocation

Contractor shall obtain and review available record plans, conduct ground surveys, and excavate test pits as required to determine the existence and location of all existing overhead and underground Utilities within the limits of the Project that may be impacted by the Work. Contractor shall minimize unnecessary relocation of Utilities.

Contractor shall provide maintenance and protection of existing Utility crossings by means of relocation, encasement, structural relief slabs, or reconstruction. Utility relocations shall be in accordance with the requirements of the respective Utility Owner, RIDOT Standards, and all Local Agencies and Approvals. Structural relief slabs shall only be provided where the respective Utility Owner considers other available means of protection inappropriate. Utility protection by means of encasement shall utilize reinforced concrete or steel casing sleeves conforming to the requirements of RIDOT Standards. Size, location and layout of Utility sleeves shall meet the requirements of the respective Utility Owner.

9.11 Americans with Disabilities Act (ADA)

All construction shall provide for convenient and safe pedestrian demands and conform to ADA requirements. All signs, utility poles, traffic signal equipment, hydrants, and other fixtures shall be located so as not to obstruct pedestrian walkways and to provide the required walkway width. Handicapped spaces shall be located as provided in the Conceptual Design.

9.12 Shop and Working Drawings

Contractor's construction team shall generate shop and working drawings as necessary to clearly define, control, construct, and inspect the Work. These working drawings shall be sent back to Contractor's engineering team for review and internal approval. All such drawings shall be prepared by a professional engineer registered in the state, and shall be stamped approved for construction and signed by Contractor's engineering team prior to them being considered approved.

Contractor shall consult with RIDOT as necessary, in the review of shop and working drawings, and shall coordinate the preparation, submittal and review of all such shop and working drawings. Where permits are required from Utilities, shop and working drawings shall be submitted to them for review and approval in accordance with their requirements.

Shop and working drawings for the permanent Work shall include structural steel fabrication plans, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required by the QA Manager, Contract Documents, or Utilities. The shop and working drawings shall be reviewed and approved by Contractor's design engineers who prepared the Design Documents.

Shop, working drawings and calculations for excavation shoring, cribs, falsework, overhead signs, temporary support systems, formwork and other temporary work that describe the methods of construction proposed to be used for the Work shall be prepared by Contractor and reviewed by Contractor's design engineer in accordance with the QC/QAP. RIDOT will not review or regularly receive copies of these submittals unless it specifically requests such documents. Receipt of submittals for temporary work by RIDOT shall in no way constitute approval of the planned work or acceptance of any liability by RIDOT.

Contractor shall obtain all necessary approvals for shop and working drawings. Said approvals, along with copies of all approved drawings, shall be provided to RIDOT one (1) Business Day prior to the start of any Work detailed by those drawings. No changes shall be made by Contractor in any approved shop or working drawing after it has been approved.

9.13 Conditions to Final Acceptance

Issuance of Final System Acceptance shall be contingent upon the following being completed:

(a) Successful completion of Extended Operations Testing (EOT) (including review and approval of EOT Test Report);

(b) Punch list completion (all Toll Points, AET Host or other related project sites);

(c) As-built drawings including wiring diagrams;

(d) Training completion including materials;

(e) Completed, final, approved documentation;

(f) Final resolved RTM;

(g) Final Bill of Materials (BOM);

(h) All software license information;

(i) Verification that all Maintenance and Operations facilities and staffing are fully deployed; and

(j) Miscellaneous work as required by RIDOT to obtain Final System Acceptance.

9.14 Subcontracts

The following requirements shall apply to all Subcontracts:

(a) notwithstanding any subcontract or contract with any Subcontractors, Contractor shall be fully responsible for all of the Work. RIDOT shall not be bound by any Subcontracts, and no Subcontract shall include a provision purporting to bind RIDOT;

(b) as soon as a potential Subcontractor has been identified by Contractor, but in no event less than fourteen (14) Days prior to the scheduled initiation of Work by such proposed Subcontractor, Contractor shall notify RIDOT, in writing, of the name and address of such Subcontractor; and

(c) each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable 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 a contract by the Subcontractor to participate in any dispute review proceeding pursuant to SECTION 23. of this Contract, if such participation is requested by either RIDOT or Contractor).

SECTION 10. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION/EQUAL EMPLOYMENT OPPORTUNITY

10.1 Disadvantaged Business Enterprise Policy

The Project is subject to a specific goal for Disadvantaged Business Enterprise ("DBE") participation. The goal for DBE participation for the Project has been established per the following:

12% - Construction Qualifying Work

12% - Design Qualifying Work

10% - Operation and Maintenance

Contractor shall diligently seek to comply with this goal and to utilize Under-utilized DBEs to the extent possible.

10.2 Civil Rights

Contractor shall fully comply with the civil rights provisions of the Federal-Aid Requirements provided in Exhibit C. Contractor and its Subcontractors shall not discriminate on the basis of race, color, creed, national origin or gender in the performance of the Work. Failure to carry out this requirement is a material breach of this Contract, which may result in the termination of the Contract or such other remedy as RIDOT deems appropriate.

SECTION 11. PERFORMANCE AND PAYMENT SECURITY

11.1 Bonds

As required under the provisions of R.I.G.L. c. 37-12, Contractor shall provide security for performance and payment in the form of the bond identified in Sections 11.1.1 and 11.1.2. Contractor shall maintain this bond at all times during the term of this Contract.

11.1.1 Contract Performance Bond

Concurrently with its execution of the Contract, Contractor shall provide RIDOT with a performance bond, including a bond for liens, in the amount of 100% of the Deployment Price (Phases I and II, Sheets 2 and 3 of the Cost Form) (the "Performance Bond"). The Performance Bond shall be released after issuance of Final Acceptance Date.

As a pre-condition of issuance of Final System Acceptance the Contractor shall provide a Performance Bond for Phase III Operations and Maintenance in the amount of 100% of the ten (10) year Operations and Maintenance price (Sheet 4 of the Cost Form) and in a form satisfactory to RIDOT in its sole discretion, provided that Contractor is not then in default under the Contract.

11.1.2 Contract Payment Bond

Concurrently with its execution of the Contract, Contractor shall provide RIDOT with a Labor and Material Payment Bond in the amount of 100% Deployment Price (Phases I and II, Sheets 2 and 3 of the Cost Form) (the "Payment Bond"). The Payment Bond for deployment shall be released upon the later to occur of one year after Final Acceptance or satisfactory evidence that all persons performing the Work for Phases I and II have been fully paid.

As a pre-condition of issuance of Final System Acceptance the Contractor shall provide a Payment Bond for Phase III Operations and Maintenance in the amount of 100% of the ten (10) year Operations and Maintenance price (Sheet 4 of the Cost Form) and in a form satisfactory to RIDOT in its sole discretion, provided that Contractor is not then in default under the Contract.

11.2 Surety Financial Requirements

Any bond provided in accordance with Section 11.1 shall be issued by a Surety that is listed on the United States Treasury approved surety list, or as otherwise approved by RIDOT in its sole discretion.

11.3 Performance by Surety or Guarantor

Performance by a Surety or a Guarantor of any of the obligations of Contractor shall not relieve Contractor of any of its obligations hereunder.

SECTION 12. INSURANCE

12.1 Requirements

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to RIDOT certificates

of insurance evidencing the other required insurance, prior to the issuance of NTP, unless otherwise agreed to by RIDOT, but in any event, prior to entry onto the Site. In addition, Contractor shall provide certified copies of the insurance policies for the required insurance within 30 days of RIDOT's written request. All insurance shall be procured from insurers authorized to do business in the State of Rhode Island. Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to RIDOT so stipulates. The insurance shall provide for thirty (30) days prior written notice to RIDOT in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Work is satisfactorily completed (unless otherwise noted below), all Contractor personnel and equipment have been removed, and the Work has been formally accepted. The insurance required hereunder may contain such deductibles or retained amounts as RIDOT may approve from time to time, except however that the Contractor shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a default of the Agreement and this Contract.

12.1.1 Workers' Compensation and Employers' Liability Insurance

Contractor shall carry Worker's Compensation Insurance, including Employer's Liability Insurance, as required under the provisions of R.I.G.L. c. 27-7.1, covering all work performed under the Contract and covering all employees on the Project, with limits of not less than $1,000,000 per accident or illness. Such insurance shall contain a waiver of any and all subrogation rights against RIDOT.

In the event the Operations are to be performed on or over navigable waterways, a Longshoremen and Harbor Workers' Compensation Act Endorsement and a Maritime Coverage Endorsement are to be added, including coverage for wages, transportation, maintenance and cure, and the Employers Liability limit shall be increased to $5 million each accident.

12.1.2 Professional Liability Insurance

Contractor shall provide Professional Liability Insurance of not less than $1,000,000 covering the liability of Contractor for any and all errors or omissions committed by Contractor in the performance of the Work, regardless of the type of damages. The coverage shall be maintained during the term of the Contract, and for at least ten (10) years following completion thereof.

12.1.3 Valuable Papers and Records Insurance

Contractor shall provide valuable papers insurance of not less than $150,000. Such insurance shall assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the services covered by the Contract Documents in the event of loss or destruction until all data is turned over to RIDOT.

12.2 General Requirements

Unless otherwise specified, all insurance policies specified above shall (i) be on an occurrence basis; (ii) name RIDOT as additional insureds; and (iii) include a requirement that the insurer(s) provide RIDOT with thirty (30) days prior written notice of any material change, cancellation, or non-renewal of the insurance.

The insurance shall (i) name RIDOT as an additional insured as its interests appear under this Contract and shall be primary to and non-contributory to any other coverage maintained by RIDOT; (ii) be placed with insurance companies licensed by the Rhode Island Division of Insurance to do business in the State of Rhode Island and having a Best's rating of B+ or better; and (iii) be taken out before the Notice to Proceed is issued and be kept in full force and effect throughout the term of this Contract.

Contractor shall be responsible for any modifications, deviations or omissions in these insurance requirements on behalf of itself and any of its Subcontractors.

12.3 Claims-Made Insurance

If any liability insurance specified above (that is not required to be provided on an occurrence basis) shall be provided on a claims-made or occurrences-reported basis, then in addition to coverage requirements above, such policy shall provide that:

(a) The retroactive date shall coincide with or precede the effective date of the Contract or the effective (inception) date of the first such policy that was written on a claims-made or occurrences-reported basis. If any insurance that was previously written on a claims-made or occurrences-reported basis is subsequently written on an occurrence basis, the contractor or subcontractor shall procure "prior acts" coverage on the new occurrence policy(ies) with a retroactive date and with effect for all occurrences not known or reported under the preceding claims-made and occurrences-reported polices;

(b) The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;

(c) The contractor or subcontractor will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above; and

(d) If insurance is terminated for any reason, the contractor or subcontractor will purchase an extended reporting provision of at least two (2) years to report claims arising from Operations.

12.4 Waiver of Subrogation

All policies of insurance except the Professional Liability policy, must be endorsed waiving subrogation against RIDOT and evidence of such waiver must be furnished to RIDOT.

12.5 Certificates of Insurance

Certificates of Insurance evidencing insurance under this SECTION 12. shall be delivered to RIDOT prior to the commencement of any Work.

12.6 Indemnification

The responsibilities imposed by the provisions of Section 22.1 relating to "indemnity" and "save harmless" will be insured to the extent covered by the policies of insurance specified in Section 12.2 above; provided that such indemnification shall not be limited to the insurance specified in Section 12.2.

12.7 Other Insurance Provided by Contractor and Subcontractor

The insurance requirements outlined above are intended to afford broad coverage against relatively high limits of liability, but may not provide all the insurance needed or desired by Contractor or any Subcontractor. Any insurance for limits of liability in excess of and greater than those specified, or other coverage which Contractor or any Subcontractor may be required by law to carry, or may need for its own protection, shall be at Contractor's and/or the Subcontractor's own expense. Any policy of insurance covering Contractor or any Subcontractor for its owned or leased machinery, watercraft, vehicles, tools or equipment for physical loss or damage shall provide for waiver of subrogation rights in favor of RIDOT, including the employees, agents or assigns of any one of them.

SECTION 13. RESPONSIBILITY FOR LOSS OR DAMAGE

Pursuant to RIDOT Blue Book Section 104.14 the Contractor shall maintain, rebuild, repair, restore or replace all Work that is injured or damaged during the completion of the Work prior to Final System Acceptance.

If insurance proceeds with respect to any loss or damage are paid to RIDOT, then RIDOT will arrange for such proceeds to be paid to Contractor as repair or replacement work is performed by Contractor to the extent that Contractor has not previously been paid for such repair or replacement work. The release of such proceeds to Contractor shall not be a condition precedent to its performing such replacement or repair work.

SECTION 14. PAYMENT

14.1 Contract Price

The total Contract Price for this project is $_____. The total Contract Price is comprised of the following:

(a) Total Deployment Cost for Phase I and Phase II (Sheets 2 and 3 of Cost Proposal)

(b) Total Operations and Maintenance Phase III (Sheet 4 of Cost Proposal)

The Contract Price shall be paid in accordance with this SECTION 14. and may be changed only by a Change Order issued in accordance with SECTION 15. Contractor acknowledges and agrees that, subject only to Contractor's rights under SECTION 15. , the Contract Price includes (a) all equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services related to Contractor's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor and services provided by Subcontractors and all 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; and (d) payment of any duties and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein.

14.2 Method of Payment for Deployment

The Contractor will be compensated for work performed under the delivery phases (Deployment) of the project (Phase I - Initial Implementation and Phase II - Final Implementation), based on the Payment Schedule detailed below.

All invoices will be subject to retainage to be paid upon Final System Acceptance.

