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**TRANSPORTATION COMMISSION
AGENDA**

**WEDNESDAY, MARCH 24, 2021
6:00 PM
REMOTE PARTICIPATION ONLY**

CHAIR: CHERYL VIEGAS-WALKER

VICE CHAIR: ROSIE ARREOLA-FERNANDEZ

Individuals wishing accessibility accommodations at this meeting, under the Americans with Disabilities Act (ADA), may request such accommodations to aid hearing, visual, or mobility impairment by contacting ICTC offices at (760) 592-4494. Please note that 48 hours advance notice will be necessary to honor your request.

To participate on your computer via Zoom Meeting:

<https://zoom.us/j/91386733797?pwd=VU1VZEJicU0xemRtUjN6YlZwaGNkZz09>

To Join by phone please dial (669) 900-9128

Meeting ID: 913 8673 3797 #

Passcode: 702792 #

I. CALL TO ORDER AND ROLL CALL

II. EMERGENCY ITEMS

A. Discussion / Action of emergency items, if necessary.

III. PUBLIC COMMENTS

In compliance with the Governor's Order N-29-20, the meeting will be held telephonically and electronically. If members of the public wish to review the attachments or have any questions on any agenda item, please contact Cristi Lerma at 760-592-4494 or via email at cristilerma@imperialctc.org. Agenda and minutes are also available at: <http://www.imperialctc.org/meetings-&-agendas/commission/>. If any member of the public wishes to address the Commission, please submit written comments by 5 p.m. on Tuesday, March 23, 2021. Comments should not exceed three minutes on any item of interest not on the agenda within the jurisdiction of the Committee. The Committee will listen to all communication, but in compliance with the Brown Act, will not take any action on items that are not on the agenda.

IV. CONSENT CALENDAR

(Executive Director recommends approval of consent calendar items)

- | | | | |
|----|--|-------------------------------------|------------|
| A. | Approval of the ICTC Commission Draft Minutes: | December 16, 2020 | Pages 4-21 |
| B. | Receive and File: | | |
| | 1. ICTC Management Committee Minutes: | December 9, 2020 | |
| | 2. ICTC TAC Minutes | December 17, 2020; January 28, 2021 | |
| | 3. ICTC SSTAC Minutes: | January 6, 2021; February 3, 2021 | |

**CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND,
IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL**

- C. Low Carbon Transit Operations Program (LCTOP) Application for FY 2020-21 Funds Page 23

The ICTC Management Committee will meet on March 24, 2021 and will likely forward this item to the Commission for their review and approval after public comment, if any:

1. Authorize the ICTC Chairperson to sign the attached resolution
2. Authorization for the Execution of the LCTOP Project: Free Fare Program for eligible ICTC administered transit services.

V. REPORTS (Up to 5 minutes per staff report)

- A. ICTC Executive Director
- Executive Director Report Page 27
 - IVRMA Program Report Page 39
- B. Southern California Association of Governments
- See attached report Page 41
- C. California Department of Transportation – District 11
- See attached report Page 50
- D. Commission / Committee Member Reports (if any)

VI. ACTION CALENDAR

- A. Calexico East Port of Entry Bridge Expansion Project – Contract Award Page 59-487

The ICTC Management Committee will meet on March 24, 2021 and will likely forward this item to the Commission for their review and approval after public comment, if any:

1. Authorize the Executive Director to sign the Agreement for Services between ICTC and Hazard Construction Company for the Contract Price of \$19,965,000 effective March 24, 2021.
2. Issuance of Notice to Proceed to Hazard Construction Company upon receipt and verification of required documentation.

- B. Appointment to the California Vanpool Authority (CalVans) Board Page 489

ICTC Staff is requesting the following action after public comment, if any:

1. Appoint a representative and an alternate from the Commission to the CalVans Board.

VII. INFORMATION CALENDAR

- A. Impacts of Border Delays at the California-Baja California Land Ports of Entry Page 491
Presentation by SANDAG staff

VIII. MEETING DATE AND PLACE

- A. The next meeting of the **Imperial County Transportation Commission** will be held on **Wednesday, April 28, 2021 at 6:00 p.m.**, remotely via Zoom Meeting.

IX. ADJOURNMENT

- A. Motion to adjourn

IV. CONSENT CALENDAR

IN CONSENT CALENDAR

- A. Approval of the ICTC Commission Draft Minutes:
December 16, 2020
- B. Receive and File:
 - ICTC Management Committee Minutes:
December 16, 2020
 - ICTC TAC Minutes
December 17, 2020; January 28, 2021
 - ICTC SSTAC Minutes:
January 6, 2021; February 3, 2021

**IMPERIAL COUNTY TRANSPORTATION COMMISSION
MANAGEMENT COMMITTEE
DRAFT MINUTES OF DECEMBER 9, 2020
10:30 a.m.**

VOTING MEMBERS PRESENT:

City of Brawley	Tyler Salcido
City of Calexico	Miguel Figueroa
City of Calipatria	Rom Medina
City of El Centro	Marcela Piedra
City of Holtville	Nick Wells
City of Imperial	Alexis Brown
County of Imperial	Tony Rouhotas
County of Imperial	Esperanza Colio-Warren
Imperial Irrigation District	Ismael Gomez
ICTC	Mark Baza

STAFF PRESENT: David Aguirre, Cristi Lerma, Virginia Mendoza, Layla Sarwari (ICTC Counsel)

OTHERS PRESENT: David Salgado: SCAG; Jose Ornelas, Hanh-Dung Khuu, Patrick Jenkins: Caltrans; Liz Zarate: City of El Centro; Rebecca Terrazas-Baxter: County of Imperial

The following minutes are listed as they were acted upon by the Imperial County Transportation Commission Management Committee and as listed on the agenda for the meeting held Wednesday, December 9, 2020 together with staff reports and related documents attached thereto and incorporated therein by reference.

I. CALL TO ORDER AND ROLL CALL

Chair Piedra called the Committee meeting to order at 10:37 a.m., roll call was taken and a quorum was present.

II. EMERGENCY ITEMS

There were none.

III. PUBLIC COMMENTS

There were none.

IV. CONSENT ITEMS

An error was made on the September 9, 2020 minutes and they were pulled from the consent calendar. A motion was made by [Salcido](#) seconded by [Piedra](#) to approve the consent calendar as amended; Roll call was taken:

Agency	Roll Call
City of Brawley	Yes
City of Calipatria	Yes
City of Calexico	Yes
City of El Centro	Yes
City of Holtville	Yes
City of Imperial	Yes
County of Imperial Baxter	Yes

County of Imperial Warren	Yes
City of Westmorland	Absent
Imperial Irrigation District	Yes

Motion carried unanimously.

- | | | |
|----|--|--------------------|
| A. | Pulled the Management Committee Draft Minutes: | September 9, 2020 |
| B. | Received and Filed: | |
| 1. | ICTC Commission Minutes: | September 23, 2020 |
| 2. | ICTC TAC Minutes: | October 22, 2020 |
| 3. | ICTC SSTAC Minutes: | October 7, 2020 |
| | | November 4, 2020 |

V. REPORTS

- A. ICTC Executive Director
 - Mr. Baza provided updates from the report on page 24 of the agenda with a focus on the recent approval of the TCEP application for an additional \$7.5 million for the Calexico East Port of Entry Bridge Widening Project.
 - Mr. Baza informed committee members that the LTA Report was attached to the agenda. He stated that staff is working with the underwriter regarding the bond refunding to obtain bond insurance. This effort will ensure that the LTA receives a better rate.
- B. Southern California Association of Governments (SCAG)
 - Mr. Salgado provided updates from the report on page 32 of the agenda.
 - o The Economic Summit had a great program this year. Michael Bracken released a comprehensive report on the economic state of the SCAG region.
 - o SCAG has approved the Sustainable Communities Grant Program grant guidelines. The call for projects has been extended until December 11, 2020.
- C. Caltrans Department of Transportation – District 11
 - Caltrans updates were provided from the report on page 38 of the agenda.
 - o Mr. Ornelas provided an update on the SR-111 Niland Geyer/Mudpot. The temporary detour remains in place until the mudpot moves beyond the freeway.
 - Ms. Piedra stated that a meeting should be scheduled soon regarding the signage for the Imperial Ave. / I-8 Project. Mr. Jenkins stated that he has met with the architect and that Mr. Campos has sent the font and photos of the Palm Springs projects.
- D. Committee Member Reports
 - Ms. Colio-Warren stated that there is funding available to provide relief for families struggling with paying their utility bills. The program will end on December 20, 2020. The income eligibility has increased to \$75,000 for a family of 4 for all Imperial Valley residents.

VI. LTA ACTION CALENDAR

- A. State Route 86 U.S. Border Patrol Checkpoint Improvement Project – Consultant

Agreement, Modification #1

It was requested that ICTC Management Committee forward this item to the LTA Board for review and approval after the receipt of public comment, if any:

1. Approved the change order under the amended scope of services of the Consultant Agreement, Modification #1 for the State Route 86 U.S. Border Patrol Checkpoint to AECOM Technical Services, Inc. in the amount of \$185,000.
2. Authorized the Chairperson to sign the consultant agreement, modification #1.

A motion was made by [Wells](#) seconded by [Salcido](#). Roll call was taken:

Agency	Roll Call
City of Brawley	Yes
City of Calipatria	Yes
City of Calexico	Yes
City of El Centro	Yes
City of Holtville	Yes
City of Imperial	Yes
County of Imperial Baxter	Yes
County of Imperial Warren	Yes
City of Westmorland	Absent
Imperial Irrigation District	Yes

Motion carried unanimously.

VII. INFORMATION CALENDAR

- A. Proposed Project on State Route (SR) 111
Ms. Hanh-Dung Khuu provided a presentation.
The project description included the following:
- Upgrade existing guardrail with current standard Midwest Guardrail System (MGS)
 - Pavement rumble strips
 - Roadside Sign Panel Replacement
 - Weigh in Motion System (WIMS) replacement on I-8 (Pending)
 - Curb Ramp Replacement in the City of Calipatria and Niland
 - Enhanced Crosswalk Visibility
 - LED Lighting
- The unconstrained items included:
- Intelligent Transportation System (ITS) Enhancements
 - Bridge Rail Replacement
 - Bicycle Facility Enhancements
- Unconstrained items that require coordination and Cooperative Agreements with Imperial County Transportation Commission (ICTC) to determine recommended locations and funding. Mr. Baza stated that staff will schedule time to meet with staff in Caleipatria and Niland to identify priorities and funding opportunities.
- Pedestrian Shade Access installation
 - o Add pedestrian shade structures to serve the highest pedestrian usage along the corridor.
 - o Solar Shade Panels

- Provide shade for pedestrians and provide sustainable energy source for lighting.
- Located at north and south end of Niland Elementary School along SR-111
- Transit Stop Enhancements
 - Proposed features may include pedestrian shelter, bench, waste receptacle, and/or lighting.

VIII. NEXT MEETING DATE AND PLACE

The next meeting of the **Management Committee** is scheduled for **January 13, 2021** at the **ICTC Offices and via Zoom Meeting.**

IX. ADJOURNMENT

A. Meeting adjourned at 11:50 a.m. ([Wells/Piedra](#))



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TECHNICAL ADVISORY COMMITTEE **DRAFT** MINUTES

January 28, 2021

Present:

Gordon Gaste	City of Brawley
Abraham Campos	City of El Centro
Veronica Atondo	County of Imperial
Jesus Villegas	City of Imperial
Lili Falomir	City of Calexico
George Galvan	City of Calipatria
Adriana Amezcua	City of Holtville
Joel Hamby	City of Westmorland
Frank Fiorenza	IID

Others:

Virginia Mendoza	ICTC
Marlene Flores	ICTC
David Salgado	SCAG
Tyler Salcido	City of Brawley
Guillermo Sillas	City of Brawley
Manuel Cabrera	City of Brawley
Andres Miramontes	City of Brawley
Ana Gutierrez	City of Brawley
Christian Rodriguez	City of El Centro
Felix DeLeon	City of El Centro
Robert Ureña	County of Imperial
Adolfo Garcia	County of Imperial
Ben Guerrero	Caltrans

1. The meeting was called to order at 10:03 a.m. A quorum was present and introductions were made. There were no public comments made.
2. **Rotation of Chair and Vice-Chair Positions**

A motion was made by [Gordon Gaste](#) and seconded by [Veronica Atondo](#) to nominate the City of El Centro as the Chair for 2021, **Motion Carried.**

A motion was made by [George Galvan](#) and seconded by [Joel Hamby](#) to nominate the City of

Brawley as the Vice-Chair for 2021, **Motion Carried.**

3. A *motion* was made to adopt the minutes for December 17, 2020 ([Galvan/Gaste](#)) **Motion Carried.**
4. **Congestion Mitigation Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) 2021 Call for Project Guidelines**

Virginia Mendoza summarized both the Congestion Mitigation Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) 2021 Call for Project Guidelines with TAC members and made a recommendation for approval.

TAC members made recommendations to the Call for Projects Guidelines:

- A DRAFT resolution will be acceptable. Applicants may submit a draft resolution with each application; however, applicants must state the anticipated adoption date of the resolution.

Below is the Call for Project Schedule:

2021 CMAQ AND STBG CALL FOR PROJECTS SCHEDULE	
December 17, 2020 (Thursday)	ICTC Technical Advisory Committee (TAC) reviews preliminary draft 2021 CMAQ & STBG Guidelines
January 28, 2021 (Thursday)	TAC approves the draft 2021 CMAQ & STBG Guidelines
February 10, 2021 (Wednesday)	Management Committee reviews and approves the 2021 CMAQ & STBG Guidelines
February 24, 2021 (Wednesday)	ICTC reviews and approves the 2021 CMAQ & STBG Guidelines
February 26, 2021 (Friday)	Call for Projects begins. The Approved 2021 CMAQ & STBG Guidelines application document is posted on the ICTC website
April 15, 2021 (Thursday)	Call for Projects ends. Project applications deadline is 5:00 pm
April 19, 2021 (Monday)	Project selection process begins
April 30, 2021 (Friday)	Project selection process ends (ICTC staff generates list of projects recommended for funding)
May 27, 2021 (Thursday)	TAC reviews and approves project selection recommendations
June 9, 2021 (Wednesday)	Management Committee reviews and approves project selection recommendations
June 23, 2021 (Wednesday)	ICTC reviews and approves project selection recommendations

ICTC staff forwards this item to the Technical Advisory Committee for discussion and recommendation to submit to the ICTC Management Committee and Commission after public comments, if any:

1. Approve and adopt the Congestion Mitigation Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) 2021 Call for Projects Guidelines;
2. Direct staff to open a competitive call for projects for member agencies for

estimated STBG and CMAQ funds, effective February 26, 2021 through April 15, 2021;

3. Direct staff to convene an evaluation committee to score and rank the projects; and,
4. Direct staff to return with a list of recommended projects for approval by the Commission.

A *motion* was made to approve both Call for Projects Guidelines with recommended changes by the TAC Committee, ([Atondo/Falomir](#)) **Motion Carried**

5. ICTC Updates / Announcements

(Presented by ICTC Staff)

a. Transit Planning Updates:

- Virginia Mendoza provided a brief update on transit. ICTC is still operating under COVID-19 requirements. Free fares for Transit riders except for Medtrans.

b. Transportation Planning Updates:

- Beginning October 1, 2020 agencies are allowed to move forward with request for authorization (RFA) for CMAQ, STBG and ATP programmed in FY2020/2021. A list of projects is part of the agenda. ICTC updated the project list based on Federal and State projects that need to obligate in this current year. ICTC will revise the list and resend to all local agencies with updates and current status of projects.

6. SCAG Updates / Announcements *(Presented by David Salgado):*

- **Call for Collaboration request for proposals.** SCAG is pleased to announce the release of the Call for Collaboration request for proposals. In partnership with California Community Foundation (CCF), SCAG is launching the Call for Collaboration program that will fund the development of community-based policies and plans that help cities and counties reach the 6th Cycle Regional Housing Needs Assessment goals of 1.3 million new housing units across the six-county SCAG region.

The program will fund several grants for non-profit organizations through two opportunities:

- Partnership Programs: Awards of up to \$125,000 to support the expansion and/or implementation of existing plans, initiatives and/or partnerships that promote equitable growth strategies.
- Spark Grants: Smaller, capacity-building grants of around \$50,000 to seed new models of collaboration and engagement to support community-driven approaches and partnerships that promote equitable growth strategies.

The deadline to apply is Tuesday, February 23, 2021

- **SCAG Aerial Imagery Project 2020/21 Update:** After numerous meetings to discuss the potential for SCAG to facilitate a new Aerial Imagery Flyover Project, the County of Imperial has agreed to facilitate a public procurement process. This will allow for more funds to be applied to the project to support the procurement. SCAG has set aside \$250,000 for the project and will increase the support by \$50,000 for a total of \$300,000. The County of Imperial has received proposals and will be moving forward with recommendations to the Board of Supervisors this month.
- **2020 SCAG Sustainable Communities Program (SCP) Grant Program:** SCAG has approved the 2020 SCP grant guidelines. The FY 2020/2021 program will fund projects in the following areas that support and implement the policies and initiatives of the 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), Connect SoCal: Active Transportation & Safety; Housing and Sustainability; Smart Cities, Mobility Innovation & Transportation Demand Management; and Green Region.
- **2020 Local Early Action Planning Grant (LEAP) Program:** The Local Early Action

Planning (LEAP) grant program's deadline has been extended to January 31, 2021.

7. Cities and County Planning / Public Works Updates:

- Local agencies gave an update on their local projects in progress.

8. Caltrans Updates / Announcements (*Presented by: Ben Guerrero*):

- Caltrans provided general information on inactive projects. The next deadline to submit Inactive projects and Future inactive invoices is February 19, 2021.
- Federal Fiscal Year (FFY) 20/21 Requests for Authorization Obligations will be due by January 29, 2021.
- New Federal Lands Access Program (FLAP) Call for Projects. The "FLAPApplication" deadline will be May 27, 2021. The outreach plan includes webinars that assist tribal and local agencies, as well as Caltrans, with this process. (The final date is February 10, 2021, for all prospective applicants to hear the details during a live FHWA webcast.).
- New Invoice Form Required effective immediately. New version of LAPM Exhibit 5-A.
- Quality Assurance Program (QAP). A list with updated dates was provided. Ben Guerrero will update the list with updated dates.

9. General Discussion / New Business

- A brief update for next TAC meeting.
- Next TAC meeting will be on February 25, 2021 via Zoom

10. Meeting adjourned at 11:52 a.m.



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TECHNICAL ADVISORY COMMITTEE

DRAFT MINUTES

December 17, 2020

Present:

Gordon Gaste	City of Brawley
Abraham Campos	City of El Centro
Robert Ureña	County of Imperial
Jesus Villegas	City of Imperial
Carlos Romero	City of Calexico
George Galvan	City of Calipatria
Nick Wells	City of Holtville
Joel Hamby	City of Westmorland
Ismael Gomez	IID

Others:

Virginia Mendoza	ICTC
Marlene Flores	ICTC
Cristi Lerma	ICTC
David Salgado	SCAG
Tyler Salcido	City of Brawley
Guillermo Sillas	City of Brawley
Manuel Cabrera	City of Brawley
Andres Miramontes	City of Brawley
Ana Gutierrez	City of Brawley
Javier Luna	City of El Centro
Christian Rodriguez	City of El Centro
Felix DeLeon	City of El Centro
Catherine Gutierrez	City of El Centro
Ben Guerrero	Caltrans
Denise Marin	The Holt Group
Kelly Burnell	Kleinfelder Consultant

Due to the COVID-19 and Executive Order N-25-20, teleconferencing is recommended for the public, however measures will be taken to have access for those who wish to participate in person while still abiding by local, state and federal mandates. Following is teleconference information.

The meeting was called to order at 10:04 a.m. A quorum was present, and introductions were made. There were no public comments made.

1. Introductions
2. A *motion* was made to adopt the minutes for November 19, 2020 (**Hamby/Romero**) **Motion Carried.**

3. **SR-78/Glamis Multiuse Grade Separated Crossing Feasibility Study Update:** (*Presented by: Virginia Mendoza and Kelly Burnell from Kleinfelder*)

A presentation was provided by Kelly Burnell from Kleinfelder on the State Route 78/Glamis Multiuse Grade Separated Crossing Feasibility Study. The Imperial County Transportation Commission (ICTC) performed a feasibility study to identify and analyze design alternatives and locations for a safe multi-use grade separated crossing for off-highway vehicle (OHV) users across the Union Pacific Railroad (UPRR) rail line at SR 78 and the Imperial Sand Dunes Recreation Area (ISDRA), commonly known as Glamis. The Study area is within the eastern portion of the ISDRA and is approximately 3 miles long and 2,000 feet wide. It is bisected by the UPRR from SR 78 in the north to approximately Wash 15 in the south, encompassing Ted Kipf road to the east. Kelly Burnell provided a list of alternatives that were considered based on the type of grade-separated crossing, overcrossing and underpass, and the location of the crossing within the study area. These four alternatives represented the primary locations and included three overcrossing and one underpass.

After considering the programming needs, the following six alternatives were identified:

1. Alternative 78-Overcrossing is an overcrossing at SR 78 with an estimated cost of \$34.5 million.
2. Alternative 78 T-Overcrossing is an overcrossing southeast of SR 78 with an estimated cost of \$12 million.
3. Alternative 9.5-Underpass is an underpass between Wash 9 and 10 at an estimated cost of \$10.5 million.
4. Alternative 10-Overcrossing is an overcrossing at Wash 10 with an estimated cost of \$11.5 million.

ICTC staff request that the Technical Advisory Committee recommend and submit the attached Draft Study Report to the ICTC Management Committee for review and recommendations to forward onto the Commission to: Approve the State Route 78/Glamis Multiuse Grade Separated Crossing Feasibility Draft Study Report.

A *motion* was made to approve the State Route 78/Glamis Multiuse Grade Separated Crossing Feasibility Draft Study Report (**Galvan/ Luna**) **Motion Carried.**

4. **Congestion Mitigation Air Quality (CMAQ) & Surface Transportation Block Grant (STBG) 2021 Call for Projects DRAFT Guidelines** *Presented by: ICTC Staff*

Virginia Mendoza introduced the Call for Project Guidelines for the Congestion Mitigation Air Quality (CMAQ) & Surface Transportation Block Grant (STBG) Programs. The guidelines were introduced to TAC members as an information item and plan to request TAC members consideration for Action during the January TAC meeting.

Virginia Mendoza summarized the CMAQ and STBG funds that will be available for programming for the three-year period FFY 2021-2022- 2023/2024.

CMAQ Funding Estimates

FFY 21/22	FFY 22/23	FFY 23/24	TOTAL
\$1,741,362	\$1,740,810	\$1,740,248	\$5,222,420

STBG Funding Estimates

FFY 21/22	FFY 22/23	FFY 23/24	TOTAL
\$2,570,088	\$2,568,035	\$2,565,941	\$7,704,064

ICTC is currently working on releasing the 2021 Call for Projects Guidelines for both STBG and CMAQ Programs. Program Guidelines highlight eligible and ineligible project types as well as an overview of each program and submittal instructions. Funding availability is projected for FFY2021/2022 thru FFY 2023/2024. The Call for Projects is open to all cities and the County of Imperial. Below is the proposed Call for Projects implementation schedule for both CMAQ and STBG.

Virginia Mendoza mentioned how the new guidelines have been combined into one set. A sample application has been added to the guidelines to guide local agencies with the application.

A DRAFT copy of the Call for Project Guideline was provided to all TAC members. Virginia asked TAC members to review both program guidelines and to provide input to ICTC before the next TAC meeting on January 28, 2021.

5. **Adjournment:** Meeting adjourned at 11:07 a.m.



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SOCIAL SERVICES TRANSPORTATION ADVISORY COUNCIL

DRAFT MINUTES

January 6, 2021

Present

Voting Attendees:

Ted Ceasar	Consumer
Mike Hack	Consumer
Mitzi Perez	ARC-IV
Sarah Enz	Area Agency on Aging (AAA)
Dr. Kathleen Lang	California Health & Wellness
David Aguirre	CTSA-ICTC
Maricela Galarza	CTSA-ICTC
Gustavo Gomez	CTSA-ICTC

Non-Voting Attendees:

Cesar Sanchez	IVT/IVTAccess/IVTRide/IVTMedtrans
Helio Sanchez	IVT
Jose Guillen	IVT MedTrans
Karla Pacheco	IVT Access
Karla Aguilar	IVT Ride
Guillermo Calves	AECOM
Stuart Geltman	AECOM
Liz Sacctuni	Caltrans

1. Dr. Lang called the meeting to order at 10:05 a.m. **A quorum was present.** Introductions were made.
2. Minutes were reviewed for November 4, 2020. (Ceasar, Hack), **Motion carried.**
3. Minutes were reviewed for December 2, 2020. (Hack, Ceasar), **Motion carried.**
4. Fare Study Analysis:

Mr. Aguirre introduced AECOM consultants to present on the ongoing fare study. Mr. Calves presented study findings and recommendations (presentation attached). Mr. Calves clarified that all data and information is based on a pre-COVID pandemic situation.

- Dr. Lang expressed concern for students that may not use the U pass but still need to pay an additional college fee.
 - Mr. Calves agreed that is a concern, thus needs to be piloted.

Further outreach with IVC or other campuses is needed to proceed with implementation.

- Dr. Lang asked Mr. Calves what is the fee paid at UCSD.
 - Mr. Geltman stated it is not only dependent on the range of fees but also on how it is funded. In some universities it's a college fee other is parking revenue or can be a combination of the both. There is no set rule on how to fund the U-pass. The U-pass is a partnership between the transit agency and the University/College, often driven by the University/College. It would be often voted through a student council or union. The fee range could be seen as low as \$20 to \$120. It all depends if it will be solely funded by the students or if there will be other funding contributions connected to it.
 - Mr. Calves added that the UCSD current fee is at \$52 per student, per quarter. The student could utilize the whole San Diego transit system. Would expect the IV transit fee not to be as high. Given the Valley's geography, it only makes sense to have all routes included in the pass.
 - Mr. Ceasar added that there already fees in universities/colleges that students pay and may never use. For example, at IVC, all students pay a health center fee, but not all students utilize it. Nevertheless, they all have access to it and it's available. There was a lot of controversy on the fee, but now it would be difficult to not have the Health Center available it become such an institution. There would be initial resistance but it's a great idea and would be helpful to students.
 - Dr. Lang asked for the current IVC parking fee is.
 - Mr. Calves stated that IVC charges \$25 for a semester and \$15 for motorcycles.
 - Mr. Aguirre stated that there has been a preliminary discussion with IVC on potential U pass but still has a long way to go before its implementation. As it pertains to the recommendations on the fare increase, there are no plans for implementing an increase. As for other recommendations such as mobile ticketing, other payment methods ICTC will continue to explore those options.
- Ms. Enz wanted to clarify that ICTC will consider the mobile ticketing options.
 - ICTC previously has discussed with mobile ticketing providers what it would look like. The potential uses for mobile ticketing would be IVC students. If it is potentially implemented ICTC wants to ensure we can service IVC to the best of our ability. Discussions on mobile ticketing are still ongoing.
 - Ms. Enz stated there was a couple of instances that individual tickets were needed for clients. AAA has the booklets, but only need one or two. Ms. Enz asked if mobile ticketing would allow a third party to purchase tickets.
 - Mr. Aguirre stated that is one of the concepts that is being looked at. That individuals (third parties) to purchase and be able to distribute. If mobile ticketing will be implemented, ICTC will ensure this function is available and operating properly.
- Mr. Hack asked if the paper tickets will be still available.

- Mr. Aguirre clarified that there is no intent to remove the options of paper tickets or using cash. The purpose is to expand on more options for passengers.

5. CTSA Reports:

Mr. Aguirre had the following updates:

- ICTC is working on a variety of projects, the fare analysis is towards the end.
- The Coordinated Plan is ongoing that assesses transit needs in the Imperial Valley.
- Software and hardware upgrades are towards the end, in the next month or so the AVL mobile app will be implemented to help passengers with the location of the buses.
- ICTC is still available remotely. There have been no issues with the remote approach, passengers are still eligible to register or apply for services.

Ms. Galarza had the following updates:

- In December, there were only two certifications. Holidays and the new stay home order may affect that.
- Mobility staff is taking the opportunity to attend training on effective post-COVID outreach approaches. The new vaccination should be the initiative on when to begin to promote safety for our passengers to utilize the services.

Mr. Gomez had the following updates:

- The updated MedTrans brochure will be out soon ready to be distributed to any agencies interested, we are open to various methods to distribute (e.g., via mail, drop off, etc.)
- Remote sign-ups are still conducted for IVT Ride.

6. FY 2021-22 Master Needs List:

- Mr. Aguirre presented the Master Needs List. ICTC encourages SSTAC member feedback to prioritize needs that are not met yet.
 - Dr. Lang asked to share the timeline for the UTN process for SSTAC members.
 - Mr. Aguirre stated that the timeline falls during the February & March timeframe. Last year it fell during the March & April timeframe which is fine. The purpose is to complete the UTN process before the next fiscal year budget is proposed, June. This year ICTC is looking at the March & April timeframe, the approach towards the hearing and feedback will be different.
- Mr. Aguirre mentioned that item 11 is ongoing, it has been difficult since the property is privately owned. ICTC is looking at the opportunity to serve the area, once the opportunity becomes available it will be implemented. It will be looked at post-pandemic.
 - Mr. Hack on the status for the El Centro Library stop.
 - Mr. Aguirre stated that the City of El Centro has a proposed project that will help facilitate the bus stop enhancement.
 - Dr. Lang added that the project conceptual drawing conveys a nice bus stop.
 - ICTC hopes that it will be part of the project and if not will continue to advocate for a bus stop.

After discussion, STACC members requested to add mobile ticketing as number 12 on the Master Needs List. Dr. Lang called a motion to approve. (Cesar, Hack) **Motion Carried.**

- Adoption of list

UTN Support Letter:

- After discussion, SSTAC members requested some amendments to the UTN Support letters, they are as follows;
 - ✓ Under the general comments section for fiscal year 20-21, item number one will delete Imperial. The imperial transfer terminal is completed. Callexico is an ongoing process.
 - ✓ Under the priorities section, add mobile ticketing as number two, move other items down the list.

Dr. Lang called a motion to approve all amendments to the letter. ([Cesar, Hack](#)) **Motion Carried.**

- Adoption of letter

7. Transit Operator Updates:

IV Transit; Mr. H. Sanchez had the following updates;

- In December the service has been slow.
 - Mr. Aguirre stated that ridership started to pick up before the recent shutdown, but the shutdown decreased the numbers again. Services are still available.

IVT Access; Ms. Pacheco had the following updates;

- In December, the service has been slow.

IVT Ride; Ms. Aguilar had the following updates;

- In December, the service has been slow.

IVT MedTrans; Mr. Guillen had the following updates;

- In December, the service has been slow.

8. General Discussion

- Ms. Galarza announced that Ms. Blankenship retired, who was Vice-Chair for SSTAC. There was a name change to our Vice-Chair position, Sarah Enz, the acting Area Agency on Aging Director. To clarify that since the agency is the one that represents at SSTAC there is no need for a motion to approve.

9. Adjournment

- The meeting adjourned at 11:17 a.m. ([Cesar, Hack](#)), **Motion Carried.**
- The next meeting will be held on Wednesday, February 3, 2021, at the Imperial County Transportation Commission Office, 1503 N. Imperial Ave., Suite 104, El Centro, CA 92243.



1503 N. IMPERIAL AVE., SUITE 104
EL CENTRO, CA 92243-2875
PHONE: (760) 592-4494
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SOCIAL SERVICES TRANSPORTATION ADVISORY COUNCIL

DRAFT MINUTES

February 3, 2021

Present

Voting Attendees:

Ted Ceasar	Consumer
Mitzi Perez	ARC-IV
Karen Teran	Access to Independence
Dr. Kathleen Lang	California Health & Wellness
Michelle Soto	California Children's Services
David Aguirre	CTSA-ICTC
Maricela Galarza	CTSA-ICTC
Gustavo Gomez	CTSA-ICTC

Non-Voting Attendees:

Cesar Sanchez	IVT/IVTAccess/IVTRide/IVTMedtrans
Helio Sanchez	IVT
Jose Guillen	IVT MedTrans
Karla Pacheco	IVT Access
Karla Aguilar	IVT Ride
Kathy Chambers	Moore & Associates Inc.
Jim Moore	Moore & Associates Inc.
Liz Santucci	Caltrans
Kitty Gay	Imperial County Public Health

1. Dr. Lang called the meeting to order at 10:04 a.m. **A quorum was present.** Introductions were made.
2. Minutes were reviewed for January 6, 2021. (Ceasar, Perez), **Motion carried.**
3. Coordinated Plan:

Mr. Moore conducted a presentation (attached) on the purpose and process of the Coordinated Plan. Mr. Moore conducted a stakeholder roundtable with members present.

- Mr. Moore mentioned that a survey was shared previously with members via email. Some organizations have already completed and submitted the survey. Various agencies are still pending to complete the survey. The link to the survey is still active.
 - Dr. Lang asked about the outreach approach of the survey.
 - Mr. Moore stated that the survey was mailed out to a variety of agencies which are mentioned in the previous coordinated plan

and also agencies mentioned by ICTC staff. 10-12 days later another form of contact was made by email. A third email blast was sent to SSTAC members to request the completion of the survey. Mr. Moore opens up an opportunity for members to provide additional approaches to sharing the survey.

- Dr. Lang asked about the timeframe where the survey will remain open to completion.
- Mr. Moore stated that the survey will remain open for a couple of weeks more.
- Dr. Lang opened the item up for discussion.
 - Dr. Lang asked if the 4 recommendations were still possible to be implemented.
 - Mr. Aguirre stated that ICTC is always open to pursuing any recommendation to make transit service better. ICTC is always looking at opportunities to implement.
 - Mr. Moore mentioned that any other suggested outreach approach is appreciated.
 - Dr. Lang suggested that nonprofit organizations, chambers of commerce, and schools have large distribution lists. Dr. Lang mentioned that she can make the connection with the Chamber of Commerce, covering businesses and individuals.

4. CTSA Reports:

Mr. Gomez had the following updates:

- Continuing to conduct IVT Ride sign-ups remotely, averaging 3-4 weekly.
- A decrease of ADA certifications during December and January.
- Staff is still open to presentations via zoom to agencies or individuals.
- Staff is always available for questions.

Mr. Aguirre had the following updates:

- ICTC continues to be available remotely to the public during normal hours for any clients.
- ICTC continues to work on several ongoing projects, some are at the finalizing stage.
- ICTC is pursuing a couple of grant opportunities for some projects proposed in hopes to pursue them.

5. Transit Operator 2nd Quarter Reports:

IV Transit; Mr. H. Sanchez presented 2nd Quarter Report (attached);

- COVID protocols are still implemented and followed. There are no issues with compliance with passengers or staff.
- More services are ready to be provided as soon as demand picks up.

IVT Access; Ms. Pacheco presented 2nd Quarter Report (attached);

- The numbers are consistent. Passenger count begins to decrease in November and December which is expected. December is always a slow month even pre COVID situation.
- Still running Saturday schedule.
- There are no issues with the service.
- COVID procedures are still followed.
- January passenger count seems to be increasing.

IVT Ride; Ms. Aguilar presented 2nd Quarter Report (attached);

- In December, the passenger count dropped for the service.

- Service to Coachella and Brawley continues to be provided.
 - Ms. Gay mentioned that COVID cases were high during December and it may have impacted the service demand.

