

CONSTRUCTION
Design-Build

Date of Award: [insert]

Action Date: DATE [insert]; Item No. [insert]

Project No. 612187

City/Town of CHICOPEE

Contract No. [insert]

NTP Date: [insert]

Acct. No.: [insert]

Completion Date: [insert]

Bid Amount: [insert]



**[DRAFT] CONTRACT
FOR
STATE HIGHWAY WORK
CHICOPEE**

Bridge Replacement, C-13-038, I-391 over (ST 116) Chicopee Street

Best Value Design-Build Procurement
Federal Aid Project No. HIP(NGB)-3912(004)

Phase 2
Request for Proposals

**Volume III of III
Terms and Conditions**

March 26, 2026

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RFP ADDENDA TRANSMITTAL COVER LETTERS (X pages)

DRAFT

**MASTER PROPOSER'S RFP QUESTION/RESPONSE
SUMMARY THROUGH ADDENDUM NO. X (X pages)**

DRAFT

CONTRACT NO. CCCCC

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

AND

This Contract made this [insert date] day of [insert month], [insert year] at Boston, Massachusetts and governed by the laws of the Commonwealth of Massachusetts, between the Massachusetts Department of Transportation, a body politic and corporate, established by St. 2009, c. 25 ("MassDOT" or "Owner"), having a principal place of business at 10 Park Plaza, Boston, MA (MassDOT and the Secretary and CEO of DOT may hereinafter sometimes be collectively referred to as "MassDOT"),

AND

[insert contractor name] located at [insert contractor address] and acting through its proper officials, hereinafter referred to as the Design-Builder, is for the design and construction of the Bridge Replacement, C-13-038, I-391 over (ST 116) Chicopee Street Design-Build Project in the City of Chicopee. Both MassDOT and the Design-Builder, when used together, are hereinafter referred to as the "Parties."

THIS DB CONTRACT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS:

On November 1, 2009, the Massachusetts Highway Department was abolished, and all assets, liabilities, and obligations became those of the Massachusetts Department of Transportation. Anywhere in this Contract the terms Commission, Commonwealth, Department of Public Works, Department, Massachusetts Highway Department, MassHighway, Party of the First Part, or any other term intending to mean the former Massachusetts Highway Department is herein used, it shall be interpreted to mean the Massachusetts Department of Transportation or applicable employee of MassDOT unless the context clearly requires otherwise.

Pursuant to St. 2009, c. 25 "An Act Modernizing the Transportation Systems of the Commonwealth", as amended, the Massachusetts Department of Transportation has by operation of law inherited all rights and obligations pursuant to any Contract, and therefore the Parties to this Contract hereby acknowledge and agree that its terms shall be liberally construed and interpreted to maintain the rights and obligations of the Massachusetts Department of Transportation. Furthermore, the Parties hereby acknowledge and agree that the transfer of all rights and obligations from the Massachusetts Highway Department to the Massachusetts Department of Transportation shall not have the effect of altering or eliminating any provision of this Contract in a manner that inures to the detriment of the Massachusetts Department of Transportation.

The Contract consists of two separately bound volumes: Volume I - Terms and Conditions, and Volume II - Technical Provisions. Contract Volume I is the final version of RFP Volume III - Draft Terms and Conditions, and includes revisions thereto made by RFP addenda. Similarly, Contract Volume II is RFP Volume II – Technical Provisions, and includes revisions thereto made by RFP addenda.

The “Project” is the design and construction of the Bridge Replacement, C-13-038, I-391 over (ST 116) Chicopee Street Design-Build in the City of Chicopee in Hampden County, Massachusetts and within the boundary of MassDOT District 2 and (as more specifically described in Sections 1 and 4 of Contract Volume II – Technical Provisions and in the definitions contained in Contract Volume I, Exhibit A, the “Project”);

MassDOT determined to utilize a design-build (“DB”) procurement and construction method for construction of the Project pursuant to M.G.L. c. 149A, ss. 14 et seq.

Upon completion of the two-phase process for selecting a DB team, the MassDOT Selection Committee recommended that the Contract be awarded to [insert contractor name], based on MassDOT’s determination that the Design-Builder Price Proposal and Technical Proposal, which includes MassDOT approved Alternative Technical Concept(s) provided in Exhibit F, in fact best met the selection criteria as contained in the RFP and that the Design-Builders Proposals provided the best value to MassDOT;

The Parties intend for this DB Contract to be lump sum, obligating the Design-Builder to perform all work necessary to obtain completion of the Project by the deadline specified herein for the DB Price, subject only to certain specified limited exceptions set forth herein. In order to allow MassDOT to budget for the Project and to reduce the risk of cost overruns, this DB Contract includes restrictions affecting the Design-Builder’s ability to make claims for an increase to the DB Price or an extension of the Contract Time.

MassDOT has determined and the Parties agree that, if the Design-Builder fails to complete the Project within the time limitations set forth in the Contract Documents (as they may be extended in accordance with the Contract Documents), MassDOT will suffer substantial losses and damages. Therefore, the Contract Documents provide that the Design-Builder shall pay substantial Liquidated Damages to MassDOT in the event such completion is delayed.

The conceptual design for the Project and the RFP Documents form the basis for the Design to be furnished by the Design-Builder. The Parties intend for the Design-Builder to assume full responsibility and liability for the Design, including correction of any errors, omissions, inconsistencies or other defects in the Design and correction of any errors, omissions, inconsistencies or other defects in the RFP Documents, and for the Design-Builder to indemnify, defend and hold harmless MassDOT with respect to any defects in the Project which may relate to errors, omissions, inconsistencies or other defects in the conceptual design except as provided under M.G.L. c. 30, s. 39N.

NOW, THEREFORE, in consideration of the sums to be paid to the Design-Builder by MassDOT, 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 REFERENCE DOCUMENTS AND STANDARDS

1.1.1 Project Requirements

The Design-Builder will conduct work in accordance with the "Project Requirements" referred to as Contract Volume II – Technical Provisions; the Design-Builder's Technical Proposal titled _____, the Executive Summary attached hereto as Exhibit C; and the Design-Builder's Price Proposal Document B00420, attached hereto in Exhibit J. The Design-Builder agrees that the services will be performed within the period required under the Contract. MassDOT may extend this Contract incrementally or in one step, by mutual agreement of MassDOT and the Design-Builder, by written notification provided to the Design-Builder by MassDOT. This right to extend the Contract in no way minimizes MassDOT's right to the timely receipt of the Project deliverables as specified in the Proposal.

1.2 CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.2.1 Contract Documents

The term "Contract Documents" shall mean this Contract which consists of Contract Volume I – Terms and Conditions and Contract Volume II -- Technical Provisions, including all exhibits, appendices and other documents listed in Section 1.2, including all amendments to the foregoing and all Contract Amendments issued. Capitalized terms appearing in the Contract Documents and not otherwise defined shall have the meanings ascribed to them in the document entitled Terms and Definitions attached hereto as Exhibit A.

1.2.2 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 accordance with the requirements of M.G.L. c. 149A, s. 14 et seq. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

1.2.2.1 For design standards and requirements:

1. Contract Amendments;
2. Contract Volume I – Terms and Conditions;
3. Contract Volume II – Technical Provisions;
4. Request For Proposal (RFP) including all Addenda;
5. MassDOT Engineering Directives;
6. Proposal documents, to the extent that they are consistent with the requirements of the other Contract Documents;
7. All Applicable Standards in Contract Volume II – Technical Provisions, Section 1.2.

1.2.2.2 For construction-related standards, specifications and requirements:

1. Contract Amendments;
2. Contract Volume I – Terms and Conditions;
3. Contract Volume II – Technical Provisions;
4. Design Documents accepted in writing by MassDOT, with specifications contained therein having precedence over plans provided in the RFP and excluding any deviations from the requirements of the other Contract Documents contained therein which have not been accepted in writing by MassDOT;
5. Request For Proposal (RFP) including all Addenda;
6. MassDOT Engineering Directives;
7. Proposal documents, to the extent that they are consistent with the requirements of the other Contract Documents;
8. All Applicable Standards in Contract Volume II – Technical Provisions, Section 1.2.

1.2.2.3 For all other matters:

1. Contract Amendments;
2. Contract Volume I – Terms and Conditions;
3. Contract Volume II – Technical Provisions;
4. Request For Proposal (RFP) including all Addenda;
5. MassDOT Engineering Directives;
6. Proposal documents, to the extent that they are consistent with the requirements of the other Contract Documents;
7. All Applicable Standards in Contract Volume II – Technical Provisions, Section 1.2.

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, MassDOT shall have the right to reasonably determine which provision applies, and if MassDOT makes such determination, it shall do so promptly. The Design-Builder shall request MassDOT's determination promptly upon becoming aware of such conflict.

1.3 REFERENCED STANDARDS

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

In interpreting Referenced Standards, the following apply:

- a. References to the Project Owner shall mean MassDOT; and
- b. References to "Plan(s)" shall mean the Design Documents.

1.4 APPROVALS OR CONSENTS

In all cases where approvals or consents are required to be provided under the Contract Documents by MassDOT, the Design-Builder or other parties to the Contract Documents, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall not be subject to "Dispute Resolution" hereunder.

1.5 DELIVERABLES

The Design-Builder will provide MassDOT with all products and services stated within the Project Requirements.

1.6 SUBCONTRACT REQUIREMENTS

The following requirements shall apply to all Subcontracts:

Notwithstanding any Subcontract or agreement with any Subcontractors, the Design-Builder shall be fully responsible for all of the DB Work. MassDOT shall not be bound by any Subcontracts, and no Subcontractor shall include a provision purporting to bind MassDOT.

As soon as a potential Subcontractor has been identified by the Design-Builder, but in no event less than fourteen (14) Days prior to the scheduled initiation of DB Work by such proposed Subcontractor, the Design-Builder shall notify MassDOT, in writing, of the name and address of such Subcontractor.

Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract and shall include those terms that are specifically required by the Contract to be included therein. All Subcontracts (including Subcontracts with Suppliers) shall incorporate terms substantially similar to those contained in this Contract (specifically including an agreement by the Subcontractor to participate in any dispute review proceeding identified in the Contract, if such participation is requested by either MassDOT or the Design-Builder).

The Design-Builder shall pay each Subcontractor under the Contract for satisfactory performance of subcontract work not later than ten (10) Business Days from the receipt of each payment the Design-Builder receives from MassDOT. Failure to comply with this requirement may result in the withholding of payment to the Design-Builder until such time as all payment due under this provision has been received by the Subcontractor(s) and/or referral to the Prequalification Committee for action which may affect the Design-Builder's prequalification status.

The Design-Builder further agrees to make payment in full, to each Subcontractor not later than ten (10) Business Days after the Subcontractor has completed all of the work required under its subcontract.

Upon receipt of full payment by the Subcontractor, the Subcontractor shall promptly record in the EBO system that full payment has been received.

The Design-Builder and Subcontractor are directed to the following: MassDOT Standard Specifications for Highways and Bridges, 2026 Edition, Subsection 5.09 which provides that inspection of the work shall not relieve the Design-Builder of any obligations to fulfill the terms of the Contract.

1.7 MAJOR PARTICIPANTS

Major Participants cannot be changed after Contract Award without written consent of MassDOT. Failure to receive approval of such a change may result in Contract cancellation.

SECTION 2. PAYMENT

2.1 DB PRICE

As full compensation for the DB Work and all other obligations to be performed by the Design-Builder under the Contract Documents, the Design-Builder shall be paid a lump sum of _____ (\$ _____) (such sum, as it may be adjusted from time to time to account for Contract Amendments, is referred to herein as the "DB Price"). The DB Price shall be paid in accordance with this Section 2 and may be changed only by a Contract Amendments issued in accordance with Contract Volume I, Section 3, adjustments in the prices of hot-mix asphalt mixtures, diesel fuel and gasoline, structural steel and reinforcing steel, and Portland cement concrete, in accordance with Documents 00811DB, 00812DB, 00813DB, and 00814DB attached hereto in Exhibit G, adjustments in the price of hot mix asphalt based on the quality of the hot mix asphalt in accordance with MassDOT Standard Specifications for Highways and Bridges, 2026 Edition, Subsection 450, Hot Mix Asphalt Pavement; adjustments in the quantities of the unit Bid Item number 740.3, adjustments in quantities of the unit Bid Items of Hazardous Materials Management Bid Item numbers 180.02, 180.03, 181.11, 181.12, 181.13, 181.14, 182.2, 182.2, 183.1, and 183.2 in Contract Volume II, Appendix C, in accordance with Section 3.8.1, and incentive payments/disincentive deductions in accordance with Contract Volume II, Section 9.3, and Damages in accordance with Contract Volume I, Section 7.

The Design-Builder acknowledges and agrees that, subject only to the Design-Builder's rights under Section 3, the DB Price includes: (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services related to the Design-Builder's performance of its obligations under the Contract Documents (including all DB Work, equipment, materials, labor and services provided by Subcontractors); (b) performance of each and every portion of the DB Work; (c) the cost of obtaining all Governmental Approvals (except for those Governmental Approvals for which MassDOT is responsible); and (d) payment of any duties and other fees and/or royalties imposed with respect to the DB Work and any equipment, materials, labor or services included therein.

The Design-Builder further acknowledges and agrees that the DB Price includes reasonable costs and expenses incurred in developing the Design of the Project and the construction cost estimate.

2.2 METHOD OF PAYMENT

Payment to the Design-Builder of the DB Price shall be made in accordance with the Design-Builder's satisfactory completion (as evidenced by MassDOT's written acceptance) of activities as noted in the Cost-and-Resource Loaded Critical Path Method (CPM) Schedule described in Contract Volume II, Section 9, and further defined by this Section, and in conjunction with Subsection 9.0 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition.

MassDOT intends to pay the Design-Builder, for design and construction of the Project, based upon a cost-loaded critical path method schedule as generated from bid items in the Contract and the requirements of the CPM (as a basis of production and time). Once the cost and resource loaded baseline schedule is approved, each month, the Design-Builder will reference and status each active individual schedule activity – either as unit priced bid items and/or the lump sum priced bid items. Although all cost will be loaded into the Cost/Resource loaded CPM as part of the baseline schedule submission, the Design-Builder will not be required to update the actual costs in the scheduling software, as a requirement of the progress schedule submissions. Rather, for invoicing purposes, an export of all activities with costs assigned as part of an invoicing spreadsheet will be acceptable to MassDOT.

As an example: a detailed schedule activity, that is part of the lump sum bridge payment item, is submitted to be 50% complete at the invoice period date, and the 50% progress/status has been agreed by MassDOT. With an original duration of twenty (20) Days, and original cost of \$100,000, the Design-Builder will be paid out at \$50,000 and there will be \$50,000 that remains – to be invoiced when the remaining work is complete).

MassDOT may, at its discretion, withhold payment, of the specific schedule activity in the event that the Design-Builder fails to install the work correctly or when MassDOT does not agree with the stasured completion percentage.

2.3 SCHEDULE OF PAYMENTS

2.3.1 Payment by MassDOT

2.3.1.1 M.G.L. c. 30, s. 39G.

The payment procedures for all public works contracts in the Commonwealth are in M.G.L. c. 30, s. 39G (contained in Subsection 7.15 of the Standard Specifications) which states:

Upon substantial completion of the work required by a contract with the commonwealth, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and, water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty–one days thereafter, the awarding authority shall present to the contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty–one day period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.

Within sixty–five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one percent retainage, if held by the awarding authority, on that work, including the quantity, price and all but one per cent retainage, if held by the awarding authority, for the undisputed part of each work item and extra work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty–nine F, but no contract subject to said section thirty–nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by subcontractors, material suppliers or others.

If the awarding authority fails to prepare and send to the contractor any substantial completion estimate required by this section on or before the date herein above set forth, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.

Within fifteen days after the effective date of the declaration of substantial completion, the awarding authority shall send to the contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his control, the contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the contractor by certified mail, return receipt requested, terminate the contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the contractor.

Within thirty days after receipt by the awarding authority of a notice from the contractor stating that all of the work required by the contract has been completed, the awarding authority shall prepare and forthwith send to the contractor for acceptance a final estimate for the quantity and price of the work done and all retainage, if held by the awarding authority, on that work less all payments made to date, unless the awarding authority's inspection shows that work items required by the contract remain incomplete or unsatisfactory, or that documentation required by the contract has not been completed. If the awarding authority fails to prepare and send to the contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the contractor for acceptance or the date of payment therefor, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.