Item No.	Payment Schedule	Percent Payment
1	Project Mobilization	2.00%
2	Phase I Commencement of Revenue Collection (Toll Points 1 and 2)	5.00%
3	Preliminary AET System Design Documentation	5.00%
4	Final AET System Design Documentation	5.00%
5	Factory Acceptance Test Completion	30.00%
6	Phase II Commencement of Revenue Collection (3% paid per Commencement of Revenue Collection per Toll Point)	33.00%
7	Extended Operational Test Completion	15.00%
8	Issuance of Final Acceptance	5.00%

Payment to Contractor shall be made in accordance with Contractor's satisfactory completion (as evidenced by RIDOT's written acceptance of each Payment Milestone) RIDOT may, at its sole discretion, withhold payment to Contractor in the event that Contractor fails to meet any one of the Project Milestone Deadlines or required deliverables as indicated in the Scope of Work.

14.3 Payment for Operations & Maintenance

Contractor shall be compensated for Operations and Maintenance on a monthly basis per the following methods of measurement for payment:

(a) For Maintenance – The total annual Lump Sum for the corresponding year of Maintenance service divided by 12.

(b) For Operations – The total annual Lump Sum for the corresponding year of Operations services divided by 12 plus any additional increase in image

processing in accordance with the unit costs for such increases as indicated in the cost proposal.

Operations and Maintenance payments shall not be made until the Contractor has successfully achieved Final System Acceptance as indicated by RIDOT. During the deployment phases of the Project the Contract shall commence interim Operations and Maintenance upon Commencement of Revenue Collection of each Toll Point in accordance with the performance requirements in the Scope of Work. Any costs associated with interim Operations and Maintenance efforts shall be considered part of the deployment phase(s) of the Project.

14.4 Delivery of Payment Request and Certificate

Contractor shall deliver to RIDOT five (5) copies of a payment request and certificate for each payment (the "Payment Request") in the form agreed to by the Parties, with no additions or deletions other than those approved by RIDOT, together with a status report upon meeting the requirements of each Payment Item. Each Payment Request shall be executed by a designated representative of Contractor appointed by Contractor to have such authority in accordance with this Contract. No Payment Request shall be considered complete unless it (a) describes the status of completion as it relates to the current approved Project Schedule; (b) states the payments that are then due; (c) includes the required attachments and certificates thereto in a form approved by RIDOT; and (d) 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.

Within five (5) calendar days after RIDOT's receipt of the Payment Request, RIDOT will review the Payment Request and all attachments and certificates thereto for conformity with the requirements of the Contract Documents and shall notify Contractor 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 Payment Request. Contractor may include such disapproved amounts in the Payment Request after correction by Contractor of the deficiencies noted by RIDOT (all such disapproved amounts shall be deemed in dispute unless otherwise agreed).

14.5 Payment by RIDOT

Within thirty (30) calendar days after issuance of the notice described in Section 14.4 to Contractor, RIDOT shall pay Contractor the amount of the Payment Request approved for payment less any applicable Retainage and less any amounts which RIDOT is otherwise entitled to have withheld.

14.6 Payment to Subcontractors

Upon receipt of payment for the Work from RIDOT, 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, less any Retainage provided for in the Subcontract, as well as any other offsets and deductions provided in the Subcontract or by law. Contractor shall, by appropriate contract with each Subcontractor, require each Subcontractor to make payments to other Subcontractors and Suppliers in a similar manner.

RIDOT shall not have any obligation to cause the payment of any funds 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 Price.

14.7 Continued Performance During Disputes

Failure by RIDOT to pay any amount in dispute shall not postpone, alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract Documents, including Contractor's obligation to achieve Final Acceptance and complete all Work in accordance with the Contract Documents, and Contractor shall not cease or otherwise limit its performance under the Contract Documents on account of any such amount. Any dispute regarding such payment shall be resolved pursuant to SECTION 23. . Upon resolution of any such dispute, subject to the limitations specified in this SECTION 14. , RIDOT shall pay to Contractor any amount owing.

14.8 Failure of Payment

If RIDOT, without justifiable cause, fails to pay any amount that has been approved for payment, then Contractor may, upon ten (10) additional days written notice to RIDOT stop the Work until payment of the amount owing has been received. If Contractor properly suspends Work in accordance with this Section 14.8, Contractor shall submit a Change Order in accordance with SECTION 15. to increase the time and recover the reasonable costs of shut-down, delay and start-up.

14.9 Retainage

Except as provided below, RIDOT shall withhold funds (the "Retainage") from each payment to be made to Contractor for the Work. The Retainage shall be an amount equal to three percent (3%) of the amount due.

The Retainage (subject to reduction as specified below) shall be held by RIDOT until thirty (30) Days after Final Acceptance and following Contractor's completion of the Punch List and submittal to RIDOT of all items required as a condition of Final Acceptance. At such time, RIDOT shall release to Contractor all Retainage other than amounts applied to the payment of Damages or which RIDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, or the cost of any uncompleted Work. Final payment of such Retainage not applied to Damages shall be made

upon Contractor's showing, to RIDOT's reasonable satisfaction, that all such matters have been resolved, including delivery to RIDOT of a certification representing that there are no outstanding claims of Contractor or any claims, Liens or stop notices of any Subcontractor, Supplier or laborer with respect to the Work.

Upon the written request of Contractor, RIDOT agrees to release up to thirty percent (30%) of the Retainage thirty (30) Days after achievement of Substantial Completion, provided that Contractor shall have the right to request release of additional Retainage should Substantial Completion be delayed through no fault of Contractor. The balance of Retainage shall be released at Final Acceptance, subject to the right of the Contractor to request release of the balance of Retainage should Final Acceptance be delayed through no fault of Contractor. The amount to be released shall be reduced by any amounts which RIDOT deems advisable, in its sole discretion, to cover any uncompleted Work (including uncompleted warranty work), any Damages which RIDOT anticipates may be payable, or any existing or threatened claims, Liens or stop notices relating to the Project. In addition, no portion of the Retainage shall be released unless and until (a) Contractor shall have applied in writing for such release; and (b) such release shall have been approved in writing by Contractor's Surety and any Guarantor.

14.10 Deductions

In addition to the deductions provided for above, RIDOT may deduct from each Milestone Payment the following:

(a) any Damages which have accrued as of the date of the Milestone Payment;

(b) any sums expended by RIDOT in performing any of Contractor's obligations under this Contract which Contractor has failed to perform;

(c) the adjusted value of Nonconforming Work that is suitable to remain in place; and

(d) any other sums which RIDOT is entitled to recover from Contractor under the terms of this Contract.

The failure by RIDOT to deduct any of these sums from a Milestone Payment shall not constitute a waiver of RIDOT's right to recover such sums or to deduct such funds from future progress payments.

SECTION 15. CHANGES IN THE WORK

15.1 Change Orders

This SECTION 15. sets forth the requirements for obtaining all Change Orders under this Contract relating to the Work. Contractor hereby acknowledges and agrees that the Price constitutes full compensation for performance of all of the Work, subject only to those

exceptions specified in this SECTION 15. , and that RIDOT is subject to constraints which limit its ability to increase the Price or extend the date for Final Acceptance. Contractor hereby waives the right to any Claim for a time extension for any Completion Deadline or for any element of the Project Schedule or for any monetary compensation in addition to the Price and other compensation specified in this Contract for the Work, except as set forth in this SECTION 15. To the extent that any other provision of this Contract expressly provides for a Change Order to be issued relating to the Work, such provision is hereby incorporated into this SECTION 15.

15.2 Requirements Relating to Change Orders

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this SECTION 15. RIDOT may issue unilateral Change Orders as specified below in Section 15.3. Contractor may request Change Orders pursuant to Section 15.4 only. A Change Order shall not be effective for any purpose unless executed by RIDOT as specified herein. Change Orders may be issued for the following purposes (or combination thereof):

(a) to modify the scope of the Work;

(b) to revise a deadline in the Project Schedule;

(c) to revise the Price; and

(d) to revise other terms and conditions of the Contract Documents.

RIDOT may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Work within the general scope of the Contract pursuant to a Change Order. All additions, deductions or changes to the Work as directed by Change Orders shall be executed under the conditions of the original Contract Documents.

Upon RIDOT's approval of the matters set forth in the Change Order form (whether it is initiated by RIDOT or Contractor), RIDOT shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of RIDOT, direct Contractor to proceed with the Work with the amount of any such adjustment to be determined in the future in accordance with the terms of the Contract.

15.3 Issuance of Change Orders by RIDOT

RIDOT may issue a Change Order for a RIDOT-Directed Change. Any such Change Order shall state that Contractor shall be entitled to compensation for the additional work required thereby.

15.4 Contractor Initiated Change Orders

15.4.1 Eligible Changes

15.4.1.1 Contractor may request a Change Order to extend a Completion Deadline only for the following delays changing the duration of a Critical Path:

(a) RIDOT-Caused Delays;

(b) delays directly attributable to events included within the definition of Force Majeure; and

(c) Damage Events.

15.4.1.2 Contractor may request a Change Order to increase the Price, subject to strict compliance with the requirements of this Section 15.4, only for increased costs in the Work, as follows:

(a) additional costs directly attributable to RIDOT-Caused Delays or RIDOT-Directed Changes;

(b) additional costs directly attributable to Force Majeure events described in clauses (d), (e) and (f) of the Force Majeure definition (but subject to Section 14);

(c) additional costs directly attributable to subsurface obstructions in accordance with Section 202.01.1 of the Rhode Island Standard Specifications for Road & Bridge Construction, but subject to this SECTION 15. ;

(d) additional costs of OHM Management to the extent specified in Section 6.2.3.2 (but subject to this SECTION 15.);

(e) additional costs directly attributable to uncovering, removing and restoring work, (but subject to this SECTION 15.); and

(f) for additional costs as specified in this SECTION 15. .

15.4.2 Conditions Precedent to Contractor Change Orders: PCO Notices

The following requirements constitute conditions precedent to Contractor's entitlement to request a Change Order in all circumstances except those involving an increase in the Price under Section 15.3. Contractor agrees that the filing of a Proposed Change Order Notice ("PCO Notice") and subsequent filing of requests for Change Orders with RIDOT pursuant to this Section 15.4.2 are necessary in order to begin the administrative process for the resolution of Contractor disputes. Contractor understands that it shall be forever barred from recovering such costs if it fails to give notice of any act, or failure to act, by RIDOT or its Authorized

Representative or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, even though it complies with the remaining requirements of this Section 15.4.2.

15.4.2.1 Contractor shall deliver to RIDOT a PCO Notice stating that an event or situation has occurred within the scope of Section 15.4.1.2 and shall state which subsection thereof is applicable. The first notice shall be labeled "PCO No. 1" and subsequent notices shall be numbered sequentially.

15.4.2.2 Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. In the event that any PCO Notice is delivered later than ten (10) Days after Contractor first discovered the occurrence which is described therein, Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in any Critical Path which accrued prior to the date of delivery of the PCO Notice. Furthermore, in the event that the PCO Notice concerns any condition or material described in Section 22, Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith if RIDOT is not afforded the opportunity to inspect such material or condition. Contractor's failure to provide such PCO Notice within thirty (30) Days after Contractor first discovered 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) RIDOT was not materially prejudiced by the lack of notice, or (b) RIDOT's Authorized Representative specified in Exhibit D had actual knowledge, prior to the expiration of the thirty (30) Day period, of such event or situation and that Contractor believed it was entitled to a Change Order with respect thereto.

15.4.2.3 The PCO Notice shall (a) state in detail the facts underlying the potential claim, the reasons why Contractor believes additional compensation or time will or may be due and the date of occurrence; (b) state the name, title, and activity of each RIDOT representative who may be aware or knowledgeable of the facts underlying the potential claim; (c) identify any documents and the substance of any oral communication involved in the claimed change; (d) state in detail the basis for a claim of necessary acceleration to the Project Schedule, if applicable; (e) state in detail the basis for a claim that the work in question is not required by Contractor, if applicable; (f) identify particular elements of Contractor performance for which additional compensation may be sought under this SECTION 15. ; (g) identify any potential Critical Path impacts; and (h) provide an estimate of the time within which a response to the PCO Notice is required to minimize cost, delay, or disruption of performance.

15.4.2.4 If the claim relates to a decision of RIDOT or any Person to which the Contract leaves such a decision to the discretion of such Person or as to which the Contract provides that such Person's decision is final, the PCO Notice shall set out in detail all facts supporting Contractor's objection to such decision, including all facts supporting any contention that such decision was capricious or arbitrary or unsupported by substantial evidence.

15.4.2.5 Within five (5) Days after receipt of a PCO Notice, RIDOT shall respond in writing to Contractor to (a) confirm that a change has occurred; (b) deny that a change has

occurred; or (c) advise Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicate the needed information and date by which it is to be received by RIDOT for further review. Failure of RIDOT to respond as set forth in this Section 15.4.2 shall not affect Contractor's obligation to provide a request for a Change Order within the time periods specified in this SECTION 15.

15.4.2.6 Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from Contractor's failure to provide requested additional information under this Section 15.4.2.

15.4.2.7 Contractor shall deliver all requests for Change Orders under this Section 15.4 to RIDOT within fifteen (15) Days after delivery of the PCO Notice, or such longer period of time as may be necessary, provided that Contractor shall have notified RIDOT in writing prior to expiration of said fifteen (15) Day period of the additional time required. If Contractor fails to deliver a complete or incomplete request for Change Order within the appropriate time period, Contractor shall be required to provide a new PCO Notice before it may submit a subsequent request for a Change Order.