IVT MedTrans; Mr. Guillen presented the 2nd Quarter Report (attached);

- Continue to send buses by demand, either 7 am or 10 am, but both are available to provide service as demand picks up.
- Medical Babies donated 50 boxes of diapers to donate to the Imperial Valley Food Bank.
 - Ms. Gay asked about the approach that was taken when transferring the boxes safely.
 - Mr. Guillen mentioned that they are stocked at a certain angle to prevent movement during driving. They are placed in the back in the wheelchair compartment, especially when there are no wheelchairs during the time. Safety measures are taken to ensure the safety of the passengers and driver.
 - Ms. Gay expressed appreciation and gratitude for coordinating to help the community in any way possible.
- COVID protocols are still implemented and followed.
- Coordinating with ICTC staff to increase demand by speaking with medical facilities and provide brochures.
- San Diego medical facilities are limiting the number of patients seen which can explain the decrease in service demand.

6. General Discussion

- Dr. Lang asked if there are any financial opportunities to make up for the shortfall that COVID has caused.
 - Mr. Aguirre stated that the COVID pandemic quickly affected the service demand, from an 80-90% drop. Services were adjusted to respond to the demand, if it does pick up we are ready to respond to it by implementing regular services. ICTC qualified for a CARE grant that assisted to maintain services and other grant opportunities were successfully obtained to help with maintaining services and provide free fares. The adjustments were made to assist maintain services.
- Dr. Lang asked if there were layoffs due to the pandemic.
 - Mr. Aguirre stated that furloughs were given to drivers due to the service adjustments, but once demand picks up and service adjusts to normal the drivers have the opportunity to return.

7. Adjournment

- The meeting adjourned at 10:52 a.m. ([Lang](#)), **Motion Carried.**
- The next meeting will be held on Wednesday, March 3, 2021, at the Imperial County Transportation Commission Office, 1503 N. Imperial Ave., Suite 104, El Centro, CA 92243.

IV. CONSENT CALENDAR

IV. CONSENT CALENDAR

C. LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP) APPLICATION FOR FY 2020-21 FUNDS

1. Authorize the ICTC Chairperson to sign the attached resolution.
2. Authorization for the execution of the LCTOP project : Free fare program for eligible ICTC administered transit services.



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March 19, 2021

Cheryl Viegas-Walker, Chairperson
Imperial County Transportation Commission
1503 N. Imperial Ave., Suite 104
El Centro, CA 92243

SUBJECT: Low Carbon Transit Operations Program (LCTOP) Application for FY 2020-21 Funds

Dear Commission Members:

Imperial County Transportation Commission (ICTC) proposes to submit an application for use of Low Carbon Transit Operations Program (LCTOP) funds in Fiscal Year (FY) 2020-21. The LCTOP is one of several programs that are part of the Transit, Affordable Housing, and Sustainable Communities Program established by the California Legislature in 2014 by Senate Bill 862 (SB 862). The LCTOP was created to provide operating and capital assistance for transit agencies to reduce greenhouse gas (GHG) emissions and improve mobility, with a priority on serving disadvantaged communities. Approved projects in LCTOP will support the following:

1. Expenditures that directly enhance or expand transit service by supporting new or expanded bus or rail services, new or expanded water-borne transit, or expanded intermodal transit facilities, and may include equipment acquisition, fueling, maintenance, and other costs to operate those services or facilities.
2. Operational expenditures that increase transit mode share including free fare programs.
3. Expenditures related to the purchase of zero-emission buses, including electric buses, and the installation of the necessary equipment and infrastructure to operate and support zero-emission buses.

Per the State Controller's Office, ICTC has an eligible allocation in FY 2020-21 in the amount of \$212,046. Following the LCTOP guidelines, ICTC staff recommends submitting an application requesting the use of funds from FY 2020-21 towards a free fare program to be utilized on eligible ICTC administered transportation modes.

**CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND,
IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL**

The ICTC Management Committee will meet on March 24, 2021 and it is anticipated that they will forward this item to the Commission for review and approval after receipt of public comment, if any:

1. Authorize the ICTC Chairperson to sign the attached resolution;
2. Authorization for the Execution of the LCTOP Project: Free Fare Program for eligible ICTC administered transit services.

Sincerely,



MARK BAZA
Executive Director

Attachments

MB/da

RESOLUTION #

**AUTHORIZATION FOR THE EXECUTION OF THE
CERTIFICATIONS AND ASSURANCES AND AUTHORIZED AGENT FORMS
FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP)
FOR THE FOLLOWING PROJECT:
FREE FARES PROGRAM:
\$212,046**

WHEREAS, the Imperial County Transportation Commission is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, the Imperial County Transportation Commission wishes to delegate authorization to execute these documents and any amendments thereto to Mark Baza, Executive Director.

WHEREAS, the Imperial County Transportation Commission wishes to implement the following LCTOP project(s) listed above,

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Imperial County Transportation Commission that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances and the Authorized Agent documents and applicable statutes, regulations and guidelines for all LCTOP funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that Mark Baza, Executive Director, be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Imperial County Transportation Commission that it hereby authorizes the submittal of the following project nomination(s) and allocation request(s) to the Department in FY 2020-21 for LCTOP funds as follows:

Project Name: Free Fares Program

Amount of LCTOP funds requested (including LCTOP Interest): \$212,046

Short description of project: Provide Free Fares to passengers across multiple services

Benefit to a Priority Populations: The project is located within multiple SB 535 Disadvantaged Communities and AB 1550 Low-Income Communities

PASSED AND ADOPTED at a regular meeting of the Imperial County Transportation Commission held on March 24, 2021.

By: _____
Chairman

ATTEST:

By: _____

CRISTI LERMA
Secretary to the Commission

V. REPORTS **BEBOBTL2**

- A. ICTC EXECUTIVE DIRECTOR REPORT
- B. SOUTHERN CALIFORNIA ASSOCIATION OF
GOVERNMENTS
- C. CALTRANS - DISTRICT 11
- D. COMMISSION MEMBER REPORTS (IF ANY)



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Memorandum

Date: March 20, 2021
To: ICTC Management Committee and Commission Members
From: Mark Baza, Executive Director
Re: Executive Director's Report

The following is a summary of the Executive Director's Report for the ICTC Management and Commission Meetings on March 24, 2021.

- 1) **Imperial Mexicali Binational Alliance Meeting:** *The last IMBA meeting was held March 11, 2021. The meeting included updates on the Calexico East Port of Entry/Mexicali II bridge Widening Project by ICTC and a detailed presentation on the Calexico West Port of Entry / Mexicali I Mexico Roadway/Bridge Improvements from Secretaria de Infraestructura, Desarrollo Urbano y Reordenacion Territorial (SIDURT). Daniel Hernandez, Senior Resident Engineer from Caltrans provided a brief illustration of the work that will take place in Calexico in April. Daniel Hernandez presented on the State Route 98 Project from Ollie Avenue to Rockwood Avenue. We also, had the pleasure of having Jose Marquez from Caltrans who provided a detailed presentation on the California-Baja 2021 Border Master Plan that was finalized this past month. Plus, economic development updates from IVEDC and Mexicali counterparts. The next IMBA meeting is scheduled for May 13, 2021.*
- 2) **SR-78/Glamis Multiuse Grade Separated Crossing Feasibility Study:** *The Study was completed and adopted by the Commission on January 27, 2021. A final study is on the ICTC website at <http://www.imperialctc.org/sr-78-glamis-crossing/>.*
- 3) **Calexico East Port of Entry Bridge Widening Project:** *The Project proposes to widen the bridge over the All-American Canal at the U.S./Mexico border approximately 0.7 miles south of State Route (SR) 7. The project proposes to widen the existing structure by adding four-lanes: Two New Northbound Auto Lanes and Two New Northbound Commercial Vehicle Lanes. In May 2018, Caltrans and ICTC received \$3,000,000 from the California Transportation Commission and the Trade Corridor Enhancement Program (TCEP) to complete the Project Approval and Environmental Document (PA/ED) for the project. In June 2018, Caltrans completed a Project Initiation Document (PID). In Fall of 2018, the PA/ED phase was initiated by Caltrans, technical studies for the National Environment Policy Act (NEPA) document under Caltrans as the NEPA lead are in progress and is scheduled for completion in May 2020. In December 2018, was awarded \$20 million under the U.S. Department of Transportation's BUILD discretionary grant program to complete the Design-Build construction phase. ICTC staff is completing the procurement process and plans to present an award action to Management and Commission during the March 24, 2021 meetings.*
- 4) **Imperial Valley Transit (IVT) FREE FARES PROGRAM:** *On August 7, 2020, the Imperial County Transportation Commission (ICTC) announced the implementation of a **Free Fares Program** for various Imperial Valley Transit (IVT) services. Eligible services include IVT Fixed Route, IVT Circulators (Blue, Green and Gold Lines), IVT ACCESS and IVT RIDE (El Centro, Imperial, Heber, Brawley, Calexico, Westshores). All passengers are eligible to benefit from the Free Fares Program. The fares are subsidized by a State of*

California grant and fare contributions to IVT RIDE passengers by the County of Imperial's Area Agency for the Aging (AAA). *The Free Fares Program will remain in effect while the grant funds are available. All regular service eligibility requirements and restrictions remain in effect.*

- 5) **Calexico On-Demand Transit** is a proposed demonstration of demand-responsive transit service, dynamically-routed microtransit service with plug-in hybrid electric vehicles (PHEV) to bridge transportation gaps and provide connectivity between services and locations across the City of Calexico, California. Covering 7.5 square miles (including 1.19 square miles outside of the 535 zone), instead of a fixed route service within the City, the service will provide curb-to-curb pick-up and drop-off and will feature:
- Three 6-passenger PHEVs
 - A Custom-branded passenger application for app-based ride hailing;
 - Drivers, vehicles, and full operations, including customer service;
 - Two Level 2 chargers to be located at the Imperial County Transportation Commission Bus Yard in El Centro (SB 535 disadvantaged zone); and
 - Seamless integration with Imperial County Transportation Commission's fixed route system.

ICTC has submitted a grant application for \$1 Million that will cover costs of vehicles and operations for two-years. The grant requires ICTC to be committed to fund a third year at \$500,000. The additional amount will be covered with other state funds available to ICTC. ICTC expects to receive announcement of award in April 2021.

- 6) **Potential Bus Stop in Calipatria:** ICTC has evaluated all of its fixed route service routes to attempt to provide service to the east side of Calipatria. Staff conducted time trials as well utilized several types of buses to verify buses would not have issues with other existing stops within proposed routes. Potential stops for the area include a stop along Commercial Avenue and potentially another stop near Alexandria Street. Staff is proposing to utilize its IVC Express route to potentially service the area. Final location and infrastructure associated with the potential bus stop(s) is pending discussion with the city of Calipatria staff.
- 7) **State Route 86 (Northbound) Border Patrol Checkpoint:** State Route 86 (Northbound) Border Patrol Checkpoint: In August 2017 following a year of coordination, Caltrans, the County of Imperial and ICTC met with CBP management and operations staff achieved consensus for a new conceptual alternative prepared by Caltrans. The LTA Board met on September 27, 2017, staff presented the Board with a fund request for \$1.3 million from the 5% Regional Highway Set-Aside from the Measure D allocations. A Consultant Agreement with AECOM for design and construction engineering was approved by the LTA on February 28, 2018. Following our ICTC Board meeting in late September 2020, ICTC has initiated a traffic study as required by Caltrans. Design work has been delayed due to Border Patrol's concern related to their ability to provide additional funding necessary to meet their operational requirements. Discussions have been on-going through to this week of March 15, 2021. On Wednesday, March 17th ICTC received confirmation from Border Patrol Headquarters in Washington D.C. that they wish to proceed with the original Canopy Design that is similar to Interstate 8 Pine Valley Checkpoint.

As discussed and confirmed with Border Patrol, ICTC will only provide the remaining funds we have available of approximately \$1 million to complete the traffic study, 100% design plans, and construction of the canopy, lighting related to the canopy, and traffic related improvements required by Caltrans. Border Patrol has committed paying for all other construction related costs and Border Patrol will lead the construction contract.

- 8) **I-8 / Imperial Avenue Interchange Reconstruction:** Caltrans and construction team have been meeting with City of El Centro and ICTC to discuss details of construction phases and the public information campaign for both the Interchange Project and the Imperial Avenue Extension South Project. *Stage 1 of construction began on Monday, May 6, 2020. During the extended closure, motorists on eastbound I-8 will be detoured along 4th Street/State Route 86 (SR-86) located east of Imperial Avenue. On July 23rd closure of the I-8 was needed to demolish and remove the existing bridge. Crews have completed the demolition of the existing bridge at the I-8/Imperial Avenue Interchange. There were no reported incidents and detoured traffic was flowing with no major*

delays. Over the next month, the community will see crews performing general earthwork operations. There will be construction equipment, noise (including OSHA required backup alarms), dust and some minor traffic control. Stage 2 work on the northern portion of I-8 is anticipated to take four to six months to complete and could begin as early as December. During Stage 2, all I-8/Imperial Avenue on- and off- ramps will be fully closed. The interchange is expected to open to traffic by the end of 2022 with project completion by mid-2023.

- 9) **State Route 98 Widening from Ollie to Rockwood:** As part of the Calexico West POE Expansion project, SR-98 and Cesar Chavez Boulevard were widened and improved to serve the expansion to the west. Caltrans' SR-98 work between VV Williams and Ollie Avenue was completed in March 2018, and the Cesar Chavez Blvd. Widening was completed in October 2019. Caltrans has completed the design and right of way phase for SR-98 Widening between Rockwood Avenue and Ollie Avenue. On June 24, 2020, CTC authorized construction funding. The total project cost is estimated at \$7 million using a combination of 2016 Earmark Repurposing, Demonstration, Traffic Congestion Relief, ICTC and local funds. *The construction start date is scheduled for mid-April with completion scheduled for April 2022.*
- 10) **FY 2019 Public Transit Fare Analysis:** *The final draft of the analysis was presented at the January 2021 meeting(s). The study is currently in the final public comment period. A pre-recorded bilingual presentation will be posted on the ICTC website in the upcoming weeks at: <http://www.imperialctc.org/publications-&-reports/transit-and-non-motorized/>*
- 11) **Funding for Phase II of the Calexico West Port of Entry:** As previously noted, Congress authorized \$98 million for Phase 1. The U.S. General Services Administration (GSA) began construction for Phase 1 in December 2015 with completion now scheduled for July 2018. Phase 2A was awarded in the amount of \$191million and will include six additional northbound privately-owned vehicle (POV) inspection lanes, permanent southbound POV inspection, expanded secondary inspection and adding a pre-primary canopy, new administration building, and employee parking structure. *Funding for phase 2B is in the President's Budget Proposal in the amount of \$99.7million. Work for phase 2B will include demolition of the old port building and construction of the new pedestrian building. The total estimated cost for phases 2A plus 2B are \$276million. According to GSA Phase 2A is anticipated to be completed Spring 2023.*
- 12) **Calexico Intermodal Transportation Center (ITC):** A new Intermodal Transportation Center in the City of Calexico has been part of ICTC's long range transit planning. The new Calexico ITC will serve as a regional mobility hub that will accommodate bus bays for Imperial Valley Transit in addition to the City of Calexico's private transit operators, taxis and farm labor buses. ICTC received a Congestion Mitigation and Air Quality federal program fund to complete the environmental and design plans of the new Calexico ITC. ICTC staff is in the process of completing the contract award for a consultant firm that will complete the environmental and design phase. Currently, ICTC staff is completing the Caltrans award review process with multiple Caltrans' departments. The ICTC Board adopted the agreement with Psomas on September 26, 2018. *Environmental phase is in progress with consultant team and agency partners, including the City of Calexico, Caltrans and ICTC. The environmental phase is in progress including studies. Next steps: Begin design and property (Right of Way) acquisition process.*
- 13) **Imperial County Regional Climate Action Plan:** After the kick-off meeting on June 28, 2019, ICTC established Project Management Procedures and Communication Protocols with the Consultant as well as reviewing the Scope of Work and Schedule. The consultant is working on the draft CAP and finalizing the inventory, forecasts, and targets; anticipating a Final Draft of the CAP by Mid-March, 2021. ICTC member agencies' will have the opportunity to review the Final Draft CAP with a goal of having comments back by March 31, 2021. As we move forward with public comments, ICTC will post the CAP on their website with the intent to get feedback and comments from the public. A final CAP will be presented to local jurisdictions Council/Board for review and approval for the months of May or June 2021.
- 14) **State and Federal funding Obligations:** Projects programmed in programmed in Federal Fiscal Year (FFY) 2019/2020 were fully obligated according to Caltrans Local Assistance. Beginning October 1, 2020, agencies can move forward with request for authorization (RFA) for Congestion Mitigation Air Quality (CMAQ), Surface Transportation Block Grant program (STBG) programmed in FFY 2020/2021. Other state funding also included

in the Federal Transportation Improvement Program (FTIP) include the Active Transportation Program (ATP). *See complete project list attached.*

- 15) **2018 Trade Corridor Enhancement Program:** The Trade Corridor Enhancement Program (TCEP), created by Senate Bill (SB) 1 (Beall, Chapter 5, Statutes of 2017), provides approximately \$300 million annually for infrastructure improvements on federally designated Trade Corridors of National and Regional Significance, on the Primary Freight Network, and along other corridors that have a high volume of freight movement. ICTC in partnership with Caltrans and the San Diego Association of Governments (SANDAG) were successful in receiving TCEP funds for Advanced Technology Corridors at the California-Mexico Ports of Entry (POE). The goal project is to implement Intelligent Transportation System (ITS) strategies that will improve border travel delays. Some of the ITS strategies will include Bluetooth and Wi-Fi readers to help track vehicle delays, as well as implement changeable message signs on State Routes to inform border travelers of POE delays. Caltrans will serve as the implementing agency of this project and has an estimated completion date of early 2020. *Caltrans has initiated the environmental phase and preliminary design of the project. TCEP funds will be used in collaboration with the BUILD grant award for the design and construction phases.*
- 16) **State Legislation for Transportation Funding – SB 1 Road Maintenance and Rehabilitation Account (RMRA):** \$1.5 Billion annually will go to cities and counties for local road improvements. The following are projected annual revenues of RMRA for the FY 20/21. This list of projects for all cities and the county can also be found on the ICTC website at: <http://www.imperialctc.org/senate-bill-1/>

Below are the projected annual revenues for FY 2020/2021. All Imperial County cities and the county are required to submit their list of projects in order to be eligible for funding distribution.

Agency	RMRA Amount FY 2020-2021
Brawley	\$469,831
Calexico	\$725,242
Calipatria	\$132,423
El Centro	\$794,848
Holtville	\$116,508
Imperial	\$342,513
Westmorland	\$42,296
County of Imperial	\$8,185,798
TOTAL	\$10,809,459*

**Estimate source is from the California League of Cities dated May 15, 2020*
<http://californiacityfinance.com/LSR2005.pdf>

- 17) **California-Baja California Binational Region:** A Fresh Look at Impacts of Border Delays: Building upon previous Caltrans, SANDAG, and ICTC studies, this project will refine the economic models developed to assess economic impacts of delays at the land ports of entry (POEs) between the San Diego and Imperial Counties region and Baja California, Mexico, on the border region economies. It will also estimate greenhouse gas (GHG) emissions of passenger and commercial vehicles due to northbound and southbound border delays at the six California POEs and propose strategies to reduce GHG emissions at the border region. Lastly, extensive outreach to government agencies, local border communities, and private sector stakeholders was conducted. *A final report was completed in the fall of 2020.*
- 18) **State Legislation for Transportation Funding – SB 1 2018 Local Partnership Program (LPP):** Local Partnership Program is comprised of formulaic program and competitive programs. In FY2017/2018 total amount available statewide is \$200M and distribution is 50/50 for both formulaic and competitive programs. The formulaic program share distributions for the Local Partnership Program were presented at the CTC meeting in December 6-7, 2017. The Imperial County received \$1,632 of Local Partnership Formulaic Program (LPFP) funds in Cycle 1 (\$1,076) and Cycle 2 (\$556) for a total of \$1,632.

List of projects for Imperial County:

Local Partnership Program (LPP) Programing for FY19/20						
Agency	Project Name	LPP Formulaic Funds	Local Match	Total Cost	Project Implementation Fiscal Year	Proposed CTC Programming Date
Brawley	2020 Legion Street Improvements	\$ 209,000	\$ 209,000	\$ 418,000	2019-2020	1/30/2020
Calexico	Scaroni Road Improvements	\$ 305,000	\$ 550,000	\$ 855,000	2019-2020	5/16/2019
Calipatria	Calipatria Date Street Sidewalk Improvement Project	\$ 41,000	\$ 41,000	\$ 82,000	2019-2020	5/16/2019
County	Overlay of Picacho Road from Winterhaven Road to Quechan Drive	\$ 523,000	\$ 523,000	\$ 1,046,000	2019-2020	5/16/2019
Imperial	Aten/Clark Road Improvements	\$ 154,000	\$ 327,000	\$ 481,000	2019-2020	5/16/2019

Local Partnership Program (LPP) Programing for FY20/21						
Agency	Project Name	LPP Formulaic Funds	Local Match	Total Cost	Project Implementation Fiscal Year	Proposed CTC Programming Date
Holtville	Orchard Road/Cedar Avenue	\$ 60,000	\$ 60,000	\$ 120,000	2020-2021	Jun-20
El Centro	Dogwood Road from Villa Road to Commercial Avenue	\$ 339,000	\$ 339,000	\$ 678,000	2020-2021	Jun-20

The following is the link to the 2019 Local Partnership Program guidelines:

http://catc.ca.gov/programs/sb1/lpp/docs/062719+Amended_LPP%20Guidelines.pdf

19) Partnerships with IVEDC:

- a) **Southern Border Broadband Consortium (SBBC):** For FY 2020/2021. SBBC continues to work with local stakeholders to identify, prioritize and advance broadband infrastructure and improvement projects; facilitate and promote broadband education community wide using survey data; work with the Boys and Girls Club of IV and the Workforce Development Board to create Digital Literacy Centers throughout Imperial County; and develop a preferred scenario for 98% deployment in Imperial County and present to the California Advanced Service Fund and the CPUC in 2020. Recent updates to SBBC's role in the region include a partnership with local healthcare organizations including ECRMC, Pioneers Hospital and Alliance Healthcare to identify telemedicine broadband needs and funding opportunities in Imperial County; working with the California Emerging Technology Fund and the Inland Empire Regional Broadband Consortium as part of a SCAG project to identify transportation broadband strategies to reduce VMT and greenhouse emissions; and working with local internet services providers including AT&T to assist successful applications for funding opportunities with the CPUC in locations such as north County, central Imperial and the Imperial Business Park by end of July 2020.
- b) **The Brawley Transit Corridor Brownfield Assessment:** ICTC in partnership with IVEDC received a U.S. Environmental Protection Agency (EPA) Brownfields Communitywide Assessment Grant award of \$300,000 from the Environmental Protection Agency's Brownfields Assessment Program. This assessment will be focused along the transit circulator route within the 13-mile Imperial Valley Transit's (IVTs) Brawley

Gold Line Transit Route and the Brawley Transit Center that serves as the IVTs North Imperial County transfer terminal. The commercial corridors in the target assessment area include over 100 known commercial properties and suspected historical gas station sites with known or suspected underground tanks in the target area. ICTC will be the fiscal agent and has developed an MOU which will define roles and responsibilities (Audits, Administration and Project Management) or ICTC and IVEDC. SCS Engineers have initiated early Tasks that include the Quality Assurance Project Plan (QAPP) and project management plan as required by EPA.

- (1) **The Finnell Property** has 3 parcels. It received DTSC approval on March 8, 2019. Phase 1 and Phase 2 reports have been finalized and 3 underground storage tanks have been excavated and disposed of no further action is required.
- (2) **The Chai Property** has 2 parcels. It received DTSC approval on March 28, 2019. Phase 1 report completion occurred on October 15, 2019 and no further action is required.
- (3) **The Lesicka Property** has 2 parcels. It received DTSC approval on August 29, 2019 and Phase 1 and Phase 2 reports have been finalized and no further action is required.
- (4) **The Dek Property** has 1 parcel. It received DTSC approval on April 22, 2020. Phase 1 was improperly completed by a previous engineering firm. 95% of the re-development was completed when the contractor discovered concerning amounts of underground contamination on site. We stepped in and completed a phase 2 and we are currently assessing the situation while collecting additional soil samples and pending laboratory results.
- (5) **The Pioneers Property** has 3 parcels. It received DTSC approval on May 11, 2020. Phase 1's were completed on all parcels. 1 parcel which is the site of a former Chevron station closed on 1975 will require a phase 2. The Field Sampling Plan was approved and is underway.

PROJECT DESCRIPTION

- Canopy with 2 northbound Primary inspection lanes on existing SR 86
- 1 dedicated truck inspection lane to secondary inspections

SCHEDULE/COSTS

- Total Estimated Construction costs: \$3.1 Million
- Local Funding Committed: \$1.3 Million for Traffic Study, Design and Construction
- Border Patrol Funding Committed: \$2.3 million for Construction
- Complete Design and Environmental: July 2021
- Begin Construction: October 2021
- Complete Construction: April 2022

State Route 86 (Northbound) Border Patrol Checkpoint Expansion Project

- **Project Goals:**
 - Improve security and enforcement
 - Improve interregional trade and travel
 - Reduce congestion and delays
 - Provide safe operational space
 - Provide 2 primary inspection lanes with Canopy
- **Average Annual Daily Traffic**
6,600 Vehicles
- **36% Truck Traffic**
- **Existing Checkpoint:**
1 primary lane for cars and trucks



CANOPY DESIGN CONCEPT

STATE ROUTE 86 U.S. BORDER CHECKPOINT IMPROVEMENTS IMPERIAL VALLEY, CA

65% DESIGN - MARCH 29, 2019

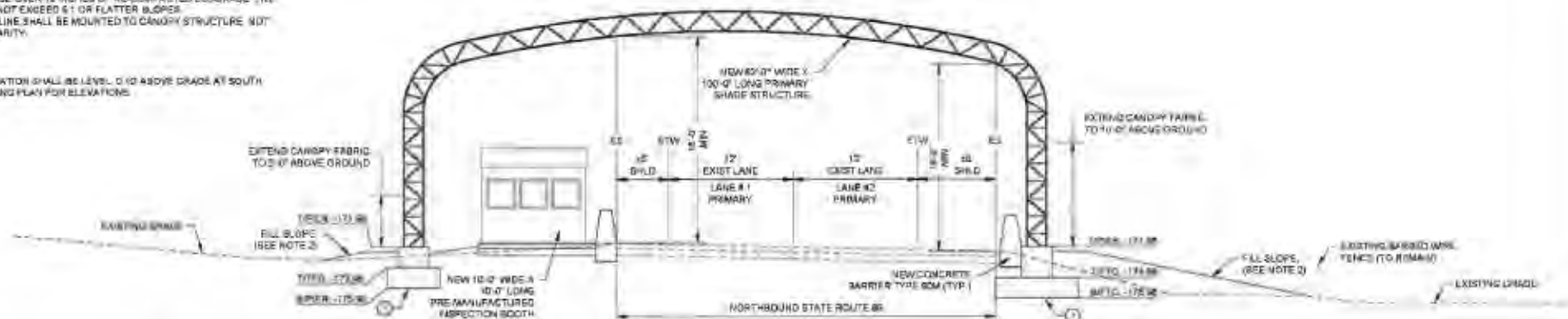


NOTES

1. A MINIMUM VERTICAL CLEARANCE OF 12' SHALL BE MAINTAINED FROM THE EDGE OF SHOULDER TO THE PRIMARY SHADE STRUCTURE. THE MINIMUM VERTICAL CLEARANCE SHALL INCLUDE ALL APPURTENANCES INCLUDING LIGHTS AND CONDUIT.
2. ALL FILL SLOPES SHALL CONSIST OF MINIMUM 8 INCHES OF CLASS 2 AGGREGATE BASE OVER 12 INCHES OF RE-COMPACTED SUBGRADE. FILL SLOPES SHALL NOT EXCEED 4:1 OR FLATTER SLOPES.
3. DOWN-WATER LINE SHALL BE MOUNTED TO CANOPY STRUCTURE. NOT SHOWN FOR CLARITY.

KEY NOTES

1. CANOPY FOUNDATION SHALL BE LEVEL 0 TO 450' GRADE AT SOUTH END. SEE GRADING PLAN FOR ELEVATIONS.



1 PRIMARY INSPECTION AREA CROSS SECTION

SPECIFICATIONS FOR TENSIONED FABRIC STRUCTURE

TENSIONED FABRIC STRUCTURE: APPROXIMATE SIZE AS SHOWN ON THE PLANS CONSISTING OF 30,000 PSI GALVANIZED TUBULAR STEEL FRAMEWORK WITH GALVANIZED COATING FOR RUST PROTECTION. HIGH STRENGTH VINYL FABRIC COVERING (OR EQUAL). EACH SHELTER SYSTEM WILL HAVE NO END PANELS. EACH END WILL BE OPEN. THE SHELTER SYSTEM MUST HAVE A RECTANGULAR SHAPE WITH SEMI VERTICAL WALLS AND A ROUND STYLE ARCH ROOF FOR FABRIC TENSIONING. THE CANOPY AND STRUCTURE SHALL BE PROVIDED BY THE SAME MANUFACTURER.

1. FABRIC SHOULD BE TREATED TO RESIST DEGRADATION BY ULTRAVIOLET LIGHT. BE FLAME-RETARDANT AND SELF-EXTINGUISHING IN ACCORDANCE WITH NFPA 701 LARGE AND SMALL SCALE TEST AND TEST METHOD 5003.
2. SHELTER MUST BE CAPABLE OF WITHSTANDING WIND LOADS OF 150 MPH. ONLY THE MANUFACTURER'S WARRANTY WILL BE ACCEPTED.
3. SHELTER MUST BE CAPABLE OF BEING ANCHORED TO CONCRETE FOUNDATIONS AS SHOWN ON THE PLANS.
4. THE FABRIC, FRAME, CANOPY STRUCTURE, ANCHORAGE, AND FABRIC ATTACHMENTS SHALL BE WARRANTED AGAINST DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF A MINIMUM OF TEN (10) YEARS FROM THE DATE OF INSTALLATION.
5. THE MANUFACTURER SHALL BE THE ORIGINAL FABRICATOR OF THE SHELTERS AND HAVE BEEN IN BUSINESS FOR MORE THAN 25 YEARS.

INCLUDE THE FOLLOWING:

1. GALVANIZED TUBULAR STEEL TRUSSES AND RIGID BRACING BETWEEN THE TRUSSES. DIAGONAL CABLE MAY ALSO BE REQUIRED.
2. FRAMING TO CONSIST OF 180° THREE (3) BRUSH TYPING. PRIMARY SHADE STRUCTURE TRUSS DEPTH SHALL BE 30 INCHES MAXIMUM. STRUCTURE SHALL HAVE TRUSSES ON 10 FOOT CENTER.
3. FRAMING MUST PROVIDE A CLEAR, OPEN WORKING AREA WITH NO INTERNAL BEAMS OR SUPPORT POSTS.
4. TENSION OF THE COVER MUST BE MAINTAINED IN THE VERTICAL AND HORIZONTAL DIRECTION UTILIZING A PULL BAR ON THE SIDES. THE COVER MUST OVERLAP THE FRONT AND REAR OF THE BUILDING WITH A CABLED FLAP.
5. SIDE WALLS.
 - a. THE PRIMARY SHADE STRUCTURE SHALL HAVE FABRIC DOWN TO 10 FEET ABOVE THE GROUND ON ONE SIDE AND TO 6 FEET ABOVE THE GROUND ON THE OTHER SIDE AS SHOWN ON THE PLANS.
6. THE MAIN COVER VINYL IS TO BE SAND TAN IN COLOR WITH 100% UV PROTECTION BY THE VINYL MANUFACTURER.

7. FABRIC SHALL BE ATTACHED ON EACH END OF THE SHELTER WITH A 1/4" DIA AIRCRAFT CABLE TENSIONED BY A LASHING WEDGE AT EACH END / ON EACH CORNER OF THE FRAMEWORK.
8. THE FABRIC AND FRAMEWORK SHALL BE CUSTOM MANUFACTURED FOR THE INTENDED STRUCTURE TO MINIMIZE FIELD MODIFICATIONS.
9. THE STRUCTURE MUST BE PROVIDED WITH ANCHORING.
10. ALL CONNECTIONS MUST USE GRADE 5 GALVANIZED PLATED BOLTS.
11. PLATE CONNECTIONS VIA A 305 BOLTS WITH LOCK WASHERS.
12. THE STRUCTURE CORROSION RESISTANCE IS TO BE ACHIEVED THROUGH A FLO-COAT PROCESS BEFORE FABRICATION.
13. ALL WELDED JOINTS ARE TO BE PAINTED AFTER FABRICATION WITH 87% ZINC CHROMATE PAINT TO RETARD RUSTING.
14. NO END PANELS (BOTH ENDS ARE TO BE OPEN).
15. TO VALIDATE THE WARRANTY MANUFACTURER TECHNICAL ASSISTANCE IS REQUIRED TO BE ON SITE UNTIL COMPLETION OF THE ERECTION OF THE SHELTER SYSTEMS.
16. THE FABRIC AND FRAMEWORK SHALL BE CUSTOM MANUFACTURED BY A US MANUFACTURER ONLY.
17. ATTACH 1" X 4" DIP TO CANOPY TRUSSES AT LOCATION SHOWN ON SHEET C-106 TO SUPPLY WATER TO HYDRANT NEAR PRIMARY INSPECTION BOOTH.

FABRIC SPECIFICATIONS

1. WEIGHT: 28 OZ PER SQ YD ± 10% VINYL MATERIAL.
2. TENSILE (CRAB 3100) WARP 235 LBS. FILL 50 LBS.
3. TEAR (TENSILE 5124) WARP 55 LBS. FILL 50 LBS.
4. CANOPY MATERIALS SHALL BE CLASS B RATED IN ACCORDANCE WITH NFPA LIFE SAFETY CODE NO. 101.
5. FLAME PASS NFPA 701 LG & SMALL SCALE, STATE OF CA, FIRE MARSHALL (METHOD 5003).
6. ADHESION 5 LBS 2 IN.
7. LOW TEMPERATURE -40°F.
8. HYDROSTATIC RESISTANCE (METHOD 5012) 500 PSI.
9. TENSILE BEFORE ABRASION (METHOD 3102) WARP 140 LBS. FILL 145 LBS.
10. TENSILE AFTER ABRASION (METHOD AFTER ABRASION) WARP 140 LBS. FILL 135 LBS.

LIGHTING SPECIFICATIONS

LIGHTING SYSTEMS SHALL BE SUPPLIED IN ACCORDANCE WITH THE ELECTRICAL LIGHTING PLANS.

LIGHTING PROTECTION



LIGHTING PROTECTION SYSTEM SHALL BE SUPPLIED FOR EACH SHELTER IN ACCORDANCE WITH THE ELECTRICAL PLANS.

INSTALLATION

MANUFACTURER'S INSTALLATION PERSONNEL ARE REQUIRED TO BE PRESENT AT ALL TIMES TO ASSURE THE INSTALLATION AND ANCHORING IS CORRECT IN ORDER TO VALIDATE THE WARRANTY.