The awarding authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. Within 15 days, 30 days in the case of the commonwealth, after receipt from the contractor, at the place designated by the awarding authority, if such place is so designated, of a periodic estimate requesting payment of the amount due for the preceding periodic estimate period, the awarding authority shall make a periodic payment to the contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the work but delivered and suitably stored at the site, or at some location agreed upon in writing, to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the contractor, a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five per cent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five per cent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.

Substantial completion, for the purposes of this section, shall mean either that the work required by the contract has been completed except for work having a contract price of less than one per cent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.

2.3.1.2 Payment Requests – Cost and Resource Loaded CPM Schedule.

The Design-Builder will produce DB payment requests for MassDOT approval using a format that is acceptable to MassDOT. The payment requests shall be generated from the detailed Cost and Resource Loaded CPM Schedule (exported activity costs) and shall include a quantification of all units installed, forecasted days to complete, and a percentage complete (as validated by MassDOT) for all activities that are part of the Lump Sum breakdown as submitted in the CPM.

As part of the baseline schedule submission, and with regard to the cost loading of the activities contained within a lump sum payment item (breakdown), should the Design-Builder submit any costs that are deemed unreasonable or questionable, the Design-Builder will be requested to provide pricing back up to support the requested costs. After reviewing this information, along with the information provided as part of the resource loading, MassDOT will make a determination as to the activity costs that will be allowed for invoicing purposes. If the Design-Builder does not provide suitable pricing that supports the requested cost distribution, MassDOT will make a determination of the allowable cost distributions that will be final. This applies to all lump sum bid items and the schedule activities that support those lump sum breakdowns.

MassDOT shall pay the Design-Builder the amount of the payment request approved for payment less any amounts which MassDOT is otherwise entitled to have withheld. In no event shall the Design-Builder be entitled to a payment for any activity eligible for payment from the fixed price portion of the DB Price in excess of the demonstrated percentage completion of such activity.

2.3.2 Payment to Subcontractors

Upon receipt of payment for the DB Work from MassDOT, the Design-Builder shall promptly pay each Subcontractor (out of the amount paid to the Design-Builder on account of such Subcontractor's portion of the DB Work) the amount to which such Subcontractor is entitled, less any other offsets and deductions provided in the Subcontract or by Law. The Design-Builder shall, by appropriate Contract with each Subcontractor, require each Subcontractor to make payments to other Subcontractors and Suppliers in a similar manner. MassDOT shall have no obligation to pay or 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 the Design-Builder's responsibility, and shall not be a part of the DB Price.

2.3.3 Continued Performance During Disputes

Failure by MassDOT to pay any amount in dispute shall not postpone, alleviate, diminish or modify in any respect the Design-Builder's obligation to perform under the Contract Documents, including the Design-Builder's obligation to achieve Final Acceptance and complete all DB Work in accordance with the Contract Documents, and the Design-Builder 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 13. Upon resolution of any such dispute, subject to the limitations specified in Section 3, MassDOT shall pay to the Design-Builder any amount owing. Design-Builder Interest on judgments for contractor claims filed with the Superior Court of Massachusetts shall be calculated pursuant to the provisions of M.G.L. c. 231, ss. 6C and 6I from the date of the breach or demand. If the date of the breach or demand is not established, such interest shall be calculated from the date of the commencement of the action, in accordance with M.G.L. c. 231, s. 6C.

2.3.4 Reserved

2.3.5 Deductions

In addition to the deductions provided for above, MassDOT 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 MassDOT in performing any of the Design-Builder's obligations under this DB Contract which the Design-Builder has failed to perform;
- c. the adjustment in the Contract price due to Nonconforming Work that is suitable to remain in place (see Subsection 5.03 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition); and
- d. any other sums which MassDOT is entitled to recover from the Design-Builder under the terms of the DB Contract.
- e. The failure by MassDOT to deduct any of these sums from a Milestone Payment shall not constitute a waiver of MassDOT's right to recover such sums or to deduct such funds from future progress payments.

2.3.6 Traffic Officers and Railroad Flaggers

2.3.6.1 Traffic Officers

The Design-Builder shall provide such traffic officers and/or road flaggers as MassDOT determines appropriate for traffic control within the construction zone, in accordance with 701 CMR 7.00 and the Road Flagger and Police Detail Guidelines and Subsection 7.11 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition. The Design-Builder shall also submit all Construction Zone Safety Plans to the local law enforcement agency having primary responsibility for the patrol and enforcement of vehicular law on the Public Road within which the Construction Zone is located.

The MassDOT District 2 District Highway Director (DHD) shall have control and responsibility over the safety, security, and closure of the construction zone.

Traffic officers shall wear regulation policemen's uniforms. They may be reserve, special, or regular officers not subject to the control of the Design-Builder. Compensation for the services of said traffic officers will be paid by the Design-Builder to their employers at their regular rate of pay in effect in the city or town in which the work is being performed.

MassDOT will reimburse the Design-Builder for the exact amount paid by the Design-Builder for the services of all required traffic officers, except during period of overrun as stated in Section 7.1. There will be no mark up on the cost of hired traffic officers.

The rate of wages paid by the Design-Builder to such traffic officers shall be the same as those paid to traffic officers working on special details.

2.3.7 Alternative Technical Concepts

During design development as noted in RFP Volume I – Instructions to Proposers, Section 2.4.4 should the Design-Builder be unable to obtain required approvals from third parties for any MassDOT approved Alternative Technical Concept (ATC) incorporated into the Contract Documents, or if the ATC otherwise proves to be infeasible, the Design-Builder will be required to conform to the original Base Technical Concept (BTC) requirements with no additional time to complete the Project regardless of when it is determined to be infeasible. MassDOT will not make any adjustments to the Contract value in the event that an ATC which was approved during the proposal phase cannot be implemented.

2.3.8 Final Acceptance and Final Payment

When in the opinion of MassDOT the DB Contract has been satisfactorily completed, the Design-Builder shall be notified in writing of the date of such acceptance, upon which date the Design-Builder's responsibility shall cease except as provided in any bond and as provided in Section 2.4.

MassDOT shall, as soon as practicable after the physical completion of the DB Contract, make final estimate of the amount of work done thereunder and the value of such work. Within sixty-five (65) Days from and after the date the work has been accepted, MassDOT shall forward to the Design-Builder a copy of the final estimate or semifinal estimate as stipulated in M.G.L. c. 30, s. 39G, as amended, together with an agreement form for acceptance. After such acceptance has been filed with MassDOT, payments of the entire sum will be made, so found to be due thereunder after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the DB Contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. If within six months from the date the final estimate is forwarded to the Design-Builder, the Design-Builder has not filed a valid (as determined by the MassDOT) written reason(s) for not accepting the final estimate, the final estimate will be considered acceptable to the Design-Builder and payment of the final estimate made. The acceptance by the Design-Builder of the final payment shall operate as and shall be a release to MassDOT and every member, agent and employee thereof, from all claims by the Design-Builder for anything done or furnished for, or relating to the work or for any act or neglect of MassDOT or of any person relating to or affecting the work, except the claim against MassDOT for the remainder if any there be, of the amounts kept or retained as provided in Section 13.6.

2.4 NO WAIVER OF LEGAL RIGHTS

MassDOT shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the physical completion and final acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Design-Builder, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract. MassDOT shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Design-Builder or his/her sureties, or both, such damage as it may sustain by reason of his/her failure to comply with the terms of the DB Contract. Neither the acceptance by MassDOT nor any representative of MassDOT, nor any payment for any acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by MassDOT, shall operate as a waiver of any portion of the Contract of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

Any remedy provided in the DB Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and MassDOT shall also be entitled as of right to a writ of injunction against any breach of the provisions of the DB Contract.

SECTION 3. AMENDMENTS TO THE DB WORK

3.1 CONTRACT AMENDMENTS

This Section 3 sets forth the requirements for obtaining all Contract Amendments under this Contract relating to the DB Work. The Design-Builder hereby acknowledges and agrees that the DB Price constitutes full compensation for performance of all of the DB Work, subject only to those exceptions specified in Section 2 above and in this Section 3, and that MassDOT is subject to constraints which limit its ability to increase the DB Price or extend the Final Completion date. The Design-Builder hereby waives the right to any Claim for a time extension or for any monetary compensation in addition to the DB Price and other compensation specified in this Contract for the DB Work, except as set forth in Section 2 above and in this Section 3. To the extent that any other provision of this Contract expressly provides for a Contract Amendment relating to the DB Work to be issued, such provision is hereby incorporated into this Section 3.

3.1.1 Requirements Relating to Contract Amendments

The term "Contract Amendment" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 3. MassDOT may issue unilateral Contract Amendments as specified below in Section 3.2.2. Contract Amendments may be requested by the Design-Builder only pursuant to Section 3.3. A Contract Amendment shall not be effective for any purpose unless executed by MassDOT, as specified herein. Contract Amendments may be issued only for the following purposes (or combination thereof):

- a. to modify the scope of the DB Work;
- b. to revise milestones in the Schedule;
- c. to revise the DB Price; or
- d. to revise other terms and conditions of the Contract Documents.

Upon MassDOT's approval of the matters set forth in the Contract Amendment (whether it is initiated by MassDOT or the Design-Builder), MassDOT shall sign such Contract Amendment form indicating approval thereof. A Contract Amendment may, at the sole discretion of MassDOT, direct the Design-Builder 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.

MassDOT may at any time issue a Directive Letter to the Design-Builder in the event of any desired change in the DB Work or in the event of any dispute regarding the scope of DB Work. The Directive Letter will describe the work in question and will state the basis for determining compensation, if any. The Design-Builder will proceed immediately with the work as directed, pending the execution of a formal Contract Amendment (or, if the letter states that the DB Work is within the Design-Builder's original scope of DB Work, the Design-Builder will proceed with the work as directed but shall have the right to submit the question of entitlement to a Contract Amendment and the amount of allowable compensation and time to dispute resolution in accordance with Contract Volume I, Section 13.

Before starting to work on any item which the Design-Builder considers to be outside of the original scope of the DB Work, as a condition precedent to its right to receive additional payment therefore or an extension of a Milestone in connection with such work, the Design-Builder shall have received one of the following:

- a. A Directive Letter from MassDOT stating that it is issued pursuant to Section 3.1; or
- b. A Contract Amendment for such work signed by MassDOT.

In addition to provision of a Contract Amendment Notice and subsequent Contract Amendment request pursuant to Section 3.3, receipt of a letter from MassDOT under this Section shall be a condition precedent to the Design-Builder's right to make a claim that a MassDOT-Directed Amendment has occurred, provided that no Directive Letter shall be required for an alleged MassDOT-Directed Amendment directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by MassDOT. The fact that a Directive Letter was issued by MassDOT shall not be considered evidence that in fact a MassDOT-Directed Amendment occurred. The determination whether a MassDOT-Directed Amendment in fact occurred shall be based on an analysis of the original Design-Builder requirements and a determination whether the Directive Letter in fact constituted an amendment in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the Design-Builder to have the right to receive compensation for DB Work within its original scope (such as Utility work) for which additional compensation is specifically allowed under this Section 3.

3.1.2 Right of MassDOT to Issue Contract Amendments

MassDOT may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the DB Work within the general scope of the Design-Builder pursuant to a Contract Amendment. All additions, deductions or changes to the DB Work as directed by Contract Amendments shall be executed under the conditions of the original Contract Documents.

3.2 MASSDOT INITIATED CONTRACT AMENDMENTS

This Section concerns Contract Amendments issued by MassDOT following a Notice of Proposed Directed Amendment and Contract Amendment unilaterally issued by MassDOT.

3.2.1 Notice of Proposed Directed Amendment

If MassDOT desires to issue a MassDOT-Directed Amendment or to evaluate whether to initiate such an amendment, then MassDOT may, at its discretion, issue a Notice of Proposed Directed Amendment.

Within seven (7) Days of the Design-Builder's receipt of a Notice of Proposed Directed Amendment, MassDOT and the Design-Builder shall arrange an initial consultation (at no charge to MassDOT) to define the proposed scope of work. Within fourteen (14) Days after completion of the initial consultation, MassDOT and the Design-Builder shall consult concerning the estimated cost and time impacts. The Design-Builder shall provide data regarding such matters as requested by MassDOT.

After the initial consultation and provision of data as described in this Section, MassDOT shall notify the Design-Builder whether MassDOT: (i) wishes to issue a Contract Amendment; (ii) wishes to request the Design-Builder to prepare a Contract Amendment form as discussed at the meeting; (iii) wishes to request the Design-Builder to modify the work plan and prepare a Contract Amendment form based on the modified plan; or (iv) no longer wishes to issue a Contract Amendment.

If so requested, the Design-Builder shall, within fourteen (14) Days after receipt of the notification described in this Section, comply with all applicable requirements of Section 3.5 and Section 3.6, incorporating and fully reflecting all requests made by MassDOT. If the Design-Builder determines that it cannot meet the time allowed, the Design-Builder shall notify MassDOT in writing of the Design-Builder's proposed deadline for providing the Contract Amendment form, which deadline shall be subject to approval by MassDOT. The cost of developing the Contract Amendment form, including any revisions thereto requested by MassDOT, shall be made at the Design-Builder's cost and expense, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Contract Amendment form shall be included in the Contract Amendment as reimbursable items.

In the event that the Parties agree that an amendment in the requirements relating to the DB Work has occurred but disagree as to whether the amendment justifies additional compensation or time, or disagree as to the amount of any increase to be made to the DB Price or extension of a Milestone to be made, MassDOT may, in its sole discretion, order the Design-Builder to proceed with the performance of the work in question notwithstanding such disagreement. Such order may, at MassDOT's option, be in the form of: (a) a Time and Materials Contract Amendment as provided in Section 3.7; or (b) a Directive Letter under Section 3.1.1.

3.2.2 Unilateral Contract Amendments for MassDOT-Directed Amendments

MassDOT may issue a Contract Amendment for a MassDOT-Directed Amendment at any time, regardless of whether it has issued a Notice of Proposed Directed Amendment. Any such Contract Amendment shall state that the Design-Builder shall be entitled to compensation in accordance with Section 3.7 for the additional work required thereby.

3.3 THE DESIGN-BUILDER INITIATED CONTRACT AMENDMENTS

3.3.1 Eligible Amendments

- A. The Design-Builder may request a time extension amendment to extend a milestone only for the following delays changing the duration of a Critical Path demonstrated by a documented time entitlement analysis (TEA):
- a. MassDOT-Caused Delays;
 - b. Delays directly attributable to events included within the definition of Force Majeure (Section 20) for which a workaround is infeasible; and
 - c. Delays caused by Public Service Corporations, Municipal Departments or other Third Parties.

The Design-Builder's sole remedy for a concurrent delay shall be a time extension. In the event of such a delay the Design-Builder must demonstrate through a time entitlement analysis that a time extension is warranted.

- B. The Design-Builder may request a Contract Amendment to increase the DB Price, subject to strict compliance with the requirements of this Section 3.3 and M.G.L. Ch. 30 Sec. 39O, only for increased costs in the DB Work as follows:
- a. Additional costs directly attributable to MassDOT-Caused Delays provided delay is not a concurrent delay;
 - b. MassDOT-Directed Amendments;
 - c. Additional costs of Hazardous Materials Management to the extent specified in Section 3.8;

- d. Additional costs as specified in Section 3.9 regarding "Force Majeure" events as described therein; and
- e. Differing subsurface or latent physical conditions in accordance with the following provision set forth in M.G.L. c. 30, s. 39N:

If, during the progress of the work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract documents either the contractor or the contracting authority may request an equitable adjustment in the Contract price of the Contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the Contract price and the Contract shall be modified in writing accordingly.