15.4.2.8 Each request for Change Order under Section 15.4.2.7 shall meet all requirements set forth in Section 15.5; provided that if any such requirements cannot be met due to the nature of the occurrence, Contractor shall provide an incomplete Change Order which contains all information capable of being ascertained and which shall include a list of those Change Order requirements under Section 15.5 which are not fulfilled, together with an explanation reasonably satisfactory to RIDOT stating why such requirements cannot be met. Each request for a Change Order shall further provide such information regarding the proposed Change Order's projected impact on the Critical Path as may be requested by RIDOT, and shall include sufficient detail for RIDOT to ascertain the basis for the proposed Change Order and for any ascertainable amounts with respect thereto. Contractor shall furnish, when requested by RIDOT, such other information and details as may be required to determine the facts or contentions involved. Contractor agrees that it shall give RIDOT 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 RIDOT may investigate the basis for such proposed request for Change Order. Contractor shall provide RIDOT with a monthly update relative to each outstanding incomplete request for a Change Order that describes the status of all previously unfulfilled requirements and states any changes in projections previously delivered to RIDOT, time expenditures to date, and time anticipated for completion of the activities for which the time extension is claimed. RIDOT may reject Contractor's claim at any point in the Change Order request process. Once a complete request for a Change Order is provided, RIDOT's failure to respond thereto within five (5) Days of delivery of the request shall be deemed a rejection of such request. Although RIDOT intends to review incomplete Change Orders for the purposes described in this Section 15.4.2.8, RIDOT shall not have any obligation to review the supporting documents associated with any incomplete request for Change Order until a complete Change Order is provided.

15.4.2.9 Contractor acknowledges and agrees that, due to the limited availability of funds for the Project and the limited time available to construct the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to RIDOT. RIDOT is relying on Contractor to evaluate promptly, upon the occurrence of any such event or situation, whether the event or situation will affect a Critical Path and, if so, whether Contractor believes a time extension and/or claim is appropriate. If an event or situation occurs which may affect the Price, a Completion Deadline, or a Critical Path, RIDOT will evaluate such event or situation and determine whether it wishes to make any changes to the scope of the Project so as to bring it within the Project's funding and time constraints. The following matters (among others) shall be considered in determining whether RIDOT has been prejudiced by Contractor's failure to provide notice in a timely fashion: (i) the effect of the delay on alternatives available to RIDOT (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within five (5) Days after occurrence of the event or when such occurrence should have been discovered in the exercise of due diligence), and (ii) the impact of the delay on RIDOT's ability to obtain and review objective information contemporaneously with the event.

15.4.2.10 Prior to submission by Contractor of any request for a Change Order which is based in whole or in part on any facts alleged in a submittal by any Subcontractor to Contractor, Contractor shall have reviewed all such Subcontractor claims and determined in good faith whether the claims are justified as to both entitlement and amount, and Contractor's request for a Change Order shall include only those items which Contractor has determined are so justified and which otherwise meet all requirements hereunder for Contractor initiated Change Orders. Contractor shall include, with its request, a summary of its analysis of all Subcontractor claims components.

15.4.3 Submission of Request for Change Order

Contractor shall initiate each request for a Change Order, after satisfaction of all conditions precedent set forth above, by submitting a Change Order form and supporting documentation to RIDOT for review and approval. If Contractor submits a request for Change Order requesting an extension of a Completion Deadline pursuant to Section 15.4, then Contractor shall also provide an alternative Change Order including a Recovery Schedule in accordance with Section 8.4.

15.4.4 Performance of Disputed Work

In the event that RIDOT refuses to approve a Change Order in response to Contractor's request, Contractor shall nevertheless promptly perform all work as specified in an appropriate letter from RIDOT, with the right to submit RIDOT's denial of the request for a Change Order and a corresponding change in the Price or a Completion Deadline to dispute resolution in accordance with SECTION 23.

15.5 Contents of Change Orders

15.5.1 Form of Change Order

Each Change Order and PCO Notice shall be prepared in form acceptable to RIDOT, and shall otherwise meet all applicable requirements of this SECTION 15. Each Change Order shall specify whether it is subject to contingencies, and shall identify the applicable subsection of this SECTION 15. under which the Change Order is requested.

15.5.2 Information Regarding Effect of Change

Each request for a Change Order prepared by Contractor shall include as attachments thereto a detailed cost estimate setting forth all consequences of the event, situation or proposed change giving rise to the proposed Change Order, including (a) if Contractor claims that such event, situation or proposed change requires a modification to the Work, the proposed modification of the Price (if any) occasioned by such change and all facts justifying such modification in a format acceptable to RIDOT; and (b) if Contractor claims that such event, situation or change affects a Critical Path or a Completion Deadline, an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, with a narrative report, in form satisfactory to RIDOT, which compares the proposed new schedule to the current approved schedule, and identifies any required changes to the Project Schedule.

15.5.3 Justification

All requests for Change Orders initiated by Contractor hereunder shall include an attachment containing a detailed narrative justification therefore, describing the circumstances underlying the proposed change, identifying the specific provision(s) of SECTION 15. which permit a Change Order to be issued, and describing the data and documents (including any required data and reports) that establish the necessity and amount of such proposed change.

15.5.4 Contractor Representation

Each Change Order form shall contain a written representation by Contractor that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, whether direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change.

15.6 Determination of Terms of Change Order

15.6.1 Cost Categories and Mark-ups

The amount of each Change Order, whether established pursuant to Section 15.7 or Section 15.8, shall be calculated based on, and shall be limited to, the categories of costs and the mark-ups thereto specified in Section 15.8.

15.6.2 Exclusion from Price Increase

Any increase in the Price allowed hereunder shall exclude (a) costs caused by the breach of Contractor of this Contract, or Contractor's fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible; and (b) costs that could reasonably be avoided by Contractor, by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).

15.6.3 Delay Damages

In the event of a RIDOT-Caused Delay or Force Majeure event the Contractor may be compensated in accordance with RIDOT Blue Book Section 109.10.

No Acceleration Costs or other delay damages shall be compensable hereunder under any circumstances except in the case of delays which qualify as RIDOT-Caused Delays or delays caused by Force Majeure events.

Before Contractor may obtain any increase in the Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to RIDOT-Caused Delays or other events identified in this Section 15.6.3, Contractor shall demonstrate to RIDOT's satisfaction that:

(a) Contractor's schedule that defines the affected Critical Path sets forth a reasonable method for completion of the Work;

(b) the change in the Work or other event or situation that is the subject of the request for Change Order has caused or will result in (i) an identifiable and measurable disruption of the Work that has or will impact a Critical Path; and (ii) has consumed or will consume all available Float which was generated by RIDOT or by deletion of Work;

(c) the delay or damage was not aggravated by any breach of Contractor or fault or negligence or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work;

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

(e) Contractor shall have provided documentation of such costs satisfactory to RIDOT, provided that if Contractor has not otherwise been compensated for

extended overhead resulting from the delay, the rate for extended overhead specified herein shall apply, without requiring proof of actual overhead costs.

Acceleration Costs are permitted only with respect to Change Orders issued as an alternative to allowing an extension of the Completion Deadline hereunder as contemplated by Section 15.4.1.1.

15.6.4 Time Extensions

(a) Contractor shall provide a Critical Path analysis in conjunction with any request for an extension of any Completion Deadline that describes the impact of the proposed time extension on all affected activities. The revision to the Project Schedule associated with the time extension shall not modify the "early and late start cost curves" of the Project Schedule except with respect to activities that have been impacted by the event that justifies the extension. Contractor may reschedule activities not otherwise affected by the event in order to take advantage of additional Float available as the result of the time extension. Any such rescheduling shall be reflected on the Project Schedule and Payment Milestone Plan.

(b) Any extension of the dates for Substantial Completion or Final Acceptance allowed hereunder shall exclude any delay to the extent that it (a) was due to the fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible; or (b) could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work. Contractor shall be required to demonstrate to RIDOT's satisfaction that the change in the Work or other event or situation which is the subject of the request for Change Order has caused or will result in an identifiable and measurable disruption of the Work so as to delay completion thereof and change the duration of a Critical Path which was not due to any such fault or negligence and could not reasonably be avoided by Contractor by resequencing, reallocating or redeploying its forces to other portions of the Work.

15.6.5 Work Performed Without Direction

Except as directed by RIDOT, work that is not part of the Work shall be deemed to have been performed voluntarily by Contractor and Contractor shall not be entitled to a Change Order in connection therewith.

15.7 Negotiated Change Orders

It is the intent of the Parties that they will attempt to negotiate all requests for Change Orders. A negotiated Change Order shall specify scheduling requirements, time extensions and

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

For any work undertaken by Contractor (on its own behalf and on behalf of its Subcontractors) under a Change Order other than unilateral Change Orders issued by RIDOT under Section 15.3, RIDOT and Contractor shall endeavor to negotiate a reasonable cost for each Change Order.

15.7.1 Cost Proposal

Contractor shall submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 15.8, with mark-ups not exceeding the amounts set forth therein, supported by documentation satisfactory to RIDOT (a) showing all impacts on Contractor from additions to the Work, deletions and modifications shown in the Change Order being priced, including any modifications to the Project Schedule and/or Payment Milestone Plan; and (b) setting out the proposed costs in such a way that a fair evaluation can be made. No mark-up shall be allowed in excess of the percentages specified in Section 15.8.

15.7.2 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 non-occurrence of an event.

15.7.3 Unit Priced Change Orders

In the event that RIDOT and Contractor negotiate a unit priced Change Order, measurement shall be as specified in the unit prices identified in the Proposal, and the unit prices shall not be subject to change regardless of any change in the estimated quantities.

15.8 Time and Materials Change Orders

15.8.1 General

RIDOT may, at its discretion, issue a Time and Materials Change Order at any time. The Time and Materials Change Order shall instruct Contractor to perform the work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the work as far as they can be ascertained, the terms under which changes to the Price will be determined, and the estimated total change in Price anticipated thereunder.

Upon final determination of the allowable costs, RIDOT shall issue a modified Change Order setting forth the final adjustment to the Price. The costs and mark-ups shall be calculated in accordance with RIDOT Blue Book Section 109.04.

No allowance shall be made for general superintendence and the use of small tools and manual equipment.

Contractor shall, when requested by RIDOT, furnish itemized statements of the cost of the Work ordered and give RIDOT access to all accounts, bills and vouchers relating thereto. Unless Contractor shall furnish such itemized statements and access to all accounts, bills and vouchers, Contractor shall not be entitled to payment for any items of extra work for which such information is sought.

15.8.2 Basis for Compensation

Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs described in this Section 15.8.2 with respect to all Work which is the subject of a Change Order or a proposed Change Order, but specifically excluding negotiated Change Orders; and (b) all data necessary to show the actual impact (if any) of the change on each critical path or Milestone Completion Deadline 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 the authorized representative of RIDOT reviewing any claim or dispute regarding compensation for such Work.

15.8.3 Time and Materials Records

(a) Contractor shall maintain such records as RIDOT deems sufficient to distinguish the direct cost of Work completed under a Time and Materials Change Order from the cost of other Work. Contractor shall furnish daily to RIDOT reports of all such work on forms approved by RIDOT. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs to date. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation. All such records and reports shall be made immediately available to RIDOT upon its request. The cost of furnishing such reports shall be included in Contractor's overhead and fee percentages.

(b) All reports prepared by Contractor pursuant to the paragraph above shall be signed by Contractor or its authorized representative. RIDOT will compare its records with Contractor's reports, make the necessary adjustments and compile the costs of work completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both parties, they will become the basis of payment.

15.9 Compensation for OHM Management

(a) Compensation for OHM Management shall be available only as approved by RIDOT in accordance with the approved OHMMP. Upon such approval, Contractor shall be entitled to reimbursement of the reimbursable costs of OHM Management, as defined herein.

(b) Reimbursable Costs of OHM Management will be based, to the extent possible, on the actual incremental costs of OHM Management above the costs that would be incurred if the OHM to be managed was not present in concentrations above reportable concentrations, without markup for profit. Measurement of quantities will be in accordance with accepted industry practice and the terms of this Contract. Contractor shall give RIDOT notice in advance of any measurement of quantities, so as to allow RIDOT the opportunity to oversee the process. Reimbursable Costs shall be based on time and materials in accordance with the procedures described in Section 15.8.

(c) If the cost of any OHM Management reimbursable under this Section 15.9 is covered by any insurance, Contractor shall use all reasonable effort to obtain reimbursement of eligible costs directly from proceeds of insurance up to the limits of the applicable policy, less any deductibles associated with policies of insurance provided by Contractor, which are Contractor's responsibility. To the extent that such proceeds are available, Contractor shall not be entitled to any reimbursement. The obligation to seek reimbursement shall survive payment by RIDOT. In the event that the Contractor receives payment from an insurance policy after reimbursement by RIDOT, Contractor shall refuse the difference.

15.10 Differing Site Conditions and Certain Force Majeure Events

15.10.1 Differing Site Conditions

Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to any additional costs or delays due to differing Site conditions for subsurface obstructions in accordance with the Standard Specifications for Roads & Bridges. Subject to the limitations contained in and upon Contractor's fulfillment of all applicable requirements of this SECTION 15. , RIDOT shall be responsible for and agrees to issue Change Orders to (a) compensate Contractor for additional costs incurred arising from the need to address subsurface obstructions; and (b) extend the time for completion of the Work as the result of any delay in the critical path caused by a differing Site condition to the extent that it is not possible for Contractor to work around the problem.

15.10.2 Force Majeure Events

Subject to the limitations contained in and upon Contractor's fulfillment of all applicable requirements of this SECTION 15. , RIDOT shall be responsible for and agrees to issue Change Orders to (a) compensate Contractor for additional costs incurred arising from the events described in clauses (d), (e) and (f) of the definition of "Force Majeure"; and (b) extend the time for completion of the Work as the result of any delay in the Critical Path caused by a Force Majeure event.

15.11 Eliminated Work

Should any Work contained in the Contract be found to be unnecessary by RIDOT, RIDOT shall, upon issuance of a Change Order to Contractor, eliminate the work from the Contract, provided that this action shall not invalidate the Contract.