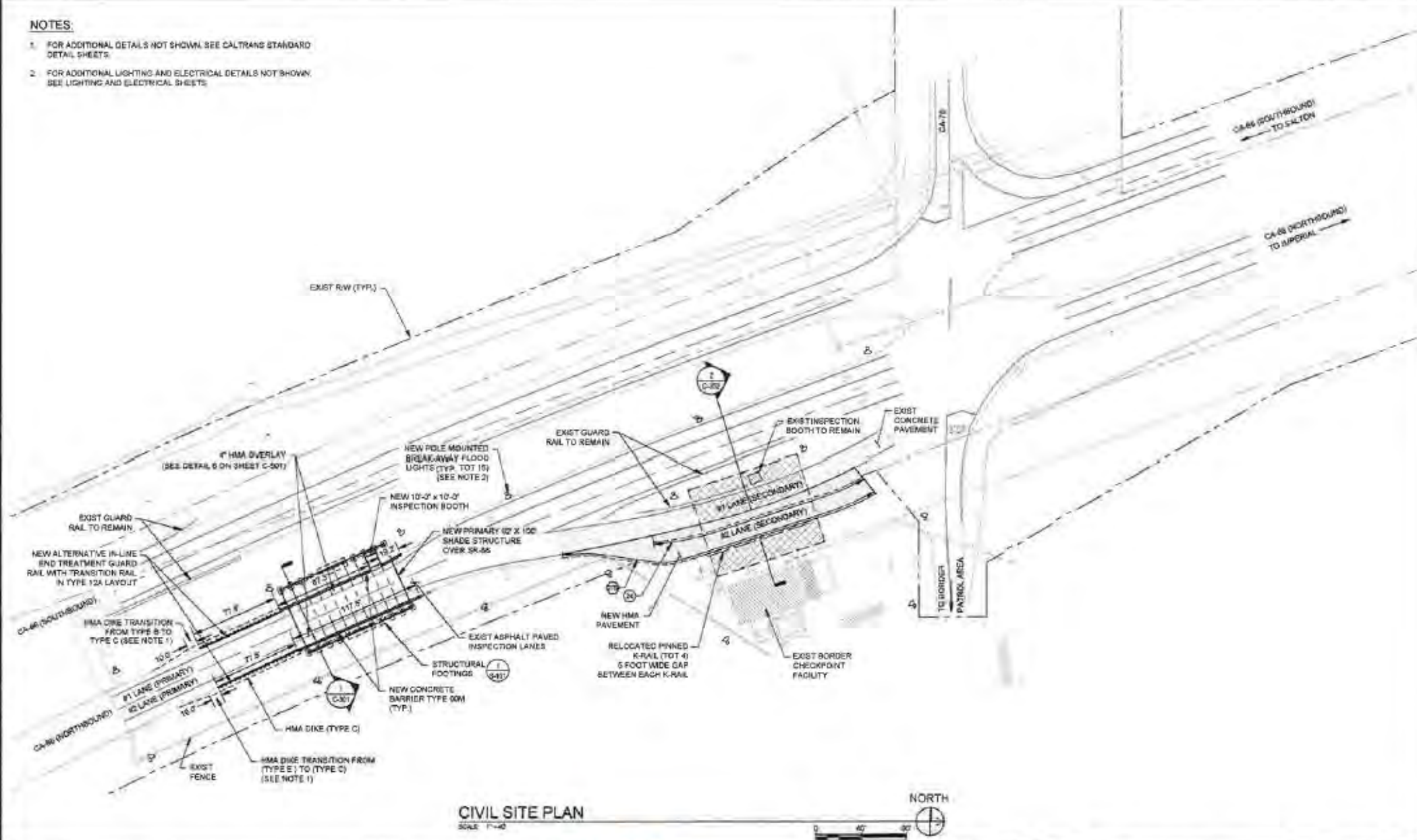
SUBMITTALS

CANOPY REQUIREMENTS AND SUBMITTALS SHALL COMPLY WITH SPECIFICATION SECTION 10 34 19 AS APPLICABLE TO THE CANOPY. EXCEPT DESIGN REQUIREMENTS ON THIS SHEET SHALL TAKE PRECEDENCE.

FORM 304-2	REVISIONS	 OFFICE OF THE CALIFORNIA GOVERNMENT ARCHITECTS	DESIGNED BY: LFD 01/15/2019	 2201 Graham Drive Sacramento, CA 95811 TEL: (916) 414-4000 FAX: (916) 414-5955	STATE ROUTE 86 U.S. BORDER PATROL CHECKPOINT IMPROVEMENTS	DATE: 01/15/2019
IF THIS BAR IS LONGER THAN ONE INCH, IT IS A REDUCED PRINT SCALE. REDUCED SHEET ADDITIONAL.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000		36		DESIGNED BY: LFD 01/15/2019 CHECKED BY: DL 01/15/2019 DRAWN BY: CL 01/15/2019 CADD BY: CC 01/15/2019	STATE ROUTE 86 U.S. BORDER PATROL CHECKPOINT IMPROVEMENTS

NOTES:

1. FOR ADDITIONAL DETAILS NOT SHOWN, SEE CALTRANS STANDARD DETAIL SHEETS.
2. FOR ADDITIONAL LIGHTING AND ELECTRICAL DETAILS NOT SHOWN, SEE LIGHTING AND ELECTRICAL SHEETS.



CIVIL SITE PLAN
SCALE: 1" = 40'

GRAPHIC SCALE

IF THIS BAR IS LESS THAN ONE INCH,
IT IS A REDUCED PRINT
SCALE REDUCED SHEET
ACCORDINGLY.

NO.	DATE	REVISIONS
1	3/25/2019	ISSUED FOR PERMIT
2	3/25/2019	ISSUED FOR PERMIT
3	3/25/2019	ISSUED FOR PERMIT
4	3/25/2019	ISSUED FOR PERMIT
5	3/25/2019	ISSUED FOR PERMIT
6	3/25/2019	ISSUED FOR PERMIT
7	3/25/2019	ISSUED FOR PERMIT
8	3/25/2019	ISSUED FOR PERMIT
9	3/25/2019	ISSUED FOR PERMIT
10	3/25/2019	ISSUED FOR PERMIT



NO.	DATE	REVISIONS
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3	3/25/2019	ISSUED FOR PERMIT
4	3/25/2019	ISSUED FOR PERMIT
5	3/25/2019	ISSUED FOR PERMIT
6	3/25/2019	ISSUED FOR PERMIT
7	3/25/2019	ISSUED FOR PERMIT
8	3/25/2019	ISSUED FOR PERMIT
9	3/25/2019	ISSUED FOR PERMIT
10	3/25/2019	ISSUED FOR PERMIT



**STATE ROUTE 85 U.S. BORDER PATROL
CHECKPOINT IMPROVEMENTS**

CIVIL SITE PLAN

C-106

SHADE STRUCTURE EXAMPLE



IMPERIAL VALLEY RESOURCE MANAGEMENT AGENCY

SERVING THE CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO,
HOLTVILLE, IMPERIAL, WESTMORLAND AND COUNTY OF IMPERIAL



AGENDA REPORT

TO: IVRMA Board Members and City / County Managers
FROM: Daveline Villaseñor, Project Manager
SUBJECT: IVRMA Board Meeting
MEETING DATE: March 24, 2021

STAFF REPORT

City County Payment Program (CCPP): FY 2018-19 City/County Payment Program expenditure reports are due on April 1, 2021. The Expenditure Period End Date and the last day to expend FY 2018-19 funds was of March 1, 2021. The New FY 2019-20 City/County Payment Program expenditure period will begin on April 1, 2021 for the amount of \$59,528.00.

Food Generators under SB 1383: SB 1383 Organic Waste Methane Emissions Reductions legislature requires a 20% reduction of edible food currently going to landfill by 2025. To accomplish this mandate, a unified food recovery network is necessary. Luckily, the Food Bank in the Imperial County has an extensive food recovery program that already exists so we are here to help enhance that network. Outreach is strongly encouraging businesses to be aware of SB 1383 requirements in efforts to expand the food recovery network. Requirements for food generating business information is attached.

Jurisdiction's Annual Spring Review 2020: CalRecycle Local Assistance and Market Development (LAMd), Haley Aumiller, has begun scheduling jurisdictions for the annual review of the implementation of those local programs; AB 341 Mandatory Commercial Recycling (MCR) and SB 1826 Mandatory Commercial Organics Recycling (MORe) to determine if the jurisdiction has met the requirements of AB 939 (known as the Integrated Waste Management Act [IWMA]). In doing this, CalRecycle will continue to rely on annual reports, staff jurisdiction visits and other information that the jurisdiction deems relevant to local program work. IVRMA is available to meet with each city representative to prepare for the review. Jurisdictions will be expected to meet the requirements requested on the 2019 Fall Annual Review and MCR & MORe Plan recently submitted.

Household Hazardous Waste (HHW): All HHW facilities are now opened to welcome residents of the Imperial Valley to drop off their household hazardous material. Brawley & Calexico are opened every other Sunday from 8 a.m. to 12 p.m. El Centro is opened from 8 a.m. to 12 p.m. every Saturday of the month. For schedule information or verification of items received please feel free to contact our office at (760) 337-4537 between Monday through Friday from 8:00 a.m. to 5:00 p.m. or a full list of items received visit the IVRMA website at www.ivrma.org.

Commercial Edible Food Generator is subject to the requirements of **Article 10. of SB 1383**, shall keep a record that includes the following:

1. A list of each food recovery service or organization that collects or receives its edible food pursuant to a contract or written agreement established under Section 21 18991.3(b).
2. A copy of contracts or written agreements between the commercial edible food generator and a food recovery service or organization.
3. A record of the following for each food recovery organization or service that the commercial edible food generator has a contract or written agreement with pursuant to Section 18991.3(b)
 - The name, address and contact information of the service or organization.
 - The types of food that will be collected by or self-hauled to the service or organization.
 - The established frequency that food will be collected or self-hauled.
 - The quantity of food collected or self-hauled to a service or organization for food recovery. The quantity shall be measured in pounds recovered per month.

Food Recovery Organization is an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities including, but not limited to:

- A food bank as defined in [Section 113783 of the Health and Safety Code](#);
- A nonprofit charitable organization as defined in [Section 113841 of the Health and Safety code](#); and,
- A nonprofit charitable temporary food facility as defined in [Section 113842 of the Health and Safety Code](#).

Food Recovery Organization shall maintain a record of:

- The name, address and contact information for each commercial edible food generator that the organization receives edible food from.
- The quantity in pounds of edible food received from each commercial edible food generator per month.
- The name, address and contact information for each food recovery service that the organization receives edible food from for food recovery.

Food Recovery Service means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery.

Food Recovery Service shall maintain a record of:

- The name, address and contact information for each commercial edible food generator that the service collects edible food from.
- The quantity in pounds of edible food collected from each commercial edible food generator per month.
- The quantity in pounds of edible food transported to each food recovery organization per month.
- The name, address and contact information for each food recovery organization that the service transports edible food to for food recovery.

Memorandum

Date: March 24, 2021
To: ICTC Management Committee/Commission Meeting
From: David Salgado, Regional Affairs Officer (RAO)
Re: Southern California Association of Government's (SCAG) Report

The following is a summary of the SCAG Executive Director's Report and/or Federal and State Legislature Staff Report for the Imperial County Transportation Commission's Management Committee and Commission meetings for March 24, 2021.

- 1. SCAG Joint Policy Committee Meeting March 2021:** In lieu of a regular schedule of Policy Committee Meetings SCAG held a Joint Policy Committee (JPC) meeting. The JPC was held to present SCAG's Racial Equity and Regional Planning "Baseline Conditions Report." In July 2020 SCAG adopted a resolution affirming its commitment to advancing justice, equity, diversity, and inclusion throughout Southern California. Since adoption of the resolution an ad hoc "Special Committee on Equity and Social Justice" has been meeting on a quarterly basis to advance efforts on an Early Action Plan (EAP). The Racial Equity EAP provides a set of goals and strategies designed to advance racial equity through SCAG's policies, practices, and activities.
- 2. SCAG March Regional Council (RC) Meeting:** At SCAG's March 4th Regional Council Meeting the board took action to approve the final 6th cycle Regional Housing Needs Assessment (RHNA) Allocation Plan. SCAG has completed all final reviews and appeals of the RHNA Allocation Plan. Upon approval the final plan will be submitted to the California Department of Housing and Community Development (HCD) for approval. Additionally, the RC approved the 2021 Federal Transportation Improvement Program (FTIP), including the associated transportation conformity determination.
- 3. SCAG 2021 General Assembly Delegate and Alternate Appointments:** SCAG has provided formal notice to all city clerks regarding the appointment of 2021 SCAG General Assembly Delegates and Alternates. Appointments should occur at a regularly scheduled council meetings to select one delegate and an alternate to vote at the General Assembly on behalf of the member city. Only the appointed delegate or alternate can vote at the convening of the 2021 SCAG General Assembly and must be present to do so.
- 4. SCAG 2021 General Assembly:** The annual convening of the SCAG General Assembly is scheduled for *Thursday May, 6th 2021*. The meeting will be held remotely. More information will be provided as it is made available. Please contact SCAG RAO David Salgado with any questions regarding the 2021 SCAG General Assembly.

5. **2020 SCAG Sustainable Communities Program (SCP) Grant Program:** SCAG has approved the 2020 SCP grant guidelines. The FY 2020/2021 program will fund projects in the following areas that support and implement the policies and initiatives of the 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), Connect SoCal: Active Transportation & Safety; Housing and Sustainability; Smart Cities, Mobility Innovation & Transportation Demand Management; and Green Region. The first Call prioritizes Active Transportation & Safety projects, and the second Call prioritizes efforts to increase housing production.

SCAG is pleased to announce the 2020-2021 Sustainable Communities Program (SCP) – Smart Cities & Mobility Innovations Call for Applications is now open to eligible applicants.

The program will provide resources for projects that support the implementation of three Connect SoCal key connections, focusing on smart cities and job centers, go zones, and shared mobility/mobility as a service, to expand upon our mobility ecosystems and advance the region's vision. Application Webinars will be held Monday March 8th and Monday April 5th. One to one sessions are also available through April 16 for any interested potential applicants who may need assistance. **Deadline to apply is April 23, 2021. Please feel free to contact SCAG RAO David Salgado with any questions.**

6. **SCAG Regional Data Platform (RDP):** The Regional Data Platform will standardize regionally significant datasets, provide opportunities for local partners to update their data in real-time, and draw insights from local trends. More specifically, it will be an online tool for SCAG and local jurisdictions to access data necessary for local general plan development and general decision making by monitoring transportation, land development trends, housing and economic growth, and sustainability conditions. The platform will also feature a data-driven collaboration hub for local jurisdictions to engage with stakeholders for individual projects, such as local and regional land use planning, active transportation planning, greenhouse gas reduction strategies and development impact assessments.

Moving beyond just technology, this platform will help government engage with data in a simpler way, allowing the interpretation of information into actionable insights and knowledge, and provide a digital venue for local agencies to engage with their residents using data as a medium.

Process wise, SCAG will enable users to improve the platform through data revision and insight sharing, empower local partners to use the platform for their own initiatives (thereby spotlighting best practices), and ultimately foster continuous experimentation at the local level by helping jurisdictions understand how their plans could impact the region's most significant challenges – transportation, jobs, housing, and sustainability.

- **Housing Element Parcel Tool (HELPR):** The HELPR tool is a readily available mapping and data tool available to SCAG member agencies and partners. The tool drills down on parcel specific data and demographics which will support the development of housing plans and general plan updates.

- **Local Information Services Team (LIST):** SCAG has created the “Local Information Services Team” in an effort to support the roll out of the Regional Data Platform (RDP) and other housing and data support needs.
7. **SCAG Broadband Action Plan:** At the February 4th SCAG Regional Council (RC) Meeting, the SCAG RC adopted a resolution which directs SCAG staff to develop a “Broadband Action Plan.” The development of an action plan would provide a model resolution and policy paper for local jurisdictions, pursue funding opportunities and partnerships to assist local jurisdictions with broadband implementation, convene a working group, and further support broadband planning and data research. These efforts would also be developed to compliment SCAG’s ongoing efforts to support an Inclusive Economic Recovery and efforts supporting Racial Equity and Social Justice.
 8. **SCAG Aerial Imagery Project 2020-21 Update:** After numerous meetings to discuss the potential for SCAG to facilitate a new Aerial Imagery Flyover Project, the County of Imperial has agreed to facilitate a public procurement process. This will allow for more funds to be applied to the project to support the procurement. SCAG has set aside \$250,000 for the project and will increase the support by \$50,000 for a total of \$300,000. The project is currently in the final phases. A meeting was held recently to discuss proposed member contributions in time for budget development. The proposed local contribution amount is attached for review.

6TH CYCLE RHNA UPDATE

On Feb. 16, the Regional Housing Needs Assessment (RHNA) Subcommittee/Appeals Board reviewed and recommended the 6th Cycle proposed Final RHNA Allocation Plan for further recommendation to the Community, Economic, and Human Development (CEHD) Committee. On Feb. 21, the CEHD Committee reviewed the proposed Final RHNA Allocation Plan and recommended it to the Regional Council for adoption at a public hearing scheduled for March 4. The Final RHNA Allocation Plan includes a redistribution of successfully appealed units from the RHNA appeals process and must be consistent with the regional determination provided by the California Department of Housing and Community Development (HCD) in October 2019.

The RHNA Subcommittee and CEHD Committee at their respective February meetings also reviewed and recommended a resolution to address various issues that were raised during the RHNA process. The resolution outlines a strategy for SCAG to explore these reforms, such as a continuation of supporting subregions and local jurisdictions through the Regional Early Action Planning (REAP) program, facilitations of discussion with HCD, statewide committee participation, legislative changes, and enhanced communications with county transportation commissions, policymakers, and stakeholders. The resolution will be included in the March 4 Regional Council agenda for adoption. For more information, please visit the [RHNA webpage](#).

CALL FOR COLLABORATION GRANT APPLICATION CLOSES, AWARD ANNOUNCEMENTS ANTICIPATED IN THE COMING WEEKS

In partnership with SCAG, the California Community Foundation (CCF) released the Call for Collaboration request for proposals on Jan. 19, inviting community organizations and their government partners to apply for small grants that fund the development of community-based policies and plans that support increased housing production. SCAG and the CCF issued widespread outreach and hosted a webinar to support community groups in developing their applications. As of the Feb. 23 deadline, dozens of applications had been received from organizations across the SCAG region. A review panel of foundations, academic scholars, housing professionals, and SCAG representatives has been carefully crafted to review proposals and identify grantees. The anticipated date of grantee award announcements is March 19, with grantees beginning an 18-month performance period on April 1. For more information about the [Call for Collaboration](#), please contact Alisha James at james@scag.ca.gov.

THIRD SUSTAINABLE COMMUNITIES PROGRAM CALL FOR APPLICATIONS RELEASED

On Feb. 8, SCAG released the third Sustainable Communities Program Call for Applications, which is open through April 23 and is focused on Smart Cities & Mobility Innovations. Applicants can apply for technical assistance for project types focusing on smart cities and job centers, go zones, and shared mobility and mobility as a service. Staff will hold two webinars to support application development and highlight best practices for eligible program areas on both March 8 and April 5. Staff is also holding weekly office hours for one-on-one coaching to support application development. To learn more and sign up for the upcoming webinars and office hours, please visit the [2020-2021 Sustainable Communities Program Call for Applications webpage](#).

SCAG LEADERSHIP MEETS WITH CONGRESSIONAL REPRESENTATIVES TO DISCUSS REGIONAL PRIORITIES

On Feb. 10, President Rex Richardson, First Vice-President Clint Lorimore, Second Vice-President Jan Harnik, and Immediate Past President Alan Wapner, and I conducted two virtual meetings, respectively, with Congressman Ken Calvert (R-Corona), Member of the House Appropriations Energy and Water Subcommittee, and Congressman Mike Garcia (R-Santa Clarita), Member of the House Appropriations Transportation and Housing & Urban Development Subcommittee. They were joined by Regional Council Members Juan Carrillo, Peggy Huang, David Pollock, Steve Manos, and Karen Spiegel.

The meetings provided an opportunity for leadership to advocate and discuss some of the agency's most critical federal legislative priorities. First, to support direct and flexible federal aid for all cities, regardless of population size, to help with unexpected COVID-19-

related expenses and to backfill tax revenues losses. Secondly, to support a long-term federal surface transportation reauthorization bill. The Fixing America's Surface Transportation (FAST) Act was extended for one-year to Sept. 30, which will give Congress more time to work on a new bill. Lastly, against the backdrop of the COVID-19 pandemic that has amplified the need for reliable and affordable broadband services, local governments and the private sector must have a strong federal partner as they deploy broadband infrastructure especially in underserved communities.

NEW MEMBER ORIENTATION

On Feb. 23, SCAG Regional Council President Rex Richardson, Executive Director Kome Ajise, and staff hosted a New Member Orientation for Regional Council members that have joined SCAG as a result of the November 2020 General Election outcomes. Staff provided an in-depth presentation that covered multiple topics such as the agency's governing structure, member benefits, and major ongoing projects. There was also an opportunity for members to ask questions on Connect SoCal, housing and economic recovery efforts, and other significant regional planning initiatives. Future New Member Orientations will be planned as needed to provide new members with an opportunity to learn more about SCAG, meet key staff, and discuss important programs and initiatives.

SCAG HOSTS TRIBAL GOVERNMENT LISTENING TOUR AND PRESENTS CONNECT SOCIAL TO TRIBAL ALLIANCE OF SOVEREIGN NATIONS

In January, SCAG gave a presentation on Connect SoCal to the Tribal Alliance of Sovereign Indian Nations, who subsequently identified two members for GLUE Council membership. In February, President Rex Richardson and Tribal Government Regional Councilmember Andrew Masiel, Sr., hosted the Tribal Government Listening Tour, which was attended by elected officials from the Agua Caliente Band of Cahuilla Indians, Chemehuevi Indian Tribe, Pechanga Development Corporation, Santa Rosa Band of Cahuilla Indians, Morongo Band of Mission Indians, Torres-Martinez Desert Cahuilla Indians, and the Torres-Martinez Gaming Commission. Since 2006, SCAG's Bylaws have ensured that the Native American perspective is represented at the policy decision-making level by providing voting seats to tribal government representatives on the General Assembly, Regional Council, and Policy Committees.

INCLUSION, EQUITY, DIVERSITY & AWARENESS WEBPAGE, BASELINE CONDITIONS REPORT & PUBLIC SURVEY RELEASED

At its July 2020 meeting, SCAG's Regional Council adopted [Resolution 20-623-2](#), declaring systemic racism a human rights and public health crisis. The resolution affirms SCAG's commitment to work in partnership with others to close the gap of racial injustice and meaningfully advance inclusion, diversity, equity, and awareness. The [Special Committee on Equity & Social Justice](#) was formed to advise SCAG's Regional Council on policies and practices to: 1) End racial and social disparities internal to the agency; 2) Strengthen the way it engages and convenes to protect and expand community voice and power; and 3) Work in partnership with others to close the gap of racial injustice and better serve communities of color, and in so doing, serve all the people of the region. To bring together the agency's work regarding inclusion, equity, diversity and awareness, SCAG has published a [webpage](#) that provides a working definition of Racial Equity and covers the various work items currently underway, released the [Racial Equity: Baseline Conditions Report](#), and launched a [public survey](#) to gather input on the development of the Racial Equity Early Action Plan. For updates, please visit the [Inclusion, Equity, Diversity & Awareness page on the SCAG website](#).

SCAG'S INCLUSIVE ECONOMIC RECOVERY STRATEGY UPDATE

As part of SCAG President Rex Richardson's [2020-2021 Work Plan](#), SCAG is developing an Inclusive Economic Recovery Strategy that aims to support an equitable and inclusive economic recovery for the SCAG region. SCAG will be hosting 25–30 small focus groups from late February to early April for various industries to gather feedback and insights into what an inclusive economy would look like in their respective sectors and how SCAG can provide support. SCAG has kicked off the first seven convenings, meeting with community-based organizations, labor unions, incubators and accelerators, financial sector representatives, and commercial developers. In these first set of focus groups, we received invaluable input on the needs of each sector and SCAG's potential role in addressing these needs and narrowing racial disparities in accessing opportunities to economic mobility. SCAG will take the feedback from the convenings, combined with baseline data, to recommend strategies, policies, and programs for increasing our regional competitiveness and accelerating the creation of family supporting jobs.

SAVE THE DATE: 32ND ANNUAL DEMOGRAPHIC WORKSHOP

SCAG and the University of Southern California Sol Price School of Public Policy will jointly host the 32nd Annual Demographic Workshop as a virtual two-day event on June 8 and June 15 from 1:30 p.m. – 4:45 p.m. The theme for this year's program is "The Post-Pandemic City." Over the last year, Southern Californian residents, and the nation as a whole, have experienced extraordinary changes in all aspects of their lives such as those related to family formation and childcare, healthcare, employment, commuting, and housing accommodations. A demographic check-up panel covers the latest trends in migration, fertility, and vaccination, as well as the new 2020 Census counts due for release. Additional panels will focus on myths and realities of California's mass exodus and declining mobility, and the new trends in workplace, travel, and residential locations. The program will also include a keynote address and a series of expert-led roundtable discussions to build skills about topics discussed. Online registration will be available soon. For more information, please contact John Cho at choj@scag.ca.gov.

GLUE COUNCIL RECONVENES IN 2021

On Feb. 8, SCAG reconvened the Global Land Use & Economic (GLUE) Council, bringing together existing members and new members that reflect diverse industries from across the region. Staff provided presentations including updates on Connect SoCal, RHNA, SCAG's housing program, and legislative bills related to housing and land use policy. SCAG will continuously share its legislative agenda to keep GLUE Council members informed and receive industry-specific feedback. The framework of the Inclusive Economic Recovery Strategy (IERS), part of the President's Work Plan, was also shared by staff. As part of the work plan, SCAG will host a dedicated focus group for the GLUE Council to learn more about how they see local and regional governments supporting efforts to promote an economic recovery that is centered on racial and gender equity. Members suggested many potential topics for future meetings, including adjustments to the models used for Connect SoCal on population growth, utility companies contributing to permitting process evaluation in smart cities initiatives, regionally responding to the Climate Action Plan for Transportation Infrastructure process, the complexity of the state's new vehicle miles traveled (VMT) goals, and the region's overall economic picture.

TOOLBOX TUESDAY TRAINING FOCUSES ON PRESENTING DATA AND MAPS

On Feb. 23, SCAG hosted "StoryMapping: Transforming Data into Interactive Stories," a Toolbox Tuesday webinar that included an overview of ArcGIS StoryMaps and how it can be used to create immersive web-based stories or presentations by combining data, text, interactive maps, and other multimedia content. The webinar introduced participants to various types of StoryMaps, featured professionals using the tool, showcased regional StoryMaps from local jurisdictions and students, and closed with a tutorial on developing StoryMaps. The [2021 SCAG Student Showcase](#) was also briefly discussed as it is a StoryMap competition available to qualified students in the SCAG region. Please visit the [Toolbox Tuesday Online Training Materials page](#) for a recording of the webinar and other downloads of this training, as well as to access prior trainings and materials.

SCAG NATURAL & FARM LANDS CONSERVATION WORKING GROUP MEETS

On Feb. 25, SCAG hosted the Natural & Farm Lands Conservation Working Group. Meeting since 2014, the purpose of the working group is to provide a forum for stakeholders to share best practices and develop recommendations for natural and agricultural land conservation throughout the region and has been instrumental in the formation and implementation of Connect SoCal's conservation policies and strategies. The most recent meeting featured several presentations, many of which focused on agriculture and grazing lands conservation. An update on the SoCal Greenprint was provided, after which feedback was sought from the group on agricultural-related data and how the tool will convey that information. An additional presentation was given on agricultural conservation efforts around California and engaged the group on how SCAG can implement agricultural conservation strategies based on goals in Connect SoCal. For more information about the group and to attend future meetings, please contact India Brookover at brookover@scag.ca.gov.

Breakdown of total cost and reserves per project partner:

Entity	Contribution	Contribution
SCAG	\$300,000.00	50.00%
IID	\$120,000.00	20.00%
Imperial County	\$100,000.00	16.67%
ICTC	\$30,000.00	5.00%
LAFCO	\$15,000.00	2.50%
City of El Centro	\$7,675.00	1.28%
City of Calexico	\$6,800.00	1.13%
City of Brawley	\$4,550.00	0.76%
City of Imperial	\$3,250.00	0.54%
City of Calipatria	\$1,275.00	0.21%
City of Holtville	\$1,075.00	0.18%
City of Westmorland	\$375.00	0.06%
Caltrans	\$10,000.00	1.67%
Total	\$600,000.00	100.00%
Cost of 2020 Flight	\$455,465.62	
Reserves for Next Flight	\$144,534.38	

Breakdown of cities total contribution:

City	Percentage Contribution	\$25,000.00
City of El Centro	30.70%	\$7,675.00
City of Calexico	27.20%	\$6,800.00
City of Brawley	18.20%	\$4,550.00
City of Imperial	13.00%	\$3,250.00
City of Calipatria	5.10%	\$1,275.00
City of Holtville	4.30%	\$1,075.00
City of Westmorland	1.50%	\$375.00

News Release

FOR IMMEDIATE RELEASE

February 4, 2021

Contact: Steve Lambert, The 20/20 Network
(909) 841-7527/ steve@the2020network.com



SCAG commits to developing a Broadband Action Plan to help cities, counties address the digital divide

Los Angeles – The nation’s largest metropolitan planning organization on Thursday committed to helping its 191 cities and six counties bridge the digital divide and increase broadband access in underserved communities throughout Southern California.

Within the SCAG region alone, 10 percent of households do not have access to adequate internet speeds or have no internet access whatsoever. These households are disproportionately located in low-income or rural areas, where the population is predominantly Black, Latino or over 65 years old.

A resolution adopted by the Regional Council of the Southern California Association of Governments (SCAG) is aimed at addressing a problem that has become even more pronounced during the COVID-19 pandemic as schools, many jobs, healthcare and a significant number of government services have gone online. Without adequate broadband infrastructure, underserved communities find themselves at a bigger disadvantage, resulting in a widening of the equity gap.

The resolution adopted Thursday directs SCAG staff to develop a Broadband Action Plan, which would include:

- Developing a model resolution and policy paper for local jurisdictions, addressing the digital divide.
- Pursuing grant funding opportunities and partnerships to assist local jurisdictions with broadband implementation.
- Convening a working group to develop ways to facilitate rapid deployment of broadband technology such as streamlining the permit process, lowering fees to a reasonable level, and reducing the cost of entry and operation of broadband systems within underserved communities.
- Including broadband planning, data and research findings, and strategies as part of SCAG’s work in promoting an inclusive Regional Economic Recovery and Strategy.

“Closing the digital divide is critical to our commitment to addressing economic and social disparities within communities of color,” said SCAG President Rex Richardson, Vice Mayor of Long Beach.

“Broadband has become essential infrastructure for the 21st century, but as many as 10% of Southern California households – disproportionately located in low-income communities – continue to be left out in the cold.”

Under Richardson’s leadership, SCAG declared racism a public health crisis, established a special committee on equity and social justice, and focused its 2020 Southern California Economic Summit on developing an inclusive recovery strategy.

Those efforts have underscored just how onerous the digital divide has become, and the need to expedite the development of broadband infrastructure and prove connectivity at an affordable rate.

“It’s a vicious cycle for residents in disadvantaged communities, who are struggling to participate in the digital landscape due to lack of affordability or infrastructure,” said Kome Ajise, SCAG’s Executive Director. “Our aim is to build regional cohesiveness and work with local municipalities to develop the framework and support they need to address this critical task.”

###

About SCAG

SCAG is the nation’s largest metropolitan planning organization, representing six counties, 191 cities and nearly 19 million residents. SCAG undertakes a variety of planning and policy initiatives to plan for a livable and sustainable Southern California now and in the future. For more information about SCAG, please visit: www.scag.ca.gov.

California Department of Transportation



To: ICTC COMMISSION
ICTC MANAGEMENT COMMITTEE

Date: March 2021

From: GUSTAVO DALLARDA
Caltrans District 11 Director

Subject: **DISTRICT DIRECTOR'S REPORT**

CONSTRUCTION

1. **I-8/Imperial Avenue Interchange:** The project includes installing two ramps that will provide direct access to southbound Imperial Avenue which will provide connectivity to the south portion of El Centro. Work will take place weekdays from 7:00 a.m. to 3:30 p.m. for the time being. Eastbound I-8/Imperial Avenue ramps will continue to be closed through spring 2021. Bridge work (pile-driving) began on November 12, 2020 and will continue for three months. Eastbound I-8/Imperial Avenue ramps will continue to be closed; fully closing access to/from Imperial Avenue for six to eight months. The El Centro City Council has approved the installation of a community identifier for this structure. Caltrans District 11 and Headquarters units are moving forward based on this approval. A rendering is shown below. The project is expected to open to traffic in late 2021 or early 2022, with plant establishment and close out work continuing through 2023.



Project Website: <https://dot.ca.gov/caltrans-near-me/district-11/current-projects/i8-imp-interchange>

2. **SR-98 Widening Project:** As part of the Calexico West POE Expansion project, SR-98 and Cesar Chavez Boulevard were widened and improved to serve the expansion to the west. SR-98 work between VV Williams and Ollie Avenue was completed in March 2018, and the Cesar Chavez Blvd. widening was completed in October 2019 by the City of Calexico. Caltrans has completed the design and right of way phase for SR-98 widening between Rockwood

Avenue and Ollie Avenue. The total project cost is estimated at \$8.2 million using a combination of 2016 Earmark Repurposing, Demonstration, and Traffic Congestion Relief funds. The project has a \$1.7 million funding shortfall for which Caltrans requested an ICTC contribution of \$200,000; this was approved by the ICTC LTA board in September. The remaining \$1.5 million shortfall will be covered by other State funds, which was approved by the CTC in October. *SR-98 project contract was approved on December 24, 2020 and the project will start in spring 2021, no later than April 23, 2021.*

3. **SR-111 Niland Geyser/Mudpot:** The SR-111 Niland Geyser/Mud Pot is active. The caldera is approximately 20 feet away from SR-111. Water from the Mud Pot is free-flowing through the subsurface drainage installed in 2019. The original temporary detour road was opened to traffic in August of 2020. The original detour is being extended to accommodate for the Mud Pot's unpredictable change in direction. The temporary detour will remain in place as the mud pot moves beyond the original freeway.

PROJECT DELIVERY

1. **SR-186 All-American Canal Bridge:** This project proposes to construct a new bridge over the All-American Canal (AAC). The new bridge will improve safety and better facilitate international and interregional movement of people, goods and services. A 2019 feasibility study proposed 8 alternatives including a no-build option. The following stakeholders have been identified, Fort Yuma Quechan Indian Tribe, US BIA, US BOR, IID, International Boundary and Water Commission, County of Imperial, Union Pacific Railroad and US GSA. *Project Milestones: Project Approval/Environmental Clearance 9/2023. The Anticipated funding fiscal year for construction is 2025/26.*

MAINTENANCE AND TRAFFIC OPERATIONS

1. The El Centro Travelway Crew continued with paving project on SR-86 east of Heber Rd and performed litter control at various locations along I-8/SR-111. Potholes were repaired on SR-86 between Bradshaw and Adams.



2. The Midway Travelway Crew performed a crack sealing operation on Vanderlinden Rd OC(I-8) to prepare pavement for spring microseal project.

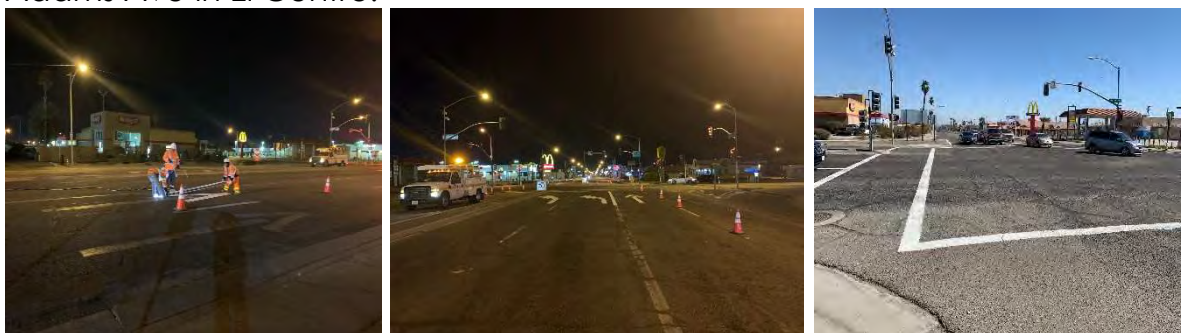
3. The El Centro Functional/Landscape performed sign and landscape maintenance and litter control along I-8 (SR111/Dogwood) response to an installation order from Caltrans Traffic Operations.