3.3.2 Conditions Precedent for Contract Amendments

The following requirements constitute conditions precedent to the Design-Builder's entitlement to request a Contract Amendment in all circumstances except those involving a Notice of Proposed Amendment or involving a price increase under Section 3.2. The Design-Builder agrees that the filing of a Requests for a Contract Amendment with MassDOT pursuant to this Section 3.3 are necessary in order to begin the administrative process for the resolution of the Design-Builder disputes. The Design-Builder understands that it shall be forever barred from recovering against MassDOT as stated below if it fails to give notice of any act, or failure to act, by MassDOT or MassDOT's Authorized Representative or the happening of any event, thing or occurrence pursuant to a proper Contract Amendment Notice, and thereafter complies with the remaining requirements of this Section 3.3.

The Design-Builder shall deliver to MassDOT a Contract Amendment Notice stating that an event or situation has occurred within the scope of this Section 3.3 and shall state which subsection thereof is applicable. The first notice shall be labeled "Contract Amendment No. 1" and subsequent notices shall be numbered sequentially.

Each Contract Amendment Notice shall be delivered as promptly as possible after the occurrence of such event or situation. In the event that any Contract Amendment Notice is delivered later than ten (10) Days after the Design-Builder first discovered (or should have discovered in the exercise of due diligence) the occurrence which is described therein, the Design-Builder shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of any Milestone with respect to any delay in any Critical Path which accrued prior to the date of delivery of the written notice. The Design-Builder's failure to provide such written notice within sixty (60) Days after the Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Design-Builder from any relief.

The Contract Amendment Notice shall state in detail the facts underlying the potential amendment, the reasons why the Design-Builder believes additional compensation or time will or may be due and the date of occurrence.

If the claim relates to a decision of MassDOT or any Person which the Contract leaves to the discretion of such Person or as to which the Contract provides that such Person's decision is final, the Contract Amendment Notice shall set out the facts supporting the Design-Builder's objection to the decision, including facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

Within fourteen (14) Days after receipt of a Contract Amendment Notice, MassDOT may respond in writing to the Design-Builder to: (a) confirm that a change has occurred; or (b) deny that a change has occurred; or (c) advise the Design-Builder 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 for further review. Failure of MassDOT to respond shall not affect the Design-Builder's obligation to provide a Request for Contract Amendment within the time periods specified in this Section 3.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Design-Builder's failure to provide requested additional information under this Section 3.3.

The Design-Builder shall deliver all Requests for Contract Amendments under this Section 3.3 to MassDOT within thirty (30) Days after delivery of the Contract Amendment Notice, or such longer period of time as may be necessary, provided that the Design-Builder shall have notified MassDOT in writing prior to expiration of said thirty (30) Day period how much additional time is required. The Contract Amendment Request(s) shall: (a) state in detail the facts underlying the potential claim, the reasons why the Design-Builder believes additional compensation or time will or may be due and the date of occurrence; (b) state the name, title, and activity of each MassDOT representative 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 time extension or accelerated schedule performance, if applicable; (e) state in detail the basis for a claim that the work is not required by the Design-Builder, if applicable; (f) identify particular elements of the DB Contract performance for which additional compensation may be sought under this Section 3; (g) identify any potential Critical Path impacts; and (h) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance. MassDOT may require design and construction costs to be covered by separate Contract Amendment Requests. If the Design-Builder fails to deliver a complete or incomplete Request for Contract Amendment within the appropriate time period, the Design-Builder shall be required to provide a new Contract Amendment Notice before it may submit a Request for Contract Amendment. Such new, replacement Contract Amendment Notice shall be retroactive to the date of the original Contract Amendment Notice unless MassDOT suffers prejudice as a result of the submission of such incomplete Contract Amendment Request.

Each Request for Contract Amendment provided under Section 3.3 shall meet all requirements set forth in Section 3.4; provided that if any such requirements cannot be met due to the nature of the occurrence, the Design-Builder shall provide an incomplete Contract Amendment which fills in all information capable of being ascertained and which shall include a list of those Contract Amendment requirements which are not fulfilled, together with an explanation reasonably satisfactory to MassDOT stating why such requirements cannot be met, shall provide such information regarding projected impact on the Critical Path as is requested by MassDOT and in all events shall include sufficient detail to ascertain the basis for the proposed Contract Amendment and for any ascertainable amounts with respect thereto. The Design-Builder shall furnish, when requested by MassDOT, such further information and details as may be required to determine the facts or contentions involved. The Design-Builder agrees that it shall give MassDOT access to any and all of the Design-Builder's books, records and other materials relating to the DB Work, and shall cause its Subcontractors to do the same, so that MassDOT can investigate the basis for such proposed request for Contract Amendment. The Design-Builder shall provide MassDOT with a monthly update to each outstanding incomplete request for Contract Amendment, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to MassDOT, time expenditures to date and time anticipated for completion of the activities for which the time extension is claimed.

MassDOT may reject the Design-Builder's claim at any point in the process. Once a complete Request for a Contract Amendment is provided, MassDOT's failure to respond thereto within twenty-one (21) Days of delivery of the Request shall be deemed a rejection of such Request. Although MassDOT intends to review incomplete Contract Amendments for the purposes described in Section 3.3, MassDOT shall have no obligation to review the back-up associated with any Request for Contract Amendment until a complete Contract Amendment is provided.

The Design-Builder acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Contract Amendments and updates thereto are of vital importance to MassDOT. MassDOT is relying on the Design-Builder to evaluate promptly, upon the occurrence of any event or situation, whether the event or situation will affect a Critical Path and, if so, whether the Design-Builder believes additional compensation or a time extension is appropriate. If an event or situation occurs which may affect the DB Price or a Critical Path, MassDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within MassDOT's funding and time restraints. The following matters (among others) shall be considered in determining whether MassDOT has been prejudiced by the Design-Builder's failure to provide notice in a timely fashion: the effect of the delay on alternatives available to MassDOT (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten (10) Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence) and the impact of the delay on MassDOT's ability to obtain and review objective information contemporaneously with the event. Such prejudice may result in denial of the Request.

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

3.3.3 Submission of Request for Contract Amendment

The Design-Builder shall initiate each Request for a Contract Amendment, after satisfaction of all conditions precedent set forth above, by submitting a Contract Amendment Request and supporting documentation to MassDOT for its review and approval. If the Design-Builder submits a Request for Contract Amendment requesting an extension of the Milestone as permitted by Section 3.3, then the Design-Builder shall also provide an alternative Contract Amendment including a Recovery Schedule in accordance with the Contract Project Schedule Requirements defined in this Contract.

3.3.4 Performance of Disputed DB Work

In the event that MassDOT refuses to issue a Contract Amendment based on the Design-Builder's request, the Design-Builder shall nevertheless promptly perform all work as specified in a written direction from MassDOT, with the right to submit the issue of entitlement to a Contract Amendment to dispute resolution in accordance with Section 13.

3.4 CONTENTS OF CONTRACT AMENDMENTS

3.4.1 Form of Contract Amendment

Each Contract Amendment and Request for Contract Amendment shall be prepared in a form acceptable to MassDOT, and shall otherwise meet all applicable requirements of this Section 3. Each Contract Amendment shall identify the applicable subsection of this Section 3 under which the Contract Amendment is requested.

3.4.2 Information Regarding Effect of Amendment

Each Request for a Contract Amendment prepared by the Design-Builder shall include as attachments a detailed cost estimate relating thereto setting forth all consequences of the event, situation or proposed change giving rise to the proposed Contract Amendment, and including: (a) if the Design-Builder claims that such event, situation or change requires an amendment to the DB Work, the proposed amendment of the DB Price and payment portion of the Project Schedule (if any) occasioned by such change and all facts justifying such amendment in a format acceptable to MassDOT; and (b) if the Design-Builder claims that such event, situation or change affects a Critical Path, 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 a form satisfactory to MassDOT, which compares the proposed new schedule to the current approved schedule.

3.4.3 Justification

For all Requests for Contract Amendments initiated by the Design-Builder hereunder, the Contract Amendment form shall include an attachment containing a detailed narrative justification therefore, describing the circumstances underlying the proposed amendment, identifying the specific provision(s) of Section 3 which permit a Contract Amendment to be issued, and describing the data and documents (including any required data and reports) which establish the necessity and amount of such proposed amendment.

3.4.4 The Design-Builder Representation

Each Contract Amendment form shall contain a written representation by the Design-Builder that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed amendment.

3.5 DETERMINATION OF TERMS OF CONTRACT AMENDMENT

3.5.1 Cost Categories and Mark-ups

The amount of each Contract Amendment, whether established pursuant to Section 3.6 or Section 3.7, shall be calculated based on, and shall be limited to, the categories of costs and the mark-ups thereto specified in said Section 3.7.

3.5.2 Exclusion from Price Increase

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

3.5.3 Compensation for Delay

No acceleration costs or other compensation for delay shall be payable hereunder under any circumstances except in the case of delays which qualify as MassDOT-Caused Delays or delays caused by Force Majeure events as described in Section 3.9. Acceleration Costs are permitted only with respect to Contract Amendment issued as an alternative to allowing an extension of the Milestone hereunder as contemplated by Sections 3.5.3 (a) and 3.5.3 (c) pursuant to Subsection 7.16 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition. Compensation for delay shall be paid in accordance with MassDOT Standard Specifications for Highways and Bridges, 2026 Edition, Subsection 8.05.

Before the Design-Builder may obtain any increase in the DB Price as set forth in Section 3.3.1, the Design-Builder shall be required to demonstrate to MassDOT's satisfaction that:

- a. The damage was not aggravated by any breach of the Design-Builder or fault or negligence, or act or failure to act of the Design-Builder, its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible, and could not reasonably have been avoided by the Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the DB Work;
- b. The delay for which compensation is sought is not concurrent with any delay for which the Design-Builder is responsible; and
- c. the Design-Builder shall have provided documentation of such costs satisfactory to MassDOT, provided that if the Design-Builder 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, and provided that additional maintenance expenses shall be determined as specified in this Section 3.5.

3.5.4 Time Extensions

The Design-Builder shall submit a Contract Amendment Notice for a time extension to MassDOT within fifteen (15) Days after the start of the delay. No time extension will be granted if a request for a time extension is not filed within fifteen (15) Days after the start of the delay.

A documented preliminary time entitlement analysis (TEA) supporting the request for a time extension and meeting the requirements of this Contract Section shall be submitted no later than fifteen (15) Days after the request for a time extension is submitted to MassDOT or thirty (30) Days after the start of the delay. A documented final TEA shall be submitted to MassDOT no later than fifteen (15) Days after the end of the delay. During the time between the preliminary and final TEAs, the delay shall be documented in statused contract progress schedules submitted in accordance with the requirements of this Contract Section. The TEA shall clearly document the delays, demonstrate that the delays have impacted the Critical Path, contain a cost and resource loaded Critical Path Method Schedule which shows any proposed overtime hours or additional shifts, and state that the Design-Builder's presentation of alternative recovery options has been determined to be unacceptable to MassDOT.

No time extension will be granted for any delay or any suspension of the Work due to the fault of the Design-Builder.

Before the Design-Builder may obtain time extension as set forth in Section 3.3.1, the Design-Builder shall be required to demonstrate to MassDOT's satisfaction that:

- a. Its schedule which defines the affected Critical Path sets forth a reasonable method for completion of the DB Work;
- b. The change in the DB Work or other event or situation which is the subject of the Contract Amendment has caused or will result in an identifiable and measurable disruption of the DB Work which has or will impact a Critical Path, has consumed or will consume all available float which was generated by MassDOT or has caused or will result in the deletion of a portion of the DB Work from the Design-Builder's scope;
- c. The delay was not aggravated by any breach of the Design-Builder or fault or negligence, or act or failure to act of the Design-Builder, its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible, and could not reasonably have been avoided by the Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the DB Work;

3.5.5 DB Work Performed Without Direction

Except as directed by MassDOT, work that is not part of the DB Work shall be deemed to have been performed voluntarily and the Design-Builder shall not be entitled to a Contract Amendment in connection therewith.

3.6 NEGOTIATED CONTRACT AMENDMENTS

For any work undertaken by the Design-Builder (on its own behalf and on behalf of its Subcontractors) under a Contract Amendment, MassDOT and the Design-Builder shall endeavor to negotiate a reasonable cost for each Contract Amendment other than unilateral Contract Amendments issued by MassDOT under Section 3.2.

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

3.6.1 Cost Proposal

The Design-Builder shall submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 3.7, with mark-ups not exceeding the amounts set forth therein, supported by documentation satisfactory to MassDOT: (a) showing all impacts on the Design-Builder from additions to the DB Work, deletions and amendments shown in the Contract Amendment being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made. MassDOT shall have the right to require that any or all of the information submitted by the Design-Builder be used in evaluating the proposal. No mark-up shall be allowed in excess of the percentages specified in Section 3.7.

3.6.2 Identification of Conditions

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

The Design-Builder shall contemporaneously collect, record in writing, segregate and preserve: (a) all data necessary to determine the costs described in this Section 3.6 with respect to all DB Work which is the subject of a Contract Amendment or a proposed Contract Amendment, specifically including costs associated with Design as well as Utility Relocations, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all DB Work which is the subject of a Contract Amendment or a proposed Contract Amendment, if the impact on the Project Schedule is in dispute.

3.6.3 Unit Priced Contract Amendments

In the event that the Parties negotiate a unit-priced Contract Amendment, measurement shall be as specified in Subsection 9.01 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition, and the unit prices shall not be subject to change regardless of any change in the estimated quantities.

3.7 TIME AND MATERIALS CONTRACT AMENDMENTS

MassDOT may at its discretion issue a Time and Materials Contract Amendment at any time. The Time and Materials Contract Amendment shall instruct the Design-Builder to perform the work, indicating expressly the intention to treat the items as amendments in the DB 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 DB Price will be determined and the estimated total change in DB Price anticipated thereunder. Upon final determination of the allowable costs, MassDOT shall issue a modified Contract Amendment setting forth the final adjustment to the DB Price. The costs and mark-ups shall be calculated based on the following:

- a. For construction-related labor: (1) the actual cost for direct labor, material (less value of salvage, if any) and use of equipment, plus 10 percent of this total for overhead; plus (2) actual cost of Workmen's Compensation and Liability Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits; plus (3) 10 percent of the total of (1) and (2);
- b. For Engineering Services.
 - (1) For work that is directly related to completing the original scope of the contract work: (a) the actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (b) a mark-up equal to the designer's MassDOT audited indirect cost mark-up rate, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages;
 - (2) For MassDOT-Directed Amendments that add to or amend the original scope of the Contract: (a) the actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (b) a mark-up equal to either the consultant's MassDOT audited indirect cost mark-up rate, or the documented indirect cost mark-up rate stipulated in a subcontract, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages;
- c. The estimated proportionate cost of surety bonds;
- d. For work performed by a Subcontractor, the Design-Builder shall accept as full payment therefore an amount equal to the cost to the Design-Builder of such work as determined by the Project Manager, plus 10 percent of such cost, and;
- e. The Design-Builder shall accept as full payment for other direct costs the cost of any justified amendment-related direct cost not covered by the categories of costs contained in subparagraphs (a) through (d) above. Back-up documentation supporting each cost item for this category shall be provided by the Design-Builder and approved by MassDOT prior to any payment authorization being granted.

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

The Design-Builder shall, when requested by the MassDOT Project Manager, furnish itemized statements of the cost of the DB Work ordered and give the Project Manager access to all accounts, bills and vouchers relating thereto. Unless the Design-Builder shall furnish such itemized statements and access to all accounts, bills and vouchers, the Design-Builder shall not be entitled to payment for any items of extra or otherwise amended work for which such information is sought by MassDOT.

3.7.1 Basis for Compensation

The Design-Builder shall contemporaneously collect, record in writing, segregate and preserve: (a) all data necessary to determine the costs described in this Section 3.7 with respect to all DB Work which is the subject of a Contract Amendment or a proposed Contract Amendment, specifically including costs associated with Design as well as Utility Relocations, but specifically excluding negotiated Contract Amendments; and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all DB Work which is the subject of a Contract Amendment or a proposed Contract Amendment, if the impact on the Project Schedule is in dispute. Such data shall be provided the authorized representative of MassDOT reviewing any Claim or dispute regarding compensation for such DB Work under Section 13.

3.7.2 Time and Materials Records

The Design-Builder shall maintain such records as MassDOT deems sufficient to distinguish the direct cost of work completed under a Time and Materials Contract Amendment from the cost of other work. It shall furnish daily, on forms approved by MassDOT, reports of all such work. 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 MassDOT upon its request. The cost of furnishing such reports shall be included in the Design-Builder's overhead and fee percentages.