15.12 Restrictions and Limitations on Change Orders

Contractor acknowledges and agrees that RIDOT shall bear responsibility only for limited matters involving delays and costs and the consequences resulting therefrom as set forth in this SECTION 15. Contractor shall bear responsibility for all other matters, including the following:

(a) errors, omissions, inconsistencies or other defects in the Contract Documents;

(b) defective or incorrect schedules of work or changes in the planned sequence of performance of the Work;

(c) action or inaction of other contractors (including failure to organize and integrate their work with the Work);

(d) subsurface moisture content;

(e) 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;

(f) all costs covered by insurance proceeds received by or on behalf of Contractor;

(g) correction of Nonconforming Work and review and acceptance thereof by RIDOT;

(h) failure by Contractor to comply with the requirements of the Contract Documents;

(i) any delay not on a Critical Path; and

(j) delays in issuance of any permit or approval by any entity with jurisdiction over the subject matter of such permit or approval that is required to be obtained by Contractor.

Contractor hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Contractor of responsibility for such costs and delays, and the consequences and costs resulting therefrom, is reasonable under the circumstances of this Contract. CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY 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 CHANGE ORDER FORM AS REQUIRED BY SECTION 15.4, AND FURTHER AGREES THAT CONTRACTOR SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

15.13 Disputes

The failure of RIDOT and Contractor to agree to any Change Order under this SECTION 15. shall be a Dispute to be resolved pursuant to SECTION 23. . Except as otherwise specified in the Change Order, execution of a Change Order by RIDOT and the Contractor shall be deemed an accord and satisfaction of all claims by Contractor of any nature arising from or relating to the Work covered by the Change Order.

15.14 No Release or Waiver

No extension of time granted hereunder shall release Contractor's Surety or Guarantor from its obligations. In the event an extension of time is granted, Contractor shall continue the Work 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 the completion and Final Acceptance, unless formally suspended or annulled in accordance with the terms hereof. Permitting Contractor to finish the Work or any part thereof after the deadline established for the Project, or the making of payments to Contractor after such date, shall not constitute a waiver on the part of RIDOT of any rights under this Contract.

Neither the grant of an extension of time beyond the date fixed for any Completion Deadline or Final Acceptance, nor the performance and acceptance of any part of the Work specified by Contractor after the deadline established for the Project, shall be deemed to be a waiver by RIDOT of its right to abrogate the Contract for abandonment or failure to complete the Work within the time specified, or to impose and deduct damages as may be provided herein.

SECTION 16. SUSPENSION OF ALL OR PART OF THE WORK

16.1 Suspension for Convenience

RIDOT may order Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time not to exceed 24 hours, as RIDOT may determine to be appropriate. Any suspension for convenience in excess of 24 hours will be considered a RIDOT-Directed Change.

16.2 Suspension for Other Reasons

(a) RIDOT has the authority to suspend the Work wholly or in part, for such period as RIDOT deems necessary because of the failure on the part of Contractor to perform any requirement of the Contract Documents. Contractor shall promptly comply with a written order by RIDOT for Contractor to suspend the Work wholly or in part. The suspended Work shall be resumed at the discretion of RIDOT upon RIDOT's determination that appropriate corrective action has been taken.

(b) RIDOT has the right to undertake appropriate efforts to cause Contractor to perform any and all requirements of the Environmental Approvals. Actions that may be undertaken by RIDOT in connection with any such failure include the right to direct Contractor to take specified corrective action or to stop Work.

(c) Contractor shall not be entitled to any increase in the Price or extension of the Contract Time in connection with any suspension under this SECTION 16. , including for the work described in Section 16.3, except to the extent that the suspension is determined to be a RIDOT-Directed Change or as otherwise provided herein.

16.3 Protection of Property in the Event of Suspension

In the event that a suspension of Work is ordered under this SECTION 16. , Contractor shall take all action that may be necessary, or that RIDOT may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Contractor and in which RIDOT has or may acquire an interest.

SECTION 17. TERMINATION OF CONTRACT

17.1 Reasons for Termination

The Department may terminate the entire Contract, or any portion thereof, when the Contractor is prevented from proceeding with the prescribed work for any of the following reasons:

(a) An Executive Order of the President of the United States with respect to the prosecution of war; in the interest of national defense; or any civil emergency or natural disaster.

(b) An Executive Order of the Governor of the State with respect to a natural disaster or civil emergency.

(c) Court orders relating to energy consumption, and orders or injunctions obtained by third party action resulting from national or local environmental protection laws.

(d) Discovery of unanticipated archaeological artifacts of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly recovery.

(e) Occurrence of an unanticipated environmental situation of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly mitigation.

(f) Any other circumstances beyond the control of either the Department or the Contractor that precludes the orderly prosecution or completion of the work and that is in the public interest.

(g) RIDOT may, at any time prior to or subsequent to Substantial Completion, terminate all or part of Contractor's rights and obligations under the Contract Documents. In that event, RIDOT shall deliver to Contractor a Notice of Termination, and may arrange for a new agreement for completion of the Project to be executed with a substitute contractor having the qualifications, experience, expertise and financial ability necessary to complete the Work.

The Engineer shall terminate the Contract by delivering to the Contractor a Notice of Termination which shall specify the extent of the termination, the reasons therefore, and the effective date thereof.

17.2 Termination Procedures

After receipt of a Notice of Termination, and except as directed by the Engineer, the Contractor shall immediately proceed with the following obligations:

(a) Stop work as specified in the notice.

(b) Place no further subcontracts or orders (referred to as subcontracts in this clause for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

(c) Terminate all subcontracts to the extent they relate to the work terminated.

(d) With approval or ratification to the extent required by the Engineer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(e) As directed by the Engineer, transfer title and deliver to the Department the fabricated, partially fabricated, or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and the completed or partially competed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Department.

(f) Complete performance of the work not terminated.

(g) Take any action that may be necessary, or that the Engineer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Department has or may acquire an interest.

(h) At the direction of the Engineer, acceptable materials obtained by the Contractor for the Project but which have not been incorporated therein, may be purchased from the Contractor at actual cost delivered to a prescribed location, or disposed of as mutually agreed.

When the Department orders termination of a Contract, or portion thereof, effective on a certain date, all completed items of work as of that date will be paid for at the contract bid prices. Payment for partially completed work will be made either at agreed prices or in accordance with the subparagraph below entitled, "Contractor and Department Fail to Agree." Items that are eliminated in their entirety by such termination shall be paid for as provided in Subsection 109.05; Eliminated Items of RIDOT Standard Specifications.

The Contractor shall submit, within 60 days of the effective termination date, a claim for additional damages or costs not covered above or elsewhere in the Contract. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an equitable settlement be reached with the Contractor. In no event will loss of anticipated profits be considered as part of any settlement.

The Contractor and the Department may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work performed. The Contract shall be amended, and the Contractor paid the agreed amount.

17.3 Contractor and Department Fail to Agree

If the Contractor and the Department fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Department shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon above;

(a) For contract work performed before the effective date of termination, the total of the following:

(b) The cost of this work;

1. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract; and

2. A sum, as profit on (1), above, determined by the Department to be fair and reasonable; however, if the Contractor would have sustained a loss on the entire Contract had it been completed, the Department shall allow no profit and shall reduce the settlement to reflect the indicated rate loss.

(c) The reasonable costs of settlement of the work terminated, including:

1. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and support data;

2. The termination and settlement of subcontracts (excluding the amounts of such settlements); and

3. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(d) Except for normal spoilage, and except to the extent that the Department expressly assumed the risk of loss, the Department shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Department or to the buyer.

(e) In arriving at the amount due the Contractor under this clause, there shall be deducted:

1. All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;

2. Any claim which the Department has against the Contractor under this Contract; and

3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Department.

4. Partial Termination. If the termination is partial, the Contractor may file a proposal with the Department for an equitable adjustment of the price(s) of the continued portion of the Contract. The

5. Department shall make any equitable adjustment agreed upon. 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 Engineer.

6. Records. The Department may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Department believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

   The Contractor shall maintain and make available all project cost records to the Department for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Department, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Department,

photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

7. Contractual Responsibilities. Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

SECTION 18. DEFAULT AND REMEDIES

18.1 Contractor Defaults

18.1.1 Events or Conditions Triggering Default

Contractor shall be in default under this Contract upon the occurrence of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable) as specified in Section 18.1.2, each of which events shall be considered a "Contractor Default":

(a) Contractor: (i) fails to begin Work within 30 days following issuance of a Notice to Proceed or (ii) fails to satisfy all conditions to commencement of the Work, and commence the Work with diligence and continuity;

(b) Contractor fails to perform the Work with sufficient resources to assure the prompt completion thereof (for example, Contractor fails to provide and thereafter meet a Recovery Schedule pursuant to Section 8.4);

(c) Contractor fails to perform the Work in accordance with the Contract Documents, or refuses to remove and replace rejected materials or unacceptable Work;

(d) Contractor discontinues the prosecution of the Work (exclusive of work stoppage (i) due to termination by RIDOT; or (ii) due to and during the continuance of a Force Majeure event or suspension by RIDOT);

(e) Contractor fails to resume performance of Work that has been suspended or stopped, within a reasonable time after receipt of notice from RIDOT to do so, or after cessation of the event preventing performance, if applicable;

(f) Contractor or any Guarantor has become insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors;

(g) insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Contractor or any Guarantor and is not dismissed within sixty (60) Days;

(h) any representation or warranty made by Contractor or any Guarantor in the Contract Documents or any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents that was false or materially misleading when made;

(i) Contractor breaches any agreement, representation or warranty contained in the Contract Documents, including minimum wage payments and equal employment opportunity requirements, or Contractor fails to provide financial guarantees (if necessary), appropriate performance and payment bonds or financial data as specified in this Contract;

(j) Contractor receives a notice of non-compliance from a Regulatory Agency with authority relating to an element of the Project;

(k) Contractor assigns or transfers the Contract Documents or any right or interest herein, except as expressly permitted hereunder or thereunder;

(l) Contractor fails to discharge or obtain a stay 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, the posting of a bond in the amount of one hundred and twenty-five percent (125%) of such judgment or order shall be deemed an effective stay);

(m) 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, or shall have failed to maintain labor harmony or to comply with any Law or failed reasonably to comply with the instructions of RIDOT consistent with the Contract Documents;

(n) Contractor or any Guarantor is a party to fraud which affects the performance under this Contract;

(o) any Guarantor, or any Person who provided a guaranty to RIDOT with respect to this Contract, revokes or attempts to revoke its obligations under any guaranty, or otherwise takes the position that such instrument is no longer in full force and effect;

(p) Contractor fails to timely observe, perform or cause to be observed or performed any covenant, contract, obligation, term or condition required to be observed or performed by Contractor under this Contract;

(q) Contractor fails to execute and deliver any Contract Document as and when required under this Contract;

(r) Contractor fails to acquire and maintain the required insurance in accordance with Section 12 of this Contract;

(s) 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 Contractor or any substantial part of Contractor's assets; files an answer admitting the material allegations of a petition filed against Contractor in any involuntary case or court or other proceeding commenced against Contractor; consents to any such relief or to the appointment of control by any such official in any involuntary case commenced against Contractor; makes an assignment for the benefit of creditors; fails, is unable, or admits in writing the inability generally to pay Contractor's debts as they become due; takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to Guarantor; or

(t) an involuntary case is commenced against Contractor seeking (i) liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Contractor or Contractor's debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official of Contractor or any substantial part of Contractor's assets; or (iii) seeking the issuance of a writ of attachment, execution, or similar process; or (iv) seeking like relief, and such involuntary case shall not be contested by Contractor in good faith or shall remain undismissed and unstayed for a period of ninety (90) Days; or (v) any such involuntary case or cases shall be commenced against Guarantor (but not necessarily in the same proceeding or concurrently) and such case or cases shall not be contested by Guarantor in good faith or shall remain undismissed and unstayed for a period of ninety (90) Days.

18.1.2 Opportunity to Cure

Contractor shall be entitled to fifteen (15) Days notice and opportunity to cure any of the breaches described in clauses (a) through (e) and (i) through (r) above (other than any breach which by its nature cannot be cured); provided that if such breach is capable of cure, but by its nature cannot be cured within fifteen (15) Days, RIDOT shall allow an additional period of time as may be reasonably necessary to cure the breach so long as Contractor commences such cure within such fifteen (15) Day period and thereafter diligently prosecutes such cure to completion. In the case of an emergency, RIDOT shall have the right to shorten the fifteen (15) Day cure period by so specifying in the notice of breach. If any breach described in Section 18.1.1 is not subject to cure or is not cured within the period (if any) specified in this Section 18.1.2, RIDOT may declare that a "Contractor Default" has occurred.

18.2 Contractor Default

18.2.1 RIDOT Remedies

Upon the occurrence of a Contractor Default, RIDOT may exercise any one or more of the following remedies as RIDOT, in its sole and absolute discretion, shall determine:

(a) any and all remedies available at Law or in equity, including recovery of damages to the extent provided by Law;

(b) terminate all of Contractor's rights under the Contract and all of Contractor's rights of entry upon possession and control and operation of the Project and call upon Contractor's surety to perform in accordance with its obligations under the Payment and Performance Bond, (which termination shall be subject to this SECTION 18.);

(c) if requested by RIDOT, Contractor shall withdraw from the Site, shall assign to RIDOT (without recourse to Contractor) such of Contractor's Subcontracts as RIDOT may request and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, Contractor in the performance of the Work as RIDOT may direct and RIDOT may take possession of any and all Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents and site facilities of Contractor that RIDOT deems necessary for completion of the Work;

(d) RIDOT, without incurring any liability to Contractor, shall have the right (either with or without the use of Contractor's materials, equipment, tools and instruments) to take the performance of the Work from Contractor, and RIDOT may appropriate or use Contractor's materials, equipment, tools and instruments located on the Site as may be suitable and acceptable and may enter into a contract with another Person for the completion of the Work in accordance with the terms and provisions of the Contract Documents, or use such other methods as will be required for the completion of the Project in the opinion of RIDOT;

(e) RIDOT may offset any sums owed to Contractor by any sums owing from Contractor, including Liquidated Damages or other damages owing RIDOT under the Contract; or

(f) Contractor shall be liable to RIDOT (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably incurred by or any party acting on its behalf in completing the Work or having the Work completed by another Person. Upon occurrence of an Event of Default, RIDOT shall be entitled

to withhold all or any portion of further payments to Contractor until such time as RIDOT is able to determine how much (if any) remains owing to Contractor. Promptly upon such determination, RIDOT shall notify Contractor in writing of the amount, if any, that Contractor shall pay RIDOT or RIDOT shall pay Contractor with respect thereto. All costs and charges incurred by RIDOT, including attorneys' 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 Contractor. If such expense exceeds the sum which would have been payable under the Contract, then Contractor and its Surety(ies) and Guarantor(s) shall be liable and shall pay RIDOT the amount of such excess.