4. The Brawley Travelway Crew performed scheduled brush removal on SR-78 bypass and washout repair at various locations on SR-78 (Glamis)



5. The Brawley Marking Crew refreshed pavement markings on SR-86 and Adams Ave in El Centro.



6. **SR-86/Customs & Border Protection Checkpoint Expansion:** ICTC informed Caltrans that the scope of the project has changed to add a second detour lane into the existing canopy to perform inspection. ICTC will work with their consultant and will provide Caltrans with a traffic study to identify necessary SR-78/SR-86 intersection operation improvements to accommodate the change in inspection operation. A location for secondary inspection is still being analyzed. Once Caltrans agrees with the operational improvements,

ICTC/AECOM will submit design plans for review and approval of their project. Caltrans will assist ICTC in coordinating upcoming meetings.

An environmental document as well all other appropriate studies will be needed to finalize the project. A series of permits will be required for their existing traffic control at the checkpoint, for the inspection operations and equipment within the facility, and for a temporary checkpoint while the project is in construction. A new Freeway Maintenance Agreement will be required for the portion of the existing canopy that is within Caltrans ROW.

PLANNING AND LOCAL ASSISTANCE

1. **District 11 Active Transportation Plan:** Caltrans District 11 is developing an Active Transportation Plan for San Diego and Imperial Counties. This plan will include an existing conditions analysis and a prioritized list of identified bicycle and pedestrian needs on and around the State Highway System. Input from regional and local partner agencies and local advocates is essential to the development of this plan. Caltrans encourages our partner agencies to participate in the Active Transportation Plan Working Group (ATPWG). Further outreach will occur at future TAC meetings and through non-traditional methods such as social media and virtual meetings.
2. **Border Master Plan (BMP):** The BMP is a comprehensive, binational approach to coordinate the planning and delivery of international land Ports of Entry (POEs) and their transportation infrastructure projects. *The draft 2021 California-Baja California BMP report was presented to the BMP Policy Advisory Committee and approved on February 11, 2021.*
3. **Project Study Report: Forrester Road Improvements** As drivers on SR-86 between I-8 and the City of Westmorland are experiencing greater delays, a growing number of vehicles are using the segment of Forrester Road between I-8 and Westmorland as an alternative route. This increase in traffic (including higher truck use and the movement of farm equipment) has led to longer travel times and limited passing opportunities. This project proposes short-term, mid-term, and long-term improvements to the segment of Forrester Road from I-8 to Westmorland. The project includes the development of a temporary Westmorland Bypass, various intersection improvements, the installation of passing lanes, shoulder widening, a long-term Westmorland Bypass, and an ultimate four-lane facility. Conceptual drawings and planning level cost estimates are currently being developed. This PSR is a partnership between Caltrans and ICTC with a Technical Working Group providing input, which includes stakeholders from the County of Imperial, the cities of El Centro, Westmorland, Imperial, and Brawley and representatives from the Imperial Irrigation District (IID). This PSR process began in 2016, with TWG meetings beginning in 2018 and being held as needed. The last meeting was held on December 16, 2020. Caltrans will

continue to develop alternatives for intersection improvements and a four-lane roadway.

4. **Local Assistance:** FHWA Federal Lands Access Program (FLAP)

FLAP funds projects providing access to, are adjacent to, or are located within Federal Lands on facilities maintained or owned by a state, county, local or tribal government. Projects near high-use Federal recreation sites or Federal economic generators receive priority. **Deadline: May 27, 2021**

<https://highways.dot.gov/federal-lands/programs-access/ca>

Federal Fiscal Year 20/21 Requests for Authorization/Obligation **Past Due:**

Funding Requests for Authorization (RFA) for this federal FY were due January 29, 2021. *Please continue to transmit RFA submittals and minimize delay in obtaining fund authorizations.*

Note the Obligation Authority (OA) funds for redistribution are dwindling faster than in prior years. Make sure that funds are programmed appropriately.

Schedule for California Transportation Commission (CTC) Allocation Requests:

Please review the attached schedule of deadlines to send allocation request packages for California Transportation Commission (CTC) approval during the *June 23-24 CTC meeting*. Caltrans District 11 must receive all documents at least two months prior to the preferred CTC meeting date. *April 23 is the next deadline (for the June 23-24, 2021 CTC meeting).*

February 23, 2021 – Assembly Bill (AB) 1012 Cycle 22 Obligation Plan **Past Due:**

In Imperial County over \$2.5 million from both the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and Regional Surface Transportation Program (RSTP) are subject to reprogramming on November 1, 2021. For any questions, contact Peggy Siu: 916-651-6875.

Under provisions of AB 1012, Regions are required to obligate all federal funds within three years of receiving apportionments. *Annual obligation plans were due to the District 11 Local Assistance Engineer by February 23, 2021.* Please transmit at the earliest opportunity. Linked below is the Assembly Bill (AB) 1012 notification letter for federal apportionment balances from federal FY 2019.

<https://dot.ca.gov/programs/local-assistance/projects/ab1012>

June 30, 2021 – Funds Lapsing – Cooperative Work Agreement (CWA) Notice:

The Cooperative Work Agreement (CWA) process began December 21, 2020. Caltrans provided local agencies with a list of projects funded with budget authority that expires on June 30, 2021.

The CWA is intended to be a two-year extension of project funding availability before lapsing. Visit the Government Code 16304.3 webpage for details using link below.

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=16304.3.&lawCode=GOV

Local agencies unable to submit invoices for the expiring funds to Caltrans District 11 by April 1, 2021, may apply for CWA to avoid lapsing of funds and seek an additional two years of funding availability. Beyond eight years, which includes the two years extended by a CWA, funding may risk reverting to the fund of origin and require local agencies to continue financing projects from local sources only.

If budget authority assigned to a project lapses, the funding is consequently lost. Failure to complete a project may result in local agency repayment of any state or federal funds already reimbursed to the agency for the project.

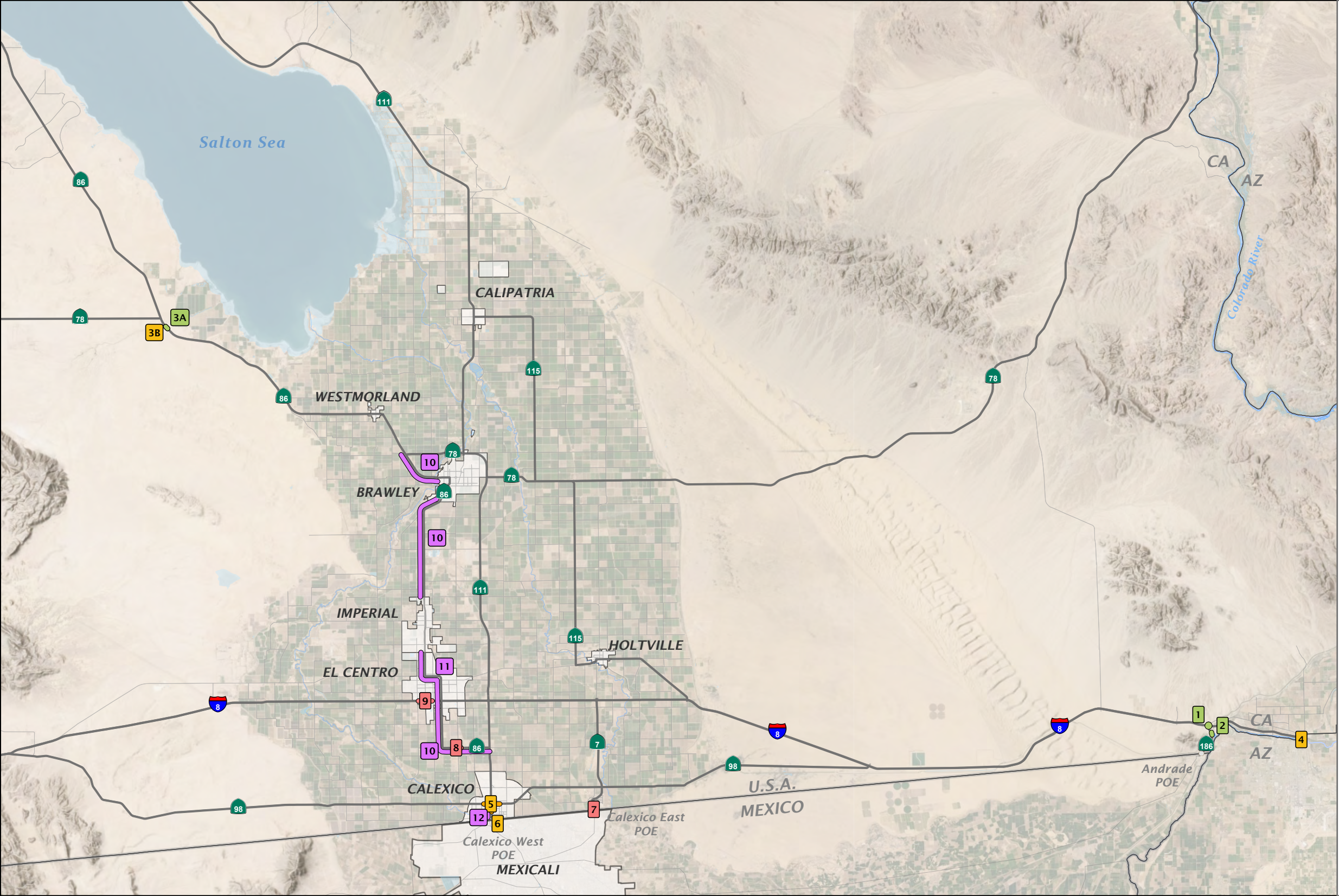
Please send specific questions to CWA Support – CWASupport@dot.ca.gov

Title VI Nondiscrimination Program

A reminder that local agencies shall comply with all Title VI requirements. See LAPM Section 9.2, Title VI of the Civil Rights Act of 1964 and Related Statutes.

IMPERIAL COUNTY

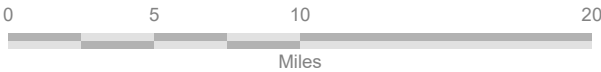
STATUS OF TRANSPORTATION PROJECTS



ENVIRONMENTAL	
1.	SR-186/I-8 Quechan Interchange Improvements* Complete June 2022
2.	SR-186 All-American Canal Bridge Complete Mar 2023
3A.	SR-86 USBP Checkpoint Canopy* Complete June 2022
DESIGN	
3B.	SR-86 USBP Checkpoint Canopy* Complete Dec 2022
4.	I-8 Colorado River Viaduct Complete April 2021
5.	SR-98 Widening Phase 1C Ollie Ave to Rockwood Ave Complete Feb 2020; Begin Construction Spring 2021
6.	SR-111 Pavement Rehabilitation, Border to SR-98 Complete Nov 2020
CONSTRUCTION	
7.	Calexico East POE Bridge Widening Design/Build Begin Mar 2021; Complete June 2023
8.	SR-86/Dogwood Road Intersection Improvements County Permit* Complete Oct 2022
9.	I-8/Imperial Ave Interchange Improvements Open to Traffic May 2022; Complete May 2023
RELINQUISHMENT	
10.	SR-86 Relinquishment to County of Imperial Date Estimate 2026
11.	SR-86 Relinquishment to City of El Centro Date Estimate 2026
12.	SR-111 Relinquishment from 2nd St to SR-98 to City of Calexico Date Estimate 2022

* The California Department of Transportation (Caltrans) is a partner in this study/projects, although not the lead agency.

- Environmental
- Design
- Construction
- Relinquishment



:Project funded by Senate Bill 1

Abbreviations:

GSA: General Services Administration

56: Port of Entry

Portions of this map contain geographic information copyrighted by the Imperial County GIS program. All rights reserved. The data provided is "as is" without warranty of any kind.

Questions can be directed to (619) 688-6699
ct.public.information.d11@dot.ca.gov

Date:03/19/2021



2021 PREPARATION SCHEDULE CALIFORNIA TRANSPORTATION COMMISSION (CTC) MEETINGS AGENDA ITEM(S) DUE DATES

Prepared by:

OFFICE OF CTC LIAISON

DIVISION OF FINANCIAL PROGRAMMING

CALIFORNIA DEPARTMENT OF TRANSPORTATION

As of:

August 2020

2021 California Transportation Commission (CTC) Meeting Schedule	Local Agency Submits Off System Funds Requests, Program Amendments, and Time Extensions to Caltrans Districts	District Submits Off System and On System Requests to HQ Divisions	HQ Divisions Submit Final Off System and On System Requests to Budgets	Final Agenda Language Due From HQ Divisions to Office of CTC Liaison	Final Book Items Due from HQ Divisions to Office of CTC Liaison
Date and Location:	10:00 AM District and CTC	10:00 AM HQ Divisions	5:00 PM Email to Budgets	10:00 AM Email to CTC Liaison OCTCL Email: CTCLiaison@dot.ca.gov	10:00 AM Email to CTC Liaison OCTCL Email: CTCLiaison@dot.ca.gov
Jan 27-28 - Stockton	Mon, Nov 30, 20	Mon, Dec 7, 20	Mon, Dec 14, '20	Fri, Dec 18, '20	Mon, Dec 21, '20
Mar 24-25 - San Diego	Mon, Jan 25, 21	Mon, Feb 1, 21	Mon, Feb 8, '21	Wed, Feb 17, '21	Thu, Feb 18, '21
May 12-13 - San Francisco	Mon, Mar 15, 21	Mon, Mar 22, 21	Mon, Mar 29, '21	Wed, Apr 7, '21	Thu, Apr 8, '21
June 23-24 - Sacramento	Mon, Apr 26, 21	Mon, May 3, 21	Mon, May 10, '21	Wed, May 19, '21	Thu, May 20, '21
Aug 18-19 - Los Angeles	Mon, Jun 21, 21	Mon, Jun 28, 21	Tue, Jul 6, '21	Wed, Jul 14, '21	Thu, Jul 15, '21
Oct 13-14 - Baskerfield	Mon, Aug 16, 21	Mon, Aug 23, 21	Mon, Aug 30, '21	Wed, Sep 8, '21	Thu, Sep 9, '21
Dec 8-9 - Riverside	Mon, Oct 11, 21	Mon, Oct 18, 21	Mon, Oct 25, '21	Wed, Nov 3, '21	Thu, Nov 4, '21

* No Scheduled Meeting in: February, April, July, September and November

Moved - July 4 (Observed)

Moved -Christmas

Moved -Christmas

VI. ACTION CALENDAR

A. CALEXICO EAST PORT OF ENTRY BRIDGE EXPANSION PROJECT CONTRACT AWARD

1. Authorize the Executive Director to sign the Agreement for Services between ICTC and Hazard Construction Company for the contract price of \$ 19,965,000 effective March 24, 2021.
2. Issuance of Notice to Proceed to Hazard Construction Company upon receipt and verification of required documentation.



1503 N. IMPERIAL AVE., SUITE 104
EL CENTRO, CA 92243-2875
PHONE: (760) 592-4494
FAX: (760) 592-4410

March 21, 2021

Cheryl Viegas-Walker, Chairperson
Imperial County Transportation Commission
1503 N. Imperial Ave., Suite 104
El Centro, CA 92243

SUBJECT: Calexico East Port of Entry Bridge Expansion Project – Contract Award

Dear Commission Members:

The U.S. Department of Transportation awarded the Imperial County Transportation Commission (ICTC) with a 2018 Better Utilizing Investment to Leverage Development (BUILD) grant in the amount of \$20 million for the Calexico East Port of Entry Bridge Expansion project. The Project will widen the existing Calexico East Port of Entry (POE) Bridge over the All-American Canal at the USA/Mexico Border to facilitate traffic flow to the existing U.S. federal primary inspection booths, and to reduce delays, idling times, and improve air quality emissions.

- The Project will widen the Bridge on its east side to minimize traffic impacts during construction and reduce construction costs.
- The project will add four northbound lanes: two commercial vehicle lanes and two passenger vehicle lanes including an eight-foot shoulder.
- The existing northbound pedestrian walkway will be shifted to the west to facilitate the addition of the two new northbound passenger vehicle lanes.
- The Project will add new concrete barriers and minor modifications to existing landscaping, drainage, signage, and lighting.
- The Project will also complete deferred maintenance improvements to the existing bridge structure.

The project is funded by a \$20 million BUILD award, \$3 million Trade Corridor Enhancement Program (TCEP), Cycle 1, \$7.5 million TCEP, Cycle 2, and Local Transportation Authority 5% Regional Highway Set-Aside funds in the amount of \$1,844,000. The project funds have been and will be used to complete environmental, preliminary engineering, design, construction and construction management costs of the widening of the bridge over the All-American Canal of the Calexico East Port of Entry.

The procurement process consisted of a two-phased approach. The Request for Qualifications (RFQ) was released in May 2020. Three qualified firms responded to the RFQ. The Request for Proposals (RFP) was released September 21, 2020. Only two of the three firms submitted proposals to ICTC.

**CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND,
IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL**

A Best Value Determination process was utilized for the evaluation of the proposals. A Best Value Determination is a Caltrans proposal evaluation process which is comprised of a formal scoring process that factors the project cost resulting in a Best Value Determination. An evaluation team comprised of representatives from Caltrans, General Services Administration (GSA), Imperial Irrigation District (IID) and ICTC participated in the evaluation of the proposals. The evaluation was conducted on February 3, 2021 and cost estimates were opened on February 5, 2021, resulting in the selection of the firm Hazard Construction and their designated Design firm of Mark Thomas Company for a total project cost of \$19,965,000.00.

The ICTC Management Committee will meet on March 24, 2021 and will likely forward this item to the Commission for their review and approval after public comment, if any:

1. Authorize the Executive Director to sign the Agreement for Services between ICTC and Hazard Construction Company for the Contract Price of \$19,965,000 effective March 24, 2021.
2. Issuance of Notice to Proceed to Hazard Construction Company upon receipt and verification of required documentation.

Sincerely,



MARK BAZA
Executive Director

Attachments



**IMPERIAL COUNTY
TRANSPORTATION COMMISSION**

**DESIGN-BUILD CONTRACT
BOOK 1**

**Calexico East Port of Entry
Bridge Widening**

**FOR DESIGN AND CONSTRUCTION ADJACENT TO
STATE ROUTE 7 IN IMPERIAL COUNTY**

**Off System Facility Located in Imperial County
0.7 Mile South of Route 7 Near the US/Mexico Border**

**ICTC CONTRACT NO. 20-101
11-IMP-007-PM0.0
PROJECT ID: 1118000265**

Federal Aid Project BUILD L-6471 (017)

**RFP Issue Date: September 21, 2020
Proposal Due Date: January 22, 2021**

Final: March 19, 2021

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Exhibit P	Grant Agreement Under the Consolidated Appropriations Act, 2018 for the National Infrastructure Investments Discretionary Grant Program
Exhibit Q	Donation Acceptance Agreement by and Between the United States of America, Acting by and through the U.S. General Services Administration, Public Building Service and the Imperial County Transportation Commission
Exhibit R	Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 10-O1: Consultant Proposal DBE Commitment
Exhibit S	LAPM Exhibit 10-O2: Consultant Contract DBE Commitment
Exhibit T	LAPM Exhibit 15-G: Construction Contract DBE Commitment

THIS Design-Build Contract is entered into by and between the Imperial County Transportation Commission (ICTC) through its Executive Director and Hazard Construction Company (Design- Builder), effective as of the last date set forth on the signature page hereto, with reference to the definitions contained in Exhibit A hereto and the following facts:

Recitals

- a) The Calexico East Port of Entry Bridge Widening Project (Project) is located in Imperial County within the Federal Port of Entry on Federal General Services Administration (GSA) property with the U.S. Customs and Border Protection (CBP) as the Site operator. The Site shall remain in full, uninterrupted operations during construction Work. The Project will widen the existing structure of the Calexico East Port of Entry (POE) Bridge over the All-American Canal near the USA/Mexico Border to facilitate flow to the existing inspection booths.
- b) The Project is funded through a U.S. Department of Transportation (DOT) Building Utilizing Investments to Leverage Development (BUILD) Transportation Development Grant. The Trade Corridor Enhancement Program (TCEP) provided funding for the Project Initiation Documents (PID). ICTC is the lead agency as the recipient of the BUILD funds and subsequent agreement approved by the DOT and Federal Highway Administration (FHWA).
- c) Additional governmental agencies who may be consulted regarding the Project development include the California Department of Transportation (Caltrans), the GSA, CBP, U.S. Bureau of Reclamation (USBR), and the Imperial Irrigation District (IID). ICTC will lead the selection process. Caltrans may be involved in various roles during the procurement and Project delivery process, as requested by ICTC, including procurement advisory support, design and construction reviews and Site inspection during construction, as appropriate. Other stakeholder agencies may have a purely consulting role. ICTC will provide additional information to the Proposers as these agency roles are identified and confirmed.
- d) California Public Contract Code, Chapter 6.5 [Transportation Design-Build Program 6820 - 6829] allows a regional transportation agency such as ICTC to utilize the design-build method to design and construct projects on or adjacent to the State Highway System, including related non-highway portions of the Project, and enter into a Cooperative Agreement with Caltrans for a Project on or interfacing with the State Highway System. California Streets and Highways Code Section 307 provides that State Route 7 is from the northerly boundary of the Federal Port of Entry near Calexico to Route 8 near El Centro. Through Cooperative Agreement, ICTC collaborated with Caltrans to complete the Project Approval and Environmental Document (PAED).
- e) The parties intend for the Contract to be a lump-sum design-build contract obligating Design-Builder to perform all Work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to certain specified limited exceptions. To allow ICTC to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting Design-Builder's ability to make claims for an increase to the Contract Price or an extension of the Completion Deadlines. Design-Builder has agreed in the Contract to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Contract Price.
- f) If Design-Builder fails to complete the Project within the time limitations set forth in the Contract Documents, then ICTC and the public will suffer substantial losses and damages. The Contract Documents therefore provide that Design-Builder shall pay ICTC substantial Liquidated Damages if such completion is delayed.

- g) ICTC has provided certain documents to Design-Builder for the purpose of defining certain aspects of the Project, including the Preliminary Engineering Drawings establishing the Basic Configuration presented in the Approved Project Report and its Attachments. ICTC has also provided Reference Information Documents (RID) to Design-Builder. To the extent Design-Builder incurs time or cost impacts as a result of Errors in the RID, Preliminary Engineering Drawings or Basic Configuration that are material and not discovered by Design-Builder and not reasonably capable of being discovered through the exercise of due diligence (Latent Material Errors), then Design-Builder shall be entitled to a Change Order in accordance with Section 13. With the exception of such Latent Material Errors, ICTC and Design-Builder both intend for Design-Builder to assume full responsibility and liability with respect to the design of the Project, including correction of any other Errors in the Basic Configuration or RID, and ICTC and Design-Builder both intend for Design-Builder to indemnify and hold harmless ICTC and others with respect to any defects in the Project which may relate to such Errors (but not Latent Material Errors) in the Basic Configuration or RID.
- h) Design-Builder shall have the burden of proof with respect to establishing an Error to constitute a Latent Material Error. Evidence shall be in a form and amount reasonably acceptable to ICTC and shall be sufficiently detailed to show clearly that there was an Error in the reference documents which was material, not discovered by Design-Builder, and not reasonably capable of being discovered through the exercise of due diligence.

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

1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

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

1.2 Contract Documents

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

1.3 Order of Precedence

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

1. Amendments, including Change Orders, to Book 1 (Design-Build Contract), as executed by ICTC and Design-Builder.
2. Book 1 (Design-Build Contract), as executed by ICTC and Design-Builder.
3. Amendments, including Change Orders, to Book 2 (Project Requirements).
4. Book 2 (Project Requirements), except that Book 2 (Project Requirements) Exhibits have a lower order of precedence as noted below.
5. Book 2 (Project Requirements) Exhibits.
6. Amendments, including Change Orders, to Book 3 (Applicable Standards).
7. Book 3 (Applicable Standards).
8. The Proposal, except if the Proposal includes statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to ICTC than the requirements of the Contract Documents, as determined by ICTC, Design-Builder’s obligations hereunder shall include compliance with all such statements, offers and terms.

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement established by reference contained in the Contract Documents, ICTC shall have the right to determine, in its sole discretion, which requirement applies. Design-Builder shall request ICTC’s determination in writing respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Interpretations

In the Contract Documents, where appropriate:

- a) The singular includes the plural and vice versa.
- b) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to.
- c) The words “including,” “included,” “includes,” and “include” are deemed to be followed by the words “without limitation.”
- d) Unless the context requires otherwise, in phrases involving performance by a Person, the word “shall” indicates a requirement imposed on the Person.
- e) Unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references.
- f) Words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or section.
- g) Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings.
- h) 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.
- i) Words of any gender used herein include each other gender where appropriate.
- j) All references to law are California Law unless otherwise specified.

References to “engineer” or “Engineer” in the Contract Documents may mean Design-Builder’s Engineer or it may mean an ICTC representative, depending on the context, as determined by ICTC, in its sole discretion.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.

Design-Builder acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person who prepared them, and instead other rules of interpretation shall be used. ICTC’s final answers to the questions posed during the proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.5 Referenced Standards and Specifications

Except as otherwise specified in the Contract Documents or otherwise directed by ICTC, Work specified by the number, symbol, or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect as of the Request for Proposals (RFP) issue Date unless modified by Addendum or Change Order.

1.6 Omission of Details; Clarification by ICTC

Design-Builder shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Design-Builder shall apply to ICTC in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Design-Builder shall promptly notify ICTC of all Errors which it may discover in the Contract Documents and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed under similar circumstances, shall not relieve Design-Builder from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.7 Computation of Periods

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

1.8 Standard for Approvals

In all cases where approvals, acceptances, or consents are required to be provided by ICTC or Design-Builder hereunder, such approvals, acceptances, or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution or other legal challenge; provided, however, the issue of whether the decision was arbitrary or capricious shall be subject to dispute resolution hereunder.

1.9 Federal Requirements

The Work to be performed under the Contract will be financed in part with federal funds and is therefore subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the requirements set forth in Exhibit D and payment of Federal Prevailing Wages provided in Exhibit E. Notwithstanding anything to the contrary contained herein, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

2. OBLIGATIONS OF DESIGN-BUILDER

2.1 Performance Requirements

2.1.1 Performance of Work

All materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be Design-Builder's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 13, the costs of all such materials, services and efforts are included in the Contract Price.

2.1.2 Performance Standards

Design-Builder shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering and architectural principles and construction practices generally accepted as standards of the industry in the State (but at least meeting the requirements of the Contract Documents), in a good and workmanlike manner, free from construction defects except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents unless (a) Design-Builder has actual or constructive knowledge of such defects, and (b) Design-Builder fails to request a change thereto by ICTC, and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.3 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Design-Builder shall perform as directed by ICTC in a diligent manner and without delay, shall abide by ICTC's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 19.

2.2 General Obligations of Design-Builder

Design-Builder, in addition to performing all other requirements of the Contract Documents, shall:

- a) Furnish all design and other services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other Persons):
 - i. To construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, all Governmental Rules, all Governmental Approvals, and all other applicable safety, security, environmental, licensing and other requirements, taking into account the Site right of way and other constraints affecting the Project, so as to achieve, Substantial Completion and Final Acceptance by the applicable Completion Deadlines.
 - ii. Otherwise to do everything required by and in accordance with the Contract Documents.
- b) At all times provide the Project Manager, Approved by ICTC, who will
 - i. Have full responsibility for the prosecution of the Work.
 - ii. Act as agent and be a single point of contact in all matters on behalf of Design-Builder.

- iii. Be present (or its Approved designee will be present) at the Site at all times that Work is performed.
 - iv. Have authority to bind Design-Builder on all matters relating to the Project.
- c) Obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals as provided in Section 6.3).
- d) Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including implementation of all environmental commitments (including avoidance, minimization, and/or mitigation measures) required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.
- e) Provide such assistance as is reasonably requested by ICTC in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to, or arising out of the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, maintain insurance in compliance with Contract requirements; indemnify, hold harmless, and defend ICTC in compliance with Contract requirements.
- f) Comply with all requirements of all Governmental Rules, including:
 - i. The Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 7, "Environmental Compliance," and requirements regarding the handling, generation, treatment, storage, transportation, and disposal of Hazardous Materials.
 - ii. The Americans with Disabilities Act of 1990 (ADA), 42 USC § 12101 et seq., including any amendments, and all applicable regulations and guidelines.
 - iii. The Federal Requirements.
- g) Comply with the Quality Manual requirements in Book 2, Section 5, "Quality Program."
- h) Cooperate with ICTC and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work.
- i) Supervise and be responsible to ICTC for acts and omissions of all Design-Builder-Related Entities, as though all such Persons were directly employed by Design-Builder.
- j) Mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating, or redeploying Design-Builder's forces to other Work, as appropriate.
- k) Pay all applicable federal, State and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Person, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.
- l) Comply with all Design-Builder related requirements of the Project Oversight Agreement between the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans), and the Imperial County Transportation Commission, Exhibit O. ICTC obligations do not pass through to the Design-Builder unless specifically noted in the Exhibit.
- m) Comply with all Design-Builder related requirements of the Grant Agreement Under the Consolidated Appropriations Act, 2018 for the National Infrastructure Investments Discretionary

Grant Program, Exhibit P. ICTC obligations do not pass through to the Design-Builder unless specifically noted in the Exhibit.

- n) Comply with all Design-Builder related requirements of the Donation Acceptance Agreement by and Between the United States of America, Acting by and through the U.S. General Services Administration, Public Building Service and the Imperial County Transportation Commission, Exhibit Q. ICTC obligations do not pass through to the Design-Builder unless specifically noted in the Exhibit.

2.3 Representations, Warranties, and Covenants

Design-Builder represents, warrants, and covenants for the benefit of ICTC as follows:

2.3.1 Maintenance of Professional Qualifications

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

2.3.2 Evaluation of Constraints

Design-Builder has evaluated the constraints affecting delivery of the Project, including the Site right of way, Approved Project Report and its Attachments, Reference Information Documents, Basic Configuration, the conditions of the Environmental Approvals, and has reasonable grounds for believing and does believe that the Project can be delivered within such constraints.

2.3.3 Feasibility of Performance

Design-Builder has evaluated the feasibility of performing the Work within the time specified herein and for the Contract Price and has reasonable grounds for believing and does believe that such performance (including achievement of Substantial Completion and Final Acceptance by the applicable Completion Deadlines, for the Contract Price) is feasible and practicable.

2.3.4 Review of Site Information

Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the preliminary boring logs provided by ICTC in the RFP and undertaken appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project, to the extent Design-Builder deemed necessary or advisable for submittal of a Proposal. Said activities have included inspection and examination of the Site and surrounding locations, to the extent possible. Based on its review, inspection, examination and other activities, Design-Builder is familiar with and accepts the physical requirements of the Work, subject to the right to receive a Change Order for Differing Site Conditions as specified herein. Before commencing any Work on a particular aspect of the Project, Design-Builder shall confirm all governing dimensions and conditions at the Site and shall examine all adjoining work which may have an impact on such Work. Design-Builder shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Governmental Approvals

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

2.3.6 Progression of Work

Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines and in accordance with the Project Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts and overtime operations) as may be necessary to achieve such goals, all at Design-Builder's own expense, except as otherwise specifically provided in Section 13.

2.3.7 Design and Engineering Personnel

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

2.3.8 Organization

Design-Builder is a company duly organized and validly existing under the laws of the State of California, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Design-Builder is duly qualified to do business, and is in good standing, in the State, and shall remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

2.3.9 Authorization

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

2.3.10 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of Design-Builder and, if applicable, of each member of Design-Builder, enforceable in accordance with its terms.

2.3.11 False or Fraudulent Statements and Claims

Design-Builder recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC § 3801 et seq. and the USDOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing the Contract, Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, Design-Builder also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Design-Builder to the extent the federal government deems appropriate. Design-Builder also recognizes that the California False Claims Act (Government Code §12650 et seq) apply to its action hereunder.

2.4 Design Requirements

2.4.1 Required Approval

Approval by ICTC is required before commencing any Work that would necessitate a modification in the Basic Configuration, regardless of whether the modification is required by a Governmental Approval, is desired by Design-Builder for its benefit or for any other reason. Design-Builder acknowledges and agrees that constraints set forth in the Contract Documents, as well as Site conditions, environmental footprint, the Site right of way and the requirement to obtain Approval, will impact Design-Builder’s ability to revise the Basic Configuration. ICTC commits to work in good faith with Design-Builder on all reasonable modifications and will not unreasonably withhold Approval of modifications.

2.4.2 Design Review Process; Compliance with Design

2.4.2.1 Design Review Process

Design-Builder shall furnish the Released for Construction Documents and other Design Documents to ICTC in accordance with Book 2, Section 5, “Quality Program”. Design-Builder shall obtain ICTC’s Approval of the Released for Construction Documents in accordance with Book 2, Section 5, “Quality Program,” and, if required, shall obtain ICTC’s acceptance or Approval of the other Design Documents (as applicable) in accordance with Book 2. ICTC shall have the right to review and comment on all Released for Construction Documents and other Design Documents for compliance with the requirements of the Contract Documents in accordance with Book 2, Section 5, “Quality Program”. ICTC shall complete its review and provide all of its comments, if any, with respect to any individual Released for Construction Document or other Design Document within fifteen (15) Days of receipt or such earlier time as is required to not delay Design-Builder in the finalization of the design or the commencement or performance of the Work, and any failure to do so shall be considered an ICTC-Caused Delay. Design-Builder shall notify ICTC in writing within fourteen (14) Days after receipt of any such comments if Design-Builder believes incorporation of the comments would cause the Released for Construction Documents, other Design Documents or any Contract Documents to contain Errors in any respect or which would otherwise adversely affect in any manner the design or construction of the Project or the Project Schedule, and ICTC shall have the right to modify its

comments. Any failure of Design-Builder to so notify ICTC shall constitute Design-Builder's full acceptance of all responsibility for changes made to the Released for Construction Documents and other Design Documents in response to such ICTC comments and will be treated for all purposes hereunder as if Design-Builder had initiated such changes. Within fourteen (14) Days of receipt of comments (including modifications to previous comments) or such longer period as may be allowed by ICTC, Design-Builder shall revise and modify all such documents or materials so as to fully reflect all such comments.

2.4.2.2 Design Reviews Required by Third Parties

Design-Builder, in coordination with ICTC, shall be responsible for giving and obtaining all design reviews required by Utility Owners, Governmental Persons, and any other Persons other than ICTC, as applicable.

2.4.2.3 Compliance with Contract Documents and Design

Design-Builder shall deliver the Project in accordance with and otherwise meet the requirements of the Contract Documents and Design Documents. To the extent of any conflicts between the Contract Documents and the Design Documents, the Contract Documents shall have precedence over the Design Documents.

2.4.3 Ownership of Design

Released for Construction Documents and other Design Documents become ICTC's property upon preparation and payment by ICTC of all sums due under the Contract Documents. Other documents prepared or obtained by Design-Builder in connection with the performance of its obligations under the Contract, including Construction Documents, studies, manuals, As-Built Documents, calculations, technical and other reports and the like, become ICTC's property upon Design-Builder's preparation or receipt thereof and payment by ICTC of all sums due under the Contract Documents.

2.5 Alternative Technical Concepts

Alternative Technical Concepts (ATCs) were not allowed during the Proposal phase.

2.5.1 Reserved

2.5.2 Reserved

2.5.3 Reserved

3. INFORMATION SUPPLIED TO DESIGN-BUILDER; RESPONSIBILITY FOR DESIGN; DISCLAIMER

3.1 Information Supplied

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

3.2 Responsibility for Design

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

- a) The Basic Configuration based on the Approved Project Report and its Attachments is preliminary and conceptual in nature.
- b) Design-Builder is not entitled to rely on and has not relied on (i) the RID or (ii) any other documents or information provided by ICTC, except to the extent specifically permitted in the Contract Documents (including, without limitation, Recital g) of this Contract).
- c) Design-Builder is responsible for correcting any Errors (but not Latent Material Errors) in the Basic Configuration through the design and/or construction process as set forth in Book 2 without any increase in the Contract Price or extension of a Completion Deadline.
- d) Design-Builder's Warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors (but not Latent Material Errors) in the Basic Configuration or RID.