All reports prepared by the Design-Builder pursuant to Section 3.7 above shall be signed by the Design-Builder or its authorized representative. MassDOT will compare its records with the Design-Builder's reports, make the necessary adjustments and compile the costs of work completed under a Time and Materials Contract Amendment. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

3.8 COMPENSATION FOR HAZARDOUS MATERIALS MANAGEMENT

3.8.1 Reimbursable Costs

Payment for Hazardous Materials Management shall be made in one of three ways:

- Incidental to pay items in the Price Proposal
- Reimbursable through Unit Price bid items for which the Design-Builder had provided prices in the Price Proposal
- Reimbursable through Time and Materials with no mark-up for profit, for work activities not identified as either incidental to or covered by unit pay items.

When payment is incidental to pay items, no separate measurement or payment shall be made.

When reimbursement is based on unit bid items as listed in the Design-Builder's Price Proposal and as defined in "Hazardous Materials Management" Items in Contract Volume II – Technical Provisions, Appendix C, measurement of quantities will be in accordance with Subsection 9.01 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition. The Design-Builder shall give MassDOT notice in advance of any measurement of quantities, so as to allow MassDOT the opportunity to oversee the process.

When reimbursement is based on time and materials, measurement and payment shall be made in accordance with the procedures described in Section 3.7, except that there shall be no mark-up for profit. Upon approval, the Design-Builder shall be entitled to reimbursement of costs calculated in accordance with Contract Volume II -- Appendix C and Subsection 9.03 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition. The Design-Builder shall give MassDOT notice in advance of any time and materials activities, so as to allow MassDOT the opportunity to oversee and properly document the process for reimbursement.

3.8.2 Waiver

The Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection with any work relating to Hazardous Materials Management if MassDOT is not afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit MassDOT's ability to ascertain, based on a site inspection, the nature and extent of the materials or if MassDOT is not afforded the opportunity to oversee the measurement of Hazardous Materials quantities.

3.8.3 Insurance

If the cost of any Hazardous Materials Management for Unknown Contamination is covered by insurance, the Design-Builder shall be entitled to reimbursement of eligible costs from proceeds of insurance up to the limits of the applicable policy, less any deductibles, which are the Design-Builder's responsibility. To the extent that such proceeds are available, the Design-Builder shall not be entitled to any reimbursement.

3.8.4 Actions Against Third Parties

During the term of the Contract, the Design-Builder shall be permitted to commence appropriate actions against third parties that may be legally responsible for Hazardous Materials Management costs in connection with Hazardous Materials within the Right-of-Way, subject to MassDOT's prior approval of any such action in each instance. Unless MassDOT otherwise informs the Design-Builder in writing, all costs associated with any action to recover Hazardous Materials Management costs from third parties will be borne by the Design-Builder.

3.9 FORCE MAJEURE EVENTS

Subject to the limitations contained in, and upon the Design-Builder's fulfillment of all applicable requirements of this Section 3, MassDOT shall be responsible for, and agrees to issue Contract Amendments: (a) to compensate the Design-Builder for additional costs incurred arising from the events described in the definition of "Force Majeure"; and (b) to extend the time for completion of the DB Work as the result of any delay in the Critical Path caused by a Force Majeure event to the extent that it is not possible to work around the problem.

3.10 ELIMINATED DB WORK

Should any DB Work contained in the Contract be found unnecessary, MassDOT will, upon issuance of a Contract Amendment (or a Directive Letter followed by a Contract Amendment) to the Design-Builder, eliminate the work from the Contract, and this action shall not invalidate the Contract. When the Design-Builder is notified of eliminated work, reimbursement will be made for actual work done and all costs incurred, including mobilization of materials prior to the date that Design-Builder received notification. Credit for the eliminated DB Work shall be based on the Design-Builder's estimated price for such work included in the Proposal, plus the mark-ups for overhead and profit allocated to such DB Work included in the Proposal.

3.11 MASSDOT-DIRECTED AMENDMENTS OUTSIDE OF SCOPE

If any MassDOT-Directed Amendment materially alters the scope of the DB Work, an adjustment, excluding anticipated profit, will be made to the DB Price. The basis for the adjustment shall be agreed upon prior to performance of such work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Design-Builder in such amount as MassDOT may determine to be fair and equitable. The term "materially alter" as used in this Section shall be construed to apply only to circumstances involving a direction to perform work which is not related to the Project or a direction to delete or modify DB Work such that this Contract would no longer be considered a design-build Contract for the Project of the nature described in the RFP Documents.

3.12 RESTRICTIONS AND LIMITATIONS ON CONTRACT AMENDMENTS

The Design-Builder acknowledges and agrees that MassDOT shall bear responsibility only for limited matters involving delays and costs and the consequences resulting therefrom as set forth in this Section 3. The Design-Builder shall bear responsibility for all other matters, including but not limited to the following:

- a. Errors, omissions, inconsistencies or other defects in the RFP Documents;
- b. Any design changes requested by MassDOT as part of the process of approving the Design for consistency with the requirements of the Contract Documents;
- c. Defective or incorrect schedules of work or changes in the planned or actual sequence of performance of the DB Work;
- d. Action or inaction of subcontractors or other contractors (including failure to organize and integrate their work with the DB Work);
- e. Subsurface moisture content;
- f. 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;
- g. All costs covered by insurance proceeds received by or on behalf of the Design-Builder;
- h. Correction of Nonconforming Work and review and acceptance thereof by MassDOT (including rejected Design Submittals);
- i. Failure by the Design-Builder to comply with the requirements of the Contract Documents;
- j. Any delay not on a Critical Path;
- k. All events beyond the control of MassDOT for which MassDOT has not agreed to assume liability hereunder;
- l. 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 the Design-Builder; and
- m. Delays from any other situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in this Contract or arise out of the nature of the DB Work.

The Design-Builder hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by the Design-Builder of responsibility for such costs and delays, and the consequences and costs resulting therefrom, is reasonable under the circumstances of this Contract. THE DESIGN-BUILDER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE DB WORK, DELAY OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH THE DESIGN-BUILDER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CONTRACT AMENDMENT FORM AS REQUIRED BY SECTION 3.3, AND AGREES THAT THE DESIGN-BUILDER SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES OR TIME EXTENSIONS WHATSOEVER IN CONNECTION WITH THE DB WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE DESIGN-BUILDER IS ENTITLED TO A CONTRACT AMENDMENT OR OTHER COMPENSATION OR DAMAGES.

3.13 DISPUTES

The failure of MassDOT and the Design-Builder to agree to any Contract Amendment under this Section 3 shall be a dispute to be resolved pursuant to Section 13. Except as otherwise specified in the Contract Amendment, execution of a Contract Amendment by the Parties shall be deemed accord and satisfaction of all claims by the Design-Builder of any nature arising from or relating to the DB Work covered by the Contract Amendment.

3.14 NO-COST AMENDMENTS

Amendments in the DB Work which have no net cost effect on the DB Price shall not require a Contract Amendment provided the Final Design Documents are accepted by MassDOT.

3.15 NO RELEASE OR WAIVER

No amendment to this Contract, including but not limited to an extension of time granted hereunder shall release the Design-Builder's Surety [or Guarantor] from its obligations. The Design-Builder shall continue the DB Work in accordance with all of the provisions of the Contract, and the Contract shall be and shall remain in full force and effect during the continuance and until the completion unless formally suspended or annulled in accordance with the terms hereof. Permitting the Design-Builder to finish the DB Work or any part thereof after the Completion Date established for the Project, or the making of payments to the Design-Builder after such date, shall not constitute a waiver on the part of MassDOT of any rights under this Contract.

Neither the grant of an extension of time beyond the Completion Date of any part of the DB Work, nor the performance and acceptance of any part of the DB Work specified by the Design-Builder after the deadline established for the Project, shall be deemed to be a waiver by MassDOT of its right to declare a Default under the Contract for abandonment or failure to complete the DB Work within the time specified or to impose and deduct damages as may be provided herein.

SECTION 4. SUSPENSION OF ALL OR PART OF THE DB WORK

4.1 SUSPENSION FOR CONVENIENCE

MassDOT may order the Design-Builder in writing to suspend, delay, or interrupt all or any part of the DB Work for a period of time not to exceed twenty- four (24) hours, as MassDOT may determine to be appropriate for the convenience of MassDOT. Any suspension for convenience in excess of twenty- four (24) consecutive hours will be considered a MassDOT-Directed Amendment.

4.2 SUSPENSION FOR OTHER REASONS

MassDOT has the authority to suspend the DB Work wholly or in part, for such period as MassDOT deems necessary because of the failure on the part of the Design-Builder to perform any requirement of the Contract Documents. The Design-Builder shall promptly comply with the written order of MassDOT to suspend the DB Work wholly or in part. The suspended DB Work shall be resumed when appropriate corrective action has been taken and MassDOT lifts the suspension in writing.

MassDOT has the right to undertake appropriate efforts to cause the Design-Builder to perform any and all requirements of the Environmental Approvals. Actions which may be undertaken by MassDOT in connection with any such failure include the right to direct the Design-Builder to take specified corrective action or to stop DB Work.

The Design-Builder shall not be entitled to any increase in the DB Price or extension of the Contract Time in connection with any suspension under this Section 4, including for the work described in Section 4.3, except to the extent that the suspension is considered to be a MassDOT-Directed Amendment.

4.3 TRAFFIC SAFETY IN THE EVENT OF SUSPENSION

In the event that a suspension of DB Work is ordered under this Section 4, the Design-Builder shall undertake all work necessary to provide a safe, smooth, and unobstructed passageway through the construction area for use by public traffic during the period of such suspension.

SECTION 5. TERMINATION

MassDOT has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Design-Builder.

5.1 TERMINATION FOR CONVENIENCE

MassDOT shall have the right to terminate the Contract for its convenience if MassDOT determines termination to be in its best interest. The Design-Builder shall be paid for work satisfactorily performed and for all materials purchased prior to the effective date of the termination, but in no event shall the Design-Builder be entitled to recover loss of profits on the work not performed or materials not purchased.

The amount otherwise due the Design-Builder under this Section 5 shall be reduced by: (a) all unliquidated advance or other payments, on account theretofore made to the Design-Builder applicable to the terminated portion of this Contract; (b) the amount of any claim which MassDOT may have against the Design-Builder in connection with this Contract; and (c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Design-Builder or sold, pursuant to the provisions of this Section 5, and not otherwise recovered by or credited to MassDOT.

5.2 NON-APPROPRIATION

MassDOT's obligation to make payments during any MassDOT fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, MassDOT shall have the right to terminate the Contract. The Design-Builder shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

5.3 TERMINATION FOR CAUSE

MassDOT shall have the right to terminate the Contract for the Design-Builder default under Contract Volume I, Section 6, upon written notice to the Design-Builder. MassDOT shall also have the right, upon written notice to the Design-Builder, to terminate the Contract for other cause as specified in the Contract or by law. If it is later determined that MassDOT erred in terminating the Contract for cause, then, at MassDOT's discretion, the Contract shall be deemed to have been terminated for convenience under Contract Volume I, Section 5.1.

5.4 THE DESIGN-BUILDER'S RESPONSIBILITIES AFTER RECEIPT OF NOTICE OF TERMINATION

After receipt of a Notice of Termination, and except as otherwise directed by MassDOT, the Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 5:

- a. Stop DB Work as specified in the notice.
- b. Place no further Subcontracts, except as necessary to complete the continued portion of the DB Work, if any, or for mitigation of damages.
- c. Terminate all Subcontracts to the extent they relate to the DB Work terminated except to the extent that continuation of the Subcontracts is necessary in order to mitigate damages.
- d. Assign to MassDOT or its designee, in the manner, at the times, and to the extent directed by MassDOT, all of the rights, title, and interests of the Design-Builder under the Subcontracts so terminated, in which case MassDOT will have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such Subcontracts.
- e. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of MassDOT, to the extent it may be required, which approval or ratification shall be final.
- f. Transfer title and deliver to MassDOT or its designee, in the manner, at the times, and as and to the extent, if any, directed by MassDOT:
 - i. fabricated or unfabricated parts, the DB Work in process, completed DB Work, supplies and other material produced or acquired for the DB Work terminated; and
 - ii. the Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to MassDOT if the DB Work had been completed.
- g. Complete performance in accordance with the Contract Documents of all DB Work not terminated.
- h. Take all action that may be necessary, or that MassDOT may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of the Design-Builder and in which MassDOT has or may acquire an interest.
- i. Use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by MassDOT, any property of the types referred to in Section 5.4.f; provided, however, that the Design-Builder:
 - i. is not required to extend credit to any purchaser; and
 - ii. may acquire the property under the conditions prescribed and at prices approved by MassDOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by MassDOT under the Contract Documents or paid in any other manner directed by MassDOT.

5.5 INVENTORY AFTER TERMINATION

The Design-Builder shall submit to MassDOT a list of termination inventory not previously disposed of and excluding items authorized for disposition by MassDOT. Within forty-five (45) Days of receipt of such list, the Design-Builder shall deliver such inventory to MassDOT and MassDOT shall accept title to such inventory as and to the extent MassDOT in its sole reasonable discretion deems appropriate.

5.6 PAYMENT

MassDOT may, from time to time, under such terms and conditions as it may prescribe and in its discretion, make partial payments on account against costs incurred by the Design-Builder in connection with the terminated portion of this DB Contract, whenever in the opinion of MassDOT the aggregate of such payments shall be within the amount to which the Design-Builder will be entitled hereunder. Such payments shall be calculated as follows:

- a. for all completed items of work for which there is a Payment Milestone Plan(s), the original Payment Milestone(s);
- b. for all work on partially completed items, a sum agreed to by the Design-Builder and MassDOT calculated as: (i) the actual cost for direct labor, materials (less salvage value, if any) and use of equipment plus 10% of this total for overhead; (ii) the actual cost for Worker's Compensation and Employer's Liability Insurance, Health, Welfare and Pension benefits, Social Security deduction, and Employment Security Benefits; (iii) six (6%) percent of the total of (i) and (ii) for profit; (iv) the estimated proportionate cost of surety bonds; and (v) the actual cost to the Design-Builder for work performed by a Subcontractor plus ten percent (10%) of such cost. No allowance shall be made for general superintendence and the use of small tools and manual equipment;
- c. for costs of settlement as: (i) reasonable and necessary accounting, legal, clerical and other costs of work discontinuance; and reasonable and necessary storage, transportation and other costs incurred for the preservation, protection or disposition of the discontinued work; (ii) when requested by MassDOT, the Design-Builder shall furnish itemized statements of the cost of the work performed and shall give MassDOT access to all accounts, bills and vouchers relating thereto and unless the Design-Builder, when requested, shall furnish such itemized statements and access to all accounts, bills and vouchers, he shall not be entitled to payment for the work for which such information is sought by MassDOT; and (iii) except as provided herein, the Design-Builder shall not be paid and the Design-Builder shall not have any claims or loss of anticipated profits, for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all work or from unbalanced allocations, among the Contract items, of overhead expense on the part of the Design-Builder and subsequent loss of expected reimbursement therefore or for any other cause.
- d. Design-Builder shall incorporate the Provisions of this Section 5.6 in its contracts with each of its Subcontractors.
- e. Whatever sum of money may become due and payable to MassDOT by the Design-Builder under this Section 5.6 may be retained out of money belonging to the Design-Builder in the hands and possession of MassDOT, including without limitation any progress payment in process but not paid or retainage.