18.2.2 Failure to Comply Caused by Damage Event

Notwithstanding anything to the contrary contained herein, RIDOT and Contractor agree that the term Contractor Default as used herein shall specifically exclude Contractor's failure to meet the Project Schedule if caused by an event or events beyond Contractor's control, which event was not due to an act or omission of Contractor, and which delay could not have been avoided by due diligence and use of reasonable efforts by Contractor referred to herein as a Damage Event, with the understanding that the term Damage Event does not apply in cases where the delay to the Critical Path is resolved by extension of the Contract Time under this SECTION 18. A Damage Event shall not include damage caused by any of Contractor's Subcontractors, suppliers or material suppliers. Accordingly, in the event that Contractor fails to meet the Project Schedule as the proximate result of a Damage Event, RIDOT shall not be entitled to termination of this Contract or the exercise any of the remedies described in Section 18.2.1 for such failure of Contractor to perform, except as follows: (i) if Contractor fails to perform or delays the performance of any Work as the result of a Damage Event, then RIDOT shall have the right (but not the obligation) to cause third parties to perform such Work; and (ii) if the reasonable cost of such Work shall be deducted from the Price. Furthermore, occurrence of a Damage Event shall not excuse Contractor from its obligation to implement a Recovery Schedule or from its obligation to pay Damages for failure to meet the date. Contractor shall promptly notify RIDOT of any occurrence of a Damage Event.

SECTION 19. DAMAGES FOR DELAY

19.1 Liquidated Damages

19.1.1 Applicability

Contractor shall be liable for and pay to RIDOT liquidated damages with respect to any failure to achieve any Milestone Completion Deadline.

Liquidated damages shall commence on the applicable Milestone Completion Deadline, as the same may be extended pursuant to this Contract, and shall continue to accrue until the date

of the applicable Milestone Completion Deadline has been completed or until termination of this Contract. Liquidated damages shall constitute RIDOT's sole right to damages for such delay.

19.1.2 Amount

The amounts of such liquidated damages are as follows:

(a) FOR PHASE I - $4,000.00 per day for each day the Contractor fails to achieve the applicable Milestone Completion Deadline date for Phase I of the project and until Contractor has successfully recovered from any such delay(s).

(b) FOR PHASE II - $7,600.00 per day for each Toll Point which fails to begin commencement of revenue collection beyond the Milestone Completion Deadline date for Phase II.

19.2 Offset; Reduction; Waiver

RIDOT shall have the right to deduct or withhold any amount owed by Contractor to RIDOT under this Contract from any amounts owed to Contractor under this Contract, including any Retainage which may be payable to Contractor pursuant to this Contract.

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

19.3 Payment Terms

Damages, to the extent not paid as provided in Section 19.1.1, shall be payable by Contractor to RIDOT within thirty (30) Days after Contractor's receipt of a written notification therefore from RIDOT.

SECTION 20. LABOR AND EMPLOYMENT REQUIREMENTS

20.1 Key Personnel; Qualifications of Employees

20.1.1 Personnel Qualifications

The following persons shall be considered to be Key Personnel of Contractor:

(a) Project Manager;

(b) Design Manager;

(c) Construction Manager;

(d) AET System Installation Manager;

(e) Maintenance Manager;

(f) QA/QC Manager;

(g) Software Development Manager;

(h) Test Manager; and

(i) Operations Manager.

Contractor shall notify RIDOT in writing of any proposed changes in any Key Personnel. Contractor shall not change, or permit any change in, any Key Personnel without the prior written consent of RIDOT.

20.1.2 Non-Performing Personnel

All persons performing Work shall have the skill and experience and any licenses required to perform the Work assigned to them. If RIDOT determines in its sole discretion that any Person employed by Contractor or any Subcontractor is not performing the Work in a proper and skillful manner, then at the written request of RIDOT, Contractor shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of RIDOT. If such Person is not removed or if Contractor fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then RIDOT may suspend the affected portion of the Work by delivery of written notice of such suspension to Contractor. Such suspension shall in no way relieve Contractor of any obligation contained in the Contract Documents or entitle Contractor to a Claim or Change Order. Once compliance is achieved, Contractor shall be entitled to and shall promptly resume the Work.

20.2 Labor Harmony and Prevailing Wages

Contractor shall ensure labor harmony during all phases of the Project, including construction and reconstruction. Among other remedies, failure to maintain labor harmony will be grounds for termination of the Contract for default, and if such failure results in delay in completion of the Project, such failure will be grounds for assessment of Liquidated Damages. Contractor shall require prevailing wages to be paid for labor performed on the Project in accordance with the requirements of the Davis Bacon Act, and R.I.G.L. 37-13. In addition, Contractor shall provide certified weekly payroll reports that affirm that all employees working on the project have been paid wages in accordance with the prevailing wage rate requirements.

20.3 Responsibility for Employees and Subcontractors

Contractor shall supervise and be responsible for acts and omissions of Contractor's employees, agents, officers and Subcontractors and other Persons performing portions of the Work, as though all such Persons were directly employed by Contractor.

20.4 Subcontracts

Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide, in terms and in form and substance satisfactory to RIDOT, that (a) the rights of Contractor under such instrument are assigned to RIDOT contingent only upon written request from RIDOT or its successors or assigns 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 RIDOT.

Contractor shall provide RIDOT with a list of all Subcontracts for the Project from time to time upon request, and shall allow RIDOT access to all Subcontracts and records regarding Subcontracts. Contractor shall deliver to RIDOT, within ten (10) Days after execution, copies of all Subcontracts and, within ten (10) Days after receipt of a request therefore from RIDOT, copies of all other contracts or documents as may be requested.

SECTION 21. REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

During all periods necessary for the performance of the Work, Contractor and its Subcontractors will maintain all required authority, license status, professional ability, skills and capacity to perform the Work in accordance with the requirements contained in the Contract Documents.

As of the Effective Date, Contractor has evaluated the constraints affecting design and construction of the Project, including the ROW limits as well as the conditions of the RIDOT-Provided Approvals, and has reasonable grounds for believing and does believe that the Project can be designed, implemented and operated within such constraints.

Contractor has evaluated the feasibility of performing the Work within the Milestone Completion Deadlines and for the Price, accounting for constraints affecting the Project and has reasonable grounds for believing and does believe that such performance (including achievement of Final Acceptance by the applicable Milestone Completion Deadlines for the Price) is feasible and practicable.

Prior to the Proposal Due Date, Contractor, in accordance with Good Industry Practice, examined or had the opportunity to examine the Sites and surrounding locations, investigated and reviewed available public and private records, and undertook other activities sufficient to

familiarize itself with site conditions and subsurface conditions. Before commencing any Work on a particular portion or aspect of the Project, Contractor shall verify all governing dimensions of the Site and shall examine all adjoining work (including adjacent work) that may have an impact on such Work. Contractor shall ensure that any design documents and construction documents furnished as part of the Work accurately depict all governing and adjoining dimensions.

Contractor has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Agreement. Contractor shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. As of the Effective Date, Contractor has no reason to believe that any Governmental Approval required to be obtained by Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

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

As of the Effective Date, Contractor is a [_____] duly organized and validly existing under the laws of the State of Rhode Island with all requisite power and all required licenses to carry on its present and proposed obligations under the Contract Documents. Contractor is composed of [_____]. Each member of Contractor is duly qualified to do business, and is in good standing, in the State as of the Effective Date, and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

The execution, delivery and performance of the Contract Documents to which Contractor is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Contractor; each person executing the Contract Documents on behalf of Contractor has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Contractor; and the Contract Documents have been (or will be) duly executed and delivered by Contractor.

Neither the execution and delivery by Contractor of the Contract Documents to which Contractor is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Contractor.

Each of the Contract Documents to which Contractor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Contractor, enforceable against Contractor and, if applicable, each member of Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Contractor which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents to which Contractor is a party, or which challenges the authority of the Contractor official executing the Contract Documents; and Contractor has disclosed to RIDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.

As of the Proposal Due Date, Contractor disclosed to RIDOT in writing all organizational conflicts of interest of Contractor and its Contractors of which Contractor was actually aware; and between the Proposal Due Date and the Effective Date, Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Contractor or its Subcontractors identified in its Proposal which have not been approved in writing by RIDOT. For this purpose, organizational conflict of interest has the meaning set forth in the instructions to proposers under which Contractor submitted its Proposal.

SECTION 22. INDEMNIFICATION AND RELEASES

22.1 Indemnifications by Contractor

CONTRACTOR SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES (STATE, THE DEPARTMENT, ITS OFFICERS, EMPLOYEES AND AGENTS, ADJOINING STATES, CITIES, TOWNS, MUNICIPALITIES, PUBLIC UTILITIES, RAILROAD OR RAILWAY COMPANY, ANY FEE ONWER FROM WHOM A TEMPORARY RIGHT-OF-WAY WAS ACQUIRED FOR THE PROJECT) FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS AND LOSSES, IN EACH CASE IF ASSERTED OR INCURRED BY OR AWARDED TO ANY THIRD PARTY, ARISING OUT OF, RELATING TO OR RESULTING FROM:

(a) THE BREACH OR ALLEGED BREACH OF ANY OF THE CONTRACT DOCUMENTS BY ANY CONTRACTOR-RELATED ENTITY;

(b) THE FAILURE OR ALLEGED FAILURE BY ANY CONTRACTOR-RELATED ENTITY TO COMPLY WITH THE GOVERNMENTAL APPROVALS, ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER

LAWS (INCLUDING LAWS REGARDING HAZARDOUS MATERIALS MANAGEMENT);

(c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE WORK, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO RIDOT OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS AGREEMENT; PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM RIDOT'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO RIDOT BY CONTRACTOR;

(d) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT OF ANY CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK;

(e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY CONTRACTOR-RELATED ENTITY WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY ANY CONTRACTOR-RELATED ENTITY;

(f) 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 RIDOT HAS PAID ALL UNDISPUTED AMOUNTS OWING TO CONTRACTOR WITH RESPECT TO SUCH WORK;

(g) ANY ACTUAL OR THREATENED CONTRACTOR RELEASE OF HAZARDOUS MATERIALS;

(h) THE CLAIM OR ASSERTION BY ANY OTHER (i) RIDOT CONTRACTOR OR CONTRACTOR THAT ANY CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR OR CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH

OTHER CONTRACTOR OR CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, EXCEPT WHERE THE CONTRACTOR-RELATED ENTITY WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (ii) CONTRACTOR OR CONTRACTOR THAT ANY CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR OR CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT OF ANY CONTRACTOR-RELATED ENTITY;

(i) CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;

(j) ANY CONTRACTOR-RELATED ENTITY'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT RIDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN RIDOT AND A THIRD PERSON, WHERE RIDOT HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO CONTRACTOR UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF ANY CONTRACTOR-RELATED ENTITY WHICH RENDER RIDOT UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT RIDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN RIDOT AND A THIRD PERSON, WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO CONTRACTOR;

(k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY ANY CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH THE PERFORMANCE OF THE WORK;

(l) 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; AND

(m) ERRORS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROJECT AND/OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK.

(n) ANY CLAIM BY A CONTRACTOR-RELATED ENTITY ARISING OUT OF, RELATING TO, OR RESULTING FROM THE PERFORMANCE BY RIDOT OF MATERIAL INSPECTION AND TESTING SERVICES PURSUANT.

RIDOT shall have the right to withhold Contract amounts to cover such claims.

Subject to the releases and disclaimers herein, Contractor's indemnity obligation shall not extend to any third party loss to the extent caused by:

(a) the negligence, reckless or intentional misconduct, bad faith or fraud of such indemnified party,

(b) RIDOT's material breach of any of its obligations under the Contract Documents;

(c) An indemnified party's material violation of any laws or governmental approvals; or

(d) An unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Scope of Work, but only where prior to occurrence of the third party loss: (i) Contractor complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement created a potentially unsafe condition or (ii) Contractor knew of and reported to RIDOT the potentially unsafe requirement.

In claims by an employee of 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 22.1shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

For purposes of this Section 22.1, "third party" means any person or entity other than an indemnified party and Contractor, except that a "third party" includes any indemnified party's employee, agent or contractor who asserts a claim against an indemnified party which is within the scope of the indemnities and which is not covered by the indemnified party's worker's compensation program.

22.2 Restrictions

Contractor's indemnity obligations hereunder shall not extend to any loss, damage or expense incurred by an indemnified party to the extent caused by:

(a) the negligence, reckless or willful misconduct, bad faith or fraud of such indemnified party or its agents, servants or independent contractors who are directly responsible to such indemnified party; or

(b) any defect inherent in prescriptive design or construction specifications included in the Contract Documents, provided Contractor complied with such standard and did not actually know and did not have reason to know of its deficiency or, if Contractor actually knew of its deficiency, unsuccessfully sought the waiver of or approval of a deviation from such standard; or

(c) RIDOT's material breach of any of its obligations under the Contract Documents.

Statutes of Limitations: Such indemnities shall not be construed to affect any extension of statutes of limitations otherwise applicable to causes of action for breach of contract held by RIDOT against Contractor.