3.3 Reliance of Specified RID Information

3.3.1 No Other Liability Regarding RID

Design-Builder understands and agrees that ICTC shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Design-Builder-Related Entity by reason of any use of any information contained in the RID or any action or forbearance in reliance thereon, except for Latent Material Errors in the RID and except to the extent that ICTC has specifically agreed herein that Design-Builder shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. Design-Builder further acknowledges and agrees that:

- a) If and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of said information in any way, such use is made on the basis that Design-Builder, not ICTC, has approved and is responsible for said information.
- b) Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to confirm or supplement said information, and that any use of said information is entirely at Design-Builder's own risk and at its own discretion.

3.3.2 No Representation or Warranty Regarding Basic Configuration and RID

ICTC DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE BASIC CONFIGURATION AND RID IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. NOTWITHSTANDING THE FOREGOING, ICTC IS NOT AWARE OF ANY ERRORS IN THE BASIC CONFIGURATION OR RID, AND ACKNOWLEDGES THAT DESIGN-BUILDER HAS USED THE BASIC CONFIGURATION AND RID, AMONG OTHER ITEMS, TO PREPARE ITS BID. THE FOREGOING SHALL IN NO WAY AFFECT ICTC'S AGREEMENT HEREIN TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13, INCLUDING, WITHOUT LIMITATION, CHANGE ORDERS FOR TIME AND/OR COST IMPACTS CAUSED BY LATENT MATERIAL ERRORS IN THE BASIC CONFIGURATION AND/OR RID.

3.4 Professional Licensing Laws

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

4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING

4.1 Time of Essence

Time is of the essence for this Contract.

4.2 Notices to Proceed

4.2.1 Issuance of NTP1

Design-Builder shall begin performance of certain limited Work as directed and described in NTP1 issued by ICTC. Limited Work includes design Work and may include non-permanent construction, if specifically authorized in writing by ICTC, such as tree removal, clearing and grubbing, utility coordination, soil borings, and temporary construction. ICTC anticipates that it will issue NTP1 within fourteen (14) Days after all the following requirements have been fully satisfied with respect to the Work proposed to be performed:

- a) Design-Builder has notified ICTC in writing of the Work to be performed and has received ICTC Approval, which may require Released for Construction Documents with ICTC Approval.
- b) All insurance policies and bonds required to be delivered to ICTC as set forth in Section 9 of the Contract have been received and Approved by ICTC and remain in full force and effect before the start of the Project.
- c) Design-Builder has submitted for ICTC Approval a Preliminary Schedule in accordance with Book 2, Section 4, "Project Schedule Management."
- d) Approval of the Design Quality Management Plan and Document Management Plan in accordance with Book 2, Section 5, "Quality Program."
- e) Acceptance of DBE Performance Plan in accordance with Exhibit E.
- f) All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to start of such construction have been performed.
- g) All necessary rights of access for such portion of the Project have been obtained.

4.2.2 Issuance of NTP2

Design-Builder shall begin performance of the remainder of the Work as directed and described in NTP2 issued by ICTC. ICTC anticipates that it will issue NTP2 within fourteen (14) Days after the occurrence of all of the following requirements have been fully satisfied:

- a) Approval of the Baseline Schedule in accordance with Book 2, Section 4, "Project Schedule Management."
- b) Approval of the entire Quality Manual in accordance with Book 2, Section 5, "Quality Program."

- c) Approval of the Environmental Management Plan in accordance with Book 2, Section 7, “Environmental Compliance.”
- d) Approval of the Transportation Management Memorandum in accordance with Book 2, Section 25, “Maintenance of Traffic.”
- e) Design-Builder has obtained Approval of the Storm Water Pollution Prevention Plan (SWPPP).
- f) Design-Builder has submitted a Utility Tracking Report.
- g) Approval of the Visual Quality Management Memorandum in accordance with Book 2, Section 15, “Visual Quality Management.”
- h) Design-Builder has submitted Original Payment Breakdown in Book 2, Section 2.2.3.3 “Original Payment Breakdown.”
- i) Approval of the Maintenance Management Plan.

4.3 Completion Deadlines

4.3.1 Reserved

4.3.2 Substantial Completion Deadline

Design-Builder shall achieve Substantial Completion not to exceed four hundred sixty (460) Working Days after issuance of NTP1. Said deadline for Substantial Completion, is referred to herein as the “Substantial Completion Deadline.”

4.3.3 Final Acceptance Deadline

Design-Builder shall achieve Final Acceptance within forty five (45) Working Days following Substantial Completion. See Section 10.2.2 for Highway Planting Establishment requirements and Section 11.3 on Limitations on Payment. Said deadline for Final Acceptance, as it may be extended hereunder, is at ICTC’s sole discretion and is referred to herein as the “Final Acceptance Deadline.”

4.3.4 No Time Extensions

Except as otherwise specifically provided in Section 13, ICTC shall have no obligation to extend any Completion Deadline and Design-Builder shall not be relieved of its obligation to comply with the Project Schedule and achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines for any reason.

4.4 Project Schedule

Design-Builder shall deliver the Project, including planning, design, construction, management, development, and completion in accordance with the Project Schedule, as described in Book 2, Section 4, “Project Schedule Management.” Such schedule shall also be the basis for determining the amount of monthly progress payments to be made to Design-Builder.

4.5 Prerequisites for Start of Construction

Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project, except Work specifically authorized under NTP1, until all the following events have been fully satisfied with respect to the Work proposed to be constructed:

- a) ICTC has issued a Notice to Proceed authorizing such Work.
- b) All requirements of the Quality Manual that are a condition to construction have been met.
- c) Design-Builder has furnished the Released for Construction Documents to ICTC and has received ICTC's Approval thereof in accordance with Book 2, Section 5, "Quality Program," relating to such portion of the Project, unless waived in writing by ICTC.
- d) All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals or the application to the Governmental Persons which allow construction to proceed during the application process, that are a prerequisite to start of such construction have been performed.
- e) All insurance policies and bonds required to be delivered to ICTC hereunder have been received and Approved by ICTC as applicable and remain in full force and effect.
- f) All necessary rights of access for such portion of the Project have been obtained.
- g) ICTC has Approved the Design Builder's Safety and Security Program.
- h) Any additional conditions for construction set forth in the Contract Documents.

5. CONTROL OF WORK

5.1 Control and Coordination of Work

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

5.2 Safety and Security

Design-Builder shall take all reasonable precautions to prevent damage, injury, or loss to, all Persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of ICTC and its consultants, visitors to the Site, GSA and CBP employees working at the Site, traffic, and the public who may be affected by the Work. Design-Builder shall at all times comply with the Safety and Security Management Plan as defined in Book 2, Section 2.4.2.1 “Design-Builder Safety and Security Management Plan” including those GSA and CBP Site safety and security requirements. Design-Builder shall immediately notify ICTC if Design-Builder believes that any Contract requirement creates a safety or security risk. By so doing, Design-builder is not relieved of responsibility for safety or security on the Site. Should ICTC point out to Design-Builder a perceived safety hazard or security risk or lack of adequate warning devices and protective measures, that action by ICTC shall not relieve Design-Builder from responsibility for public safety and Site security. Conformance by Design-Builder with the Safety and Security Management Plan or any other safety and security provisions in this Contract shall not relieve Design-Builder of its responsibility for safety and security on the Site.

5.3 Process to be Followed for Discovery of Certain Site Conditions

5.3.1 Notification to ICTC

5.3.1.1 Discovery of Certain Site Conditions

As a condition precedent to Design-Builder’s right to a Change Order, Design-Builder shall immediately notify ICTC via telephone or in person, to be followed immediately by written notification, if Design-Builder becomes aware of any of the following that were not previously identified in the Contract Documents: (a) any on-Site material that Design-Builder believes may contain Hazardous Materials that is required to be removed or treated, (b) any archeological, paleontological, cultural, or biological resources, or (c) any Differing Site Conditions. For situations falling under the scope of clause (a), Design-Builder’s written notice shall specify (i) whether the potential Hazardous Material is HM-1 or HM-2 and (ii) whether the potential Hazardous Material is located with ICTC’s existing right of way. Upon any such discovery, Design-Builder shall immediately stop Work in the affected area and secure the affected area pending receipt of direction from ICTC. Design-Builder shall not move or take from the Site any archeological, paleontological, cultural, or biological resources. ICTC will view the location within two (2) Working Days of receipt of such notification and will advise Design-Builder at that time whether Work can be resumed or whether further investigation is required. Any delay resulting from the conditions described in this Section 5.3.1.1 or from ICTC viewing the location up to two (2) Working Days shall not be considered an ICTC-Caused Delay.

5.3.1.2 Identified Conditions; Alternative Procedure

Notwithstanding the foregoing, Design-Builder shall not be obligated to stop Work upon discovery of any materials, resources, species, or conditions which the Contract Documents indicate are present in the location in question, provided, however, that Design-Builder shall provide prompt notice to ICTC of any such discovery. Furthermore, if any Governmental Approval specifies a procedure to be followed which differs from the procedure set forth herein, Design-Builder shall follow the procedure set forth in the Governmental Approval.

5.3.2 Further Investigation and Mitigation Work

Design-Builder shall promptly conduct such further investigation as ICTC deems appropriate.

If Differing Site Conditions are discovered, Design-Builder shall advise ICTC within ten (10) Working Days after the initial notification to ICTC required in Section 5.3.1, of any action recommended to be taken regarding the situation in a written action plan. ICTC then will determine whether Design-Builder's findings and proposed actions are acceptable within three (3) Working Days of receipt of Design-Builder's proposed action plan and either Approve, or require modification of, Design-Builder's proposed action plan.

If Hazardous Materials are involved, see Book 2, Section 7, "Environmental Compliance."

If archeological, paleontological, cultural, or biological resources are present, ICTC will either perform the necessary Mitigation Work or direct Design-Builder to perform the necessary Mitigation Work pursuant to a Change Order issued under Section 13.

5.3.3 Recommence Work

ICTC shall have the right to require Design-Builder to recommence Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation of any Governmental Rules or Governmental Approvals). Design-Builder shall promptly recommence Work in the area upon receipt of notification from ICTC to do so. On recommencing Work, Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Governmental Rules with respect to such Work, consistent with ICTC's determination or preliminary determination regarding the nature of the material, resources, species, or condition.

5.4 Obligation to Minimize Impacts

Design-Builder shall ensure that all of its activities and the activities of all Design-Builder-Related Entities are undertaken in a manner that will minimize the effect on surrounding property, the public, and Site operations to the maximum extent practicable. Design-Builder and all Design-Builder-Related Entities shall perform Work as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of Work that can be prosecuted properly with due regard to the rights of the public.

5.5 Quality Management

5.5.1 Design-Builder Quality Management

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

5.5.2 Oversight, Inspection, and Testing by ICTC and Others

All materials and each part or detail of the Work shall also be subject to oversight, inspection, and testing by ICTC and other Persons designated by ICTC. When any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect, and test the Work. Such oversight, inspection, and/or testing does not make such Person a party to the Contract nor will it change the rights of the parties hereto. Design-Builder hereby consents to such oversight, inspection, and testing. Upon request from ICTC, Design-Builder shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.5.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, Design-Builder shall remove or uncover such portions of the finished construction Work as directed by ICTC. After examination by ICTC and any other Persons designated by ICTC, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing, and restoring the Work and recovery of any delay to the Critical Path occasioned thereby shall be at Design-Builder's expense and Design-Builder shall not be entitled to a time extension. Furthermore, any Work done or materials used without notice to and opportunity for prior inspection by ICTC as provided in Book 2, Section 5, "Quality Program" may be ordered uncovered, removed, or restored at Design-Builder's expense and without a time extension, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing, and restoring Work shall be considered an ICTC-Caused Delay, and Design-Builder shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to the Critical Path occasioned thereby, subject to the provisions of Section 13.

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

5.6.1 Oversight and Acceptance

Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, audits, reviews, tests, inspections, acceptances, and approvals by any Person do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. ICTC may reject or require Design-Builder to remedy any Nonconforming Work and/or identify additional Work which shall be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous

oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals were conducted by any Person. ICTC's Approval of Design Documents for construction as described by the Contract Documents shall constitute Approval of the design by ICTC for purposes of Government Code Section 830.6 but shall not be deemed to relieve Design-Builder of liability for the design.

5.6.2 No Estoppel

ICTC shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefor, from showing that any such measurement, estimate, or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by Design-Builder, or from showing that the Work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, ICTC shall not be precluded or estopped from recovering from Design-Builder and its Surety(ies) such damages as ICTC may sustain by reason of Design-Builder's failure to comply or to have complied with the terms of the Contract Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal, and Replacement of Work

Subject to ICTC's right, in its sole discretion, to accept or reject Nonconforming Work, Design-Builder shall remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at Design-Builder's expense and without any time extension; and Design-Builder shall promptly stop the Work, submit a written plan for ICTC Approval and take all action necessary to prevent similar deficiencies from occurring in the future. The fact that ICTC may not have discovered the Nonconforming Work shall not constitute an acceptance or Approval of such Nonconforming Work. The Design-Builder shall, within five (5) Days of the identification of construction-related Nonconforming Work, propose a resolution for ICTC's Approval. Following Approval of the proposed resolution, the Design-Builder shall notify ICTC 24 hours before implementing the proposed resolution so that ICTC may witness the implementation, if ICTC so chooses. If Design-Builder fails to correct any Nonconforming Work within ten (10) Days ICTC's Approval of the proposed resolution (or, for Nonconforming Work which cannot be corrected within ten (10) Days, if Design-Builder fails to provide to ICTC a schedule for correcting any such Nonconforming Work Approved by ICTC within such ten (10) Day period, begin correction within such ten (10) Day period and thereafter diligently prosecute such correction in accordance with such Approved schedule to completion), then ICTC may cause the Nonconforming Work to be remedied or removed and replaced, and may deduct the cost of doing so from any moneys due or to become due Design-Builder and/or obtain reimbursement from Design-Builder for such cost.

5.7.2 Acceptance of Nonconforming Work

ICTC may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In certain events, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, without limiting the foregoing, Design-Builder's failure to perform such items to be paid in equal monthly amounts indicated in Book 2, Section 2.2, "Cost Management," during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at ICTC's election, (a) Design-Builder's cost savings associated with its failure to perform the Work in accordance with the Contract requirements, and/or (b) the amount deemed appropriate by ICTC to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the

Nonconforming Work. In certain events, ICTC shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents.

6. ACCESS TO SITE; UTILITY RELOCATIONS; ENVIRONMENTAL MITIGATION

6.1 Access to Site

6.1.1 Access to Right of Way

6.1.1.1 Obligation to Provide Access to Right of Way

CBP, GSA, and ICTC shall provide access to the Project Site right of way.

6.1.1.2 Right of Way Access Requirements

Concurrently with review of the Baseline Schedule, Design-Builder and ICTC shall discuss the access requirements for the Site right of way associated with the scheduled activities, mutually determine which parcels are on the Critical Path and establish dates to be included in the Baseline Schedule for activities associated with provision of access. Design-Builder shall be provided access to the Site right of way as specified in Book 2, Section 11, "Right of Way". For Approval, the Baseline Schedule shall be structured to provide reasonable work-arounds to progress the Project until these parcels become available, and reasonably minimize dependence on these parcels.

6.1.1.3 Delay in Providing Access

If ICTC at any time determines it will be unable to provide access to the Site, ICTC shall notify Design-Builder regarding the revised projected date for delivery of access forty five (45) days before the current scheduled date for delivery of access. Design-Builder shall take appropriate action to minimize any cost and time impact and shall work-around such parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section 6.1.1.4, to the extent that a delay to the Critical Path cannot be avoided, such delay to the Critical Path shall be considered an ICTC-Caused Delay.

6.1.1.4 Obligation to Provide Written Notice

In addition to the requirements of Section 6.1.1.3, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to ICTC, GSA, and CBP's providing access to the Site right of way, Design-Builder shall provide ICTC with a thirty (30)-Day written notice when lack of Site access will result in an impact to the cost or schedule.

6.1.2 Access to Right of Way Not Identified

6.1.2.1 Unidentified Right of Way as a Result of an ICTC-Directed Change

Any right of way not identified in the Approved Project Report and its Attachments that is required as the result of an ICTC-Directed Change will be addressed in the respective Change Order for the ICTC-Directed Change.

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

The cost of obtaining any right of way not identified in the Approved Project Report and its Attachments associated with a Design-Builder-initiated Change Order under Section 13.3 will be considered in determining the Contract Price adjustment under Section 13.

6.1.2.3 Reimbursement of ICTC Costs

Subject to ICTC Approval, Design-Builder shall reimburse ICTC for any costs (including attorneys', accountants', and expert witness fees and costs) of acquiring any real property that is not ICTC's responsibility under Sections 6.1.1.1, 6.1.2.1 or 6.1.2.2 which Design-Builder determines is necessary or advisable in order to complete the Project, including obtaining any Construction Easements. ICTC may deduct such amounts from payments otherwise owing hereunder or may separately invoice Design-Builder. Design-Builder shall reimburse ICTC for any such amounts paid by ICTC within ten (10) Days after receipt of an invoice from ICTC therefor.

6.1.2.4 Additional Requirements

Additional requirements applicable to Design-Builder are set forth in Book 2, Section 11, "Right of Way".

6.2 Utility Relocations

This Section 6.2 describes how the risk of increased costs and delays associated with the Utility Work is allocated between ICTC and Design-Builder through the Change Order process, and contains certain additional terms relating to Utility Work to supplement those set forth in Book 2, Section 12, "Utilities". Design-Builder agrees that (a) the Contract Price covers all of the Relocations and other Utility Work to be furnished or performed by Design-Builder described in Book 2, Section 12, "Utilities" and in this Section 6.2, and (b) it is feasible to obtain and/or perform all necessary Utility Work within the time deadlines of the Contract Documents. Accordingly, Design-Builder shall be entitled to receive a Change Order for additional costs and delays associated with the Utility Work only as permitted by this Section 6.2 or in circumstances for which such a Change Order is otherwise permitted under Section 13 (such as for ICTC-Directed Changes which increase the Utility Work to be furnished or performed by Design-Builder). A deductive Change Order for reductions in the Utility Work to be furnished or performed by Design-Builder shall be issued only when permitted by this Section 6.2 or in circumstances for which a deductive Change Order is otherwise permitted under Section 13. Notwithstanding the foregoing, Design-Builder's entitlement to any Change Orders pursuant to Section 13 relating to the Utility Work shall be subject to any applicable limitations and restrictions set forth in this Section 6.2, and Design-Builder's entitlement to any Change Orders pursuant to this Section 6.2 shall be subject to the limitations, restrictions, and procedures set forth in Section 13, except as otherwise set forth in Section 6.2.8.

6.2.1 Accuracy of Design and Data

6.2.1.1 “Reasonable Accuracy” Defined

6.2.1.2 Reasonable Accuracy

For purposes of Sections 6.2.1.1 and 6.2.1.2, a Utility shall be deemed indicated with reasonable accuracy if:

- a) With respect to the “Quality Level A” Utility information provided by ICTC (as indicated therein) or the Approved Project Report and its Attachments, the Utility’s actual location is within two (2) feet of the indicated horizontal and vertical locations at the “xyz” coordinates in the utility plan sheets or pothole matrices showing Verified Utility Information in Book 2, Section 12, “Utilities.”.
- b) With respect to the “Quality Level B” Utility information provided by ICTC (as indicated therein) or the Approved Project Report and its Attachments, the Utility’s actual location is within two (2) feet of the indicated horizontal location at the “xy” coordinates in the utility plan sheets or pothole matrices showing Verified Utility Information in Book 2 (with no limitation on vertical location).

6.2.1.3 Inconsistency Among Verification Data Sheets

If there is any inconsistency between any two (2) or more utility plan sheets or pothole matrices showing Verified Utility Information cited in Section 6.2.1.3, the most accurate of the indications will be used for purposes of Section 6.2.1.3.

6.2.1.4 Design-Builder Acknowledgment Regarding RID

Design-Builder acknowledges that statements in the RID as to the extent or nature of the Work required to Relocate any Utility (as opposed to statements regarding the location of the Utility) shall have no relevance to the determination of reasonable accuracy and shall not be considered in calculating the amount of the Change Order, if any, to which either party is entitled pursuant to this Section 6.2.1.

6.2.1.5 Inaccuracy Increasing the Work

In general, if any existing underground Utility identified in Book 2, Section 12, “Utilities,” as part of the Work (or any portion of such Utility) is not indicated at all in the utility plan sheets or the Approved Project Report and its Attachments or is not indicated therein with “reasonable accuracy” (as defined in Section 6.2.1.1) therein, then, upon Design-Builder’s fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, ICTC shall be responsible for, and agrees to issue a Change Order to (a) compensate Design-Builder for additional costs of the Utility Work (other than Betterments added to the Work pursuant to Section 6.2.4) to be furnished or performed by Design-Builder which are directly attributable to such lacking or incorrect information and/or (b) to extend the Completion Deadlines as a result of any delay in the Critical Path caused by any such conditions. Notwithstanding the foregoing, Design-Builder shall be responsible for, and no Change Order shall be issued under this Section 6.2.1 with respect to:

- a) Any Utility (or portion thereof) which a surface inspection of the area would have shown the existence or the likelihood of existence thereof in the correct location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters, junction boxes or identifying markers.
- b) Service Lines.

6.2.1.6 Inaccuracy Decreasing the Work

If any existing underground Utility identified in Book 2, Section 12, “Utilities” as part of the Work (or any portion of such Utility) is not indicated with “reasonable accuracy” in the utility plan sheets or the Approved Project Report and its Attachments, then ICTC shall have the right to issue a Change Order reducing the Contract Price and/or Completion Deadlines to reflect the value of any reduction in the costs and/or duration of the Utility Work (other than Betterments added to the Work pursuant to Section 6.2.4) to be furnished or performed by Design-Builder which is directly attributable to the correction of such information. The amount of any such Change Order shall be determined in accordance with Section 13.

6.2.1.7 Partial Inaccuracy

If only a portion of an existing underground Utility identified in Book 2, Section 12, “Utilities” is not indicated at all in the Approved Project Report and its Attachments or is not indicated with “reasonable accuracy” therein, then a Change Order pursuant to Sections 6.2.1.2 or 6.2.1.3 shall be allowed only for the resulting increased or decreased costs (respectively) of the Utility Work incurred by Design-Builder with respect to that portion of such Utility (subject, in the case of any increase in the Contract Price, to the restrictions set forth in clauses (a), (b), (c), (d), and (e) of Section 6.2.1.2).

6.2.2 Change in Allocation of Responsibility

6.2.2.1 Change in Allocation of Responsibility Increasing the Work

The scope of the Work with respect to Utilities may be increased by reallocating Utility Work from a Utility Owner to Design-Builder by Change Order.

Upon Design-Builder’s fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, Design-Builder shall be entitled to an increase in the Contract Price to compensate Design-Builder for its additional costs directly attributable to any increase in the scope of the Work pursuant to this Section 6.2.2.1; provided, however, that if ICTC determines in its sole discretion that ICTC is entitled to reimbursement by the Utility Owner for the cost of such Relocation, then the amount of such resulting increase in the Contract Price shall instead be determined in the same manner as that provided in Section 6.2.4 for a Betterment, subject to the requirements of any applicable Utility Agreement. Design-Builder is responsible for scheduling all Utility Work so as to minimize delays, without regard to whether such Utility Work is performed by Design-Builder or the affected Utility Owner.

6.2.2.2 Change in Allocation of Responsibility Decreasing the Work

Any Utility Work initially included in the scope of the Work may be deleted from the scope of the Work as required to accommodate actual utility conditions encountered at the Project Site.

ICTC shall be entitled to a reduction in the Contract Price to reflect any reduction in the scope of the Work pursuant to this Section 6.2.2.2. The amount of any such deductive Change Order shall be determined in accordance with Section 13. Any reduction in the scope of the Work pursuant to this Section 6.2.2.2 shall not be considered an ICTC-Directed Change.

6.2.3 Added Utility Work

Upon Design-Builder’s fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, Design-Builder shall be entitled to (a) an increase in the Contract Price to

compensate Design-Builder for its additional costs, and/or (b) an extension of the applicable Completion Deadlines as the result of any delay in the Critical Path directly attributable to any Utility Work added after the Proposal Due Date in accordance with Book 2, Section 12.2.3.3, “Changes in Design-Builder’s Work.”

6.2.4 Betterments

Utility Betterments may be added to the Work pursuant to this Section 6.2.4.

6.2.4.1 Procedure

Any Utility Owner may request ICTC to permit Design-Builder to perform work relating to Betterments as a part of the Work, at the Utility Owner’s expense. If ICTC Approves any such request, Design-Builder will have the obligation to perform such work, with the right to receive additional payment and an extension of any affected Completion Deadline to the extent that any delay in the Critical Path is directly attributable to the Betterment. The price charged by Design-Builder for such Betterment shall either be a lump sum amount negotiated with the Utility Owner or determined on a time and materials cost basis as specified below. Any extension of any Completion Deadline(s) or Contract Price increase requested for any Betterment shall be subject to the requirements of Sections 6.2 and 13, as applicable.

6.2.4.2 Pricing

If a Utility Owner requests that Design-Builder design and/or construct a Betterment, Design-Builder shall use its best efforts to negotiate a lump sum price or unit prices for such work with the Utility Owner, in good faith. If Design-Builder and the Utility Owner are unable to agree on a lump sum price or unit prices, then ICTC will direct Design-Builder to perform such work on a time and materials basis pursuant to Section 13.7, provided that the conditions set forth in Section 6.2.4.1 are satisfied.

6.2.4.3 Change Order Increasing the Contract Price

A proposed Betterment will be added to the scope of the Work if Approved by ICTC pursuant to Section 6.2.4.1, ICTC agrees to issue a Change Order increasing the Contract Price on account of any Betterment added to the Work pursuant to this Section 6.2.4.3. The amount of any Change Order issued under this Section 6.2.4.3 shall be a direct pass-through of the lump sum price negotiated by Design-Builder and the Utility Owner (with no additional mark-ups) or, if no such price has been negotiated, an amount determined on a time and materials basis pursuant to Section 13.7. Design-Builder shall not request or accept any payment directly from the Utility Owner for any Betterment added to the Work.

6.2.4.4 ICTC’s Approval of Betterments

ICTC will Approve the addition of a Betterment to the scope of the Work under this Section 6.2.4.4 only if:

- (a) The Utility Owner has agreed to the addition of such Betterment to the Work.
- (b) Such Betterment is compatible with the Project.
- (c) The Utility Owner has agreed to reimburse ICTC for all the costs thereof.
- (d) The Utility Owner has agreed as to the method (e.g., negotiated lump sum amount, unit prices or time and materials cost basis) of pricing such work.

- (e) It is feasible to separate the cost/pricing of the Betterment work from that for any related Utility Work being furnished or performed by Design-Builder. Design-Builder shall provide ICTC with such information, analyses, and certificates as may be requested by ICTC in connection with its Approval.

6.2.4.5 Change Order Reducing the Contract Price

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but subsequently for any reason the Betterment is deleted from the Work, or the scope of Design-Builder's Work with regard to such Betterment is materially reduced, then ICTC shall be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work that is directly attributable to such deletion or reduction. Such Change Order shall be equal to the lump sum amount added to the Contract Price pursuant to Section 6.2.4.3, if applicable and if the entire Betterment has been deleted from the Work; otherwise, the amount of such Change Order shall be determined in accordance with Section 13.

6.2.4.6 Betterment Not Considered ICTC-Directed Change

Any change in the scope of the Work pursuant to this Section 6.2.4 shall not be considered an ICTC-Directed Change.

6.2.5 Utility Delays

Design-Builder shall give written notice to ICTC of any circumstance which may lead to a claim under this Section 6.2.5 immediately after Design-Builder's becoming aware that such circumstance has occurred or is likely to occur.

6.2.5.1 Allocation of Risk of Schedule Impacts

Design-Builder shall bear the risk of schedule impacts associated with the first eight (8) Days of Utility Delays per Utility Owner for the Project not to exceed eight (8) Days for all Utility Delays by all Utility Owners. Subject to the limitations and conditions set forth herein, if aggregate Utility Delays caused by a particular Utility Owner exceed eight (8) Days or if aggregate Utility Delays caused by all Utility Owners exceed eight (8) Days, then any Completion Deadline(s) affected thereby shall be extended for one (1) Day for every Day of Utility Delay caused by such Utility Owner(s) in excess of these limits identified in this Section 6.2.5.1 so long as the Utility Delay impacts the Project's Critical Path.

Failure of the parties to reach agreement regarding Design-Builder's entitlement to an extension due to Utility Delays shall be a Dispute to be resolved in accordance with Section 19. Design-Builder shall not be entitled to any extension of any Completion Deadline on account of any Utility Delay except as provided in this Section 6.2.5.1.

6.2.5.2 Conditions to Extensions for Utility Delays

With respect to each Utility Delay claimed by Design-Builder, Design-Builder shall not be entitled to any extension of any Completion Deadline(s) pursuant to Section 6.2.5.1, and such Utility Delay shall not be counted toward the four (4) Day cap on Design-Builder's risk per Utility Owner set forth in Section 6.2.5.1, unless all of the following conditions are satisfied:

- a) Design-Builder has provided evidence reasonably satisfactory to ICTC that (i) Design-Builder has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays, and (ii) Design-Builder has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
- b) If Design-Builder is responsible for the Relocation, Design-Builder has provided a reasonable Relocation plan to the Utility Owner and Design-Builder has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by or with any Governmental Person in order to design and construct such Relocation.
- c) No circumstances exist which have delayed or are delaying the affected Relocation, other than those which fit within the definition of a Utility Delay.

6.2.5.3 Concurrent Delays

To the extent one (1) or more Utility Delays is or are concurrent with any other delay which is Design-Builder's responsibility hereunder but which is not a Utility Delay, whether or not such other delay is on the Critical Path, then to the extent of the concurrency such Utility Delay(s) shall not be considered in calculating any four (4) Day cap on Design-Builder's risk pursuant to Section 6.2.5.1. Furthermore, to the extent two (2) or more Utility Delays occur concurrently with each other (whether caused by the same Utility Owner or by different Utility Owners), then only one (1) of such Utility Delays shall be considered in calculating a four (4) Day cap on Design-Builder's risk pursuant to Section 6.2.5.1 (in selecting between two (2) or more Utility Owners for such purpose, the Utility Delay caused by the Utility Owner with the greater or greatest amount of accrued Utility Delay shall be selected and applied to the four (4) Day cap on Design-Builder's risk for such Utility Owner).

6.2.6 Certain Obligations of Design-Builder; Utility-Related Right of Way Costs

6.2.6.1 Multiple Relocations of the Same Utility

Design-Builder shall endeavor to avoid multiple Relocations of the same Utility, whether by the Utility Owner or by Design-Builder. Accordingly, after a Utility has been Relocated once in order to accommodate the Project, Design-Builder shall be responsible for all costs incurred by either Design-Builder or the Utility Owner in order to subsequently Relocate such Utility to accommodate the Project. If the Utility Owner performs such subsequent Relocation at ICTC's expense, then Design-Builder shall reimburse ICTC for all amounts paid by ICTC to such Utility Owner in reimbursement for such subsequent Relocation. If Design-Builder performs such subsequent Relocation, then Design-Builder shall not receive any extension of any Completion Deadline or increase in the Contract Price on account of the performance of such subsequent Relocation.

6.2.6.2 Minimizing ICTC's Reimbursement Obligation

In designing and constructing the Project, Design-Builder shall take all reasonable steps to minimize costs to the Utility Owners which will be subject to reimbursement by ICTC, to the extent practicable and otherwise consistent with other requirements of the Contract Documents.

6.2.6.3 Reserved

6.2.6.4 ICTC's Responsibility

With respect to Utility Easements other than those described in Section 6.2.6.3.2, ICTC shall be responsible for any compensation required to be paid to Utility Owners for relinquishing their Utility Easements.

6.2.6.5 Design-Builder's Responsibility

With respect to Utility Easements resulting from a change in Basic Configuration not caused by a Latent Material Error, Design-Builder shall be responsible for, and shall reimburse ICTC within ten (10) Days after receiving an invoice therefor, any compensation which ICTC may be obligated to pay to the Utility Owners for relinquishing such Utility Easements.

6.2.7 Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in this Section 6.2 and in Section 13, the entitlement of Design-Builder to any Change Order under this Section 6.2 shall be subject to the restrictions and limitations set forth in this Section 6.2.7.

6.2.7.1 Burden of Proof

Design-Builder shall provide adequate support, by documentation acceptable to ICTC, to prove that the amount of any additional costs and/or time incurred by Design-Builder are both necessary and reasonable. For Relocations, Design-Builder shall also bear the burden of proving that the Relocation cannot reasonably be avoided.

6.2.7.2 Incremental Costs Only

Any Change Order increasing the Contract Price pursuant to this Section 6.2 shall include only the Incremental Costs arising from the circumstances giving rise to such Change Order.

6.2.7.3 Coordination Costs

Design-Builder shall not be entitled to an increase in the Contract Price for any costs of coordinating with Utility Owners or for assisting ICTC in coordinating with Utility Owners.

6.2.7.4 Voluntary Action by Design-Builder

If Design-Builder elects to make payments to Utility Owners or to undertake any other efforts which are not required by the terms of the Contract Documents, Design-Builder shall not be entitled to a Change Order in connection therewith. Design-Builder shall promptly notify ICTC of the terms of any such arrangements.

6.2.8 Special Provision Regarding Change Orders

Notwithstanding any contrary provision of Section 13, ICTC reserves the right, in its sole discretion, to waive certain of the requirements imposed on Design-Builder as set forth in Section 13 with respect to any Change Order to be issued pursuant to this Section 6.2.

6.3 Environmental Compliance

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

6.3.1 Mitigation Requirements

Design-Builder shall perform all environmental commitments (which term shall be deemed to include all avoidance, minimization and/or mitigation measures associated with the approval of the Environmental Document for the Project, including all related requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project. The Contract Price includes compensation for Design-Builder's performance of all environmental commitments (avoidance, minimization, and/or mitigation measures) and for performance of all environmental commitments arising from New Environmental Approvals which Section 6.3.2 designates as Design-Builder's responsibility as well as the cost of all activities to be performed by Design-Builder as described in Book 2, Section 7, "Environmental Compliance".

6.3.2 New Environmental Approvals

6.3.2.1 Approvals To Be Obtained by ICTC

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

6.3.2.2 Approvals To Be Obtained by Design-Builder

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.3.2.1, Design-Builder shall be fully responsible for the cost and delay of obtaining the New Environmental Approval and any other environmental approvals that may be necessary, for all requirements resulting therefrom, and for any litigation arising in connection therewith. ICTC will reasonably assist Design-Builder in obtaining any New Environmental Approvals. ICTC will be the implementing agency for any CEQA or NEPA reevaluations or approvals.

7. EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Policy

Design-Builder shall comply with the Equal Employment Opportunity (EEO) requirements set forth in Exhibits D and F.

Under 49 CFR 26.13(b), Design-Builder and each Subcontractor or Subconsultant shall comply with the following:

The Design-Builder, sub recipient or Subcontractor 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 CFR part 26 in the award and administration of United States Department of Transportation (DOT)-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 the recipient deems appropriate, which may include:

- a) Withholding monthly progress payments.
- b) Assessing sanctions.
- c) Liquidated damages.
- d) Disqualifying the Design-Builder from future bidding as non-responsible.

Design-Builder shall include this language in each Subcontract.