SECTION 6. DEFAULT AND REMEDIES

6.1 DEFAULTS AND REMEDIES

MassDOT may, subject to the provisions of Section 20, and in addition to its other rights under the Contract, following notice and opportunity to cure as specified herein, declare the Design-Builder in default by written notice thereof to the Design-Builder, and terminate (as provided in Section 5) the whole or any part of this Contract for any of the following reasons:

- a. Design-Builder fails either:
 - i. to promptly begin the DB Work under the Contract Documents; or
 - ii. to prosecute the DB Work in accordance with the Project Schedule;
- b. Design-Builder fails to perform the DB work with sufficient resources to assure the prompt completion thereof (i.e. Design-Builder fails to provide and thereafter meet a recovery schedule as required in this Contract);
- c. Design-Builder fails to perform the DB work in accordance with the Contract Documents, or refuses to remove and replace rejected materials or unacceptable DB work;
- d. The Design-Builder discontinues the prosecution of the DB Work (exclusive of work stoppage):
 - i. due to termination or suspension by MassDOT; or
 - ii. due to and during the continuance of a Force Majeure event or suspension by MassDOT;
- e. The Design-Builder fails to resume performance of DB Work which has been suspended or stopped, within a reasonable time after receipt of notice from MassDOT to do so or (if applicable) after cessation of the event preventing performance;
- f. The Design-Builder 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. Any representation or warranty made by the Design-Builder or any Guarantor in the Contract Documents or any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents shall have been false or materially misleading when made;
- h. The Design-Builder breaches any agreement, representation or warranty contained in the Contract Documents, including minimum wage payments and equal employment opportunity requirements, or failure to provide financial guarantees (if necessary), appropriate performance and payment bonds, insurance policies or certificates or financial data as specified in this Contract;
- i. The Design-Builder assigns or transfers the Contract Documents or any right or interest herein, except as expressly permitted hereunder or thereunder;

- j. The Design-Builder 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 DB Work (provided that for purposes hereof posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay);
- k. The Design-Builder 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 comply with any Law or failed reasonably to comply with the instructions of MassDOT consistent with the Contract Documents;
- l. The Design-Builder or any Guarantor is a party to fraud which affects the performance under this Contract;
- m. Any Guarantor, or any Person which provided a guaranty to MassDOT 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;
- n. The Design-Builder fails to timely observe or perform or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by the Design-Builder under this Contract;
- o. The Design-Builder fails to execute and deliver any Contract Document as and when required under this Contract;
- p. The Design-Builder commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Design-Builder or any substantial part of the Design-Builder's assets; files an answer admitting the material allegations of a petition filed against the Design-Builder in any involuntary case commenced against the Design-Builder; consents to any such relief or to the appointment of or taking possession by any such official in any voluntary case commenced against the Design-Builder; makes an assignment for the benefit of creditors; fails, is unable, or admits in writing the inability generally to pay the Design-Builder'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;
- q. An involuntary case is commenced against the Design-Builder: seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to the Design-Builder or the Design-Builder's debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Design-Builder or any substantial part of the Design-Builder's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by the Design-Builder in good faith or shall remain undismissed and unstayed for a period of ninety (90) Days; or 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 sixty (60) Days.

6.2 OPPORTUNITY TO CURE

The Design-Builder shall be entitled to fifteen (15) Days' notice and opportunity to cure any of the breaches described in Section 6 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, MassDOT shall allow an additional period of time as may be reasonably necessary to cure the breach so long as the Design-Builder commences such cure within such fifteen (15) Day period and thereafter diligently prosecutes such cure to completion. In the case of an emergency, MassDOT 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 6 above is not subject to cure or is not cured within the period (if any) specified in this Section 6, MassDOT may declare that "the Design-Builder Default" has occurred.

6.3 DESIGN-BUILDER DEFAULT: MASSDOT REMEDIES

Upon the occurrence of the Design-Builder Default, MassDOT may exercise any one or more of the following remedies as MassDOT 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 in this Contract or by Law;
- b. in the event of the Design-Builder default, MassDOT's termination of all the Design-Builder's rights under the Contract and of all the Design-Builder's rights of entry upon possession and control and operation of the Project, (which termination shall be subject to Section 5);
- c. if requested by MassDOT, the Design-Builder shall withdraw from the Right-of-Way, shall assign to MassDOT such of the Design-Builder's Subcontracts as MassDOT may request and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, the Design-Builder in the performance of the DB Work as MassDOT may direct and MassDOT may take possession of any and all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents and site facilities of the Design-Builder that MassDOT deems necessary for completion of the DB Work;
- d. MassDOT, without incurring any liability to the Design-Builder, shall have the right (either with or without the use of the Design-Builder's materials, equipment, tools and instruments) to take the performance of the DB Work from the Design-Builder, and, subject to payment of the Design-Builder's direct costs by MassDOT, MassDOT may appropriate or use the Design-Builder's materials, equipment, tools and instruments located on the Right-of-Way as may be suitable and acceptable and may enter into a Contract with another Person for the completion of the DB 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 MassDOT;
- e. MassDOT may offset any sums MassDOT owes to the Design-Builder by any sums owing to MassDOT from the Design-Builder, including Liquidated Damages or other damages owing MassDOT under the Contract; or

- f. the Design-Builder shall be liable to MassDOT (in addition to any Liquidated Damages payable hereunder) for all costs reasonably incurred by MassDOT or any party acting on MassDOT's behalf in completing the DB Work or having the DB Work completed by another Person. Upon occurrence of an Event of Default, MassDOT shall be entitled to withhold all or any portion of further payments to the Design-Builder until such time as MassDOT is able to determine how much (if any) remains owing to the Design-Builder. Promptly upon such determination, MassDOT shall notify the Design-Builder in writing of the amount, if any, that the Design-Builder shall pay MassDOT or MassDOT shall pay the Design-Builder with respect thereto. All costs and charges incurred by MassDOT, including attorneys' fees and costs, together with the cost of completing the DB Work under the Contract, will be deducted from any moneys due or which may become due to the Design-Builder. If such expense exceeds the sum which would have been payable under the Contract, then the Design-Builder and its Surety(ies) and Guarantor(s) shall be liable and shall pay to MassDOT the amount of such excess.

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SECTION 7. DAMAGES

7.1 FAILURE TO COMPLETE WORK ON TIME - LIQUIDATED AND OTHER DAMAGES

The Design-Builder understands and agrees that if the Design-Builder fails to complete the DB Work in accordance with the Contract Documents, MassDOT will suffer substantial losses and damages. The Design-Builder agrees that it shall be liable for all such losses and damages. The Design-Builder and MassDOT have agreed to liquidate damages with respect to certain types of losses and damages. The Design-Builder acknowledges and agrees that the Damages are intended to compensate MassDOT solely for the Design-Builder's failure to meet the deadline for physical completion of the Project; and shall not excuse the Design-Builder from liability from any other breach of Contract requirements, including any failure of the DB Work to conform to applicable requirements.

The Design-Builder acknowledges and agrees that because of the unique nature of the Project, and the fact that the inconvenience to the traveling public due to possible lane closures will be one of the significant impacts of any completion delay, it is impracticable to ascertain and determine the actual damages which would accrue to MassDOT and the public in the event of the Design-Builder's failure to achieve physical completion of the Project on or before the deadline identified in Contract Milestone No. 1: Contractor Field Completion, as such date may be extended by a Time Extension. Therefore, the Design-Builder agrees to pay MassDOT for a liquidated amount (the Liquidated Damages) as deemed compensation to MassDOT for such damages, which shall be comprised of an amount which shall be Three Thousand, Five Hundred Dollars (\$3,500.00) for MassDOT's administrative costs due to the delay for each Day after the required date for physical completion of the Project as specified in Contract Milestone No. 1: Contractor Field Completion, as such date may be extended by a Time Extension. The Design-Builder understands and agrees that any Liquidated Damages payable in accordance with this Section 7 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this Contract.

In the event the Contract has been substantially completed and the project opened for traffic as directed in writing by MassDOT, but physical completion of the work is subject to delay because of minor uncompleted items which do not impair the usefulness of the project, the designated sum per day shall be $\frac{1}{2}$ the charge shown above.

In addition to the daily charge, the Contractor shall pay without reimbursement the entire cost of all traffic officers, railroad flagmen and inspectors MassDOT determines to be necessary during the period of overrun time.

7.2 OFFSET, REDUCTION; WAIVER

In accordance with Section 2.3.5, MassDOT shall have the right to deduct any amount owed by the Design-Builder to MassDOT under this Contract from any amounts owed by MassDOT to the Design-Builder under this Contract.

Permitting or requiring the Design-Builder to continue and finish the DB Work or any part thereof after the Final Acceptance shall not act as a waiver of MassDOT's right to receive damages hereunder or any rights or remedies otherwise available to MassDOT.

Damages, to the extent not paid as provided in Section 7.1, shall be payable by the Design-Builder to MassDOT within thirty (30) Days after the Design-Builder's receipt of an invoice therefore from MassDOT.

SECTION 8. LABOR AND EMPLOYMENT REQUIREMENTS

8.1 KEY PERSONNEL; QUALIFICATIONS OF EMPLOYEES

MassDOT shall have the right to review the qualifications of each Person to be appointed to a key position (including Persons employed by Participants or Subcontractors) identified as Key Personnel below and to approve or disapprove the use of such Person in such position prior to the commencement of any DB Work by such Person. The Design-Builder shall notify MassDOT in writing of any proposed changes in any Key Personnel. MassDOT will only authorize such changes if it determines, at its sole discretion, that such changes are warranted due to an event that occurred after the public bid opening for the Project. The Design-Builder shall not change, or permit any change in, any Key Personnel without the prior written consent of MassDOT. The Design-Builder acknowledges that it has identified Persons to fill the Key Personnel roles listed above and that MassDOT has relied upon the Design-Builder's identification of such Persons in the selection of the Design-Builder to perform the Work. Such Persons are identified in Contract Volume I, Exhibit E. In the event that any of the Persons listed on said Exhibit E are removed from the Project but remain employed by the Design-Builder or a Subcontractor, then the Design-Builder shall provide MassDOT with a written explanation for such removal to be approved by MassDOT, whose approval shall not be unreasonably withheld.

8.2 NON-PERFORMING PERSONNEL

All persons performing DB Work shall have the skill and experience and any licenses required to perform the DB Work assigned to them. If MassDOT determines in its sole discretion (in accordance with Subsection 8.07 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition) that any Person employed by the Design-Builder, any Participant or any Subcontractor is not performing the DB Work in a proper and skillful manner, then at the written request of MassDOT, the Design-Builder shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of MassDOT. If such Person is not removed or if the Design-Builder fails to ensure that skilled and experienced personnel are furnished for the proper performance of the DB Work, then MassDOT may suspend the affected portion of the DB Work by delivery of written notice of such suspension to the Design-Builder. Such suspension shall in no way relieve the Design-Builder or the Participant of any obligation contained in the Contract Documents or entitles the Design-Builder or the Participant to a Claim or Contract Amendment. Once compliance is achieved, the Design-Builder or the Participant shall be entitled to and shall promptly resume the DB Work.

8.3 LABOR HARMONY AND PREVAILING WAGE

The Design-Builder 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 DB 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. The Design-Builder shall require prevailing wages to be paid for labor performed on the Project in accordance with the requirements of M.G.L. c.149, ss. 26-27H, inclusive.

8.4 RESPONSIBILITY FOR EMPLOYEES AND SUBCONTRACTORS

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

8.5 SUBCONTRACTS

Any subcontract must first be approved by MassDOT. Subletting of any portion of the Contract shall be done in conformance with Subsection 8.01, of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition.

Each instrument evidencing any agreement of the Design-Builder or any Participant with any Subcontractor shall provide, in terms and in form and substance satisfactory to MassDOT, that:

- a. The rights of the Design-Builder or the Participant (as appropriate) under such instrument are assigned to MassDOT contingent only upon written request from MassDOT or its successor or assign following default by the Design-Builder or such Participant or termination or expiration of this DB Contract; and
- b. All warranties (express and implied) of such Subcontract shall inure to the benefit of MassDOT.

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

8.6 SPECIAL PROVISIONS FOR RIGHT-TO-KNOW ACT REQUIREMENTS

The Design-Builder's attention is directed to M.G.L. c.111F, commonly known as the Right-To-Know Act, and to the regulations promulgated pursuant thereto. Among the provisions of the Right-To-Know Act is a requirement that employers make available to employees Materials Safety Data Sheets (MSDS) for any substance on the Massachusetts Substance List (MSL) to which employees are, have been, or may be exposed.

To ensure prompt compliance with these regulations and legislation, the Design-Builder shall:

- a. Deliver to MassDOT, prior to the start of any work under this Contract, copies of MSDS for all MSL substances to be used, stored, processed or manufactured at the worksite by the Design-Builder.
- b. Train employees of MassDOT, who may be exposed to MSL substances as a result of the Design-Builder's work under this Contract, with regard to those specific substances in accordance with requirements of the Right-To-Know Act.
- c. Observe all safety precautions recommended on the MSDS for any MSL substance to be used, stored, processed, or manufactured at the worksite by the Design-Builder.
- d. Inform MassDOT in writing regarding specific protective equipment recommended in the MSDS for MSL substances to which employees of MassDOT may be exposed as a result of the Design-Builder's work under this Contract.

MassDOT shall not be liable for any delay or suspension of work caused by the refusal of its employees to perform any work due to the Design-Builder's failure to comply with the Right-To-Know Act. The Design-Builder agrees to hold MassDOT or the Secretary and CEO of MassDOT harmless and fully indemnified for any and all claims, demands, fines, actions, complaints, and causes of action resulting from or arising out of the Design-Builder's failure to comply with the requirements of the Right-To-Know Act.

8.7 FEDERAL AND STATE LABOR AND WAGE REQUIREMENTS

Prescribed minimum state prevailing wage rates for all work performed under the Contract, as well as reporting and administrative requirements of the same, are in MassDOT Documents 00860 and 00861 and 00880 contained in Contract Volume I, Exhibit G.

Please note that M.G.L. c. 149, s. 27 provides that prevailing wage sheets in a public works Contract must be updated on the anniversary of the Contract date. The Design-Builder is advised that no increase in Contract price will be granted for updates of prevailing wage rates.

8.8 PROJECT LABOR AGREEMENT

[** THIS SECTION NOT APPLICABLE**]

8.9 PREQUALIFICATION IN PAINTING – STRUCTURAL

The Design-Builder and subcontractors performing lead based paint removal, containment and collection, surface preparation, or coating of structural steel must be pre-qualified by MassDOT in the Painting-Structural category.

SECTION 9. VALUE ENGINEERING

[THIS SECTION NOT APPLICABLE TO THIS CONTRACT**]**

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SECTION 10. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND LOCAL AGENCIES

10.1 COOPERATION WITH OTHER CONTRACTORS

MassDOT reserves the right to Contract with other contractors for performing additional work on or near the Right-of-Way. The Design-Builder shall cooperate with such other contractors to the extent reasonably necessary for the performance by such other contractors of their work, and shall cause its employees, agents, officers and Subcontractors and other Persons for whom the Design-Builder may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by MassDOT which affect the DB Work, the Design-Builder shall conduct its DB Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

10.2 INTERFERENCE BY OTHER CONTRACTORS

If the Design-Builder asserts that any of MassDOT's other contractors have hindered or interfered with the progress or completion of the DB Work, then the Design-Builder's remedy shall be to seek recourse against such other construction contractors as per Subsection 5.06 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition. To the extent legally necessary, MassDOT will assign its right to pursue claims against other contractors in the name of MassDOT to the Design-Builder. MassDOT agrees that it shall include provisions similar to this Section 10 in any other construction contracts which interface with the Project. Notwithstanding the foregoing, if the Design-Builder asserts that any hindrance or interference by MassDOT's other construction contractors satisfies the definition of an occurrence entitling the Design-Builder to a Contract Amendment (in which case such hindrance or interference shall be a MassDOT-Caused Delay), the Design-Builder may pursue the rights and remedies set forth in Section 3.

10.3 COORDINATION WITH LOCAL AGENCIES AND OWNERS OF PROPERTY

The Design-Builder shall coordinate with Local Agencies and with owners of property adjoining the Project, as more particularly described in this DB Contract.

SECTION 11. DESIGN-BUILDER REPRESENTATIONS AND WARRANTIES

11.1 GENERAL

The Design-Builder warrants that:

- A. All DB Work shall conform to all professional engineering principles generally accepted as standards of the industry in the Commonwealth.
- B. The Project shall be free of defects, and shall be free of Design Exceptions not previously approved by MassDOT in accordance with the Contract Documents.
- C. The Facility shall be fit for use for its intended functions.
- D. Construction of the Project shall be performed in a workmanlike manner using materials and equipment of good quality.
- E. The DB Work shall meet all of the requirements of the Contract Documents.
- F. Warranties shall commence upon Final Acceptance, provided that the Warranty for any element not yet completed as of the date of Final Acceptance shall start upon Final Acceptance. The Warranties for landscaping and plant establishment shall be as provided in the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition.