22.3 Employee Claims

In claims by an employee of Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 22.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

22.4 Release

To the maximum extent permitted by law, Contractor hereby releases and discharges RIDOT from any and all duty and obligation to cause permitting, relocation of utilities, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project or the Site, by Contractor, to satisfy the standards and requirements set forth in the Contract Documents, except for RIDOT's duties and responsibilities expressly set forth in the Contract Documents.

22.5 No Relief from Responsibility

No rights of RIDOT described in Section22.1 above, no exercise or failure to exercise such rights, no failure of RIDOT to meet any particular standard of care in the exercise of such

rights, no issuance of permits or certificates of completion or acceptance and no Final Acceptance shall:

(a) relieve Contractor of its responsibility for the selection and the competent performance of all Subcontractors, architects, engineers and other consultants (except those hired by RIDOT);

(b) relieve Contractor of any of its obligations or liabilities under the Contract Documents;

(c) be deemed or construed to waive any of RIDOT's rights and remedies under the Contract Documents; or

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

22.6 Right to Rely

Notwithstanding the provisions of Section 22.4 and Section 22.5 above, (a) Contractor shall be entitled to rely on specific written deviations to this Contract provided by RIDOT; (b) RIDOT is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement that RIDOT delivers; and (c) RIDOT is not relieved from its obligations under the Contract Documents.

SECTION 23. DISPUTE RESOLUTION

23.1 Dispute Resolution General Provisions

23.1.1 Mandatory Nature of Process

All Disputes between Contractor and RIDOT (or, as provided below, between Contractor's Subcontractors and RIDOT) shall be resolved as provided by this section.

23.1.2 Demands and Disputes; Disputes Governed by this Section; Priorities

A Demand is any written request for relief in any form arising out of or relating to the Contract Documents or the Project, including all contract claims, statutory claims, equitable claims and claims for extension of time; provided, however, that Section 23.1 through Section 23.4 shall not apply to claims that are not actionable against RIDOT by Contractor on its own behalf or on behalf of any of its Subcontractors, claims arising in tort, claims relating to the scope or applicability of indemnities provided under the Contract Documents, claims for injunctive relief, or claims against insurance companies.

A Demand becomes a Dispute if Contractor disagrees with a Final Determination issued by RIDOT pursuant to Section 23.1.10 and proceeds in accordance with Section 23.1.11.

Participation in and completion of this dispute resolution process is a condition precedent to commencement of an administrative proceeding under law or commencement of a court action as provided in Section 23.4.

All references to Demands or Disputes brought by a Contractor refer also to Demands or Disputes brought by Contractor on behalf of any of its Subcontractors, provided that Contractor shall comply with the additional requirements of Section 23.3.

23.1.3 Overview of Process

As described below, the dispute resolution process shall involve the following steps, each of which must be taken before the next is available, provided however that RIDOT may submit claims to mediation at any time and that the parties may, by mutual agreement, submit their dispute to mediation at any time in accordance with this SECTION 23. :

(a) Informal efforts will be made to resolve issues presented by a Demand through negotiations between the parties;

(b) If the Demand is not resolved in negotiation, Contractor shall request RIDOT to issue a written determination on the issues presented;

(c) If Contractor is not satisfied with the determination, it may seek a reconsideration and RIDOT will issue a Final Determination as provided in Section 23.1.10;

(d) If Contractor is not satisfied with RIDOT's Final Determination, Contractor may submit the Dispute to mediation; and

(e) If the Dispute is not resolved by mediation, Contractor and RIDOT shall enter into binding arbitration, subject to interest provisions in R.I.G.L. 37-13.1-1 filed in the Providence County Superior Court.

23.1.4 Continuation of Work

At all times during this dispute resolution process or any subsequent administrative or court proceeding, Contractor and all Subcontractors shall proceed with the Work diligently, without delay, in accordance with the Contract, and as directed by RIDOT. In addition, all parties shall continue to comply with all provisions of the Contract Documents.

23.1.5 Records Related to Dispute

Throughout the course of any work that is the subject of any Demand or Dispute, Contractor shall keep complete records of the extra costs and time incurred related to the

Dispute. These records shall be retained for a period of not less than six (6) years from the date of resolution of the Dispute.

23.1.6 Pre-Mediation Process

23.1.7 Notice of Demand

If Contractor disagrees with anything required in any written or oral order from RIDOT, including any direction, instruction, interpretation, or determination by RIDOT, Contractor shall deliver to RIDOT, before doing the work, either:

(a) a signed Demand; or

(b) an immediate oral notification of a potential Demand which is confirmed by a signed Demand within seven (7) calendar days.

In order to be valid, the Demand must include sufficient detail to identify the general nature and scope of the matter being protested. Failure to provide notice in accordance with this Section 23.1.7 shall constitute a waiver of all claims in any way related to the disagreed upon work.

23.1.8 Negotiation; Response to Claim

Upon receipt of a Demand, the Parties shall first attempt to resolve the issue(s) presented through negotiations between RIDOT's and Contractor's authorized representatives. The parties shall meet in good faith within three (3) Business Days of the time that a Demand under Section 23.1.7 is made. There shall be at least one meeting to attempt a resolution through negotiation, which shall be continued upon agreement by all parties.

Within five (5) business days following the conclusion of these negotiations, RIDOT shall issue a determination on the matters under dispute. If RIDOT determines that the Demand is valid, RIDOT shall take steps to address the issues presented by the Demand, as appropriate. The determination must be in writing, or, if oral, confirmed in writing within seven (7) calendar days of the oral decision.

23.1.9 Request for Reconsideration

If Contractor is not satisfied with RIDOT's determination, Contractor may deliver to RIDOT a written request for reconsideration within ten (10) calendar days of transmittal by RIDOT of the written determination. At a minimum, this request must include the following information:

(a) the date of the initial Demand;

(b) the nature and circumstances of the Demand;

(c) the Contract Document provisions relevant to the Demand;

(d) the estimated dollar cost, if any, of the work in dispute; and

(e) an analysis of the impact, if any, an outcome favoring Contractor would have on the Project Schedule.

Contractor shall also provide any additional information that RIDOT determines is reasonably necessary for its evaluation of the request for reconsideration.

23.1.10Final Determination

Within fourteen (14) Days of receipt of a request for reconsideration conforming to the requirements of Section 23.1.9, RIDOT shall issue its decision on reconsideration, including a brief description of supporting reasons and instructions for implementation of the decision (if necessary). Its decision on reconsideration will be considered the Final Determination of RIDOT (the "Final Determination"). The Final Determination shall be conclusive on the issues raised, subject only to Contractor's (or RIDOT's) right to submit the issue to mediation as described in below.

23.1.11RIDOT Disputes

RIDOT shall have the right to bring a Dispute to mediation at any time. In the event RIDOT brings a Dispute to mediation, the procedures set forth in this SECTION 23. relating to Contractor Disputes shall apply; provided, however, RIDOT shall not be required to submit the determination referred to in Section 23.2, and Contractor shall be required to submit such certification with respect to any counterclaims asserted by Contractor.

23.2 Mediation

Contractor and RIDOT, by mutual agreement, may refer a Dispute to mediation for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 calendar days after they agree to refer the Dispute to mediation. Contractor and RIDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30 day period, then either Party can, on or after the 31st day, cease participating in such mediation. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 23.2 for processing a Dispute are tolled, day for day, during mediation.

23.3 Additional Requirements for Subcontractor Demands

For purposes of this SECTION 23. , a Subcontractor Demand shall include any claim by a Subcontractor (including also any pass-through claims by a lower tier Subcontractor) against

Contractor that is actionable by Contractor and arises from work, services or materials provided or to be provided under the Contract Documents. If Contractor decides to pursue a Demand that includes a Subcontractor Demand, the following additional conditions shall apply:

(a) Contractor shall identify clearly in all submissions pursuant to this SECTION 23. , that portion of the Demand that involves a Subcontractor;

(b) Contractor shall include, as part of its submission pursuant to Section 23.3, (a) a certification by the Subcontractor's officer, partner or authorized representative with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor Demand. Contractor shall also submit a Contractor's certification that (i) the Subcontractor Demand has been thoroughly reviewed by Contractor and is submitted by Contractor in good faith; (ii) the Subcontractor Demand has been prepared and submitted in accordance with the terms of the Contract Documents and the applicable Subcontract and contains all information required by the Contract Documents and applicable Subcontract; and (iii) Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor Demand is falsely represented;

(c) At any mediation session on a Dispute that includes one or more Subcontractor Demands, Contractor shall require that each Subcontractor that is involved in the Dispute have present an authorized representative with actual knowledge of the facts underlying the Subcontractor Demand to assist in presenting the Subcontractor Demand and to answer questions raised by the mediator or RIDOT's representatives;

(d) Failure of Contractor to assert a Subcontractor Demand on behalf of any Subcontractor or Supplier at the time of submission of Contractor's Demands, as provided hereunder, shall constitute a release of RIDOT by Contractor on account of such Subcontractor Demand;

(e) Contractor shall require in all Subcontracts that all Subcontractors and Suppliers (i) agree to submit Subcontractor Demands to Contractor in a proper form and in sufficient time to allow processing by Contractor in accordance with this SECTION 23. ; (ii) agree to be bound by the terms of this SECTION 23. to the extent applicable to Subcontractor Demands; (iii) agree that, to the extent a Subcontractor Demand is involved, completion of all steps required under this SECTION 23. shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Contractor; (iv) agree that any Subcontractor Demand brought against a bonding company, that also is actionable through Contractor, shall be stayed until completion of all steps required under this SECTION 23. ; and (v) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Demands shall not be deemed to create any claim, right or cause of action by any Subcontractor or Supplier against RIDOT; and

(f) Notwithstanding the foregoing, this SECTION 23. shall not apply to (a) any Subcontractor Demand between the Subcontractor(s) or supplier(s) and Contractor that is not actionable by Contractor against RIDOT; (b) any Subcontractor Demand based on remedies expressly created by statute; (c) any Subcontractor Demand that is covered by insurance; or (c) any Subcontractor Demand that is actionable only against a bonding company.

23.4 Subsequent Proceedings; Exclusive Jurisdiction and Venue

The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, which is permitted to be brought by a Party in court arising out of the Contract Documents, shall be the Providence County Superior Court, Rhode Island. Contractor waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such jurisdiction, regardless of Contractor's residence or domicile, for any such action or proceeding.

SECTION 24. DOCUMENTS AND RECORDS

24.1 Escrowed Proposal Documents ("EPDs")

Prior to execution of this Contract, Contractor delivered into escrow one copy of all documentary information used in preparation of the Price Proposal (the "EPDs"). Concurrently with the approval of each Change Order or amendment or any Contract Document, if requested by RIDOT, on copy of all documentary information used in preparation of the Change Order or amendment shall be added to the EPDs. The EPDs for the Price Proposal shall be held in escrow until all of the following have occurred: (a) 180 Days have elapsed from Final Acceptance or termination of the Work, as applicable; (b) all disputes regarding the Work have been settled; and (c) Final Payment on this Contract has been made and accepted.

24.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by Contractor and RIDOT and their successors and assigns (including the Trustee) in connection with approval of the Schedule, negotiation of Change Orders and resolution of Disputes under the Contract Documents, and also as described in Section 24.1.6, below. RIDOT shall be entitled to review all or any part of the EPDs to satisfy itself regarding the applicability of the individual documents to the matter at issue. RIDOT shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that RIDOT has executed and delivered to Contractor a confidentiality agreement specifying that 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 RIDOT's attorneys and experts, and dispute resolvers hereunder, 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

Contractor if the EPDs have been returned to it) upon final resolution of the negotiations or disputes. The foregoing shall in no way be deemed a limitation on RIDOT's discovery rights with respect to such documents.

24.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of Contractor and shall be considered in Contractor's possession, subject to RIDOT's right to review the EPDs as provided in this SECTION 24. . RIDOT acknowledges that Contractor may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgement is based upon RIDOT's understanding that the information contained in the EPDs is not known outside of Contractor's business, is known only to a limited extend and by a limited number of Contractor's employees, is safeguarded while in Contractor's possession, and may be valuable to Contractor's construction strategies, assumptions and intended means, methods and techniques of construction. RIDOT further acknowledges that Contractor expended money in developing the information included in the EPDs, and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. RIDOT acknowledges that the EPDs and the information contained therein are made accessible to RIDOT by Contractor only as an express prerequisite to the award of this Contract.

24.1.3 Representation

Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Price Proposal. Contractor agrees that no other price preparation information will be considered in resolving disputes or claims. Contractor further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

24.1.4 Contents of EPDs

The EPDs provided with the Proposal shall, *inter alia*, clearly detail how each price included in the Price Proposal has been determined and that the EPDs are adequate to enable RIDOT to understand how Contractor calculated the Price Proposal. The EPDs provided in connection with quotations and Change Orders shall, *inter alia*, clearly detail how the total price and individual components of the price were determined. The EPDs shall itemize the estimated costs of performing the required work separated into usual and customary items and sub-items (as applicable) to present a detailed estimate of costs, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit. The EPDs shall include all assumptions, detailed quantity takeoffs, rates of production and progress calculations, and quotes from Subcontractors and suppliers used by Contractor to arrive at the Price Proposal, amendment or Change Order.

24.1.5 Form of EPDs

Except as otherwise provided in the RFP, Contractor shall submit the EPDs in such format as is used by Contractor. Contractor represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of Contractor prior to delivery, and that the EPDs meet the requirements of Section 24.1.4. Contractor further represents and warrants that the EPDs provided in connection with quotations and Change Orders were personally examined prior to delivery by an authorized officer of Contractor, and that they shall meet the requirements of Section 24.1.4.