7.1.2 Inclusion in Subcontracts

Design-Builder shall include Section 7.1.1 and Exhibits D and F in every Subcontract over ten thousand dollars (\$10,000) (including purchase orders) and shall require that they be included in all Subcontracts over ten thousand dollars (\$10,000) at lower tiers, so that such provisions shall be binding upon each Subcontractor.

7.2 Disadvantaged Business Enterprises

7.2.1 Disadvantaged Business Enterprises Policy

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

7.2.2 Inclusion in Subcontracts

Design-Builder shall include Section 7.2.1 and Exhibit E in every Subcontract (including purchase orders) and shall require that they be included in all Subcontracts at lower tiers, so that such provisions shall be binding upon each Subcontractor.

7.3 Subcontracting Requirements

Design-Builder shall comply with all applicable requirements of the Contract Documents relating to Subcontracts (including Exhibits D, E, and F), and shall ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibits D, E, and F).

7.3.1 Major Participants

Design-Builder shall not add, delete, or change the role of any Major Participant as set forth in its Proposal without the prior Approval of ICTC.

7.3.2 Assignment of Subcontract Rights

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to ICTC, (a) ICTC is a third party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit, (b) all guarantees and warranties, express and implied, shall inure to the benefit of ICTC, its successors and assigns, as well as Design-Builder, and (c) the rights of Design-Builder under such instrument are assigned to ICTC contingent upon delivery of written request from ICTC following default by Design-Builder, termination for such default, or expiration of the Contract, allowing ICTC to assume the benefit of Design-Builder's rights with liability only for those remaining obligations of Design-Builder accruing after the date of assumption by ICTC, but shall not release or relieve Design-Builder from its obligations or liabilities under the assigned Subcontract.

7.3.3 Subcontract Terms

Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents and shall include provisions addressing the following requirements and any other terms that are specifically required by the Contract Documents to be included therein. Each Subcontract shall include terms that are substantially similar to those terms required by Sections 5.1, 5.2, 5.3, 5.4, 7.1 (as appropriate), 7.2, 7.3.1, 7.4.3, 10.1, 13.7, 14, 15, 19, 20.3, and 23.6 and Exhibits D (as appropriate), E, and F (as appropriate), specifically including an agreement by the Subcontractor to be joined in any dispute resolution proceeding pursuant to Section 19 if such joinder is reasonably necessary to resolve the dispute; and each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in Sections 2.2(e), 2.2(f), 2.2(h), 2.3.1, 21.3, 22.2 (as appropriate), 22.3, and 22.4.

7.3.4 Subcontract Data

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

Design-Builder shall provide requests to sublet any portion of the Contract to ICTC on a form provided by ICTC, at least ten (10) Days in advance of the date on which the Subcontractor intends to start Work. Design-Builder shall allow ICTC access to all Subcontracts and records regarding Subcontracts within seven (7) Days following receipt of ICTC's request. All Subcontracts shall be in writing and shall include design costs (if applicable).

7.3.5 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Builder shall be fully responsible for all of the Work. ICTC shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind ICTC. Each Subcontract shall include a reference to the following provision:

“Nothing contained herein shall be deemed to create any privity of contract between the Imperial County Transportation Commission (ICTC) through its Executive Director and Subcontractor, nor does it create any duties, obligations or liabilities on the part of ICTC to Subcontractor except those allowed under California law. In the event of any claim or dispute arising under this Subcontract and/or Design-Builder’s Contract with ICTC, Subcontractor shall look only to Design-Builder for any payment, redress, relief or other satisfaction. Subcontractor hereby waives any claim or cause of action against ICTC arising out of this Subcontract or otherwise arising out of or in connection with Subcontractor’s Work.”

7.3.6 Subcontract Work

Design-Builder shall coordinate the Work performed by Subcontractors.

7.3.7 Debarred Subcontractors

Design-Builder shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

7.4 Key Personnel; Character of Workers

7.4.1 Key Personnel

Exhibit G hereto identifies certain key positions for the Project. ICTC shall have the right in its reasonable discretion to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to Approve or disapprove use of such key Person in such key position before the start of any Work by such individual or during the prosecution of the Work. Design-Builder shall notify ICTC in writing of any proposed changes in any Key Personnel and shall not change any Key Personnel without the prior written Approval of ICTC, which approval shall not be unreasonably withheld, conditioned or delayed.

7.4.2 Representations, Warranties, and Covenants

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

7.4.3 Employee Performance Requirements

All individuals performing the Work by or on behalf of Design-Builder shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If ICTC determines in its reasonable discretion that any Person employed by Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of ICTC, Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior Approval of ICTC in its reasonable discretion. If Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then ICTC may, in its reasonable discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to Design-Builder. Such suspension shall in no way relieve Design-Builder of any obligation contained in the Contract Documents or entitle Design-Builder to a Change Order. Once compliance is achieved, Design-Builder shall be entitled to and shall promptly resume the Work.

Surveys performed to progress the construction activities on the Project are covered by the Contract labor requirements. The workers performing the Work shall be paid at a minimum wage based on the most similar trade or occupation as set forth in Exhibit F.

7.5 Labor Code Requirements

7.5.1 General Requirements

Design-Builder shall strictly adhere to the provisions of the Labor Code and implementing regulations, including requirements with respect to prevailing wages, and employment and training of apprentices, as more specifically described in Exhibit B. Design-Builder shall submit all mandated and requested documents/reports to ICTC in a timely manner.

7.5.2 Nondiscrimination

Design-Builder shall comply with the applicable provisions of the Labor Code and implementing regulations relating to labor nondiscrimination, and with the applicable federal requirements, including those more specifically set forth in Exhibit D.

7.5.3 Department of Industrial Relations

The California Department of Industrial Relations is responsible for monitoring and enforcing prevailing wage requirements of applicable labor laws to ensure that the Design-Builder and all Subcontractors working on the Project are in compliance with State (Division 2, Part 7, Chapter 1 of the Labor Code) and Federal (Code of Federal Regulations 29) prevailing wage statutes and regulations. Accordingly, the Project is subject to the requirements of DIR's compliance monitoring and enforcement program as set forth in Title 8, Chapter 8, Subchapter 4.5 of the California Code of Regulations, which include, among other requirements, the obligation to furnish payroll records directly to the California Department of Industrial Relations Labor Commissioner.

7.5.4 Notice

Design-Builder shall post a notice at the Site containing the following language:

“This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job Site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the Project. These rates are listed on a separate job Site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this Project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE). Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the Project that the CMU may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of eight (8) hours per day or forty (40) per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the Project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations web site found at: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>”

8. SURETY BONDS

Design-Builder shall provide to ICTC and maintain at all times during the term of the Contract security for performance of the Work as described below (or other assurance satisfactory to ICTC in its sole discretion). Each bond required hereunder shall be provided by a Surety licensed as surety and qualified to do business in the State. The Surety shall have a “Best’s Rating” of A- or better and Financial Size Category of VIII or better by A.M. Best Co.

8.1 Payment and Performance Bonds

Design-Builder has provided to ICTC and shall maintain in full force and effect the Payment Bond in the form of Exhibit L in the amount of one hundred (100) percent of the Contract Price and the Performance Bond in the form of Exhibit K in the amount of one hundred (100) percent of the Contract Price.

8.1.1 Surety’s Obligation

The Surety’s obligation under the Performance Bond, Exhibit K, shall arise after an Event of Default occurs and remedies and rights of ICTC are exercised in accordance with Section 16.2. When ICTC has satisfied the conditions of Section 16.2, the Surety shall promptly and at the Surety’s expense take one of the following actions:

- a) Arrange for the Design-builder, with the consent of ICTC, to perform and complete the Contract
- b) Undertake to perform and complete the Contract itself, through its agents or independent design-builders
- c) Obtain bids or negotiated proposals from qualified design-builders acceptable to ICTC for a contract for performance and completion of the Contract; arrange for a contract to be prepared for execution by ICTC and a design-builder selected with ICTC’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract; and pay to ICTC the amount of damages as described in Section 8.1.2, in excess of the balance of the Contract Price incurred by ICTC as a result of the Design-builder Default
- d) Waive its right to perform and complete, arrange for completion, or obtain a new design-builder and with reasonable promptness under the circumstances
 - i. After investigation, determine the amount for which it may be liable to ICTC and, as soon as practicable after the amount is determined, make payment to ICTC
 - ii. Deny liability in whole or in part and notify ICTC, citing the reasons for denial

8.1.2 Surety and ICTC Responsibilities

If the Surety elects to act under Sections 8.1.1.a), 8.1.1.b), or 8.1.1.c), then the responsibilities of the Surety to ICTC shall not be greater than those of the Design-Builder under the Contract, and the responsibilities of ICTC to the Surety shall not be greater than those of ICTC under the Contract. Subject to the commitment by ICTC to pay the balance of the Contract Price, the Surety is obligated, without duplication, for:

- a) The responsibilities of the Design-Builder for correction of defective work and completion of the Contract

- b) Additional legal, design professional, and delay costs resulting from the Design-Builder's Default, and resulting from the actions or failure to act of the Surety under Section 8.1.1
- c) Liquidated damages or actual damages caused by delayed performance or non-performance of the Design-Builder

8.2 Warranty Bond

After Final Acceptance has occurred, Design-Builder may obtain a release of the Performance Bond by providing to ICTC and maintaining in full force and effect a warranty bond which shall guarantee performance of all obligations of Design-Builder that survive Final Acceptance under the Contract Documents. The warranty bond (a) shall be in an amount equal to four (4) percent of the Contract Price during the first two (2) years following Final Acceptance and shall be in an amount equal to two (2) percent of the Contract Price during the third year following Final Acceptance and (b) shall be in the form set forth in Exhibit M.

8.3 Utility Work

The Utility Work furnished or performed by Design-Builder hereunder will automatically be covered by the Payment and Performance Bonds and any warranty bond or other security to be provided by Design-Builder pursuant to Section 8.2. At their request, Utility Owners whose Utilities are being Relocated by Design-Builder shall be added as additional obligees to the Payment and Performance Bonds (as their interests may appear), and to such replacement bond or other security (as their interests may appear), to the limited extent of the amount of the Utility Work required on behalf of the Utility Owner. The Payment and Performance Bonds shall be provided in their full amount, however, on behalf of ICTC, with no riders that reduce ICTC's potential of recovery based on the Utility Owner's limited obligee amounts. Alternatively, Design-Builder may provide separate bonds satisfactory to the Utility Owners. Design-Builder shall provide all information necessary for such coverage to the surety(ies) providing such bonds. All cost estimates required to be provided under the Contract Documents with respect to Utility Work furnished or performed by Design-Builder shall include the cost of bond premiums.

8.4 Reserved

8.5 No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety or any Guarantor of any of the obligations of Design-Builder shall not relieve Design-Builder of any of its obligations hereunder.

9. INSURANCE

9.1 General Insurance Requirements

9.1.1 Evidence of Insurance

Design-Builder shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section 9. Evidence of insurance in the form of copies of insurance policies, Certificates of Insurance, and any self-insurance coverage documentation, including the required “additional insured” endorsements, shall be furnished by Design-Builder to ICTC. The evidence of insurance shall provide that no lapse, cancellation, or reduction of coverage without thirty (30) Days’ prior written notice to ICTC. Insurance policies and Certificates of Insurance, furnished as evidence of required insurance, for the General Liability, Umbrella-Excess Liability and Professional Liability (Errors and Omissions) policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy. Allowance of any additional exclusions is at the sole discretion of ICTC. Regardless of the allowance of exclusions or deductions by ICTC, Design-Builder shall be responsible for any deductible amount and shall warrant that the coverage provided to ICTC is consistent with the requirements of Section 9 herein.

9.1.2 Submission of Insurance Documentation

Design-Builder shall submit, before starting of Work, the following:

- a) The Design-Builder’s General Liability Insurance shall be provided under Commercial General Liability policy form No. CG 00 01 as published by the Insurance Services office (ISO), or under a policy form at least as broad as policy form No. CG 00 01 and is not inconsistent with the provisions of Section 9 herein.
- b) Copy of its commercial general liability policy and its excess policy, including the declarations page, all amendments, riders, endorsements, and other modifications in effect at the time of Contract execution.
- c) Certificate of Insurance showing all other required coverages, including Professional Liability (Errors and Omissions), auto liability insurance, and workers compensation insurance. Design- Builder shall provide to ICTC, in advance of the start of Work, each policy and all exclusions, amendments, riders, declarations pages, and other modifications in effect at the time of Contract execution.

9.1.3 A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements shall have an

A.M. Best rating of A- or better, a Financial Size Category of VII or better and be authorized to do business in the State of California.

9.1.4 Full Force and Effect

All policies shall remain in full force and effect throughout the term of the Project and, when there is an extended reporting period, shall remain in effect for the time stipulated. The Design-Builder shall maintain

completed operations coverage with a carrier acceptable to ICTC through the expiration of the statute of repose set forth in Code of Civil Procedure Section 337.1.

9.1.5 No Recourse

There shall be no recourse against ICTC for payment of premiums or other amounts with respect to the insurance provided by Design-Builder, or for deductibles under these policies.

9.1.6 Indemnification and Duty to Defend

The insurance coverage provided hereunder shall support, but is not intended to limit, Design-Builder's indemnification and duty to defend obligations under Section 18.

9.1.7 Primary and Non-contributory

The policy shall stipulate that for claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in the Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents and consultants shall be excess of such insurance and shall not contribute with it.

9.1.8 Deductibles

ICTC may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of ICTC. Regardless of the allowance of exclusions or deductions by ICTC, the Design-Builder is responsible for any deductible amount and shall warrant that the coverage provided to ICTC is in accordance with Section 9.

9.1.9 Self-Insurance

Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and Approval by ICTC.

If Design-Builder uses a self-insurance program or self-insured retention, Design-Builder shall provide ICTC with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the Contract is the Design-Builder's acknowledgement that the Design-Builder shall be bound by all laws as if the Design-Builder were an insurer as defined under Insurance Code Section 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code Section 22.

9.1.10 Enforcement

ICTC may take any steps necessary to assure Design-Builder's compliance with its insurance obligations. Should any insurance policy lapse or be canceled during the Contract period Design-Builder shall, no less than thirty (30) days before the effective expiration or cancellation date, furnish ICTC with written evidence of renewal or replacement of the policy. Failure to continuously maintain insurance coverage as herein required is a material breach of this Contract. The required insurance shall be subject to the Approval of

ICTC, but any acceptance of copies of insurance policies, insurance certificates, and self-insurance documentation by ICTC shall in no way limit or relieve Design-Builder of its duties and responsibilities under this Contract to indemnify, defend, and hold harmless ICTC, its officers, agents, and employees. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Design-Builder for liability in excess of such coverage, nor shall it preclude ICTC from taking other actions available to it under any other provision of the Contract or law, including the withholding of funds under this Contract. Failure of ICTC to enforce in a timely manner any of the provisions of Section 9 shall not act as a waiver to enforcement of any of these provisions at a later time.

If Design-Builder fails to maintain any required insurance coverage, ICTC may maintain this coverage and withhold or charge the expense to Design-Builder or terminate the Design-Builder's control of the Work in accordance with Section 16.

Design-Builder is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless ICTC, its officers, agents, and employees by ICTC's acceptance of insurance policies and certificates.

Minimum insurance coverage amounts do not relieve Design-Builder for liability in excess of such coverage, nor do they preclude ICTC from taking other actions available to it, including the withholding of funds under this Contract.

9.2 Design-Builder Provided Insurance

Design-Builder shall procure, at its own expense, insurance acceptable to ICTC, as described herein, and shall maintain such insurance, as specified herein, in accordance with the requirements stated in Section 9.1, or as otherwise Approved by ICTC at its sole discretion. Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

9.2.1 Worker's Compensation and Employer's Liability Coverage

In accordance with Labor Code Section 1860, Design-Builder shall provide Worker's Compensation coverage in accordance with Labor Code 3700.

In accordance with Labor Code Section 1861, the Design-Builder shall submit to ICTC the following certification before performing the Work:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this contract."

Contract execution constitutes certification submittal.

Design-Builder shall provide Employer's Liability Insurance in amounts not less than:

- a) One million dollars (\$1,000,000) for each accident for bodily injury by accident.
- b) One million dollars (\$1,000,000) policy limit for bodily injury by disease.
- c) One million dollars (\$1,000,000) for each employee for bodily injury by disease.

If there is an exposure of injury to the Design-Builder's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

9.2.2 Liability Insurance

Design-Builder shall provide General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Design-Builder providing insurance for bodily injury and property damage written on an occurrence form that shall be no less comprehensive or more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 or under a policy form at least as broad as policy form No. CG 00 01.

- a) Limits of liability shall be at least the amounts shown in the following table:

For Each Occurrence 1	Aggregate for Products/Completed Operation	General Aggregate 2	Umbrella or Excess Liability 3
\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
1. Combined single limit for bodily injury and property damage. 2. This limit shall apply separately to the Design-Builder's Work under this Contract. 3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.			

The general aggregate limits shall apply separately to the Project (Endorsement CG-25-03)

- b) ICTC, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability Policy and Umbrella Liability Policies with respect to liability arising out of or connected with Work or operations performed by or operations performed by or on behalf of the Design-Builder under this Contract. Coverage for such additional insureds does not extend liability:
- i. Arising from any defective or substandard condition of the roadway which existed at or before the time the Design-Builder started Work, unless such condition has been changed by the Work or the scope of the Work requires the Design-Builder to maintain existing roadway facilities and the claim arises from the Design-Builder's failure to maintain.
 - ii. For claims occurring after the Work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Design-Builder that occurred during the course of the Work.
 - iii. To the extent prohibited by Insurance Code Section 11580.04.
- c) Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured endorsement form CG 2010 and form

CG 2037, as published by the Insurance Services Office, or other form designated by ICTC. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance. Any other insurance or self-insurance maintained by ICTC will be excess only and shall not be called upon to contribute with this insurance. Such additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO).

9.2.3 Automobile Liability Insurance

Design-Builder shall provide comprehensive automobile liability insurance covering the ownership, maintenance, and use of all owned, non-owned, and hired vehicles used in the performance of Work, both on and off the Site, including loading and unloading.

The following limits of liability and other requirements shall apply:

- a) Two (\$2) million combined single limit each accident for bodily injury and property damage liability.
- b) The policy shall include uninsured and underinsured in compliance with California law.

9.2.4 Pollution/Environmental Impairment Liability Insurance

Design-Builder agrees to maintain pollution liability insurance applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed; cleanup costs; and defense, including costs, fees and expenses incurred in the investigation, defense, or resolution of claims. Coverage shall apply to sudden and non-sudden pollution conditions. Coverage shall apply to construction activities and to acts, errors, or omissions arising out of or in connection with Design-Builder's scope of Work under this Contract. Coverage may be arranged under the Design-Builder's pollution liability, as part of a professional liability policy, by any combination thereof, or by other insurance, as long as pollution liability coverage is provided for both construction activities and professional services. Coverage shall include transport and disposal of contaminants and shall include liability assumed under Contract. Coverage is preferred by ICTC to be occurrence based; however, if provided on a claims-base, Design-Builder warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage shall be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time Work under this Contract is completed. Limits shall be no less than \$2,000,000 per loss and \$4,000,000 annual aggregate.

9.2.5 Professional Liability Insurance

Design-Builder agrees to maintain, and shall cause to be maintained by other Major Participants who are involved in design Work or other professional services, professional liability insurance specifically designed to protect against acts, errors, or omissions of the Design-Builder or other Major Participant as appropriate, and "Professional Services" as designated in any such policy shall specifically include Services performed under this Contract with a retroactive date no later than the date of this Contract execution. The policy limit shall be no less than \$2,000,000 per claim and in the aggregate and shall either be in the form of a practice policy or a project specific policy. Design-Builder or other Major Participant as appropriate shall maintain this professional liability insurance throughout the term of this Contract and for at least three (3) years after the date of completion and acceptance of the Project whether through terms or endorsements

providing for an extended reporting period, or through renewals and replacement coverage with preservation of the retroactive date. All such extended reporting periods, renewals, and replacement coverage are subject to Approval by ICTC.

10. RISK OF LOSS

10.1 Site Security

Design-Builder shall provide security for the Site in compliance with GSA and CBP requirements, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by Design-Builder, ICTC, or any other Person. Design-Builder shall at all times keep the Site in a neat and clean condition, including performing litter removal, removal of graffiti, and weed control and payment shall be considered included in the Contract Price.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Design-Builder

Design-Builder shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether ICTC has title thereto under the Contract Documents) that is injured or damaged before the date of acceptance of maintenance liability by ICTC or third parties as specified in Section 10.2.3. All such Work shall be at no additional cost to ICTC except to the extent that ICTC is responsible for such costs as provided in Section 13.

For damage within the right of way that ICTC would typically seek compensation from the insurance company of the responsible party, ICTC will subrogate its right to seek said financial reimbursement to Design-Builder. ICTC will provide copies of accident reports, when they exist, to Design-Builder. ICTC makes no guarantee that Design-Builder will be able to obtain any financial reimbursement based on this subrogation of ICTC's rights.

10.2.2 Reserved

10.2.3 Relief from Liability for Maintenance

Effective as of the date on which Substantial Completion occurs, ICTC shall be considered to have accepted maintenance liability for all elements of the Project which are one hundred (100) percent complete as of such date and placed in service. All remaining elements of the Project shall be considered accepted for maintenance purposes as of the date on which Final Acceptance occurs. Notwithstanding the foregoing, all elements of the Work which will be owned by Persons other than ICTC (such as Utility facilities) will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons. However, nothing in this Section 10.2.3 providing for relief from maintenance will be construed as relieving the Design-Builder of full responsibility for making good any defective Work or materials found at any time before the formal written acceptance of the entire Contract by ICTC.

10.3 Damage to Off-Site Property

Design-Builder shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. Design-Builder, at its sole expense,

shall restore damaged, injured or lost property caused by an act or omission of any Design-Builder-Related Entity to a condition similar or equal to that existing before the damage, injury or loss occurred.

10.4 Title

Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for ICTC for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools, and supplies which shall have been delivered to the Site shall pass to ICTC, free and clear of all Liens, upon the sooner of:

- a) Incorporation into the Project.
- b) Payment by ICTC to Design-Builder of invoiced amounts pertaining thereto.

Notwithstanding any such passage of title, and subject to Section 10.1, Design-Builder shall retain sole care, custody and control of such materials, equipment, tools, and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until Design-Builder is removed from the Project.

11. PAYMENT

11.1 Contract Price

11.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by Design-Builder under the Contract Documents, ICTC shall pay to Design-Builder a lump sum amount of nineteen million nine hundred sixty five dollars (\$19,965,000.00) (such amount, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the “Contract Price”). The Contract Price shall be increased or decreased only by a Change Order issued in accordance with Section 13, by a Contract amendment or as specifically provided elsewhere in the Contract Documents.

11.1.2 Items Included in Contract Price

Design-Builder acknowledges and agrees that, subject only to Design-Builder’s rights under Section 13, the Contract Price includes:

- a) Performance of each and every portion of the Work.
- b) All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services relating to Design-Builder’s performance of its obligations under the Contract Documents (including all Work, Warranties, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work).
- c) The cost of obtaining all Governmental Approvals (except for approvals which are the responsibility of ICTC, as specifically provided elsewhere in the Contract Documents).
- d) All costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules.
- e) Payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein.

11.1.3 Delay in Issuance of NTP1

11.1.3.1 Delays beyond fourteen (14) Days

If ICTC has not issued NTP1 on or before fourteen (14) Days after satisfaction of all conditions precedent to issuance of NTP1 set forth in Section 4.2.1, to the extent provided in Section 4.2.1, Design-Builder may seek to negotiate a Change Order including an extension in the time allowed to ICTC for issuance of NTP1 and an increase in the Contract Price mutually acceptable to Design-Builder and ICTC. If Design-Builder does not wish to seek a Change Order as provided above or ICTC fails to issue a Change Order acceptable to Design-Builder, then Design-Builder’s sole remedy shall be to proceed as provided in Sections 13.13 and Section 19, or to terminate the Contract by delivery of notice of termination to ICTC, with the right to receive payment as specified in Section 15.

11.1.3.2 Allocation of Price Increase

Any price increase under this Section 11.1.3 shall be amortized proportionally over all Work remaining to be performed and shall be evidenced by a Change Order.

11.1.4 Asphalt Price Fluctuations

11.1.4.1 General

This section applies to asphalt contained in materials for pavement structural sections and pavement surface treatments such as hot mix asphalt (HMA), tack coat, asphaltic emulsions, bituminous seals, asphalt binders, and modified asphalt binders placed in the Work. This section does not apply if Design-Builder opted out of payment adjustment for price index fluctuations at the time of Price Proposal. ICTC adjusts payment if the California Statewide Crude Oil Price Index for the month the material is placed is more than five (5) percent higher or lower than the price index at the time of Price Proposal. The California Statewide Crude Oil Price Index is determined each month on or about the 1st business day of the month by ICTC using the average of the posted prices in effect for the previous month as posted by Chevron, ExxonMobil, and ConocoPhillips for the Buena Vista, Huntington Beach, and Midway Sunset fields.

If a company discontinues posting its prices for a field, ICTC determines the index from the remaining posted prices. ICTC may include additional fields to determine the index. For the California Statewide Crude Oil Price Index, go to: <http://www.dot.ca.gov/hq/construc/crudeoilindex/>

If the adjustment is a decrease in payment, ICTC deducts the amount from the monthly progress payment. If Work is not completed within the Contract time, payment adjustments during the overrun period are determined using the California Statewide Crude Oil Price Index in effect for the month in which the overrun period began.

If the price index at the time of placement increases:

- a) Fifty (50) percent or more over the price index at Price Proposal opening, notify ICTC.
- b) One Hundred (100) percent or more over the price index at Price Proposal opening, do not furnish material containing asphalt until ICTC authorizes Design-Builder to proceed with that Work. ICTC may eliminate Work or terminate the Contract.

11.1.4.2 Submittals

Before placing material containing asphalt, submit the current sales and use tax rate in effect in the tax jurisdiction where the material is to be placed. Submit certified weight slips for HMA, tack coat, asphaltic emulsions, and modified asphalt binders. For slurry seals, submit certified weight slips separately for the asphaltic emulsion. The scales used for weighing shall be operated by a weighmaster licensed in conformance with the requirements in the California Business and Professions Code, Division 5, Chapter 7. The Design-Builder shall furnish a Public weighmasters certificate or certified daily summary weight sheets. ICTC may, at its discretion, have a representative present to witness the weighing and to check and compile the daily record of the scale weights. When required by ICTC, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver that slip to ICTC at the point of delivery of the material.

11.1.4.3 Payment Adjustments

ICTC includes payment adjustments for price index fluctuations in progress pay estimates. If material containing asphalt is placed within two (2) months during one (1) estimate period, ICTC calculates two (2) separate adjustments. Each adjustment is calculated using the price index for the month in which the quantity of material containing asphalt subject to adjustment is placed in the Work. The sum of the two (2) adjustments is used for increasing or decreasing payment in the progress pay estimate.

ICTC calculates each payment adjustment as follows:

$$PA = Q_t \times A$$

where:

PA = Payment adjustment in dollars for asphalt contained in materials placed in the Work for a given month.

Q_t = Sum of all quantities of asphalt-contained materials in pavement structural sections and pavement surface treatments placed ($Q_h + Q_{rh} + Q_{mh} + Q_{rap} + Q_{tc} + Q_e + Q_{ss} + Q_{mab} + Q_o$). (See [Exhibit H](#) for quantity calculations).

A = Adjustment in dollars per ton of asphalt used to produce materials placed in the Work rounded to the nearest \$0.01.

For US Customary projects, use:

$A = [(I_u / I_b) - 1.05] \times I_b \times [1 + (T / 100)]$ for an increase in the crude oil price index exceeding five (5) percent

$A = [(I_u / I_b) - 0.95] \times I_b \times [1 + (T / 100)]$ for a decrease in the crude oil price index exceeding five (5) percent

I_u = California Statewide Crude Oil Price Index for the month in which the quantity of asphalt subject to adjustment was placed in the Work.

I_b = California Statewide Crude Oil Price Index for the month in which the Price Proposal opening for the project occurred

T = Sales and use tax rate, expressed as a percent, currently in effect in the tax jurisdiction where the material is placed. If the tax rate information is not submitted timely, the statewide sales and use tax rate is used in the payment adjustment calculations until the tax rate information is submitted.

11.1.4.4 Allowance for Asphalt Price Index Fluctuations

The Contract Price includes an allowance of eighty thousand dollars (\$80,000.00) for asphalt price index fluctuations ("Asphalt Price Index Fluctuation Allowance"). A monthly price adjustment will be made as specified in [Section 11.1.4.3](#) to account for significant fluctuations in the cost of asphalt over the course of the Project. The adjustment amount shall be calculated as specified in [Section 11.1.4.3](#). The monthly price adjustment shall be tracked throughout the Project and charged against the Asphalt Price Index Fluctuation Allowance. Any upward adjustment resulting in a payment to the Design-Builder shall be contained in the progress payment and shall be deducted from the Asphalt Price Index Fluctuation Allowance. Any

downward adjustment resulting in a credit to ICTC shall be added to the Asphalt Price Index Fluctuation Allowance. In the event the cumulative adjustments exceed the Asphalt Price Index Fluctuation Allowance, Design-Builder shall be entitled to a Change Order for any adjustments in excess of the Asphalt Price Index Fluctuation Allowance. If at the end of the Project any portion of the Asphalt Price Index Fluctuation Allowance remains unused, including any additions based on credits to ICTC, ICTC shall issue a change order decreasing the Contract Price by the remaining amount of the Asphalt Price Index Fluctuation Allowance.

11.1.5 Pavement Smoothness Pay Adjustment

11.1.5.1 General

This section applies to the pavement smoothness pay adjustment of Continuously Reinforced Concrete Pavement placed in the Work. Construction of Continuously Reinforced Concrete Pavement shall comply with all Contract requirements, including Book 3, and the Caltrans *Standard Specifications*.

ICTC verifies and accepts pavement smoothness based on the results of Design-Builder's inertial profiler testing per Caltrans *Standard Specifications*.

11.1.5.2 Pay Adjustments

Pavement smoothness is measured per the Caltrans *Standard Specifications*. The following table shows the applicable smoothness for continuously reinforced concrete pavement. For segments 0.05 miles to 0.10 miles in length, the pay adjustment will be prorated based on length. A partial section less than 0.05 mi will not receive proportional pay adjustment but must meet ALR thresholds.

Target 60 Pavement Smoothness Table		
0.1-mi MRI (in/mi)	Pay Adjustment/0.1 mi	Corrective Action ^a
≤ 45.00	+ \$1500	None
45.01 – 55.00	+ ((55 - MRI) x \$150)	None
55.01 – 65.00	0	None
65.01 – 80.00	- ((MRI - 65) x \$150)	Optional ^b
> 80.00	-	Mandatory ^c

^aCorrective action must not reduce pavement thickness below minimums in section 40-1.01D(8)(c)(iv). Applicable to MRI only.

^bDiamond grinding allowed.

^cCorrection is diamond grinding.

ICTC does not pay for mandatory smoothness corrections. Grinding to improve pay to positive pay adjustments is not allowed. Corrective grinding is only allowed to avoid negative pay adjustments.

Pavement smoothness pay adjustments are applied in addition to other pay adjustments.

11.1.6 Reserved

11.2 Invoices and Payment

Requirements relating to invoicing are set forth in Book 2, Section 2.2, “Cost Management”. Within thirty (30) Days after receipt by ICTC of each invoice, ICTC shall pay Design-Builder the amount of the invoice Approved for payment less any amounts which ICTC is entitled to withhold.

11.3 Limitations on Payment

In no event shall ICTC have any obligation to pay Design-Builder any amount which would result in (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity, or (b) aggregate payments hereunder in excess of (i) the overall completion percentage for the Project times the Contract Price or (ii) the payment caps described herein. That portion of price allocated to those activities leading to Final Acceptance is not payable until Final Acceptance is achieved.

11.3.1 Reserved

11.3.2 Reserved

11.3.3 Reserved

11.3.4 Unincorporated Materials (Materials on Hand)

ICTC will not pay for materials associated with a progressed Work Breakdown Structure activity before their incorporation into the Project, except under the circumstances described in this Section 11.3.4.

11.3.4.1 Delivery of Materials

Materials shall be delivered to the Site or delivered to Design-Builder and promptly stored by Design-Builder in storage Approved by ICTC. Materials that have not been delivered to or adjacent to the Site will be eligible for payment only if they were specifically manufactured or produced for the Project, and then only after being irrevocably assigned to ICTC. As a condition to inclusion of such materials in any invoice, Design-Builder shall submit certified bills for such materials with its invoice. Payment will not be made when the invoice value of such materials, as determined by ICTC, amounts to less than two thousand dollars (\$2,000) or if materials are to be stored less than thirty (30) Days.

11.3.4.2 Title to Materials

All such materials so delivered shall become the property of ICTC. Payment for stockpiled materials will not constitute final acceptance of such materials. At ICTC’s request, Design-Builder at its own expense shall promptly execute, acknowledge, and deliver to ICTC actual bills of sale or other instruments in a form acceptable to ICTC, conveying and assuring to ICTC title to such materials included in any invoice, free and clear of all Liens. Design-Builder at its own expense shall conspicuously mark such materials as the property of ICTC, shall not permit such materials to become commingled with non-ICTC-owned property and shall take such other steps, if any, as ICTC may require or regard as necessary to vest title to such materials in ICTC free and clear of Liens. The required invoice, billing, title, or assignment documents, furnished by Design-Builder, shall contain complete material description and identification data.

11.3.4.3 Deductions

The amount shown in an invoice for material which is subsequently lost, damaged, or unsatisfactory will be deducted from succeeding invoices until the material is repaired or replaced (at Design-Builder's expense). In case any Supplier claims against Design-Builder remain (for materials so paid for) unsatisfied for more than thirty (30) Days following issuance of payment to Design-Builder, the applicable payment may be canceled on the next invoice.

11.3.4.4 Not to Exceed Amount

Payment for material furnished and delivered as indicated in this Section 11.3.4 will not exceed the amount paid by Design-Builder as evidenced by a bill of sale supported by paid invoice, or seventy five (75) percent of the in-place price, whichever is less.

11.3.5 Materials Ineligible for Payment

11.3.5.1 Equipment

ICTC will not pay directly for equipment costs. Payment for equipment, whether new, used, or rented, and to the extent not included in the mobilization payments under Book 2, Section 2.2, "Cost Management," will be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 13.7.3.

11.3.5.2 Perishable Materials

ICTC will make no partial payment on living or perishable materials until incorporated as specified in the Contract.

11.3.5.3 Design-Builder's Election

ICTC will make no payment for materials brought onto the Site at Design-Builder's election that may be incorporated into the Project such as fuels, supplies, metal decking forms, ties, or supplies used to improve efficiency of operations.

11.3.6 Nonconforming Work

ICTC will make no payment for Nonconforming Work, except as provided under Section 5.7.

11.4 Mobilization and Time-Related Overhead

11.4.1 Mobilization

ICTC makes partial payments for mobilization as follows:

ICTC makes partial payments for the mobilization costs, not to exceed the following:

1. When five (5) percent of the original Contract amount is earned, fifty (50) percent of the amount bid for mobilization, or five (5) percent of the original Contract amount, whichever is lesser, may be paid.

2. When ten (10) percent of the original Contract amount is earned, seventy five (75) percent of the amount bid for mobilization or seven and one half (7.5) percent of the original Contract amount, whichever is lesser, may be paid.
3. When twenty (20) percent of the original Contract amount is earned, ninety five (95) percent of the amount bid for mobilization, or nine and one half (9.5) percent of the original Contract amount, whichever is lesser, may be paid.
4. When fifty (50) percent of the original Contract amount is earned, one hundred (100) percent of the amount bid for mobilization, or ten (10) percent of the original Contract amount, whichever is lesser, may be paid.
5. Upon completion of all Work on the Project, payment of any amount bid for mobilization in excess of ten (10) percent of the original Contract amount shall be paid.