If MassDOT determines that any of the DB Work has not met the standards set forth in this Section at any time during the Warranty period for such DB Work, then the Design-Builder shall correct such DB Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period. The Design-Builder shall provide letters to the suppliers with copies to MassDOT identifying the scheduled date for Substantial Completion of the bridge and therefore the date the warranty shall begin. If the date for Substantial Completion is extended, it shall be the Design-Builder's responsibility to extend the commencement of the warranties from the suppliers at no additional cost to MassDOT.

All bridge components shall be covered for one (1) year per MassDOT Standard Specifications for Highways and Bridges, 2026 Edition. During periods of operation prior to Substantial Completion, the Design-Builder shall correct at their own expense any difficulties in the operation that may arise as the result of defects of material, equipment and manufacture. The Design-Builder shall provide letters to the suppliers with copies to MassDOT, identifying the scheduled date of Substantial Completion of the bridge and therefore the date the warranty shall begin. If the date of Substantial Completion gets extended, it shall be the Design-Builder's responsibility to extend the commencement of the warranties from the suppliers at no cost to the Owner.

The Owner reserves the right to correct any such defects and the Design-Builder shall pay the cost thereof. MassDOT reserves the right to receive on demand a test report from an independent laboratory certifying that the equipment furnished meets these specifications, at no cost to MassDOT. MassDOT reserves the right to reject an entire shipment of material covered by this Warranty if an item or items are found to be defective within a sixty (60) day period following receipt of materials.

Within seven (7) Days of receipt by the Design-Builder of notice from MassDOT specifying a failure of any of the DB Work to satisfy the Design-Builder's Warranties, the Design-Builder and MassDOT shall mutually agree when and how the Design-Builder shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative action, the Design-Builder shall implement such action as it deems necessary and shall notify MassDOT of the urgency of a decision. The Design-Builder and MassDOT shall agree on a remedy immediately upon notice by or to MassDOT of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Design-Builder and MassDOT fail to reach such an agreement within such seven (7) Day period (or immediately, in the case of emergency conditions), then MassDOT, after notice to the Design-Builder, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Design-Builder.

All costs of correcting such rejected DB Work, including additional testing and inspections, shall be deemed included the DB Price. The Design-Builder shall reimburse MassDOT or pay MassDOT's expenses made necessary thereby within ten (10) Days after the Design-Builder's receipt of invoices therefore.

11.2 APPLICABILITY OF WARRANTIES TO RE-DONE DB WORK

The Design-Builder's warranties shall apply to all DB Work redone pursuant to the terms of this Section 11. The Design-Builder's warranty for re-done elements of the DB Work shall extend beyond the original warranty period if necessary to provide a one (1) year warranty period following acceptance of re-done DB Work, but not to exceed six (6) years after the date that Final Acceptance is achieved.

11.3 SUBCONTRACTOR WARRANTIES

Without in any way derogating the Design-Builder's own representations and warranties (including the warranties contained in this Section 11 and other obligations with respect to all of the DB Work), the Design-Builder shall obtain from all Subcontractors and cause to be extended to MassDOT appropriate representations, warranties (for periods at least co-extensive in duration with the Design-Builder's warranties for such DB Work), guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by the Design-Builder, MassDOT and/or their respective successors and assigns. The Design-Builder hereby assigns to MassDOT all of the Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable warranty period which are received by the Design-Builder from any of its Subcontractors.

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

11.4 NO LIMITATION OF LIABILITY

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

11.5 DAMAGES FOR BREACH OF WARRANTY

If the Design-Builder fails or refuses to provide the Warranty remedy described in this Section 11 notwithstanding a valid request by MassDOT, the Design-Builder shall be liable for the cost performance of the Warranty work by others.

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SECTION 12. INDEMNIFICATION AND RELEASES

12.1 INDEMNIFICATIONS BY THE DESIGN-BUILDER

The Design-Builder shall release, defend, indemnify and hold harmless the Massachusetts Department of Transportation, and its successors and assigns and its shareholders, officers, directors, agents and employees (collectively referred to in this Section 12 as the Indemnified Parties) from and against any and all claims, demands, liabilities, judgments, penalties, costs, expenses and damages, including personal injury, property damages and natural resource damages, and including attorney and expert consultant fees and costs incurred, arising out of, relating to or resulting from:

- a. The breach or alleged breach of the Contract Documents by the Design-Builder, its employees, agents, officers or Subcontractors or any other Persons performing any of the DB Work for whom the Design-Builder may be contractually or legally responsible;
- b. The failure or alleged failure by the Design-Builder or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible, to comply with any applicable Laws, including Environmental Laws in performing the DB Work or undertaking any Contract activities;
- 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 DB Work or undertaking any Contract activities under the Contract Documents, or arising out of any use in connection with the Project or any development of methods, processes, designs, information, or other items furnished or communicated to MassDOT or another Indemnified Party pursuant to the Contract Documents, provided that this indemnity shall not apply to any infringement resulting from MassDOT's failure to comply with specific written instructions regarding use provided to MassDOT by the Design-Builder;
- d. The alleged error, omission, negligent act or willful misconduct of the Design-Builder, its employees, agents, officers or Subcontractors or any other Persons performing any of the DB Work or undertaking any Contract activities, for whom the Design-Builder may be contractually or legally responsible;
- 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 the Design-Builder or any of its subcontractors or any of their respective agents, officers or employees with respect to any payment for the DB Work made to or earned by the Design-Builder or any of its Subcontractors or any of their respective agents, officers or employees under the Contract Documents;
- f. Any and all stop notices and/or Liens filed in connection with the DB Work, including all expenses and attorneys' fees incurred in discharging any stop notice or Lien, provided that MassDOT is not in default in payments owing to the Design-Builder with respect to such DB Work;

- g. Any Release(s) of Hazardous Materials attributable to the negligence, willful misconduct, or breach of Contract by the Design-Builder or any of its officers, employees, agents, Subcontractors, visitors, or any other persons for whom the Design-Builder has responsibility; (ii) the Release of any Hazardous Materials caused to be present on the Right-of-Way or elsewhere by the Design-Builder or any of its officers, employees, agents, subcontractors, visitors, or any other persons for whom the Design-Builder has responsibility regardless of whether those are the persons who actually caused the Release and regardless of the cause for the Release; or (iii) any Hazardous Materials Management, including assessment, containment or remediation, conducted in connection with or required for the purpose of any development;
- h. The claim or assertion by contractors of inconvenience, disruption, delay or loss caused by interference of the Design-Builder (or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors relating to the Project, or failure of the Design-Builder or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be responsible to cooperate reasonably with other contractors in accordance with the requirements of the Contract Documents; or
- i. Any claim, demand or cause of action brought against MassDOT in connection with the Project or the DB Work, resulting from any action of the Design-Builder or failure of the Design-Builder to comply with the requirements of the Contract Documents.

Subject to this Section the Design-Builder shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities and costs, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in MassDOT-Supplied Design, regardless of whether such errors, omissions, inconsistencies or defects were also included in MassDOT-Supplied Design or RFP Documents, except as provided under M.G.L. c. 30, s. 39N.

12.2 RESTRICTIONS

The Design-Builder'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 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 the Design-Builder complied with such standard and did not actually know of its deficiency or, if the Design-Builder actually knew of its deficiency, unsuccessfully sought MassDOT's waiver of or approval of a deviation from such standard; or
- c. MassDOT's material breach of any of its obligations under the Contract Documents.

Such indemnities shall not be construed to effect any extension of statutes of limitations otherwise applicable to causes of action for breach of Contract held by MassDOT against the Design-Builder.

12.3 EMPLOYEE CLAIMS

In claims by an employee of the Design-Builder, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 12.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

12.4 RELEASE

To the maximum extent permitted by Law, the Design-Builder hereby releases and discharges MassDOT from any and all duty and obligation to cause permitting, Right-of-Way acquisition, Utility Relocation, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project or Right-of-Way to satisfy the standards and requirements set forth in the Contract Documents, except for MassDOT's duties and responsibilities expressly set forth in the Contract Documents.

12.5 NO RELIEF FROM RESPONSIBILITY

No rights of MassDOT described in Section 12.1 above, no exercise or failure to exercise such rights, no failure of MassDOT 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 the Design-Builder of its responsibility for the selection and the competent performance of all Subcontractors, architects, engineers and other consultants (except those hired by MassDOT);
- b. relieve the Design-Builder of any of its obligations or liabilities under the Contract Documents;
- c. be deemed or construed to waive any of MassDOT'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 MassDOT.

Except as set forth in Section 5.1, the Design-Builder shall not be entitled to, and waives all right to recover, indirect, incidental or consequential damages, including lost profits, whether such damages arise in Contract, tort or other legal theory and irrespective of fault, negligence or strict liability.

MassDOT's obligations and liabilities are strictly limited to those set forth in the Contract Documents and the Design-Builder shall not have, may not assert, and waives any Claim against MassDOT based on any supposed or alleged duties arising in tort other than gross negligence, reckless misconduct or fraud; and MassDOT's payment of any monetary damages or other compensation or award hereunder shall be conditioned upon legislative appropriation of the payment to the Design-Builder.

12.6 RIGHT TO RELY

Notwithstanding the provisions of Sections 12.3 and 12.4 above: (a) the Design-Builder shall be entitled to rely on specific written deviations MassDOT gives under this Contract; (b) MassDOT is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement MassDOT delivers; and (c) MassDOT is not relieved from its obligations under the Contract Documents. The Design-Builder's sole remedy for damages resulting from Section 12.2(a) – (c) above is to initiate a Request for Contract Amendment under Contract Volume I, Section 3.

SECTION 13. CLAIMS ADMINISTRATION AND DISPUTE RESOLUTION

13.1 MANDATORY NATURE OF PROCESS

All Disputes between the Design-Builder and MassDOT shall be resolved as provided by this Section 13.

13.2 CLAIMS AND DISPUTES; CLAIMS GOVERNED BY THIS SECTION; PRIORITIES

A Claim 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. Section 13.1 through Section 13.9 shall only apply to Claims that arise between the Parties under the Contract Documents, and shall not apply to:

- a. Claims that are not actionable against MassDOT by the Design-Builder on its own behalf or on behalf of any of its Subcontractors;
- b. Claims arising in tort;
- c. Claims relating to the scope or applicability of indemnities provided under the Contract Documents;
- d. Claims for injunctive relief or equitable remedies; or
- e. Claims against insurance companies.

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 13.9.

All references to Claims or Disputes brought by the Design-Builder refer also to Claims or Disputes brought by the Design-Builder on behalf of any of its Subcontractors.

13.3 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:

- a. informal efforts will be made to resolve issues presented by a Claim through a review of the relevant documents and discussions between the Parties;
- b. if the Claim is not resolved during the initial review, MassDOT will issue a written decision on the issues presented; and
- c. if the Design-Builder is not satisfied with MassDOT's decision, the Design-Builder may submit the claim to the Claims Committee.
- d. If the Design-Builder is not satisfied with the determination by the MassDOT Claims Committee, the determination may be appealed to the MassDOT Administrative Law Judge/Hearing Examiner or to Superior Court for further consideration.

13.4 CONTINUATION OF DB WORK

At all times during this Dispute Resolution Process or any subsequent administrative or court proceeding, the Design-Builder and all Subcontractors shall proceed with the DB Work diligently, without delay, in accordance with the DB Contract, and as directed by MassDOT. In addition, all parties shall continue to comply with all provisions of the Contract Documents.

13.5 RECORDS RELATED TO DISPUTE

Throughout the course of any work that is the subject of any Claim or Dispute, the Design-Builder 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 seven (7) years from the date of resolution of the Dispute.

13.6 DISPUTE RESOLUTION: PRE-CLAIMS COMMITTEE PROCESS

13.6.1 Notice of Claim

If the Design-Builder disagrees with anything required in any written or oral order from MassDOT, including any direction, instruction, interpretation, or determination by MassDOT, including determinations on Contract Amendments or Requests for Contract Amendments (including without limitation default determinations resulting from MassDOT's failure to issue a Contract Amendment decision within one hundred thirty-five (135) Days, the Design-Builder shall deliver to MassDOT promptly, but not more than seven (7) Days after learning of the disagreement, a signed written Notice of Claim:

At a minimum, the Notice of Claim must include the following information:

- a. the nature and circumstances of the Claim;
- b. the Contract Document provisions relevant to the Claim;
- c. the estimated dollar cost, if any, of the work in dispute; and
- d. an analysis of the impact, if any, that an outcome favoring the Design-Builder would have on the Project Schedule.

If the Claim is related to MassDOT's denial of a Request for Contract Amendment, then the Claim must include an update of the information previously submitted.

Upon completion of the work under dispute or the sustaining of damages, the Design-Builder shall submit within thirty (30) days, an itemized statement of the details and actual amount of the work or damages. The Design-Builder is required to certify, in writing, that the amount claimed is for work actually provided and the costs as shown are the amounts legally due for performing the work claimed.

The Design-Builder's itemized statement shall include a time entitlement analysis that sufficiently explains the basis of a time-related claim. Failure to submit the required time entitlement analysis with the itemized statement shall result in denial of the Design-Builder's claim.

The Design-Builder shall also provide any additional information, at MassDOT's request, that MassDOT determines is necessary for its evaluation of the Claim. Failure to provide notice or the itemized statement in accordance with this Section shall constitute a waiver of all claims in any way related to the disagreed upon work.

Notwithstanding the foregoing the Design-Builder may, but shall not be required to, submit a Claim to MassDOT prior to exhaustion of the Contract Amendment procedure set forth in this Section 13. However, in no event shall the Design-Builder claim be deemed to be waived until at least seven (7) Days after exhaustion of the Contract Amendment procedures set forth in this Section 13.

13.6.2 Evaluation; Response to Claim

Upon receipt of a Notice of Claim and itemized statement of costs, the Parties shall attempt to resolve the issue(s) presented through a review of the materials submitted, and an evaluation of the contract documents and discussions between MassDOT and the Design-Builder's authorized representatives. The two parties shall meet in good faith promptly after the time that a Claim under Section 13.6.1 is made (or such other time as may be agreed to by the Parties). There shall be at least one meeting to attempt to find a resolution between the parties. Additional meetings shall be scheduled upon agreement by all parties.

Following the conclusion of this evaluation, if a resolution has not been reached, MassDOT shall issue a written decision on the matters under dispute. If MassDOT determines that the Claim has merit, MassDOT shall take steps to address the issues presented by the Claim as appropriate, including the execution of a Contract Amendment.

13.7 DISPUTE RESOLUTION; CLAIMS COMMITTEE PROCESS

13.7.1 Determination by MassDOT's Claims Committee

Within fourteen (14) Days after the receipt date of MassDOT's written decision denying a Claim, the Design-Builder may file a request with MassDOT's Chief Engineer for a hearing before MassDOT's Claims Committee. The Design-Builder shall also provide any additional information, at MassDOT's request, that MassDOT's Claims Committee determines is necessary for its evaluation of the Claim. The Design-Builder's Claim information must be enhanced to include sufficient description and information to enable understanding by a third party who has no knowledge of the Dispute or familiarity with the Project and this documentation must also include a description of the efforts undertaken to resolve the Dispute.

The Design-Builder shall have the opportunity to present the Claim at a quarterly meeting of the Claims Committee to be scheduled within a reasonable time after the filing of the request. After the hearing the Design-Builder will be provided a written determination by the Chief Engineer on each Claim summarizing the reason(s) for the determination.

Pending a final judicial resolution of a claim, the Design-Builder shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Chief Engineer.

13.8 CLAIMS AGAINST CONTRACTORS FOR PAYMENT OF LABOR, MATERIALS AND OTHER PURPOSES.

The Design-Builder shall pay all bills for labor, materials, rental of equipment and for such other purposes as set forth in M.G.L. c. 149, s. 29 and M.G.L. c. 30, s. 39A, and all amendments thereto. It is understood that the Payment Bond required by Section 17.1 is the sole security for petitions brought pursuant to said sections.

The Design-Builder and MassDOT shall also comply with the provisions of M.G.L. c. 30, ss. 39F and G.