24.1.6 Review by RIDOT

RIDOT may at any time conduct a review of the EPDs to determine whether they are complete. In the event that RIDOT determines that any data is missing from an EPD, Contractor shall provide such data within three (3) Business Days of RIDOT's request for such data. At the time of its submission to RIDOT, such data will be date-stamped, labeled to identify it as supplementary EPD information, and added to the EPDs. Contractor shall have no right to add documents to the EPDs except upon RIDOT's request.

24.2 Reporting Requirements

Contractor shall deliver to RIDOT financial and narrative reports, statements, certifications, budgets and information as and when required under the Contract. Contractor shall ensure that RIDOT receives, as and when produced or received, all financial, narrative, consultant and other reports, statements, certifications, budgets and information related to the project which Contractor causes to be produced. In addition, Contractor shall furnish or cause to be furnished to RIDOT such information and statements as RIDOT may reasonably request from time to time for any purpose related to the Project, this Contract or the other Contract Documents.

24.3 Maintenance of, Access to and Audit of Records

Contractor shall maintain 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 Project. Contractor shall grant to RIDOT such audit rights and shall allow RIDOT such access to and the right to copy such books and records as RIDOT may request in connection with the issuance of Change Orders and the resolution of disputes as RIDOT may reasonably deem necessary for purposes of verifying compliance with this Contract and applicable Law.

Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Contractor has been overcredited under a

previous progress report or Milestone Payment, that overcredit will be credited against current progress reports or Milestone Payments.

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

24.4 Retention of Records

Contractor shall maintain all records and documents relating to the Work (including copies of all original documents delivered to RIDOT) for seven (7) years after the Final Acceptance or termination date, as applicable. Contractor shall notify RIDOT where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Demands being processed or actions brought under the dispute resolution provisions of SECTION 23. shall be retained and made available until such actions and Demands have been finally resolved. Records to be retained include all books 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 RIDOT at Contractor's office, 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 RIDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

24.5 Public Records Act

(a) Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials that may come into RIDOT's possession, including materials submitted by Contractor, are subject to the provisions of the Rhode Island Access to Public Records Act (Rhode Island General Laws, Title 38). Contractor shall be solely responsible for all determinations made by it under such Law. Contractor is advised to contact legal counsel concerning such Law and its application to Contractor.

(b) Under no circumstances, however, will RIDOT be responsible or liable to Contractor or any other Person for the disclosure of Contract materials if the disclosure is required under the Rhode Island Access to Public Records Act, court order or occurs through inadvertence, mistake or negligence on the part of RIDOT.

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

SECTION 25. GOVERNING LAW; COMPLIANCE WITH LAW AND REFERENCE STANDARDS

25.1 Rhode Island Law

This Contract shall be governed and construed in accordance with the Laws of the State of Rhode Island.

25.2 Compliance with Laws

Contractor shall comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws.

25.3 Compliance with Referenced Standards

Contractor shall ensure that the Project meets the RIDOT Standards as modified by this Contract, except to the extent that the Contract Documents specifically allow Design Exceptions therefrom. Contractor shall also ensure that the Project meets all other applicable Industry Standards. In cases where the Contract refers to RIDOT Standards or any manual, policy, guidance document or other similar document, it shall mean the most recent such document then issued.

SECTION 26. MISCELLANEOUS

26.1 Amendments to Contract Documents

(a) The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns. No oral contract or implied covenant shall be held to vary the terms hereof, any statute, Law or custom to the contrary notwithstanding.

(b) If any provisions of the Contract Documents are rendered obsolete or ineffective in serving their purpose by Change in Law, passage of time, financing requirements or other future events or circumstances, RIDOT and Contractor agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to

the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement that would reduce its rights or enlarge its responsibilities under the Contract Documents in any material respect.

26.2 Waiver

(a) No waiver by any party of any right or remedy under any Contract Document shall be deemed to be a waiver of any other or subsequent right or remedy under the other Contract Documents. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

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

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

26.3 Relationship of Parties

The relationship of Contractor to RIDOT shall be one of an independent contractor, not an agent, partner, joint venture or employee. Officials, employees and agents of Contractor shall in no event be considered employees, agents, partners or representatives of RIDOT.

26.4 Assignment

Subject to the limitations of this Section 26.4, the Contract Documents shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in any Contract Document to any of the parties thereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

(a) Contractor shall not, without the prior written consent of RIDOT, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents.

(b) RIDOT may transfer and assign its interests in the Project, this Contract and any other Contract Document to any other public agency or private entity as permitted by Law, provided that the successor or assignee has assumed all of the RIDOT's obligations, duties and liabilities under the Contract Documents then in effect, and has provided Contractor with reasonable assurance of its legal and financial authority to honor and perform the same.

26.5 Designation of Representatives

RIDOT and Contractor shall each designate an Authorized Representative who shall be authorized to make decisions and bind RIDOT and Contractor on all matters relating to the Contract Documents except insofar as such authority may be limited by the particular provision or the delegation of such authority in accordance with this Section 26.5. Exhibit D hereto provides the initial designations of Authorized Representatives. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 26.10.

26.6 No Gift or Dedication

(a) Nothing contained in this Contract shall be deemed to be a gift or dedication of any portion of the Project, Site or Work to RIDOT or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Site or Work except as expressly set forth herein.

(b) Contractor shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value to any present or former state employee, for or because of any official act performed or to be performed by such employee or person selected to be such employee.

26.7 Use of Police and Other Powers

Nothing in this Contract limits the authority of RIDOT to exercise its regulatory, statutory and police powers granted by Law, including its powers of eminent domain with respect to all or any part of the Project, the Site and any of Contractor's rights hereunder.

26.8 Survival

All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall be deemed continuing and made at and as of the date of each such document and at and as of all other applicable times during the course of the Project. All covenants, agreements, representations and warranties made in or pursuant to the Contract Documents shall survive the expiration or earlier termination thereof and shall not be waived by the execution and delivery of the Contract Documents, by completion of construction, by any

investigation by RIDOT or by any other event except a specific written waiver by the party against whom waiver is asserted.

26.9 No Third Party Beneficiaries

Nothing contained in the Contract Documents is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a party to the Contract Documents.

26.10 Notices and Communications

Notices under the Contract Documents shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile communication followed by a hard copy and with receipt confirmed by telephone, to those persons designated by Contractor and RIDOT from time to time in accordance with Section 26.5 (or to such other persons as may from time to time be specified in writing by such Person).

In addition, copies of all Notices to Proceed and suspension, termination and default notices forwarded by RIDOT or Contractor shall be delivered to the following persons:

Contractor	**With copy to:**
_____	
_____	
_____	
_____	
_____	
_____	
_____	

RIDOT	**With copy to:**
_____	
_____	
_____	
_____	
_____	
_____	
_____	

All communications to RIDOT shall be clearly marked to identify the Contract and the Project name and location.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first (1st) Business Day following delivery (that is, in order for a fax to be deemed received on the same Day, at least the first page of the fax must have been received before 4:00 p.m.). Contractor's representatives shall be available at all reasonable times for consultation with RIDOT.

Contractor shall forward a copy of all written correspondence pertaining to the Project between Contractor and any Utility and any representative of any Governmental Person to the Person or Persons designated by RIDOT.

26.11 Further Assurances

Each Party hereto shall promptly execute and deliver to other Party all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the obligations of the Parties hereunder.

26.12 Severability

If any term or provision of the Contract Documents, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract Documents shall not be affected thereby and each other term and provision of the Contract Documents shall be valid and enforceable to the fullest extent permitted by Law. It is the intention of the Parties to this Contract, and the Parties hereto agree, that in lieu of each clause or provision of the Contract Documents that is illegal, invalid or unenforceable, the Parties in good faith shall (a) promptly meet and negotiate a substitute therefor which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations.

26.13 Headings

The captions of the sections of the Contract Documents identified therein are inserted solely for convenience. Under no circumstances is any heading to be treated or construed as part of each such instrument, except to the extent that the provision cannot be understood without the caption.

26.14 Interpretation of Contract Documents

(a) In the Contract Documents, where appropriate and unless otherwise specified, the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to sections, appendices or schedules are to the document in which they are contained; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of either 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. Furthermore, notwithstanding the rule of law to the effect that specific provisions contained in a contract shall govern over general provisions, the scope of the Work shall be as set forth in SECTION 2. , and specific provisions in the Contract Documents which describe tasks included in the Work shall not constitute a limit on the scope of the Work, unless specifically so stated.

(b) 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 and to bring to the attention of RIDOT 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 and each of its Participants has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the party which prepared them, and instead other rules of interpretation and construction shall be utilized.

(c) The exhibits attached hereto are incorporated into and are made a part of this Contract and shall be considered to be a part of the Contract Documents. The Parties acknowledge that the provisions of the exhibits shall be complied with as if the terms thereof were incorporated into the body of this Contract.

26.15 Approvals under Contract Documents

In all cases where approvals or consents are required to be provided under the Contract Documents by RIDOT, Contractor or other parties thereto, 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.

26.16 Counterparts

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

26.17 Entire Contract

The Contract Documents constitute the entire and exclusive contract between the Parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

[Continued Next Page]

Approved:

_____
Peter Alviti, P.E.
Director of Transportation

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Contract as of the date and year first set forth above.

IN THE PRESENCE OF:

CONTRACTOR.

By:

_____ _____

RHODE ISLAND DIVISION OF PURCHASES

By:

_____ _____

EXHIBITS TO CONTRACT

NAME	EXHIBIT
DEFINITIONS	A
INDUSTRY STANDARDS AND GUIDELINES	B
FEDERAL-AID REQUIREMENTS	C
INITIAL DESIGNATION OF REPRESENTATIVES	D

EXHIBIT A

Definitions

EXHIBIT A
DEFINITIONS

Acceleration Costs shall mean those fully documented increased costs reasonably incurred by Contractor (that is, costs over and above what Contractor would otherwise have incurred) that are directly attributable to increasing the performance level of the Work in an attempt to complete necessary segments of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for resequencing in connection with acceleration efforts.

Acceptance Deadline shall have the meaning set forth in Section 8.6.

AREMA Manual shall mean the American Railway and Maintenance-of-Way Association Manual for Railway Engineering, as it may be amended, revised or supplemented from time to time.

As-Built Drawings shall mean the documents to be provided by Contractor showing the as-built condition of the Facility to be prepared by Contractor in accordance with RIDOT Standards as a condition of Final Acceptance.

Authorized Representatives shall mean any person designated to act on behalf of a Party in accordance with Exhibit D to the Contract.

Award or Contract Award shall be deemed to have occurred at the time the Contract has been duly executed by Contractor and RIDOT.

Business Day shall mean days on which RIDOT is officially open for business.

Change in Law shall mean the enactment, adoption, modification, repeal or other change in any Law that occurs after the Proposal Date, but excluding any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Date.

Change Order(s) shall mean a written order issued by RIDOT to Contractor delineating changes in the requirements of the Contract documents in accordance with SECTION 15. of the Contract and establishing, if appropriate, an adjustment to the Price or Completion Deadline for the Work affected by the change(s).

Claim shall mean a separate demand by Contractor, which is disputed by RIDOT, for a time extension under the Contract, or payment of money or damages arising from work done on behalf of Contractor in connection with the Contract.

Completion Deadline shall mean the date for completion of a particular aspect of the Project as set forth in the Project Schedule.

Completion Milestone shall mean the date for completion of a particular aspect of the Project as set forth in the Project Schedule.

Construction Documents shall mean all specifications, shop drawings, working drawings and samples necessary for construction of the Project in accordance with the Contract Documents.

Contract Bond shall have the meaning set forth in Section 11.1of the Contract.

Contract Documents shall have the meaning set forth in Section 1.1 of the Contract.

Contract Time shall mean the number of Days allowed for achievement of Final Acceptance.

Contractor shall mean [INSERT NAME OF CONTRACTOR].

Contract Default shall have the meaning set forth in Section 18.1.

Contractor Assurance Testing (CAT) shall mean verification sampling and testing as defined in 23 CFR 637 (1996), used for acceptance, that Contractor or its representative performs, in accordance with standard procedures, to assure that material used on the Project meets the quality requirements of the Contract Documents. CAT is testing performed by Contractor as the material is being placed into its final position or after it has been placed in its final position and is ready for final acceptance by RIDOT. The frequency of CAT is normally specified for each type of work in the Contract Documents and in applicable standards.

Critical Path shall mean the activities and durations associated with the longest path(s) through the Project Schedule.

Damage Event shall have the meaning set forth in Section 18.2 of the Contract.

Damages shall mean those amounts to be paid to RIDOT in accordance with SECTION 19. of the Contract.

Day shall mean a calendar day unless otherwise specified. If the date to perform any act or give any notice specified in the Contract Documents falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-Business Day shall be required to be performed as specified, even though the date in question may be a non-Business Day.

Demand shall have the meaning set forth in Section 23.1 of the Contract.

Design shall mean the design for the Project as evidenced by the Final Design Documents.

Design Documents shall mean all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and submittals necessary for design of the Project in accordance with the Contract Documents.

Design Exception shall have the meaning set forth in Section 5.2.3 of the Contract.

Differing Site Conditions shall mean field conditions which differ substantially or materially from those shown on the Conceptual Design or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Design and the Contract Documents and are generally of such a nature as to cause an increase or decrease in the Price or a change in the construction methods required for the performance of the Work.

Disadvantaged Business Enterprise or DBE shall have the meaning set forth in SECTION 10. of the Contract.

Disputes shall have the meaning set forth in Section 23.1 of the Contract.

Environmental Approvals or Approvals shall mean any Governmental Approval and amendment or modification thereto, arising from or required by an Environmental law, exhaustive of any regulatory or judicial appeals.