11.4.2 Time Related Overhead

11.4.2.1 General

Time-Related Overhead includes payment for time-related field- and home-office overhead for the time required to complete the Work.

The field office overhead includes time-related expenses associated with the normal and recurring construction activities not directly attributed to the Work, including:

- a) Salaries, benefits, and equipment costs of:
 - i. Project managers
 - ii. General superintendents
 - iii. Field office managers
 - iv. Field office staff assigned to the Project.
- b) Rent
- c) Utilities
- d) Maintenance
- e) Security
- f) Supplies
- g) Office equipment costs for the Project's field office

The home-office overhead includes the fixed general and administrative expenses for operating Design-Builder's business, including:

- a) General administration
- b) Insurance
- c) Personnel and subcontract administration
- d) Purchasing
- e) Accounting
- f) Project engineering and estimating

Payment for the Time-Related Overhead does not include payment for:

- a) Home-office overhead expenses specifically related to:
 - i. Design-Builder's other contracts or other businesses
 - ii. Equipment coordination
 - iii. Material deliveries
 - iv. Consultant and legal fees
- b) Non-time-related costs and expenses such as mobilization, licenses, permits, and other charges incurred once during the Contract.
- c) Additional overhead involved in incentive/disincentive provisions to satisfy an internal milestone or multiple calendar requirements.
- d) Additional overhead involved in performing additional work that is not a controlling activity.

11.4.2.2 Progress Payments

For progress payments, the total work completed for Time-Related Overhead is the number of Working Days for the pay period until the Substantial Completion Deadline.

For progress payments, ICTC pays a unit price equal to the lesser of the following amounts:

- a) Unit price per Working Day as determined by dividing the Time-Related Overhead price (Form 9, Line 6) by the number of Working Days to achieve Substantial Completion.
- b) Twenty (20) percent of the Contract Price divided by the number of original Working Days to achieve Substantial Completion.

ICTC pays the balance due for the Time-Related Overhead in the first progress payment after Substantial Completion.

11.5 Deductions and Withholds

11.5.1 Deductions

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

- a) Any anticipated or accrued losses, liability, Liquidated Damages, or other damages for which Design-Builder is responsible hereunder.
- b) The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of Contract by Design-Builder.
- c) Any amounts that ICTC deems advisable, in its reasonable discretion, to cover any existing Liens and stop notices by Subcontractors, Suppliers, laborers, Utility Owners, or other third parties relating to the Project.
- d) Any sums expended by ICTC in performing any of Design-Builder's obligations under the Contract which Design-Builder has failed to perform.

- e) Any other sums which ICTC is entitled to deduct from the Contract Price or to recover from Design-Builder under the terms of the Contract.

Deductions are cumulative and are not retentions under Public Contract Code Section 7107. ICTC's failure to deduct from a progress payment any amount which ICTC is entitled to recover from Design-Builder under the Contract shall not constitute a waiver of ICTC's right to such amounts.

11.5.2 Withholds

11.5.2.1 General

ICTC may withhold payment for noncompliance.

ICTC returns the noncompliance withhold in the progress payment following the correction of noncompliance except as specified in Section 11.5.2.3.

Withholds are not retentions under Public Contract Code Section 7107 and do not accrue interest under Public Contract Code Section 10261.5.

Withholds are cumulative and independent of deductions under Section 11.5.1.

Section 11.5.2 does not include all withholds that may be taken; ICTC may withhold other payments as specified.

11.5.2.2 Progress Withholds

ICTC withholds ten (10) percent of a progress payment for noncompliant progress. Noncompliant progress occurs when both occur:

- a) Total Working Days elapsed to date exceed seventy five (75) percent of the Contract Working Days, and
- b) Percent of the Working Days elapsed exceeds the percent of value of the Work completed by more than fifteen (15) percent.

ICTC determines the percent of the Working Days elapsed by dividing the total Working Days to date by the revised Contract Working Days and converting the quotient to a percentage.

ICTC determines the percent value of the Work completed by summing payments made to date and the amount due on the current progress estimate, dividing this sum by the current Contract Price, and converting the quotient to a percentage. These amounts are shown on the progress payment invoice.

When the percent of the Working Days elapsed minus the percent value of Work completed is less than or equal to fifteen (15) percent, ICTC returns the withhold in the next progress payment.

11.5.2.3 Performance Failure Withholds

During each estimate period Design-Builder fails to comply with a Contract part, including the submittal of a document as specified, ICTC withholds a part of the progress payment except as specified below for the failure to submit a document during the last estimate period. These documents include schedules, water pollution control submittals, quality plans, traffic control plans, and other management plans.

For one (1) performance failure, ICTC withholds twenty five (25) percent of the progress payment but does not withhold more than ten (10) percent of the total Contract Price.

For multiple performance failures, ICTC withholds one hundred (100) percent of the progress payment but does not withhold more than ten (10) percent of the total Contract Price.

During the last estimate period, if Design-Builder fails to submit a document as specified, ICTC withholds ten thousand dollars (\$10,000) for each document. ICTC returns the withhold within thirty (30) days after receipt of the document.

11.5.2.4 Stop Notice Withholds

ICTC withholds payments to cover claims filed under Civil Code Section 9000 et seq. ICTC will release to Design-Builder the amount withheld upon ICTC's receipt of a valid stop notice release bond executed by an admitted surety insurer, in an amount equal to one hundred twenty five (125) percent of the claim stated in the stop payment notice, conditioned for the payment of any amount the claimant recovers in an action on the claim, together with court costs if the claimant prevails, in accordance with the requirements of Civil Code Section 9364.

Stop notice information may be obtained from ICTC.

11.5.2.5 Penalty Withholds

Penalties include fines and damages that are proposed, assessed, or levied against Design-Builder or ICTC by a Governmental Person or private lawsuit. Penalties are also payments made or costs incurred in settling alleged violations of federal, State, or local laws, regulations, requirements, or PLACs. The cost incurred may include the amount spent for mitigation or correcting a violation.

If ICTC is assessed a penalty, ICTC may withhold the penalty amount until the penalty disposition has been resolved. ICTC may withhold penalty amounts without notifying Design-Builder.

Instead of the withhold, Design-Builder may provide a bond equal to the highest estimated liability for any disputed penalties proposed except Design-Builder may not provide a bond for withholds related to labor compliance violations.

11.6 Final Payment

Final payment will be made in accordance with this Section 11.6.

11.6.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, Design-Builder shall prepare and submit a proposed Application for Final Payment to ICTC showing the proposed total amount due Design-Builder. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall list all outstanding or pending Change Notices and all existing or threatened claims, Liens and stop notices by Subcontractors, laborers, Utility Owners, or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue

associated with each such notice. The Application for Final Payment shall be accompanied by all of the following:

- a) Complete and legally effective releases or waivers of Liens and stop notices satisfactory to ICTC, from all Persons legally eligible to file Liens and stop notices in connection with the Work.
- b) Consent of Surety(ies) to final payment.
- c) The release and affidavit required by Section 11.6.2.
- d) Any such other documentation as ICTC may reasonably require.

Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. Change Notices filed concurrently with the Application for Final Payment shall be otherwise timely and meet all requirements under Sections 13 and 19. If a Subcontractor refuses to furnish a release or waiver required by ICTC, Design-Builder may furnish a bond satisfactory to ICTC to indemnify ICTC against such Lien.

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

11.6.2 Payment

11.6.2.1 Release and Affidavit as Condition to Final Payment

As a condition to its obligation to make payment to Design-Builder based on the Application for Final Payment, ICTC shall have received an executed release from Design-Builder for any and all claims arising from the Work, releasing and waiving any claims against the Indemnified Parties, excluding only those matters identified in any Change Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to ICTC.

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

- a) That it has resolved any claims made by Subcontractors, Utility Owners, and others against Design-Builder or the Project, or to the extent any such claims have not been fully resolved, that it has provided a release bond and/or is otherwise defending the claim at no expense to ICTC.
- b) That it has no reason to believe that any Person has a valid claim against Design-Builder or the Project which has not been communicated in writing by Design-Builder to ICTC as of the date of the certificate.
- c) That all guarantees and Warranties are in full force and effect.

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

11.6.2.2 Partial Estimates and Payments Subject to Correction

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

11.7 Payments to Subcontractors

Within ten (10) Days after receipt of payment from ICTC, Design-Builder shall pay each Subcontractor, out of the amount paid to Design-Builder on account of such Subcontractor, all undisputed amounts (less any retainage and any other offsets and deductions provided in the Subcontract or by law) due and owing in accordance with the Subcontract. Within ten (10) Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates, and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Design-Builder shall return any moneys withheld in retention from the Subcontractor. Design-Builder shall, by

appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors in a similar manner. ICTC shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

11.8 Interest on Late Payments

All amounts owing by Design-Builder to ICTC under the Contract shall earn interest from the date on which such amount is owing at the lesser of:

- a) Ten (10) percent per annum.
- b) The maximum rate allowable under Governmental Rules.

11.9 Disputes

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

12. RESERVED

12.1 Reserved

12.2 Reserved

13. CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under the Contract. Design-Builder hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 13, and that ICTC is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Deadlines. Design-Builder hereby waives the right to make any claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section 13. To the extent that any other provision of the Contract expressly provides for a Change Order to be issued, such provision is hereby incorporated into this Section 13.

13.1 Circumstances under which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Change Orders

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. ICTC may issue Unilateral Change Orders as specified in Section 13.2. A Change Order shall not be effective for any purpose unless executed by ICTC, as specified herein. As used herein, execution of a Change Order by ICTC shall mean that the Change Order has been fully executed with all the required signatures by ICTC and any other necessary parties of the State. Change Orders may be requested by Design-Builder only pursuant to Section 13.3. Change Orders may be issued for the following purposes (or combination thereof):

- a) To modify the scope of the Work.
- b) To revise a Completion Deadline.
- c) To revise the Contract Price.
- d) To revise other terms and conditions of the Contract Documents.

A Change Order may, at the sole discretion of ICTC, direct Design-Builder to proceed with the Work with the amount of any adjustment of a Completion Deadline or the Contract Price to be determined in the future.

13.1.1.2 Issuance of Directive Letter

ICTC may at any time issue a Directive Letter to Design-Builder in the event of any desired change in the Work or of any Dispute regarding the scope of the Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question, and will state the basis for determining compensation, if any. Design-Builder shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within the original scope of the Work, Design-Builder shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that ICTC issue a Change Order with respect thereto).

13.1.1.3 Performance of Changed or Extra Work

As a condition precedent to Design-Builder’s right to receive additional payment or an extension of a Completion Deadline for changed or extra Work, Design-Builder shall have received either a Directive Letter from ICTC stating that it is issued pursuant to Section 13.1.1.2 or a Change Order for such Work executed by ICTC. To the extent that Design-Builder undertakes any such Work without receiving a

Directive Letter or Change Order executed by ICTC, Design-Builder shall be deemed to have performed such Work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, Design-Builder may be required to remove or otherwise undo any such Work, at its sole cost.

13.1.2 Directive Letter as Condition Precedent to Claim That an ICTC-Directed Change Has Occurred

In addition to provision of a Change Notice and subsequent Request for Change Order pursuant to Section 13.3.2, receipt of a Directive Letter from ICTC is a condition precedent to Design-Builder's right to claim that an ICTC-Directed Change has occurred, provided that no Directive Letter shall be required for alleged ICTC-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence, or comparable tortious conduct by ICTC. The fact that a Directive Letter was issued by ICTC shall not be considered evidence that in fact an ICTC-Directed Change occurred. The determination whether an ICTC-Directed Change in fact occurred shall be based on an analysis of the original Contract requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for Design-Builder to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.1.3 Significant Changes in the Character of Work

If an ICTC-Directed Change significantly changes the character of the Work, whether the alterations or changes included in such direction are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon before performance of such Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against Design-Builder in such amount as ICTC may determine to be fair and equitable, subject to resolving the Dispute in accordance with Section 19. The term "significant change" shall be construed to apply only when (a) the changes materially modify the general definition of the Project or the design-build character of the Work, or (b) ICTC requires Work to be performed that is physically remote from the original Project and not necessary for completion of the original Project. Changes that are specifically contemplated by the Contract shall not be considered significant changes in the character of the Work. If the changes do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.

13.2 Procedure for ICTC-Initiated Change Orders

This Section 13.2 concerns Change Orders issued by ICTC following a Request for Change Proposal and Change Orders unilaterally issued by ICTC.

13.2.1 Request for Change Proposal

13.2.1.1 Issuance of Request

If ICTC desires to issue an ICTC-Directed Change or to evaluate whether to initiate such a change, then ICTC may, at its discretion, issue a Request for Change Proposal.

13.2.1.2 Initial Consultation

Within two (2) Days after Design-Builder's receipt of a Request for Change Proposal, ICTC and Design-Builder shall consult to define the proposed scope of the change. Within seven (7) Days after the initial consultation, ICTC and Design-Builder shall consult concerning the estimated cost and time impacts. Design-Builder shall provide data regarding such matters as requested by ICTC.

13.2.1.3 Notification by ICTC

Within seven (7) Days after the second consultation and provision of any data as described in Section 13.2.1.2, ICTC shall notify Design-Builder whether ICTC:

- a) Wishes to issue a Change Order.
- b) Wishes to request Design-Builder to prepare a Change Order form as discussed at the meeting.
- c) No longer wishes to issue a Change Order.

ICTC may at any time, in its sole discretion, require Design-Builder to provide two (2) alternative Change Order forms, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, and any additional costs permitted hereunder.

13.2.1.4 Submittal of Change Order Form

If so requested, Design-Builder shall, within twenty one (21) Days after receipt of the notification described in Section 13.2.1.3, prepare and submit to ICTC for review and Approval by ICTC a Change Order form for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by ICTC. Design-Builder shall bear the cost of developing the Change Order form, including any modifications thereto requested by ICTC, except that costs of design and engineering Work required for preparation of Plans or exhibits necessary to the Change Order form and preauthorized by ICTC shall be included in the Change Order as reimbursable items. If the Change Order is Approved, the design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 Order To Proceed

If ICTC and Design-Builder agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Deadline, ICTC may, in its sole discretion, order Design-Builder to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at ICTC's option, be in the form of either a:

- a) Time and Materials Change Order as provided in Section 13.7.
- b) Directive Letter as described in Section 13.1.1.2.

13.2.2 Unilateral Change Orders

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

13.2.2.1 Additive and Deductive Change Orders

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

13.2.3 Changes in Law

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

13.3 Procedure for Design-Builder Initiated Change Orders

13.3.1 Eligible Changes

This section outlines instances whereby Design-Builder shall submit Change Notice and subsequent Request for Change Orders to ICTC.

13.3.1.1 Time Extension

Design-Builder may submit a Request for Change Order to extend a Completion Deadline and a corresponding equitable adjustment to the Contract Price, subject to certain limitations, only for the following excusable delays changing the duration of the Critical Path:

- a) ICTC-Caused Delays.
- b) Delays directly attributable to Differing Site Conditions, to the extent permitted by Section 13.8.
- c) Delays directly attributable to Force Majeure events.
- d) Certain delays relating to Hazardous Materials, as described in Section 13.10, to the extent permitted therein and in Section 5.3.
- e) Certain delays relating to Utilities, as described in Section 6.2.
- f) Suspensions for convenience as described in Section 14.1.
- g) Delays attributable to Latent Material Errors.

13.3.1.2 Contract Price Increase

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

- a) Additional costs directly attributable to additional Work resulting from ICTC-Directed Changes for which ICTC has not submitted a Change Order or a Request for Change Proposal.
- b) Additional costs directly attributable to ICTC-Caused Delays.
- c) Additional costs directly attributable to Differing Site Conditions, to the extent provided in Section 13.8.
- d) Additional costs directly attributable to the following:
 - i. An earthquake.
 - ii. Any rebellion, war, riot, sabotage, terrorism, or civil commotion.
 - iii. The discovery at, near, or on the Site of any paleontological, cultural, or biological resources or any species presently or in the future listed as threatened or endangered under the federal or state endangered species act, provided that the existence of such resources was not disclosed in the RFP documents.
 - iv. The suspension, termination, interruption, denial, failure to obtain, nonrenewal, or amendment of any Environmental Approval or New Environmental Approval, except as otherwise provided in Section 6.3.
 - v. Any change in a Governmental Rule, change in the judicial interpretation of a Governmental Rule, or adoption of any new Governmental Rule, which is materially inconsistent with Governmental Rules in effect on the Proposal Due Date (excluding any such change or new Governmental Rule which was passed or adopted but not yet effective as of the Proposal Due Date), and which:
 - Requires a material modification in the Project design.
 - Requires Design-Builder to obtain a major State or federal environmental approval not previously required for the Project.
 - Specifically targets the Project or Design-Builder.
- e) Certain additional costs relating to Hazardous Materials, as described in Section 13.10, to the extent provided therein and in Section 5.3.
- f) Certain additional costs relating to Utility Work, as described in Section 6.2, to the extent provided therein.
- g) Additional costs directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 5.5.3.

- h) Certain costs relating to partnering, as described in Section 19.1, to the extent provided therein.
- i) Additional costs attributable to Latent Material Errors.

13.3.1.3 Design-Builder Initiated Change Proposal

Design-Builder at any time may submit a Request for Change Order to ICTC that proposes changes to the scope of Work of the Contract. Proposals can include changes to add or reduce the scope of Work or implement changes to the Contract that are “equal to or better” than the existing requirements. Provisions of Section 13.3.2 regarding delivery of Change Notice do not apply to a Design-Builder-initiated change proposal under this Section 13.3.1.3.

13.3.2 Conditions Precedent

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Design-Builder’s entitlement to request and receive a Change Order in all circumstances except those involving a Request for Change Proposal by ICTC or a price increase under Section 11.1.3. Design-Builder agrees that the filing of Change Notices and subsequent filing of Requests for Change Orders with ICTC pursuant to this Section 13.3.2 are necessary in order to begin the administrative process for Design-Builder-initiated Change Orders. Design-Builder understands that it shall be forever barred from recovering against ICTC under this Section 13 if it fails to give notice of any act, or failure to act, by ICTC or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper Change Notice, and thereafter complies with the remaining requirements of this Section 13.3.

13.3.2.1 Delivery of Change Notice

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

13.3.2.2 Importance of Prompt Delivery

Each Change Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any Change Notice is delivered later than ten (10) Days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred before the date of delivery of the Change Notice (unless such costs were reasonably incurred to prevent imminent harm to persons or damage to property), and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in the Critical Path which accrued before the date of delivery of the written notice, but only to the extent that the late notice resulted in material prejudice to ICTC. Furthermore, if any Change Notice concerns any condition or material described in Section 5.3, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that ICTC is not afforded the opportunity to inspect such material or condition before it is disturbed and is materially prejudiced thereby. Design-Builder shall bear burden of proving that ICTC is not materially prejudiced. Design-Builder’s failure to provide a Change Notice within thirty (30) Days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Design-Builder from any relief, unless Design-Builder can show, based on a preponderance of the evidence, that (a) ICTC was not materially prejudiced by the lack of notice, or (b) ICTC’s designated representative specified in accordance with Section 23.5.1

had actual knowledge (including items (a) through (f) of Section 13.3.2.1.2), before the expiration of the thirty (30) Day period, of the event or situation and that Design-Builder believed it was entitled to a Change Order with respect thereto. A Change Notice shall be deemed delivered only if it fully conforms to the requirements of Section 13.3.2.1.2.

13.3.2.3 Contents of Change Notice

The Change Notice shall:

- a) State in detail the facts underlying the potential Change Order, the reasons why Design-Builder believes additional compensation or time will or may be due and the date of occurrence.
- b) State in detail the basis that the work is not required by the Contract, if applicable.
- c) Identify particular elements of Contract performance for which additional compensation may be sought under this Section 13.
- d) Identify any potential Critical Path impacts.
- e) Provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.
- f) Include a Time Impact Analysis.

13.3.2.4 Facts Supporting Objection to Decision

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

13.3.2.5 Notices Under Other Contract Provisions

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

13.3.2.6 Failure to Provide Information

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from Design-Builder's failure to provide requested additional information under this Section 13.3.2

13.3.2.7 Delivery of Requests for Change Orders

Design-Builder shall deliver a Request for Change Order to ICTC within thirty (30) Days after delivery of the Change Notice. ICTC may require design and construction costs to be covered by separate Request for Change Orders, in which case Design-Builder shall deliver each such Request for Change Order to ICTC within thirty (30) Days after delivery of the Change Notice. If Design-Builder requests a time extension, then ICTC, in its sole discretion, may require Design-Builder to provide two (2) alternative Request for Change Orders within thirty (30) Days after delivery of the Change Notice, one of which shall provide for

a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, and any additional costs permitted hereunder. If Design-Builder fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all the requirements of Section 13.3.2.3 within the appropriate time period, Design-Builder shall be required to provide a new Change Notice before it may submit a Request for Change Order.

13.3.2.8 Incomplete Change Orders

Each Request for Change Order provided under Section 13.3.2.2 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature of the occurrence, Design-Builder shall provide an incomplete Request for Change Order which shall:

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

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

13.3.2.9 Importance of Timely Delivery

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 Request for Change Orders and updates thereto are of vital importance to ICTC. ICTC is relying on Design-Builder to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether Design-Builder believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect the Contract Price or a Completion Deadline, ICTC 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 ICTC's funding and time restraints.

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

- a) The effect of the delay on alternatives available to ICTC (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 when required under the Contract),
- b) The impact of the delay on ICTC's ability to obtain and review objective information contemporaneously with the event.

13.3.2.10 Subcontractor Claims

All claims (including the claims of Subcontractors) shall be submitted through Design-Builder. Claims submitted directly by Subcontractors to ICTC will be disregarded by ICTC.

13.3.3 Performance of Disputed Work

If ICTC refuses to issue a Change Order based on Design-Builder's request, Design-Builder shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to dispute resolution in accordance with Section 19. Design-Builder shall maintain and deliver to ICTC, upon request, contemporaneous records, meeting the requirements of Section 13.7.2, for all work performed which Design-Builder believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Reserved

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

Design-Builder shall prepare a scope of work, cost estimate, TIA, and other information as required by this Section 13.4.2 for each Request for Change Order.

13.4.2.1 Scope of Work

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

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless ICTC agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Design-Builder shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Design-Builder's estimate. No mark-up shall be allowed in excess of the amounts allowed under Sections 13.5.2 and 13.7. Design-Builder shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

13.4.2.3 Time Impact Analysis

If Design-Builder claims that such event, situation, or change affects the Critical Path, it shall provide a TIA indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to ICTC, which compares the proposed new schedule to the Baseline Schedule as appropriate at the time of the event. ICTC has the right to request a TIA. The revision to the Working Schedule associated with the time extension shall not modify the “early and late start cost curves” of the Working Schedule, except with respect to activities which have been impacted by the event which justifies the extension. Design-Builder may reschedule activities not otherwise affected by the event, in order to take advantage of additional Float available as the result of the time extension. Any such rescheduling shall be reflected in the Working Schedule.

13.4.2.4 Other Supporting Documentation

Design-Builder shall provide such other supporting documentation as may be required by ICTC.

13.4.3 Reserved

13.4.4 Design-Builder Representation

Each Change Order (other than Change Orders issued unilaterally by ICTC) shall contain a sworn certification in form acceptable to ICTC by 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 change and that Design-Builder has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

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

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by ICTC as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.2. Other delay and disruption damages shall be compensable hereunder only in the case of a delay which qualifies as an ICTC-Caused Delay to the extent that it entitles Design-Builder to an extension of a Completion Deadline. Without limiting the generality of the foregoing, costs of rearranging Design-Builder's work plan to accommodate ICTC-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 13.5.2.1 and mark-ups thereon in accordance with Section 13.7 and any additional field office and jobsite overhead costs incurred by Design-Builder directly attributable to such delays. In addition, before Design-Builder may obtain any increase in the Contract Price to compensate for extended overhead, Acceleration Costs or other damages relating to delay, Design-Builder shall have demonstrated to ICTC's satisfaction that:

- a) Its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work.
- b) The change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity.
- c) The delay or damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Design-Builder-Related Entity, and could not reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).
- d) The delay for which compensation is sought is not concurrent with any other delay, whether or not such other delay is on the Critical Path, excluding ICTC-Caused Delays.
- e) Design-Builder has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to ICTC.

13.5.3 Limitation on Time Extensions

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

- a) Did not impact the Critical Path;
- b) Was due to the fault or negligence, or act or failure to act of any Design-Builder-Related Entity.
- c) Could reasonably have been avoided by Design-Builder, including by resequencing, reallocating, or redeploying its forces to other portions of the Work (provided that if the request for extension

involves an ICTC-Caused Delay, ICTC shall have agreed, if requested to do so, to reimburse Design-Builder for its costs incurred, if any, in resequencing, reallocating or redeploying its forces).

Design-Builder shall be required to demonstrate to ICTC's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity.

13.6 Negotiated Price Change Orders

ICTC and Design-Builder (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order, provided that Change Orders issued under Section 13.2.2 are not subject to negotiation. In general, the price of a Change Order shall be negotiated in accordance with this Section 13.6 or shall be based on time and materials records pursuant to Section 13.7.

13.6.1 Reserved

13.6.2 Unit Price Change Orders

Instead of negotiating the price for a Change Order in accordance with Section 13.6.3, 13.6.4 or 13.6.5, ICTC and Design-Builder may agree to negotiate unit prices for changed Work. Measurement of unit-priced quantities shall be as specified in the Change Order. The unit prices shall be deemed to include all costs for the Work, including labor, material, overhead, markups, and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. The final price of a Change Order may be lump sum or may be based upon a final determination of the quantities.

13.6.3 Added Work

When the Change Order adds Work to Design-Builder's scope, the increase in the Contract Price shall be negotiated based on estimated costs of labor, material, and equipment, or shall be based on actual costs in accordance with Caltrans Standard Specifications Section 9-1.04 and Section 13.7. Mark-ups for profit and overhead shall be as provided in Caltrans Standard Specifications Section 9-1.04 and Section 13.7, and risk associated with the Work described in the Change Order shall be addressed through an additional amount agreed to by ICTC and Design Builder not to exceed eight (8) percent or reasonable amount otherwise agreed to by ICTC of the Total Change Order amount (excluding the amount allocated to risk).

13.6.4 Deleted Work

When the Change Order deletes Work from Design-Builder's scope (including deletion of any Work contained in the Contract that is found to be unnecessary), the amount of the reduction in the Contract Price shall be based upon a current estimate, including a bill of material, a breakdown of labor and equipment costs and overhead and profit associated with the deleted Work. ICTC reserves the right to request a credit for risk up to four (4) or reasonable amount otherwise agreed to by ICTC of the total Change Order amount (excluding amount allocated to risk). When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.5 Work Both Added and Deleted

When the Change Order includes both added and deleted Work, Design-Builder shall prepare separate cost breakdowns for added Work and deleted Work in accordance with Sections 13.6.3 and 13.6.4 and:

- a) The cost (or credit) amount of the Change Order shall be the difference between the added Work and deleted Work cost breakdowns.
- b) If the change results in a net change of zero, there shall be no change in the Contract Price.

13.7 Time and Materials Change Orders

ICTC may at its discretion issue a Time and Materials Change Order whenever ICTC determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Design-Builder to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, ICTC shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The following costs and mark-ups (and no others) shall be used for calculating the change in the Contract Price. No direct compensation shall be allowed for other miscellaneous costs for which no specific allowance is provided in this Section 13.7.

13.7.1 Determination of Costs

Compensation for Time and Materials Change Orders shall be in accordance with Caltrans *Standard Specification*, Section 9-1.04, "Force Account," and this Section 13.7.

13.7.1.1 Non-Construction Labor Costs

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

- a) Actual unburdened wages (i.e., the base wage paid to the employee exclusive of any fringe benefits).
- b) Unless already included in the wage rates paid, the actual ICTC Approved labor-related costs incurred by reason of subsistence and travel allowances.
- c) A labor surcharge of one hundred forty (140) percent of actual unburdened wages, which shall constitute full compensation for all State and federal payroll, unemployment and other taxes, insurance and bond premiums, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the worker, as well as overhead and profit.

13.7.1.2 Reserved

13.7.1.3 Evidence of Materials Cost

If Design-Builder or any Subcontractor (as applicable) does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within sixty (60) Days after the date of delivery of the

material, ICTC reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available, in the quantities needed and delivered to the Site.

13.7.1.4 Permit Fees

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

13.7.1.5 Credit Items

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

13.7.2 Time and Materials Records

13.7.2.1 Collection and Maintenance of Data

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

13.7.2.2 Daily Reports

Design-Builder shall furnish daily reports, on forms Approved by ICTC, of Time and Materials Change Order Work. The cost of furnishing such reports shall be included in Design-Builder's overhead and fee percentages. The reports shall include:

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

- f) Location and summary of Work completed.

The reports shall also state the total costs to date for the Time and Materials Change Order Work.

13.7.2.3 Reports As Basis for Payment

All Time and Materials Change Order reports shall be signed by the Project Manager. ICTC will compare its records with Design-Builder's reports, make the necessary adjustments and compile the costs of Time and Materials Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. Design-Builder's (and each Subcontractor's) cost records pertaining to Work paid for on a time and materials basis shall be open, during all regular business hours, to inspection or audit by representatives of ICTC during the life of the Contract and for a period of not less than seven (7) years after Final Acceptance, and Design-Builder (and each Subcontractor) shall retain such records for that period. If an audit is to be started more than sixty (60) Days after Final Acceptance, Design-Builder will be given a twenty (20) Day notice of the time when such audit is to begin.

13.7.3 Compliance with the Federal Acquisition Regulation

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

13.8 Differing Site Conditions

13.8.1 Responsibilities of ICTC

Upon Design-Builder's fulfillment of all applicable requirements of Sections 5.3 and 13, and subject to the limitations contained therein, ICTC shall be responsible for, and agrees to issue Change Orders (a) to compensate Design-Builder for additional costs directly attributable to changes in the scope of the Work arising from Differing Site Conditions in accordance with the Approved action plan under Section 5.3.2, and (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such conditions.

13.8.2 Burden of Proof

Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

13.9 Certain Events

Upon Design-Builder's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, ICTC shall be responsible for, and agrees to issue Change Orders (a) to

compensate Design-Builder for additional costs directly attributable to the events set forth in Section 13.3.1.2(d), and/or (b) to extend the applicable Completion Deadlines as the result of any delay in the Critical Path caused by a Force Majeure event.

13.10 Hazardous Materials Management

13.10.1 Price Increase

Subject to Section 13.10.3, Design-Builder shall be entitled to payment for Remediation Work (excluding those conditions for which Design-Builder has agreed to be responsible as described in Section 18.1.1(g) and Book 2, Section 7, “Environmental Compliance”) through a Change Order priced in accordance with Section 13.6 or 13.7.

13.10.2 Time Extension

Design-Builder shall be entitled to an extension of the Completion Deadlines to the extent that any delay in the Critical Path is directly attributable to Remediation Work compensable under Section 13.10.1.

13.10.3 Limitations on Change Orders

All Change Orders authorized by this Section 13.10 shall be subject to the restrictions, limitations and procedures set forth in Section 13. Allowable costs shall be limited to the Incremental Costs associated with the fact that Hazardous Materials subject to Remediation Work compensable under Section 13.10.1 are present (deducting any avoided costs such as re-use and/or disposal of non-Hazardous Materials) after completion of the testing process to determine whether Hazardous Materials are present. Design-Builder shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Section 13.10.1 shall not be allowed unless Design-Builder demonstrates to ICTC’s satisfaction that (a) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques, and (b) Design-Builder’s plan for the Remediation Work represents the approach which is most beneficial to the Project and the public. Design-Builder shall provide ICTC with such information, analyses, and certificates as may be requested by ICTC in order to enable a determination regarding eligibility for payment.

13.11 Matters Not Eligible for Change Orders

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

- a) Errors in the Design Documents and Construction Documents (including Errors directly attributable to Errors in the Basic Configuration, the Approved Project Report and its Attachments, or RID, but excluding Latent Material Errors in any of the foregoing).
- b) Subject to Sections 13.3.1.2(d)(iv) and (v), any design changes required by ICTC as part of the process of Approving the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals and/or Governmental Rules.

- c) Defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent arising from causes which otherwise give rise to a right to a Change Order).
- d) Action or inaction of Design-Builder's employees, Suppliers, Subcontractors, or any Design-Builder-Related Entity (unless arising from causes which otherwise give rise to a right to a Change Order).
- e) Groundwater levels or subsurface moisture content.
- f) Untimely delivery of equipment or material, or unavailability, defectiveness, or increases in costs of material, equipment or products specified by the Contract Documents (except to the extent arising from causes which otherwise give rise to a right to a Change Order).
- g) Delays not on the Critical Path.
- h) Costs covered by insurance proceeds received by or on behalf of Design-Builder.
- i) Correction of Nonconforming Work and oversight and related activities in connection therewith by ICTC (including rejected design submittals).
- j) Failure by Design-Builder to comply with Contract requirements.
- k) All other events beyond the control of ICTC for which ICTC has not agreed to assume liability hereunder.
- l) Any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract or arise out of the nature of the Work.

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

13.12 Waiver

DESIGN-BUILDER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT DESIGN-BUILDER IS ENTITLED TO RECEIVE OR SEEK A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.13 Disputes

If ICTC and Design-Builder agree that a request to increase the Contract Price and/or extend any Completion Deadline by Design-Builder has merit, but are unable to agree as to the amount of such price

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

13.14 No Release or Waiver

13.14.1 Extension of Time for Performance

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

13.14.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

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

14. SUSPENSION OF WORK

14.1 Suspension for Convenience

ICTC may, at any time and for any reason, by written notice, order Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that ICTC deems appropriate for the convenience of ICTC. Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from ICTC directing Design-Builder to resume Work. Suspensions related to seasonal or climatic conditions, or Force Majeure events shall not be considered ICTC-Caused Delays.

14.2 Suspension for Cause

ICTC has the authority by written order to suspend the Work without liability to ICTC wholly or in part for Design-Builder's failure to do any of the following:

- a) Correct conditions unsafe for the Project personnel or general public.
- b) Comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the Contract.
- c) Carry out orders of ICTC duly given.
- d) Comply with environmental requirements or requirements for developing and implementing the Quality Manual.

Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from ICTC directing Design-Builder to resume Work.

14.3 Design-Builder Responsibilities During Suspension

During periods that Work is suspended, Design-Builder shall continue to be responsible for the Work and shall prevent damage or injury to the Project and other facilities in the Project vicinity, provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Design-Builder-provided insurance and bonds and erect necessary temporary structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by ICTC, Design-Builder shall continue to be responsible for maintenance of traffic in accordance with the requirements of the Contract, for plant and landscape maintenance in accordance with Book 2, Section 14, "Landscape" and for stormwater maintenance in accordance with Book 2, Section 8, "Stormwater". If the suspension is for ICTC's convenience, the additional work performed by Design-Builder during the suspension period shall be considered ICTC-Directed Changes.

15. TERMINATION FOR CONVENIENCE

15.1 Notice of Termination

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

15.2 Design-Builder's Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by ICTC, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 15.

- a) Stop Work as specified in the notice.
- b) Communicate such notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by ICTC.
- c) Place no further Subcontracts or orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
- d) Terminate all Subcontracts to the extent that they relate to the Work terminated.
- e) Assign to ICTC in the manner, at the times, and as and to the extent directed by ICTC, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case ICTC will have the right, in its sole discretion, to accept performance, settle, or pay any or all claims arising out of the termination of such Subcontracts.
- f) Subject to the prior Approval of ICTC, settle all outstanding liabilities and claims arising out of such termination of Subcontracts.
- g) Provide ICTC with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, and any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to ICTC, and such other information as ICTC may request; and transfer title and deliver to ICTC, in the manner, at the times, and as and to the extent, if any, directed by ICTC (i) fabricated or unfabricated parts, the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and (ii) the Design Documents, Construction Documents and all other completed or partially completed drawings (including Plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to ICTC if the Work had been completed.
- h) Complete performance in accordance with the Contract Documents of all Work not terminated.
- i) Take all action that may be necessary, or that ICTC may direct, for the safety, security, protection and preservation of (i) the public, including public and private vehicular movement, (ii) the Work,

and (iii) the equipment, machinery, materials, and property related to the Contract Documents that is in the possession of Design-Builder and in which ICTC has or may acquire an interest.