13.9 SUBSEQUENT PROCEEDINGS; APPEAL TO THE MASSDOT ADMINISTRATIVE LAW JUDGE/HEARING EXAMINER OR SUPERIOR COURT, MEDIATION

13.9.1 Exclusive Jurisdiction and Venue

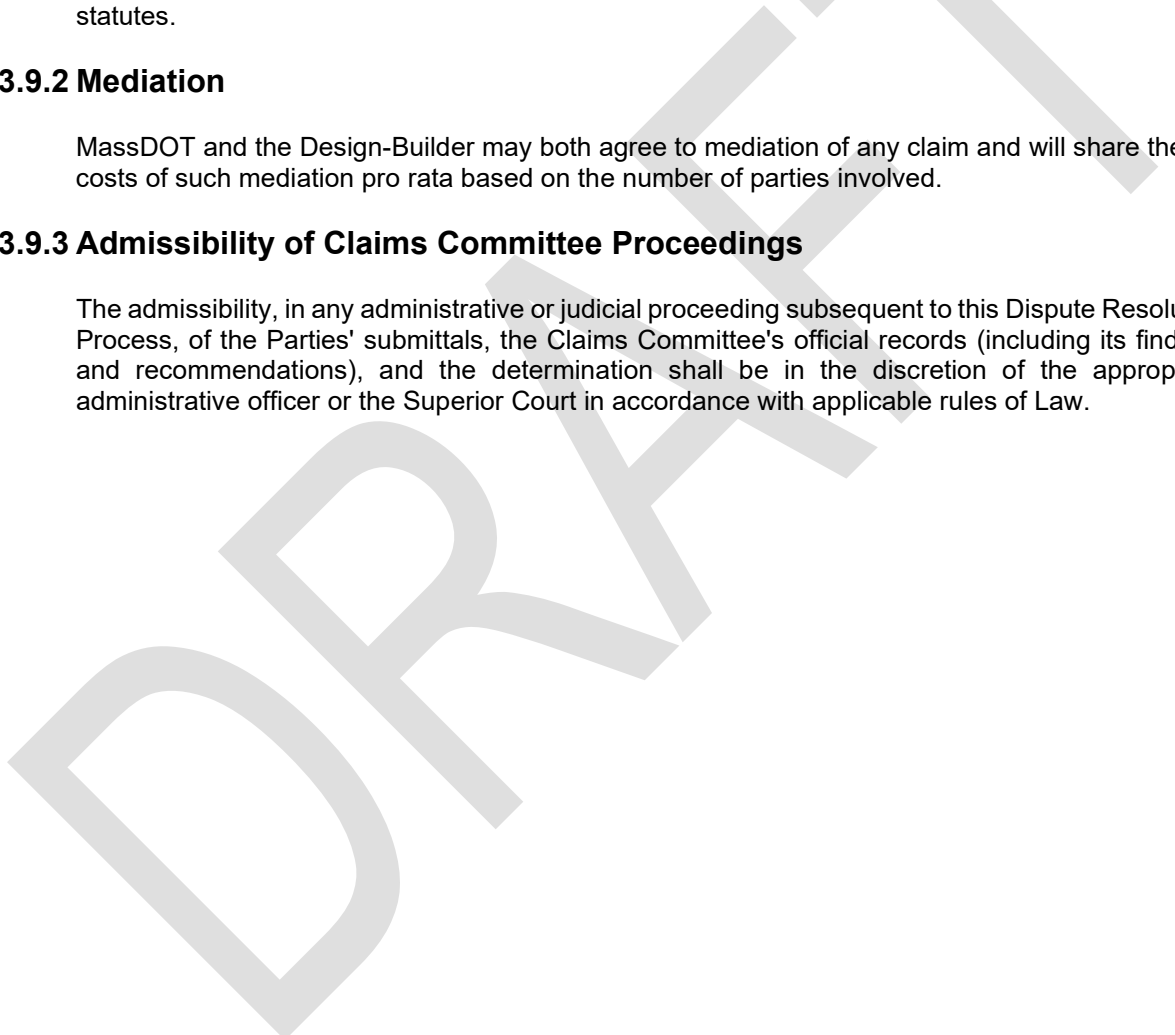
The Design-Builder may, at its election, appeal the Claims Committee's determination to the MassDOT Administrative Law Judge/Hearing Examiner or Superior Court for further consideration. The Design-Builder agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at Law or in equity, arising out of or relating to the Contract Documents or the Project, shall be the Superior Court Department of the Commonwealth of Massachusetts in the County of Suffolk. The Design-Builder waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such jurisdiction, regardless of the Design-Builder's residence or domicile, for any such action or proceeding. This Section 13.9 does not relieve the Design-Builder's obligation to submit the Dispute to Superior Court within the applicable statutes of limitations or repose and MassDOT does not hereby waive its rights to assert defenses based upon such statutes.

13.9.2 Mediation

MassDOT and the Design-Builder may both agree to mediation of any claim and will share the costs of such mediation pro rata based on the number of parties involved.

13.9.3 Admissibility of Claims Committee Proceedings

The admissibility, in any administrative or judicial proceeding subsequent to this Dispute Resolution Process, of the Parties' submittals, the Claims Committee's official records (including its findings and recommendations), and the determination shall be in the discretion of the appropriate administrative officer or the Superior Court in accordance with applicable rules of Law.



SECTION 14. DOCUMENTS AND RECORDS

14.1 REPORTING REQUIREMENTS

The Design-Builder shall deliver to MassDOT financial and narrative reports, statements, certifications, budgets and information as and when required under the Contract.

The Design-Builder shall ensure that MassDOT receives, as and when produced or received, all financial, narrative, consultant and other reports, statements, certifications, budgets and information which the Design-Builder produces or causes to be produced. In addition, the Design-Builder shall furnish or cause to be furnished to MassDOT such information and statements as MassDOT may reasonably request from time to time for any purpose related to the Project, this Contract or the other Contract Documents.

14.2 MAINTENANCE OF, ACCESS TO AND AUDIT OF RECORDS

The Design-Builder shall maintain at its Project Administration Office a complete set of all books and records prepared or employed by the Design-Builder in its management, scheduling, cost accounting and other activities related to the Project. The Design-Builder shall grant to MassDOT such audit rights and shall allow MassDOT such access to and the right to copy such books and records as MassDOT may request in connection with the issuance of Contract Amendments, the resolution of disputes, and such other matters as MassDOT reasonably deems necessary for purposes of verifying compliance with this Contract and applicable Law.

Where the payment method for any DB 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 DB Work. If an audit indicates the Design-Builder has been overcredited under a previous progress report or progress payment, that overcredit will be credited against current progress reports or payments.

For cost and pricing data submitted in connection with pricing Contract Amendments, (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), MassDOT and its representatives shall have the right to examine all books, records, documents and other data of the Design-Builder related to the negotiation of or performance of DB Work under such Contract Amendments 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 MassDOT and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

Additional audit requirements are set forth in the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition.

14.3 RETENTION OF RECORDS

The Design-Builder shall maintain all records and documents relating to the DB Work (including copies of all original documents delivered to MassDOT) for seven (7) years after MassDOT Final Acceptance or termination date, as applicable. The Design-Builder shall notify MassDOT 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 13 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 the Design-Builder's costs under the Contract Documents. The Design-Builder shall make these records and documents available for audit and inspection to MassDOT, at the Design-Builder's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to the Design-Builder). If approved by MassDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

14.4 PUBLIC RECORDS ACT

14.4.1 Acknowledgement

The Design-Builder acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in MassDOT's possession, including materials submitted by the Design-Builder, are subject to the provisions of the Massachusetts Public Records Law (M.G.L. c. 66, s. 10). The Design-Builder shall be solely responsible for all determinations made by it under such Law, and for clearly and prominently marking each and every page or sheet of materials with Trade Secret or Confidential as it determines to be appropriate. The Design-Builder is advised to contact legal counsel concerning such Law and its application to the Design-Builder.

14.4.2 Disclosure of Trade Secret or Confidential Record

If any of the materials submitted by the Design-Builder to MassDOT are clearly and prominently labeled Trade Secret or Confidential by the Design-Builder, MassDOT will endeavor to advise the Design-Builder of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will MassDOT be responsible or liable to the Design-Builder or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of MassDOT, except for any disclosure of trade secrets or proprietary information in violation of Section 14.4.1.

To the extent that either party deems any records, documents, drawings, plans, specifications and other materials generated, received or stored in connection with this DB Contract to be Sensitive Security Information (SSI) and exempt from public disclosure under federal or state law, including but not limited to 49 CFR Part 15 and M.G.L. c. 4, s. 7 (26)(n), then the party asserting the designation shall mark such information as SSI and both parties shall protect such SSI from public disclosure.

14.4.3 Litigation

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

14.5 ACCOUNTING RECORDS

The Design-Builder shall maintain accounting records and other verifiable evidence pertaining to the costs it incurs on this Project. The Design-Builder shall also require its subcontractors to maintain accounting records and other verifiable evidence pertaining to the costs they incur on this Project. These data will be made available for inspection by MassDOT and the Federal Representative, if appropriate, or any authorized representative, at all reasonable times at the office of the Design-Builder and any subcontractor during the Contract period and for seven (7) years following the date of the final payment to the Design-Builder and copies thereof shall be furnished as requested.

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SECTION 15. GOVERNING LAW; COMPLIANCE WITH LAW AND REFERENCE STANDARDS

15.1 MASSACHUSETTS LAW

This Contract shall be governed and construed in accordance with the laws of The Commonwealth of Massachusetts.

15.2 COMPLIANCE WITH DESIGN-BUILD STATUTE AND OTHER LAWS

The Design-Builder shall comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws, including:

- a. M.G.L. c. 149A ss. 14-20,
- b. Federal Requirements, and
- c. All applicable Environmental Laws.

15.3 COMPLIANCE WITH REFERENCED STANDARDS

The Design-Builder shall ensure that the Project meets the Massachusetts Department of Transportation Standard Specifications as modified for the Project except to the extent that the Contract Documents specifically allow exceptions therefrom. The Design-Builder shall also ensure that the Project meets all other applicable Referenced Standards.

SECTION 16. EQUAL EMPLOYMENT OPPORTUNITY

16.1 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

[**THIS SECTION NOT APPLICABLE**]

16.2 FEDERAL AND STATE EEO COMPLIANCE

The Design-Builder shall comply with the requirements of MassDOT Documents 00820, 00821, 00860 and 00870 contained in Contract Volume I, Exhibit G.

16.3 THE COMMONWEALTH OF MASSACHUSETTS SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

Labor participation goals for this Project shall be 15.3% for minorities and 6.9% for women for each job category. The goals are applicable to both Design-Builder and Subcontractor's on-site construction workforce. Refer to Document 00820 provided in Exhibit G for details.

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SECTION 17. PERFORMANCE AND PAYMENT SECURITY

17.1 BONDS

The Design-Builder shall provide to MassDOT and maintain at all times during the term of this Contract security for performance of the DB Work, and security for payment by the Design-Builder and its subcontractors for labor, materials, rental equipment and for such other purposes as are more specifically set forth in M.G.L. c. 149, s. 29 and c. 30, s. 39A and all amendments thereto, in accordance with Subsection 3.04 of the MassDOT Standard Specifications for Roads and Bridges, 2026 Edition (or other assurance satisfactory to MassDOT in its sole discretion).

17.2 SURETY FINANCIAL REQUIREMENTS

Any bond provided in accordance with this Section 17 shall be issued by a Surety that is listed on the United States Treasury approved surety list and licensed to do business in the Commonwealth of Massachusetts, with an A.M. Best rating of A- or better or as otherwise approved by MassDOT in its sole discretion.

17.3 PERFORMANCE BY SURETY OR GUARANTOR

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

SECTION 18. INSURANCE

The Design-Builder shall procure and maintain, at its expense, Workmen's Compensation Insurance and Public Liability Insurance in conformance with Subsection 7.05 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition, as well as additional types and amounts of insurance set forth in this Section. All insurance required of the Design-Builder shall be carried until all work required to be performed under the terms of the Contract or Subcontracts has been satisfactorily completed.

SUBSECTION 7.05 INSURANCE REQUIREMENTS

The insurance requirements set forth in this subsection are in addition to the requirements of the Standard Specifications.

7.05.B: Public Liability Insurance 3.

Railroad Protective Liability Insurance and Protective Property Damage Liability Insurance shall be obtained in the amount set forth in this section on behalf of the Massachusetts Coastal Railroad, LLC; MassDOT Rail and Transit, Cape Cod Central Railroad and MBTA / Cape Cod Regional Transit Authority.

7.05.B: Public Liability Insurance 4.

Asbestos Liability Insurance shall be obtained for this Project. The Design-Builder and the Massachusetts Department of Transportation shall be named as additional insureds.

18.1 PROFESSIONAL LIABILITY INSURANCE

The Design-Builder shall provide professional liability coverage with limits not less than \$1,000,000 per claim and aggregate, protecting against any negligent act, error or omission arising out of design or engineering activities with respect to the Project, including coverage for acts by the Design-Builder and others for whom the Design-Builder is legally responsible. The policy shall have a retroactive date no later than the date hereof and shall have a five (5) year extended reporting period with respect to events which occurred but were not reported during the term of the policy. The policy shall include as insureds the Design-Builder and any of its Subcontractors (including design subconsultants) of any tier. The policy must also indemnify MassDOT for any liabilities, damages or judgments, and reasonable attorneys' fees and related costs due to a Breach of Professional Duty of the Named Insured(s) and/or their subconsultants. The policy shall not contain any provision or exclusion the effect of which would be to prevent, Bar, or otherwise preclude MassDOT from making a claim against the Policy.

18.2 VALUABLE PAPERS INSURANCE

The Design-Builder shall provide valuable papers insurance with a limit of not less than \$100,000 each loss. 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 MassDOT.

18.3 BUILDER'S RISK INSURANCE

[**THIS SECTION NOT APPLICABLE TO THIS CONTRACT**]

18.4 RAILROAD INSURANCE

The insurance requirements set forth in this section are in addition to the requirements of the Standard Specifications.

Prior to starting any work at the project site, Subcontractor / Supplier shall obtain and maintain insurance from responsible insurer satisfactory to the Contractor, which shall name Contractor as an additional insured, and provide at least the following coverage and minimum limits:

1. Railroad Protective Liability insurance (ISO-RIMA FORM) with a limit of not less than Five Million Dollars (\$5,000,000) per occurrence, combined single limit for bodily injury and/or property damage, for all damages arising out of bodily injuries or death of all persons for and for damage to or destruction of property, including the loss of use thereof. Such insurance shall also contain an aggregate of not less than Ten Million Dollar (\$10,000,000) for damages arising out of more than one occurrence;
2. Worker's Compensation: Statutory Employer's Liability; \$1,000,000.00;
3. Commercial General Liability Occurrence Coverage, including blanket Contractual Liability, Broad Form Property Damage, operations, Independent Contractors (Sub-Let Work), and completed Operations for a period of not less than one year following completion of Contractor's operation of \$2,000,000.00, each occurrence and of \$6,000,000.00 aggregate; *NOTE** Such Policy Shall not Exclude Insured's protection and exposure within 50 ft of Railroad Right's of Way;*
4. Comprehensive Automobile Liability;
5. Equipment Floater covering all equipment and tools, scaffolding, towers, and forms;
6. Furnish to Contractor a current certificate of Insurance, naming Mass Coastal Railroad and "MassDOT Rail and Transit Unit" as "Additionally Insured" which shall state the Subcontractor / Supplier's insurance shall not be modified, canceled, or allowed to expire until at least (30) days after written notice is given to the Contractor. Contractor and Subcontractor / Supplier waive and release all rights against each other for damaged caused by fire or other perils to the extent covered by property insurance upon the Project, except such rights as each may have to the proceeds of such insurance.
7. The Contractor shall be responsible for the care, custody, and control of materials for its scope of Work and shall hold MCRR harmless for any losses suffered as a result of the Contractor's negligent handling of such materials.

Questions regarding insurance should be directed to the MBTA's Risk Manager at 617-222-3064.