Environmental Law shall mean any Law that regulates or governs the use, storage, handling, treatment, recycling, transportation or disposal of Oil and Hazardous Material or pollution or protection of human health, safety and the environment, including, but not limited to: (1) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; (2) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; (3) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (4) the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; (5) the Clean Water Act, 33 U.S.C. Section 1251 et seq.; (6) the Clean Air Act, 42 U.S.C. Section 7401 et seq.; (7) the National Environmental Policy Act, as amended, 42 U.S.C. Section 4321 et seq.; (8) the Endangered Species Act, as amended, 16 U.S.C Section 1531 et seq.; (9) the Migratory Bird Treaty Act, 16 U.S.C. Section 703 et seq.; and (10) any analogous state statutes including R.I.G.L. c. 23-19.1 and RIDEM's Remediation Regulations, all as amended or as they may be amended from time to time. The term "Environmental Law" shall not include the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.

Event of Default shall have the meaning set forth in SECTION 18. of the Contract.

Facility shall mean the Wickford Junction Garage and Station as completed.

Final Acceptance shall mean the date on which RIDOT certifies to Contractor in writing that the Work has been completed to its satisfaction in accordance with the terms of the Contract.

Final Acceptance Date shall mean the date upon which Final Acceptance occurs.

Final Payment shall mean payment by RIDOT of the final installment of the Price in accordance with the Payment Schedule as described in SECTION 14. of the Contract.

Force Majeure shall mean any of the following events (provided such events are beyond the control of Contractor and are not due to an act or omission of Contractor, its employees, agents, officers or subcontractors or any other Persons performing any of the Work for whom Contractor may be contractually or legally responsible) which materially and adversely affects Contractor's obligations and which event (or the effects of which event) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Contractor:

(a) any earthquake, hurricane or other natural disaster;

(b) any man-made disaster, such as fires and explosions:

(c) any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion which renders a material portion of the Work useless, or any national strikes:

(d) any Change in Law or any of the standards set forth in Section 1.3 of the Contract which modifies the scope of the Work or specifically targets the Project or Contractor;

(e) any release of Oil or Hazardous Material (OHM) by a third party for whom contractor has no responsibility and with whom Contractor, its employees, agents, officers, Subcontractors or any other Persons for whom Contractor may be legally or contractually responsible, has no relationship, which is required to be reported to DEM, and which renders use of the Facility or construction unsafe absent assessment, containment and/or remediation; and

(f) issuance of a temporary restraining order or other form of injunction by a court, except if arising out of the act, omission or breach of obligation of Contractor, its employees, agents, officers, Subcontractors or any other Persons for whom Contractor may be legally or contractually responsible or except to the extent such order is resolved, withdrawn or otherwise is settled within the time provided for in the Contract or otherwise fails to affect any Completion Milestone.

The term "Force Majeure" shall be limited to matters listed above and specifically **excludes** from its definition the following matters which might otherwise be considered force majeure:

(g) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, or storm, except as specified in (a) above;

(h) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;

(i) the suspension, termination, interruption, denial or failure to obtain or nonrenewal of any Governmental Approval, except as described in (e) and (f) above;

(j) any Change in Law (such as increases in tax rates) which does not result in a change in the scope of the Work (i.e. the Change in law would not require a change in the Design of the Project);

(k) any delay related to any Utility Work or failure to obtain approval from a Utility Owner;

(l) any delay or cost risk for which coverage is to be provided through insurance required under the Contract; and

(m) all other matters not caused by RIDOT or beyond the control of RIDOT and not listed in (a) through (f) above.

Governmental Approval(s) shall mean any permit, license, authorization or other approval, and any amendment or modification of any of these, required by any Law applicable to the Project or by a Governmental Person, excluding RIDOT, for the execution of any aspect of the Project.

Governmental Person shall mean any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than RIDOT.

Guarantor shall mean each of the entities which provided a guarantee as described in SECTION 11. of the Contract.

Industry Standards shall have the meaning set forth in Section 1.3 of the Contract.

Initial Project Schedule shall have the meaning set forth in SECTION 8. of the Contract.

Instructions to Proposers (ITP) shall mean the document containing guidance to the proposers on the Project, which was published as Volume I of the RFP issued on December 5, 2016 as revised by Addenda.

Key Personnel shall mean the individuals identified in Section 20.1 of the Contract.

Law or Laws shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Person, which is applicable to the Work, whether now or hereafter in effect.

Lien shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages shall have the meaning set forth in Section 19.1 of the Contract.

Local Agency shall mean any agency of the Town of North Kingstown with jurisdiction over the Work.

Local Approval shall mean any regulatory approval issued by a Local Agency.

Material shall mean any substance specified for use in the construction of the Facility and its appurtenances.

Milestone Payment shall mean a payment made to Contractor under the Payment Milestone Plan.

Nonconforming Work shall have the meaning set forth in Section 9.6 of the Contract.

Notice of Termination shall mean a notice issued by RIDOT to terminate Contractor and the performance of the Work by Contractor pursuant to Section 17.2 thereof.

Notice to Proceed shall mean a written communication issued by RIDOT to Contractor authorizing it to proceed with the Work and establishing the date of commencement of the Work.

OHM Management shall mean sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, and/or off-site disposal of Oil and Hazardous Materials, whichever is the most cost-effective approach authorized under an Environmental Law.

OHM Management Plan shall mean the plan provided as specified in SECTION 6. of the Contract.

Oil and Hazardous Materials or OHM shall mean: (1) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated or addressed pursuant to any Environmental Law as now or at any time hereafter in effect; (2) any substance, product, waste or other material of any nature whatsoever which may give rise to liability, investigation, remediation or corrective action requirements under any Environmental Law; (3) oil and petroleum derivatives; (4) asbestos; (5) lead and lead paint; and (6) radioactive wastes and substances.

Oversight Services shall mean those services and functions RIDOT have the right or obligation to perform or to cause to be performed under Governmental Rules or any Contract Document in order to monitor, review, manage or administer the Contract Documents or the work in performance of Contractor under the Contract Documents.

Payment Milestones shall mean specific elements of the Work lasting in duration of not shorter than five (5) Days nor longer than thirty (30) Days, except as approved by RIDOT, which, when completed in accordance with the Contract and properly invoiced, are payable to Contractor.

Payment Schedule shall mean the payment schedule as required by Section 14.2 of the Contract identifying discreet Payment Milestones tied to the Project Schedule on which payment of the Price, in the form of Milestone Payments, is to be based.

Payment Request shall have the meaning set forth in Section 14.4 of the Contract.

Person shall mean any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Person.

Price shall mean the price set forth in Section 14.1 of the Contract as it may be modified from time to time.

Project shall mean the value engineering of the Design and construction of the Facility in accordance with the terms of the Contract.

Project Manager shall mean the Person designated by Contractor to be Contractor's Authorized Representative for the Project.

Project Schedule or Schedule shall mean the approved schedule for performance of the Work and completion of the Project as described in Section 8.1 of the Contract.

Proposal shall mean the Proposal submitted by Contractor to RIDOT in response to the RFP.

Proposed Change Order (PCO) Notice shall have the meaning set forth in Section 15.4 of the Contract.

Proposal Date shall mean the date in which proposals were due in relation to this RFP.

Punch List shall mean the list of Work items that remain to be completed after Substantial Completion has been achieved, and shall be limited to minor incidental items of the Work that are necessary to correct imperfections, but which have no adverse effect on the safety or operability of the Facility.

QC/QA Program or QC/QAP shall mean the program described in Section 4.2 of the Contract.

Quality Assurance (QA) shall mean all those planned and systematic actions necessary to provide confidence that all Work fully complies with the Contract and that all materials incorporated in the Work, all equipment and all elements of the Work will perform satisfactorily for the purpose intended. Actions include design checks and reviews; document control; Construction Document review and approval; materials sampling and testing at the production site and the Project site; inspection of manufacturing/processing facilities and equipment; inspection of on-site equipment, calibration of test equipment, documentation of QA activities, etc.

Quality Assurance Manager or QA Manager shall mean the designated representative of Contractor responsible for inspecting and testing in accordance with the QC/QAP.

Quality Control (QC) shall mean the total of all activities performed by Contractor, or a designer, producer or manufacturer to ensure that a product or service meets Contract requirements. This includes design procedures and checking, materials handling and construction procedures, calibration and maintenance of equipment, Construction Document review, document control, production process control, and any sampling, testing and inspection done for these purposes. QC also includes documentation of QC efforts.

Recovery Schedule shall mean the schedule Contractor may be required to provide under Section 8.4 of the Contract.

Reference Documents shall mean those documents listed in Section 3.1 to the Contract. Reference Documents are not considered Contract Documents and are provided to Contractor for informational purposes only.

Regulatory Agency(ies) shall mean any federal, state or local government and any political subdivision of any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than RIDOT with jurisdiction or authority over any aspect of the Project under any law applicable to the Project.

Release of OHM shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of OHM into the environment, including any exacerbation of an existing release or condition of contamination.

Relocations shall mean each removal, relocation, abandonment, accommodation and/or protection in place (including provision of temporary services as necessary) of any and all Utilities that is necessary in order to accommodate or permit construction of the Project.

Request for Proposals or RFP shall mean the Request for Proposals regarding the Project issued by RIDOT on December 5, 2016, including all attachments thereto and any subsequent Addenda.

Retainage shall have the meaning set forth in Section 14.9 of the Contract.

RFP Documents shall mean all of the information and materials supplied to Contractor in connection with the issuance of the RFP, including the ITP.

RIDOA shall mean the Rhode Island Department of Administration.

RIDEM shall mean the Rhode Island Department of Environmental Management.

RIDOT shall mean the Rhode Island Department of Transportation and, unless otherwise specified, shall include its consultants, agents and representatives.

RIDOT-Caused Delays shall mean unavoidable delays and resulting costs, to the extent that they affect the Critical Path, arising from the following matters and no others:

(a) a suspension order pursuant to SECTION 16. of the Contract, excluding any suspension due to a Force Majeure event;

(b) RIDOT-Directed Changes;

(c) failure or inability of RIDOT to provide responses to proposed schedules, plans, Design Documents and other submittals and matters for which response is required, within the time periods, (if any) indicated in the Contract Documents, or other failure of RIDOT to act promptly and diligently with respect to actions which they are required to take hereunder, following delivery of notice from Contractor requesting such action;

(d) uncovering, removing and restoring Work, to the extent provided in the Contract;

(e) failure of RIDOT to provide materials required to be delivered under the Contract;

(f) any improper action by RIDOT's Designated Representative with binding authority or any improper failure to act by RIDOT within a reasonable time after delivery of notice by Contractor to RIDOT requesting such action; and

(g) those matters specifically defined as a RIDOT-Caused Delay in the Contract.

RIDOT-Directed Changes or RIDOT -Initiated Changes shall mean any changes in the Work (including changes in the standards applicable to the Work) which RIDOT has acknowledged in writing to be a RIDOT-Directed Change or which has been determined to constitute a RIDOT-Directed Change pursuant to SECTION 15. of the Contract. No change in the Work shall be considered a RIDOT-directed Change under the Contract unless a Change Order has been issued with respect thereto under SECTION 15. thereof.

RIDOT Standards shall have the meaning set forth in Section 1.3 of the Contract.

RIDOT'S Designee shall mean the person identified by RIDOT as its representative for purposes as specified in the Contract.

Schedule of Record or Schedule shall mean the current approved schedule then in use on the Project.

Site shall consist of the real property (which term is inclusive of all estates and interests in real property) which is necessary for the construction, ownership and operation of the Facility. The term specifically includes all air space, surface rights and subsurface rights within the established Site limits of the Facility owned by RIDOT.

Start of Revenue Service shall mean the date the RIDOT begins commuter parking service in the Facility.

Subcontract shall mean any agreement by Contractor with any other Person to perform any part of the Work or provide any modules, materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier subcontractor.

Suppliers shall mean any Person not performing work at the Facility or Site who supplies machinery, equipment, materials or systems to Contractor or any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing work at the Site.

Surety shall mean each properly licensed surety company, insurance company or other Person approved by RIDOT, which has issued any Labor and Material Payment Bond or Performance Bond.

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 15.8 of the Contract.

Time and Materials Work shall mean Work performed pursuant to a Time and Materials Change Order.

Utility or utility shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public.

Utility Owner shall mean the operator of any Utility (including both privately held and publicly held entities, cooperative utilities and municipalities and other governmental agencies).

Warranties shall mean the warranties provided by Contractor pursuant to SECTION 21. of the Contract.

Work shall mean all of the work to be completed by Contractor in accordance with the terms of the Contract.

[END OF EXHIBIT A]

EXHIBIT B

Industry References and Standards

Industry standards and codes ("Industry Standards") shall apply to the design and construction of the work, as applicable, except as otherwise set forth in the Contract Documents, RIDOT Standards or as specifically approved in writing by RIDOT. Industry Standards include, but are not limited to the following, each of which is available separately:

(a) Rhode Island Stormwater Management Policy

(b) National Electrical Manufacturers Association (NEMA)

(c) American Institute of Steel Construction (AISC) Manual of Steel Construction

(d) Illuminating Engineering Society of North America (IES)

(e) State of Rhode Island Building Code, Electrical Code and Fuel, Gas and Plumbing Code

(f) Building Officials and Administrators International (BOCA) Mechanical Code

(g) American Association for Testing and Materials (ASTM)

EXHIBIT C

Federal-Aid Requirements

The following Federal Aid provisions and requirements ("Federal-Aid Requirements") have been adopted for this Project and shall apply to the design and construction of the Work, as applicable, except as otherwise set forth in the Contract, or as specifically approved in writing by RIDOT. Federal-Aid Requirements include, but are not limited to the following, all of which are available from RIDOT:

(a) Required Contract Provisions for Federal-Aid Construction Projects, a copy of which is attached hereto

EXHIBIT D

Initial Designation of Representatives

RIDOT		CONTRACTOR	
NAME:		**NAME:**	
TITLE:		**TITLE:**	
ADDRESS:		**ADDRESS:**	
PHONE:	**Cell** **Office** **Fax**	**PHONE:**	**Cell** **Office** **Fax**
E-MAIL:		**E-MAIL:**	