The Design-Builder shall be aware of the latest MBTA insurance limits / requirements. See the following link for more information: <https://www.mbtarealty.com/licenses.html>

18.5 COMMENCEMENT OF DB WORK

The Design-Builder shall not commence work under this Contract until it has obtained the insurance required under this Section 18 and such insurance has been approved by MassDOT, nor shall the Design-Builder allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by the Design-Builder, and a Notice to Proceed has been issued by MassDOT. If the insurance provided by the Design-Builder fails to comply with the requirements listed herein, or if the Design-Builder fails to maintain such insurance, then MassDOT maintains the right to suspend the Design-Builder's right to proceed until proper evidence is provided.

18.6 TOW TRUCK SUBCONTRACTOR INSURANCE

[**THIS SECTION NOT APPLICABLE TO THIS CONTRACT**]

SECTION 19. RESPONSIBILITY FOR LOSS OR DAMAGE; TITLE

The Design-Builder's responsibility for the DB Work is set forth in Subsection 7.18 of the MassDOT Standard Specifications for Highways and Bridges, 2026 Edition.

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

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SECTION 20. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

Force Majeure shall mean any of the following events (provided such events are beyond the control of the Design-Builder, its employees, agents, officers or subcontractors or any other persons performing any of the work for whom the Design-Builder may be contractually or legally responsible) which materially and adversely affects the Design-Builder'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 the Design-Builder:

- 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, or any national strikes;
- d. Any Change in law which modifies the scope of the DB Work or specifically targets the Project or Design-Builder;
- e. Any release of hazardous Material by a third party for whom the Design-Builder has no responsibility and with whom the Design-Builder has no relationship, which is required to be reported to the DEP, and which renders use of the roadway or construction unsafe absent assessment, containment, and/or remediation;
- 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 the Design-Builder or its subcontractors, agents or employees; and
- g. Any highway accident causing catastrophic damage to the Facility.

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

- a. any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightening, explosion, drought, rain, flood, snow, storm, except as specified in (a) above;
- b. rain, wind, snow and/or other natural phenomena of normal intensity, based on National Weather Service reports, for the particular locality and for the particular season of the year in which the DB Work is being prosecuted, shall not be construed as an "Act of God",
- c. any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence;
- d. the suspension, termination, interruption, denial or failure to obtain or nonrenewal of any Governmental Approval, except as described in I and (f) above;

- e. any Change in Law (such as increases in tax rates) which does not result in a change in the scope of the DB Work or Design-Builder services (i.e. the Change in Law would not require a change in the design of the Project);
- f. any delay related to any Utility Work or failure to obtain approval from a Utility Owner;
- g. any delay or cost risk for which coverage is to be provided through insurance required hereunder; and
- h. all other matters not caused by the Owner or beyond the control of the Owner and not listed in (a) through (g) above.

The Design-Builder shall notify MassDOT orally within five (5) Days and in writing within ten (10) Days of the date on which the Design-Builder becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Design-Builder shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as MassDOT may reasonably request. After receipt of such notification, MassDOT may elect either to terminate the Contract or to extend the time for performance as reasonably necessary to compensate for the Design-Builder's delay.

In the event of a declared emergency by competent governmental authorities, MassDOT by notice to the Design-Builder, may suspend all or a portion of the work under Section 4.

SECTION 21. TITLE VI / NONDISCRIMINATION GENERAL

21.1 COMPLIANCE WITH REGULATIONS

The Design-Builder shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation Title 49, CFR, Part 21 ("Regulations"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

21.2 NONDISCRIMINATION

The Design-Builder, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

21.3 SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT

In all solicitations either by competitive bidding or negotiation made by the Design-Builder for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Design-Builder of the Design-Builder's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

21.4 INFORMATION AND REPORTS

The Design-Builder shall provide all reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MassDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Design-Builder is in the exclusive possession of another who fails or refuses to furnish this information the Design-Builder shall so certify to MassDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

21.5 SANCTIONS FOR NONCOMPLIANCE

In the event of the Design-Builder's noncompliance with the nondiscrimination provisions of this Contract, MassDOT shall impose such Contract sanctions as it may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Design-Builder under the Contract until the Design-Builder complies, and/or
- b. Cancellation, termination or suspension of the Contract, in whole or in part.

21.6 INCORPORATION OF PROVISIONS:

The Design-Builder shall include the provisions of Contract Volume I Section 21.1 through 21.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

SECTION 22. MISCELLANEOUS

22.1 AMENDMENTS TO CONTRACT DOCUMENTS

Any change to this Contract and cost and/or time as detailed in this Contract, the Proposal, the Proposal Addendum, if applicable, and the Project Requirements, shall be in writing, approved by endorsement of appropriate Design-Builder and MassDOT representatives, and further approved by the Federal Representative, if federally funded. Upon such full execution, the letter shall become a supplement to this Contract.

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, MassDOT and the Design-Builder 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 which would reduce its rights or enlarge its responsibilities under the Contract Documents in any material respect.

22.2 WAIVER

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.

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.

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

22.3 RELATIONSHIP OF PARTIES

The relationship of the Design-Builder to MassDOT shall be one of an independent Design-Builder, not an agent, partner, joint venturer, or employee. Officials, employees and agents of the Design-Builder shall in no event be considered employees, agents, partners or representatives of MassDOT.

22.4 ASSIGNMENT

Subject to the limitations of this Section 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.

The Design-Builder shall not, without the prior written consent of MassDOT, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents.

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

22.5 DESIGNATION OF REPRESENTATIVES

MassDOT and the Design-Builder shall each designate an Authorized Representative who shall be authorized to make decisions and bind MassDOT and the Design-Builder 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. Section 22.17 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 22.17.

22.6 NO GIFT OR DEDICATION

Nothing contained in this Contract shall be deemed to be a gift or dedication of any portion of the Project, Right-of-Way or DB Work to MassDOT or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Right-of-Way or DB Work except as expressly set forth herein.

The Design-Builder shall not, other than as provided by Law, directly or indirectly, give, offer or promise anything of value, as defined in M.G.L. c. 268A, 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.

The Design-Builder acknowledges that certain of its employees may be deemed to be special state employees under the applicable provisions of M.G.L. c. 268A, and that such employees shall be subject to the standards of conduct and conflict of interest provisions which pertain to such employees as set forth therein.

22.7 CONFLICT OF INTEREST

The Design-Builder is advised that its performance of work for MassDOT may, at any time, raise questions about real or perceived conflicts of interest because of a prospective team member's relationship to other entities or individuals, including without limitation: (1) private and public owners of properties that abut or may be affected by the Project, and/or (2) other state-created entities with potentially conflicting interests and/or concerns.

Accordingly, MassDOT reserves the right to:

- Disqualify any Design-Builder team member at any time solely on the grounds that a real or perceived legal or policy conflict of interest is presented,
- Require any Design-Builder team member to take any action or supply any information necessary to remove the conflict, including without limitation, obtaining an opinion from the State Ethics Commission, or
- Terminate any Contract arising out of this solicitation if, in the opinion of MassDOT, any such relationship would constitute or have the potential to create a real or perceived conflict of interest that cannot be resolved to the satisfaction of MassDOT.

In addition, representatives and/or employees of the Design-Builder shall be required to agree to certify from time to time, in a form approved by MassDOT, that in connection with work under this Contract, they are in full compliance with the provisions of M.G.L. c. 268A, 23 CFR 636.116 and any other applicable conflict of interest laws. The Design-Builder agrees to disclose in writing any facts MassDOT may seek in order to resolve questions about potential conflicts of interest occurring during the period of performance hereunder and, upon request of MassDOT, supply a full and complete list of its relationships to other entities and individuals. In any such event, the Design-Builder shall consult with the Commonwealth's authorized representatives, to learn what action shall be taken to resolve such conflicts and comply with all applicable laws and policies.

22.8 USE OF POLICE AND OTHER POWERS

Nothing in this Contract limits the authority of MassDOT to exercise its regulatory, statutory and police powers granted by Law, including its powers of condemnation with respect to all or any part of the Project, the Right-of-Way and any of the Design-Builder's rights hereunder.

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

22.10 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.

22.11 REVIEW RIGHTS

MassDOT and the Federal Representative, if appropriate, have the right to review and inspect all Project activities at any time. MassDOT retains the right to conduct security audits.

22.12 RECORD OF DESIGN-BUILDER'S PERFORMANCE

The Design-Builder will be rated on performance by MassDOT designated staff per Documents 00439 and 00440, attached hereto in Exhibit G.

22.13 FEDERAL DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE (ONLY IF FEDERALLY FUNDED)

The Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as MassDOT deems appropriate. If the Design-Builder is providing services or supplies for MassDOT pursuant to this Contract, it must include this assurance in each subcontract that it signs with a subcontractor. If the Design-Builder is a grantee or other recipient of funds from MassDOT, it must include this assurance in each Contract into which it enters to carry out the Project or activities being funded by this Contract.

22.14 MASSDOT CONTRACTING OFFICER

The person designated to act for MassDOT in administering and monitoring this Contract is designated as the MassDOT Highway Division's District 2 District Highway Director. The Design-Builder will be notified by MassDOT in writing in the event a designee or replacement is appointed.

22.15 BENEFICIAL INTERESTS

No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

22.16 CERTIFICATION OF THE DESIGN-BUILDER (ONLY IF FEDERALLY FUNDED)

The Design-Builder hereby certifies that the Design-Builder has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Design-Builder) to solicit or secure this Contract.

The Design-Builder further certifies that the Design-Builder has not agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out this Contract. The Design-Builder has not paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for the Design-Builder) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this Contract.

22.17 NOTICES

Notices under the Contract Documents shall be in writing and: (a) delivered personally; or (b) sent by certified mail, return receipt requested; or (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, to those persons designated by the Design-Builder and MassDOT (or to such other persons as may from time to time be specified in writing by such Person).

As to MassDOT:

MAILINGS:

Ms. Patricia Leavenworth, District Highway Director
Massachusetts Department of Transportation – District 2
811 North King Street, Northampton, MA 01060

DELIVERY:

Ms. Patricia Leavenworth, District Highway Director
Massachusetts Department of Transportation – District 2
811 North King Street, Northampton, MA 01060

Boston Construction Section
Brian M. Kelleher, Jr., Deputy Administrator / Chief of Construction Engineering
Massachusetts Department of Transportation – Highway Division – Construction Section
10 Park Plaza, Room 7360
Boston, MA 02116

As to the Design-Builder:

[insert POC name]
[insert DB FIRM name]
[insert address]

All communications to MassDOT shall be clearly marked on the outermost envelope/container in which the communications are delivered, to identify the Contract and the Project name and location.

These notices include, but are not limited to, notice of termination, provision of the certificate of insurance, issues requiring resolution of a dispute, modifications to this Contract and any general issues concerning the interpretation of this Contract. The Design-Builder and MassDOT will notify each other in writing in the event of a change in the identity of either party's designated representative.

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 received after 5:00 p.m. Eastern Standard or Daylight Time (as applicable) shall be deemed received on the first Business Day following delivery. The Design-Builder's representatives shall be available at all reasonable times for consultation with MassDOT.

Other points of contact which are necessary to complete the work conducted under the terms of this Contract and not concerning the items listed in the above paragraph, shall be identified by the Parties immediately after the Notice to Proceed given by MassDOT.

22.18 FURTHER ASSURANCES

Each party hereto shall promptly execute and deliver to the 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.

22.19 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 DB 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.

22.20 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.

22.21 INTERPRETATION OF CONTRACT DOCUMENTS

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 DB 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 DB Work shall be as set forth in Contract Volume II, Section 4, and specific provisions in the Contract Documents which describe tasks included in the DB Work shall not constitute a limit on the scope of the DB Work, unless specifically so stated.

The Design-Builder acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, and during the negotiation process prior to award of this Contract, to review the terms and conditions of the Contract Documents and to bring to the attention of MassDOT any conflicts or ambiguities contained therein. The Design-Builder 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.

22.22 BIDDERS LIST

Pursuant to the provisions of 49 CFR Part 26 -- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Section 26.11 all official bidders will be required to report the names, addresses and telephone numbers of all firms that submitted bids or quotes in connection with this project. Failure to comply with a written request for this information within 15 business days may result in a recommendation to the Prequalification Committee that prequalification status be suspended until the information is received.

The Department will survey all firms that have submitted bids or quotes during the previous year prior to setting the annual goal and shall request that each firm report its age and gross receipts for the year.

22.23 PERSONAL PROTECTIVE SAFETY EQUIPMENT FOR DESIGN-BUILDER PERSONNEL

The Design-Builder is responsible to ensure that all personnel, including all subcontractors, working on the Project are issued and are wearing all necessary personal protective safety equipment while working within the project limits. This equipment shall include, as a minimum, a hardhat and a safety vest, regardless of the type of work being performed. Other safety equipment shall be added as required to perform the work in which they are engaged and in accordance with all local, state and federal requirements. Safety equipment shall be provided at no additional cost to the Department.

22.24 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.

22.25 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.

[END OF CONTRACT]

CONTRACT SIGNATURE PAGE

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.

BY: _____ (Corporate Seal)
Design-Builder

Printed Name (Date)

Title

BY: _____ (Date)
MassDOT Authorized Representative

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EXHIBIT A: TERMS AND DEFINITIONS

Part A TERMS

Part B DEFINITIONS

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EXHIBIT B: DESIGN-BUILDER'S LETTER OF TRANSMITTAL

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**EXHIBIT C: DESIGN-BUILDER'S TECHNICAL PROPOSAL
SUMMARY**

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EXHIBIT D: DESIGN-BUILDER'S CPM PROJECT SCHEDULE COMPETENCY SUBMISSION

Refer to the Initial Schedule Competency Section contained in the Design-Builder's Technical Proposal Submittal

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**EXHIBIT E: DESIGN-BUILDER'S KEY PROJECT
PERSONNEL**

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EXHIBIT F: ATC APPROVAL LETTER(S)

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EXHIBIT G: MASSDOT PROVISIONS, FORMS, AND POLICY REQUIREMENTS FOR FEDERAL-AID CONTRACTS

DOCUMENT 00210	REQUIREMENTS OF M.G.L. CHAPTER 30, SECTION 39R; CHAPTER 30, SECTION 39O
DOCUMENT 00331	LOCUS MAP
DOCUMENT 00439	CONTRACTOR PROJECT EVALUATION FORM
DOCUMENT 00440	SUBCONTRACTOR PROJECT EVALUATION FORM
DOCUMENT 00760	FHWA-1273 REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS
DOCUMENT 00811DB	SPECIAL PROVISIONS - MONTHLY PRICE ADJUSTMENT FOR HOT MIX ASPHALT (HMA) MIXTURES ENGLISH AND METRIC UNITS DESIGN-BUILD
DOCUMENT 00812DB	SPECIAL PROVISIONS - MONTHLY PRICE ADJUSTMENT FOR DIESEL FUEL AND GASOLINE – ENGLISH UNITS DESIGN-BUILD
DOCUMENT 00813DB	SPECIAL PROVISIONS PRICE ADJUSTMENTS FOR STRUCTURAL STEEL AND REINFORCING STEEL ENGLISH UNITS DESIGN-BUILD
DOCUMENT 00814DB	SPECIAL PROVISIONS PRICE ADJUSTMENT FOR PORTLAND CEMENT CONCRETE MIXES DESIGN-BUILD
DOCUMENT 00820	THE COMMONWEALTH OF MASSACHUSETTS SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM
DOCUMENT 00821	ELECTRONIC REPORTING REQUIREMENTS – CIVIL RIGHTS PROGRAM AND CERTIFIED PAYROLL
DOCUMENT 00859	CONTRACTOR/SUBCONTRACTOR CERTIFICATION FORM
DOCUMENT 00860	COMMONWEALTH OF MASSACHUSETTS PUBLIC EMPLOYMENT LAWS
DOCUMENT 00861	STATE PREVAILING WAGE RATES
DOCUMENT 00870	STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS
DOCUMENT 00880	FEDERAL WAGE RATES
DOCUMENT A00875	POLICY DIRECTIVE P-22-001 AND POLICY DIRECTIVE P-22-002

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EXHIBIT H: ESCROW AGREEMENT DOCUMENTS

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EXHIBIT I: DESIGN-BUILDER'S CONFLICT OF INTEREST

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EXHIBIT J: CONTRACT EXECUTION FORMS

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