- j) As authorized by ICTC in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by ICTC, any property of the types referred to in Section 15.2(g); provided, however, that 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 ICTC (provided that such prices are not less than those for which Design-Builder is contractually obligated). The proceeds of any transfer or disposition will be applied to reduce any payments to be made by ICTC under the Contract Documents or paid in any other manner directed by ICTC.
- k) If requested by ICTC, withdraw from the portions of the Site designated by ICTC and remove such materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, Design-Builder and any Subcontractor in the performance of the Work as ICTC may direct.
- l) Take other actions directed by ICTC.

15.3 Responsibility After Notice of Termination

Design-Builder shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

- a) Design-Builder's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when ICTC certifies that those materials have been stored in the manner and at the locations directed by ICTC.
- b) Design-Builder's responsibility for damage to materials purchased by ICTC subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of those materials has been taken by ICTC.

Immediately after ICTC determines that Design-Builder has completed the Work directed to be completed before termination and such other work as may have been ordered to secure the Project for termination, Design-Builder will not be required to provide for continuing safety, security, and maintenance at the Site.

15.4 Negotiated Termination Settlement

15.4.1 Settlement Proposal

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

15.4.2 Negotiated Settlement Amount

Design-Builder and ICTC may agree, as provided in Section 15.4.1, upon the whole or any part of the amount or amounts to be paid to Design-Builder by reason of the total or partial termination of Work pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently Approved by ICTC. Such agreed amount(s), exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount the Contract will be amended accordingly, and Design-Builder will be paid the agreed amount. Nothing in Section 15.5, prescribing the amount to be paid to

Design-Builder in the event that Design-Builder and ICTC fail to agree upon the whole amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount(s) which may be agreed upon to be paid to Design-Builder pursuant to this Section 15.4. ICTC's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve Design-Builder from its obligations with respect thereto, including Warranties, or affect Design-Builder's rights under the Payment and Performance Bonds, and payment as to such completed or non-terminated Work.

15.5 Determination of Settlement Amount If Negotiations Fail

If Design-Builder and ICTC fail to agree, as provided in Section 15.4.2, upon the whole amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by ICTC in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 15.4 and without waiver by either party of its right to proceed under Section 19, Disputes.

15.5.1 Payment Amount

ICTC will pay Design-Builder the sum of the following amounts for Work performed before the effective date of the Notice of Termination, as such amounts are determined by ICTC:

- a) Design-Builder's actual reasonable out-of-pocket cost (without profit and including equipment costs only to the extent permitted by Section 13) for all Work performed, including mobilization, demobilization, and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits, or similar items, as established to ICTC's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Design-Builder, amounts realized by the sale of materials and for other appropriate credits. Deductions will also be made for the cost of damaged materials. When, in the reasonable opinion of ICTC, the cost of an item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost will be disallowed.
- b) As profit on clause (a) above, a sum determined by ICTC to be fair and reasonable; provided, however, that such sum shall not be less than that to which Design-Builder would have been entitled under the Contract Documents.

- c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 5.2(f), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the Notice of Termination under the Contract, which amounts shall be included in the cost on account of which payment is made under clause (a) above.
- d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2(i) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to Design-Builder of handling material returned to the vendor, delivered to ICTC or otherwise disposed of as directed by ICTC, and including a reasonable allowance for Design-Builder's administrative costs in determining the amount due to Design-Builder as the result of the termination of Work under the Contract.

15.5.2 Maximum Compensation

Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.5.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. However, the total amount to be paid to Design-Builder, exclusive of costs described in Sections 15.5.1(c), (d) and (e), may not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. Furthermore, if any refund is payable with respect to insurance or bond premiums, deposits or similar items which were previously passed through to ICTC by Design-Builder, such refund shall be paid directly to ICTC or otherwise credited to ICTC.

15.5.3 Excluded Items

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

15.5.4 Payment of Termination Amount

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

15.6 Partial Termination

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

15.7 Reduction in Amount of Claim

The amount otherwise due Design-Builder under this Section 15 shall be reduced by:

- a) All unliquidated advance or other payments made to or on behalf of Design-Builder applicable to the terminated portion of the Contract.
- b) The amount of any claim which ICTC may have against any Design-Builder-Related Entity in connection with the Contract.
- c) The agreed price for, or the proceeds of the sale of, any property, materials, supplies, or other things acquired by Design-Builder or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to ICTC.
- d) Amounts that ICTC deems advisable, in its reasonable discretion, to retain to cover any existing claims, Liens, and stop notices relating to the Project, including claims by Utility Owners, except to the extent that Design-Builder has provided release bonds or other acceptable security against such claims.
- e) The cost of repairing any Nonconforming Work.
- f) Any amounts due or payable by Design-Builder to ICTC.

15.8 Partial Payments

ICTC may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of the Contract, whenever in the opinion of ICTC the aggregate of such payments shall be within the amount to which Design-Builder will be entitled under this Section 15. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Design-Builder to ICTC upon demand together with interest thereon as set forth in Section 11.8.

15.9 Inclusion in Subcontracts

Design-Builder shall insert in all Subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a Notice of Termination from ICTC in accordance with this Section 15 and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

15.10 Limitation on Payments to Subcontractor

For the purposes of Sections 15.4.2 and 15.5, upon termination under Section 15.2(d) of Work under any Subcontract, Design-Builder shall not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

15.11 No Unearned Profits or Consequential Damages

Under no circumstances shall Design-Builder be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to Design-Builder determined in accordance with this Section 15 constitutes Design-Builder's sole and exclusive remedy for a termination under this Section 15.

15.12 No Waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages which ICTC may have, and ICTC may pursue any cause of action which it may have at law or in equity or under the Contract.

15.13 Dispute Resolution

The failure of the parties to agree on amounts due under this Section 15 shall be a Dispute to be resolved in accordance with Section 19.

15.14 Allowability of Costs

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

15.15 Suspension of Work

In the event of any suspension of Work by ICTC, after issuance of NTP1, for more than one hundred eighty

(180) consecutive Days, Design-Builder shall have the right to consider the Contract to have been terminated for convenience under this Section 15. Design-Builder shall notify ICTC of such election by delivering to ICTC a written notice of termination due to such suspension specifying its effective date. Upon delivery by Design-Builder to ICTC of a notice of termination due to suspension, the provisions of this Section 15 shall apply.

15.16 Termination Due to Non-Appropriation of Funds

15.16.1 Availability of Funds

The obligation of ICTC to make any payments to Design-Builder hereunder is contingent upon funds being appropriated, budgeted, allocated and otherwise made available by ICTC in amounts to meet its funding obligations for the Contract. Design-Builder is not obligated to perform Work, and correspondingly is not entitled to any compensation for Work performed, in any fiscal year beyond the amount, if any, appropriated and made available by ICTC in amounts to meet its funding obligations for the Contract.

15.16.2 Anticipated Appropriations

ICTC anticipates that sufficient funds will be authorized to allow ICTC to make all payments owing hereunder.

15.16.3 Remedy for Failure To appropriate

If funds are not budgeted, allocated, or otherwise made available by ICTC or the State or federal Legislature or local agency fails to make an appropriation, resulting in stoppage of Work, Design-Builder agrees to resume performance of the Work without any modification to the terms and conditions hereof, provided that an appropriation therefor is approved or funds are made available within sixty (60) Days after Design-Builder stops Work under Section 15.16.1. Any such Work stoppage shall be considered a suspension for

convenience under Section 14.1. If funds are not appropriated or made available before expiration of such sixty (60) Day period, either party may terminate the Contract.

16. DEFAULT

16.1 Default By Design-Builder

16.1.1 Events of Default

Design-Builder shall be in breach under the Contract upon the occurrence of any one or more of the following events or conditions:

- a) Design-Builder fails to promptly begin the Work under the Contract Documents following issuance of a Notice to Proceed authorizing such Work.
- b) Design-Builder does not comply with public safety and public convenience requirements of this Contract or fails to correct any safety hazards or security risks promptly.
- c) Design-Builder fails to perform the Work with sufficient resources to ensure the prompt completion thereof (i.e., Design-Builder fails to execute remedial action in accordance with the Quality Manual and Book 2, Section 5, "Quality Program").
- d) Design-Builder fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by ICTC under Section 7.4.3.
- e) Design-Builder discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to (i) termination by ICTC, (ii) a Force Majeure event or suspension by ICTC, or (iii) nonpayment by ICTC not related to a breach by Design-Builder).
- f) Design-Builder fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from ICTC to do so or (if applicable) after cessation of the event preventing performance.
- g) Design-Builder breaches any other agreement, representation, or Warranty contained in the Contract Documents, or Design-Builder fails to perform any other obligation under the Contract Documents, including EEO and DBE requirements.
- h) Design-Builder fails to provide and maintain the required insurance.
- i) Design-Builder fails to provide and maintain the required Payment and Performance Bonds, or Design-Builder assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 23.4.2.
- j) 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, fails to comply with any Governmental Rule or Governmental Approval; or fails reasonably to comply with the instructions of ICTC consistent with the Contract Documents.
- k) Design-Builder fails to discharge or obtain a stay within ten (10) Days of any final judgment(s) or order for the payment of money against it in excess of one hundred thousand dollars (\$100,000) in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of one hundred twenty five (125) percent of such judgment or order shall be deemed an effective stay).

- l) Design-Builder, any Guarantor, or any Major Participant shall have become insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors.
- m) Insolvency, receivership, reorganization, or bankruptcy proceedings shall have been started by or against Design-Builder, any Guarantor, or any Major Participant and not dismissed within sixty (60) Days.
- n) Any representation or warranty made by Design-Builder or any Guarantor in the Contract Documents or in any certificate, schedule, instrument, or other document delivered pursuant to the Contract Documents shall have been false or materially misleading when made.
- o) Design-Builder or any Guarantor is held liable or is convicted for fraud.
- p) Any Guarantor revokes or attempts to revoke its obligations, or otherwise takes the position that such instrument is no longer in full force and effect.

16.1.2 Right to Cure

ICTC agrees to allow Design-Builder and Surety fifteen (15) Days' notice and opportunity to cure any breach before declaring an Event of Default, provided that the notice and cure period shall only be three (3) days for a breach under Sections 16.1.1(g) (h), (k), (m), and (n) and no such notice and opportunity to cure is required for any breach which by its nature cannot be cured. If a breach for which a fifteen (15) Day cure period is provided is curable but by its nature cannot be cured within fifteen (15) Days, as determined by ICTC, ICTC agrees not to declare an Event of Default provided that Design-Builder begins such cure within such fifteen (15) Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed sixty (60) Days in total. For breach of any insurance requirements, the provisions of Section 9 apply. Notwithstanding the foregoing, if ICTC believes a condition affecting the Project poses an immediate and imminent danger to public health or safety or security, ICTC may, without notice and without awaiting lapse of any cure period, rectify the condition at Design-Builder's cost, and so long as ICTC undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose ICTC to liability to Design-Builder and shall not entitle Design-Builder to any other remedy, it being acknowledged that ICTC has a paramount public interest in providing and maintaining safe public use of and access to the Project. ICTC's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2 Remedies

16.2.1 Rights of ICTC

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

- a) ICTC may order Design-Builder to suspend or discontinue the Work or any portion of the Work.
- b) ICTC may terminate the Contract or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 shall apply.

- c) If and as directed by ICTC, Design-Builder shall withdraw from the Site; and shall remove such materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, any Design-Builder-Related Entity in the performance of the Work.
- d) Design-Builder shall deliver to ICTC possession of any or all facilities of Design-Builder located on the Site, including any or all Design Documents, Construction Documents, and all other completed or partially completed drawings (including Plans, elevations, sections, details, and diagrams), specifications, records, information, schedules, samples, shop drawings, and other documents, that ICTC deems necessary for completion of the Work.
- e) Design-Builder shall confirm the assignment to ICTC of the Subcontracts requested by ICTC, and Design-Builder shall terminate, at its cost, all other Subcontracts.
- f) ICTC may deduct from any amounts payable by ICTC to Design-Builder such amounts payable by Design-Builder to ICTC, including Liquidated Damages or other damages payable to ICTC under the Contract Documents.
- g) ICTC shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required.
- h) ICTC, without incurring any liability to Design-Builder, shall have the rights (i) to take the performance of all or a portion of the Work from Design-Builder (either with or without the use of Design-Builder's materials and equipment for which ICTC has made payment) and enter into an agreement with another Person for the completion of such Work; or (ii) to use such other methods, as in the opinion of ICTC, will be required for the completion of the Project.
- i) If ICTC exercises any right to perform any obligations of Design-Builder, in the exercise of such right ICTC may, but is not obligated to, among other things:
 - i. Perform or attempt to perform, or cause to be performed, such Work.
 - ii. Spend such sums as ICTC deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors and obtain materials and equipment as may be required for the purpose of completing such Work.
 - iii. Execute all applications, certificates and other documents as may be required for completing the Work.
 - iv. Modify or terminate any contractual arrangements.
 - v. Take any and all other actions which it may in its sole discretion consider necessary to complete the Work.
 - vi. Prosecute and defend any action or proceeding incident to the Work.

16.2.2 Liability of Design-Builder

16.2.2.1 Occurrence of an Event of Default

If an Event of Default has occurred, Design-Builder and Surety shall be jointly and severally liable to ICTC (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably incurred by ICTC or any party acting on ICTC's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and

increased financing costs). Upon the occurrence of an Event of Default, ICTC shall be entitled to withhold all or any portion of further payments to Design-Builder until such time as ICTC is able to determine how much (if any) remains owing to Design-Builder. Promptly upon such determination, ICTC shall notify Design-Builder in writing of the amount, if any, that Design-Builder shall pay ICTC or that ICTC shall pay Design-Builder with respect thereto. All costs and charges incurred by ICTC, including attorneys', accountants', and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, shall be deducted from any moneys due or which may become due to Design-Builder. If such expense exceeds the sum which would have been payable under the Contract, then Design-Builder and its Surety(ies) and any Guarantor shall be liable and shall pay to ICTC the amount of such excess.

16.2.2.2 Assurance of Future Performance

It is recognized that if a default under Section 16.1.1(k), (l), or (m) occurs, such event could impair or frustrate Design-Builder's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, ICTC shall be entitled to request of Design-Builder, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) Days of delivery of the request shall entitle ICTC to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, ICTC shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from ICTC's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract, and Payment and Performance Bonds.

16.2.2.3 Alternative to Terminating the Contract and Completing the Work

In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, ICTC may pay Design-Builder for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by the Contract. No claim under this provision will allow Design-Builder prospective profits on, or any other compensation relating to, Work uncompleted by Design-Builder.

16.2.2.4 Reserved

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

If ICTC suffers damages as a result of Design-Builder's breach or failure to perform an obligation under the Contract Documents, then ICTC shall be entitled to recovery of such damages from Design-Builder regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

16.2.2.6 Cumulative Remedies

The exercise or beginning of the exercise by ICTC of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by ICTC of any or all other rights or remedies, each of which shall be cumulative.

16.2.2.7 Continued Liability of Design-Builder and Surety

Design-Builder, any Guarantor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by Design-Builder hereunder or by ICTC's declaration of an Event of Default, or by actions taken by ICTC under this Section 16.2.

16.3 Right to Stop Work If Undisputed Payment Is Not Made

Design-Builder shall have the right to stop Work if ICTC fails to make an undisputed payment due hereunder within thirty (30) Days after receipt of notice of nonpayment. Design-Builder shall not issue a notice of nonpayment prior to the initial thirty (30) Days of an undisputed payment due to Design-Builder. If the failure to make the undisputed payment is not cured within thirty (30) Days after receipt of notice of nonpayment, then after providing an additional five (5) Days' notice of the nonpayment, Design-Builder shall have the right to terminate the Contract and recover such damages as are permitted by law.

16.4 Notice and Opportunity to Cure Other Types of ICTC Breaches

In the event of any breach of the Contract by ICTC other than a failure to make payments to Design-Builder, Design-Builder shall provide to ICTC a written notice describing the breach and the opportunity to cure such breach. ICTC shall be entitled to thirty (30) Days' notice and opportunity to cure any such breach; provided that if such breach is capable of cure but by its nature cannot be cured within thirty (30) Days, ICTC shall have such additional period of time as may be reasonably necessary to cure the breach so long as ICTC begins such cure within such thirty (30) Day period and thereafter diligently prosecutes such cure to completion. Design-Builder shall have no right to exercise any remedies to which it may be entitled at law or in equity until the foregoing notice is delivered and the foregoing cure period lapses without cure of the breach.

17. DAMAGES

17.1 Liquidated Damages

17.1.1 Failure to Meet Completion Deadlines

Design-Builder understands and agrees that if Design-Builder fails to complete the Work in accordance with the Contract Documents, ICTC will suffer substantial losses and damages. Design-Builder agrees that it shall be liable for all such losses and damages. Design-Builder acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the U.S. Border Crossing system and the California State highway system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to ICTC and the public in the event of Design-Builder's failure to achieve Substantial Completion, and/or Final Acceptance by the applicable Completion Deadlines. Therefore, Design-Builder and ICTC have agreed to stipulate the amount payable by Design-Builder in the event of its failure to meet a Completion Deadline. Design-Builder acknowledges and agrees that such Liquidated Damages are intended to compensate ICTC solely for Design-Builder's failure to meet the Completion Deadlines, and shall not excuse Design-Builder from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. Collection of Liquidated Damages shall be the ICTC's sole and exclusive remedy for delay in meeting a Completion Deadline.

If Design-Builder fails to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, as adjusted in accordance with the Contract Documents, Design-Builder agrees to pay ICTC Liquidated Damages in the following amounts:

- a) Ten thousand dollars (\$10,000) per Day for Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Deadline, until the date Design-Builder achieves Substantial Completion.
- b) Ten thousand dollars (\$10,000) per Day for Design-Builder's failure to achieve Final Acceptance by the Final Acceptance Deadline, until the date Design-Builder achieves Final Acceptance.

17.1.2 Reasonableness of Liquidated Damage Amounts

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

17.2 Offset; Waiver

17.2.1 Offset

ICTC shall have the right to deduct any amount owed by Design-Builder to ICTC hereunder from any amounts owed by ICTC to Design-Builder.

17.2.2 Waiver

ICTC may reduce or waive all or any portion of the Liquidated Damages, in its sole discretion, if the Project is in condition for safe, secure, and convenient use by the traveling public and CBP operations.

Permitting or requiring Design-Builder to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of ICTC's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to ICTC. Neither the act of taking over the Work nor a termination of the Contract or default shall forfeit ICTC's right to recover Liquidated Damages from Design-Builder or Design-Builder's Sureties.

17.3 Payment of Liquidated Damages

Liquidated Damages, to the extent not paid as provided in Section 17.2, shall be payable by Design-Builder to ICTC within ten (10) Days after Design-Builder's receipt of an invoice therefor from ICTC.

18. INDEMNIFICATION

18.1 Indemnifications by Design-Builder

18.1.1 General Indemnities

With the exception that this section shall in no event be construed to require indemnification by the Design-Builder to a greater extent than permitted by law, the Design-Builder shall defend, indemnify, and hold harmless ICTC and its officers, directors, agents, and employees, and each of them (Indemnitees) from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (Claims), to the extent arising out of or in connection with the Design-Builder's performance of this Contract for:

- a) Bodily injury, including sickness or disease, emotional injury or death to Persons, including the public, any employees, or agents of the Design-Builder, State, ICTC, or any other contractor.
- b) Damage to property of anyone, including loss of use thereof caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Design-Builder or its agents, or anyone directly or indirectly employed or retained by the Design-Builder or anyone for whose acts or omissions the Design-Builder may be liable.

Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees. The Design-Builder, however, shall not be obligated to indemnify Indemnitees for Claims arising from conduct delineated in California Civil Code Section 2782. Further, the Design-Builder's indemnity obligation shall not extend to Claims to the extent they arise from any defective or substandard condition of the roadway which existed at or before the time the Design-Builder began Work, unless this condition has been changed by the Work or the scope of the Work requires the Design-Builder to maintain existing roadway facilities and the Claim arises from the Design-Builder's failure to maintain. The Design-Builder's indemnity obligation shall extend to Claims arising after the Work is completed and accepted only if these Claims are directly related to alleged acts or omissions of the Design-Builder which occurred during the course of the Work. No inspection, oversight, Approval, or acceptance by ICTC, its employees or agents shall be deemed a waiver by ICTC of full compliance with the requirements of this Section 18.

The Design-Builder's obligation to defend and indemnify shall not be excused because of the Design-Builder's inability to evaluate liability or because the Design-Builder evaluates liability and determines that the Design-Builder is not liable to the claimant. The Design-Builder shall respond within thirty (30) days to the tender of any claim for defense and indemnity by ICTC unless this time has been extended by the ICTC. If the Design-Builder fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Design-Builder under and by virtue of this Contract as shall be reasonably necessary by ICTC, may be retained and withheld by ICTC until disposition has been made by the Claim or suit for damages, or until the Design-Builder accepts or rejects the tender of defense, whichever occurs first.

Subject to California Civil Code Section 2782, Design-Builder shall release, indemnify, defend, and hold harmless ICTC and its agents and their respective successors and assigns and their respective shareholders, officers, directors, agents, and employees (collectively referred to as the "Indemnitees") from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs, and expenses, including any injury to or death of Persons

or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants', and expert witness fees and costs, to the extent arising out of, relating to or resulting from:

- a) The breach or alleged breach of the Contract by any Design-Builder-Related Entity.
- b) The failure or alleged failure by any Design-Builder-Related Entity to comply with any applicable Environmental Laws or other Governmental Rules (including Governmental Rules regarding handling, generation, treatment, storage, transportation, and disposal of Hazardous Materials) or Governmental Approvals in performing the Work.
- c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights, or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to Indemnitees pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from ICTC's failure to comply with specific written instructions regarding use provided to ICTC by Design-Builder.
- d) The alleged negligent act or omission or willful misconduct of any Design-Builder-Related Entity.
- e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases, or sales, or the use of any property or income of Design-Builder or any of its Subcontractors or any of their respective agents, officers, or employees with respect to any payment for the Work made to or earned by any Design-Builder-Related Entity.
- f) Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys', accountants', and expert witness fees and costs incurred in discharging any stop notice or Lien, provided that ICTC is not in default in payments owing to Design-Builder with respect to such Work.
- g) Any spill or release or threatened spill or release of a Hazardous Material (i) attributable to the negligence, willful misconduct, or breach of Contract by any Design-Builder-Related Entity, or (ii) which was brought onto the Site by any Design-Builder-Related Entity.
- h) The claim or assertion by any contractor of inconvenience, disruption, delay, or loss caused by interference by any Design-Builder-Related Entity with or hindering the progress or completion of work being performed by other contractors as described in the Caltrans *Standard Specifications*, Section 5-1.20, "Coordination with Other Entities," or failure of any Design-Builder-Related Entity to cooperate reasonably with other contractors in accordance therewith.

18.1.2 Design Defects

Subject to California Civil Code Section 2782 and 2782.8, Design-Builder shall release, indemnify and hold harmless Indemnitees from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants', and expert witness fees and costs, to the extent arising out of, relating to or resulting from Errors in the Design Documents, and except for Latent Material Errors, regardless of whether such Errors were also included in the Basic Configuration or RID. Design-Builder agrees that, because the Basic Configuration and RID are subject to review and modification by Design-

Builder, it is appropriate for Design-Builder to assume liability for Errors in the completed Project even though they may be related to Errors (but not Latent Material Errors) in the Basic Configuration or RID. Nothing in this Section 18.1.2 shall be interpreted to create a duty of Design-Builder to immediately defend Indemnitees against claims for design errors or omissions; provided, however, that once Design-Builder's negligence is finally adjudicated, Design-Builder's duty to indemnify shall include the attorney's fees and other costs incurred by Indemnitees in the defense of the claims.

18.1.3 Limitation of Liability

The maximum aggregate liability of the Design-Builder under this Contract, including for default, breach of contract, negligence, any Liquidated Damages, indemnity obligations or otherwise in connection with the Project shall be limited to an amount equal to forty (40) percent of the Contract Price. The limitation of liability is not intended to limit or otherwise detract from the obligation of the Design-Builder to perform the Work for the Contract Price (including cost overruns), and shall not apply to liabilities that arise out of any of the following:

- a) Claims by third parties.
- b) Damage to or destruction of real property or tangible personal property.
- c) Bodily injury or death.
- d) Abandonment, fraud, fraudulent misrepresentations, or willful misconduct of the Design-Builder.
- e) Any sum actually recovered by the Design-Builder through the insurance required by Section 9 of the Contract, or which could have been so recovered if the Design-Builder had maintained the insurance as required in accordance with this Contract.

18.1.4 Mutual Waiver of Consequential Damages

Neither ICTC nor Design-Builder shall be liable to the other for punitive, indirect, incidental or consequential damages, whether arising out of breach of this Contract, tort (including negligence) or any other theory of liability, and each party hereby releases the other party from any such liability, provided however that this provision shall not apply to:

- a) Losses to the extent (i) the loss is covered by the proceeds of insurance required to be carried under the Contract or for which Design-Builder was required to provide insurance if coverage is not in force, or (ii) the loss is covered by the proceeds of insurance actually carried by or insuring Design-Builder under policies required to be carried pursuant to the Contract Documents.
- b) Losses arising out of fraud, criminal conduct or intentional misconduct of Design-Builder.
- c) Design-Builder's obligation to pay Liquidated Damages in accordance with this Contract.

18.1.5 Reliance on Design-Builder's Performance

Design-Builder hereby acknowledges and agrees that it is Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that Indemnitees are fully entitled to rely on Design-Builder's performance of such obligation. Design-Builder further agrees that any review, oversight, inspection, acceptance, and/or approval by ICTC and/or others hereunder shall not relieve Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations pursuant to this Contract.

18.2 Responsibility of ICTC for Certain Hazardous Materials

18.2.1 Pre-Existing Site Contamination

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

Accordingly, to the extent that Design-Builder is required to perform Remediation Work hereunder, ICTC shall compensate Design-Builder for such performance (through payment of the Contract Price, as it may be increased by Change Order pursuant to Section 13), but specifically excluding those conditions for which Design-Builder has agreed to be responsible as described in Section 18.1.1(g).

18.2.2 Generator Number for Hazardous Waste Remediation

Except for Hazardous Materials for which Design-Builder is responsible as described in Section 18.1.1(g) and without contradiction of any assertion by ICTC of third-party liability:

- a) Design-Builder shall not be required to execute any hazardous waste manifests as a “generator”.
- b) Hazardous Materials encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by, and carried in the name of, ICTC or another Person designated by ICTC.

18.3 No Effect on Other Rights

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

18.4 CERCLA Agreement

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

18.5 Intent of Indemnity for Breach of Contract

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

19. PARTNERING, DISPUTE RESOLUTION, FORMAL LEGAL ACTION(S)

19.1 Partnering

19.1.1 General

ICTC strives to work cooperatively with all design-builders; partnering is our way of doing business. ICTC encourages partnering among the Project team, made up of significant contributors from ICTC and the Design-Builder, and their invited stakeholders. Professionally facilitated partnering is required.

In implementing partnering, the Design-Builder and ICTC manage the Contract by:

- a) Using early and regular communication with involved individuals and/or entities.
 - b) Establishing and maintaining a relationship of shared trust, equity, and commitment.
 - c) Identifying, quantifying, and supporting attainment of mutual goals.
 - d) Developing strategies for using risk management concepts.
 - e) Implementing timely communication and decision making.
 - f) Resolving potential problems at the lowest possible level to avoid negative impacts.
 - g) Holding periodic partnering meetings and workshops as appropriate to maintain partnering relationships and benefits throughout the life of the Project.
 - h) Establishing periodic joint evaluations of the partnering process and attainment of mutual goals.
- Partnering does not void any Contract part.

The Caltrans *Field Guide to Partnering on Caltrans Construction Projects* is available to the Project team as reference. This guide provides structure, context, and clarity to the partnering process requirements. This guide is available at the Caltrans Partnering Program Web site:

<https://dot.ca.gov/programs/construction/partnering>

In implementing partnering, the Project team shall:

- a) Create a partnering charter that includes:
 - i. Mutual goals, including core Project goals and may also include Project-specific goals and mutually supported individual goals.
 - ii. Partnering maintenance and close-out plan.
 - iii. Dispute resolution plan that includes a dispute resolution ladder and may also include use of facilitated dispute resolution sessions.
 - iv. Team commitment statement and signatures.

- b) Participate in monthly partnering evaluation surveys to measure progress on mutual goals and may also measure short-term key issues as they arise.
- c) Evaluate the partnering facilitator on Forms CEM-5501 and CEM-5502. ICTC provides the evaluation forms to the Project team and collects the results. ICTC will make evaluation results available upon request. Facilitator evaluations shall be completed:
 - i. At the end of the initial partnering workshop on Form CEM-5501.
 - ii. At the end of the Project close-out partnering workshop on Form CEM-5502.
- e) Conduct a Project close-out partnering workshop.
- f) Document lessons learned before Final Acceptance.

19.1.2 Partnering Facilitator, Workshops, and Monthly Evaluation Surveys

ICTC sends the Design-Builder a written invitation to enter into a partnering relationship after execution of the Contract. The Design-Builder shall respond within fifteen (15) days to accept the invitation and request the initial and additional partnering workshops. After ICTC receives the request, the Design-Builder and ICTC cooperatively:

- a) Select a partnering facilitator that offers the service of a monthly partnering evaluation survey with a five (5)-point rating and agrees to follow the Caltrans *Partnering Facilitator Standards and Expectations* available at the Caltrans Partnering Program Web site.
- b) Schedule initial partnering workshop.
- c) Determine initial workshop site and duration.
- d) Agree to other workshop administrative details.

Additional partnering workshops and sessions are encouraged throughout the life of the Project as determined necessary by the Design-Builder and ICTC, at quarterly intervals or as agreed to by both the Design-Builder and ICTC.

19.1.3 Training in Partnering Skills Development

The training in partnering skills development will be required upon mutual agreement of ICTC and Design-Builder.

The Design-Builder and ICTC cooperatively schedule the training session and select a professional trainer, training site, and one (1) to four (4) topics from the following list to be covered in the training:

- a) Active Listening
- b) Building Teams
- c) Change Management
- d) Communication
- e) Conflict Resolution
- f) Cultural Diversity

- g) Dealing with Difficult People
- h) Decision Making
- i) Effective Escalation Ladders
- j) Emotional Intelligence
- k) Empathy
- l) Ethics
- m) Facilitation Skills
- n) Leadership
- o) Partnering Process and Concepts
- p) Project Management
- q) Project Organization
- r) Problem Solving
- s) Running Effective Meetings
- t) Time Management
- u) Win-Win Negotiation

Before the initial partnering workshop, the trainer conducts a one-day training session in partnering skills development for the Design-Builder's and ICTC's representatives. This training session shall be a separate session from the initial partnering workshop and shall be conducted locally. The training session shall be consistent with the partnering principles under the Caltrans "*Field Guide to Partnering on Caltrans Construction Projects*".

Design-Builder shall send at least two (2) representatives to the training session. One (1) of these shall be the designated representative as specified in Section 23.5.1.

19.1.4 Payment

ICTC pays Design-Builder for:

- a) Half of partnering workshops and sessions based on facilitator and workshop site cost.
- b) Half of monthly partnering evaluation survey service cost.
- c) Partnering skills development trainer and training site cost.

ICTC determines the costs based on invoice prices minus any available or offered discounts. ICTC does not pay markups on these costs.

ICTC does not pay for wages, travel expenses, or other costs associated with the partnering workshops and sessions, monthly partnering evaluation surveys, and training in partnering skills development.

19.2 Dispute Resolution Procedures

19.2.1 General Provisions

The Design-Builder shall comply with the requirements of Section 19.2 in order to pursue any legal action against ICTC arising from any Claim or Dispute related to ~~this Contract~~ or the Work associated therewith and arising up to and before Final Acceptance. All Claims or Disputes related to this Contract or the Work

associated therewith are subject to the requirements of Section 19.2 unless exempt and/or excluded from these requirements by other provisions in the Contract including those issues, matters and/or decisions which are within the sole discretion of ICTC.

The dispute resolution procedures set forth in Section 19.2 are not a substitute for complying with the other Claim or Dispute related requirements set forth in this Contract including requirements related to the Design-Builder's provision of notice to ICTC related to any Claim, Dispute, or potential Claim or potential Dispute, such as the provisions of Section 13 (e.g., Section 13.3, "Design-Builder Initiated Change Orders"). Failure to comply with the procedures set forth in Section 19.2 or with the other Claim and/or Dispute related requirements set forth in this Contract is a bar to any legal action against ICTC, for failure to exhaust administrative remedies.

ICTC and the Design-Builder shall use reasonable efforts to resolve Disputes under this Section 19.2 in a timely manner.

Design-Builder shall use the informal dispute resolution process in accordance with Section 19.2.2 for all Disputes.

Once the informal dispute resolution process has been exhausted, Disputes related to Claims arising up to and before Final Acceptance shall be referred to the Dispute Resolution Board (DRB) in accordance with Section 19.2.3.

If ICTC and the Design-Builder are unable to resolve Disputes regarding Claims (other than for tort liability claims arising out of personal injury, wrongful death, property damage, or related third-party claims) arising up to and before Final Acceptance in accordance with Section 19.2, the claiming party may initiate a single legal action to resolve such Claims and/or Disputes after Final Acceptance by filing a civil complaint in Sacramento County Superior Court.

The civil complaint shall be filed no later than ninety (90) days after Final Acceptance, unless a civil complaint involves a Dispute that was timely and properly referred to the DRB prior to Final Acceptance and remains pending at the time of Final Acceptance, in which case the civil complaint must be filed no later than ninety (90) days after the conclusion of the DRB proceedings respecting such Dispute. Neither ICTC nor the Design-Builder shall have the right to litigate its Claims and/or Disputes before Final Acceptance or in multiple legal actions. Neither ICTC nor the Design-Builder shall have the right to assert, and both ICTC and the Design-Builder hereby waives the right to assert, the statute of limitations as a defense to any such Claims/Disputes provided such Claims/Disputes are stated in a civil complaint timely filed in Sacramento County Superior Court, as set forth above in this paragraph, after Final Acceptance and the conclusion of all DRB proceedings respecting such Claims and/or Disputes.

19.2.2 Informal Dispute Resolution Process

19.2.2.1 Escalation Ladder

Before referring a Dispute to the DRB, ICTC and the Design-Builder shall attempt to resolve the Dispute by elevating it through the three escalation ladder level reviews by and between ICTC's Project/Contract Manager and the Design-Builder's Project Manager, ICTC's Construction Manager/Engineer and the Design-Builder's equivalent manager, and finally ICTC's Executive Director and the Design-Builder's equivalent manager.

19.2.2.2 Level One Review

ICTC's Contract Manager or the Design-Builder's Project Manager shall initiate the process of informal dispute resolution by providing the other party with written notice of a Dispute. The written notice shall provide a clear statement of the Dispute and shall refer to the specific Contract provisions that pertain to the Dispute. The notice shall also include a detailed description of the facts and circumstances relating to the Dispute (including the relevant dates, locations, and items of Work). Within five (5) days of the receipt of the written notice, ICTC's Contract Manager and the Design-Builder's Project Manager shall meet and review the Dispute. ICTC's Contract Manager and the Design-Builder's Project Manager shall attempt to resolve the Dispute within ten (10) days of the initial meeting. If the Dispute is resolved, ICTC and the Design-Builder shall create and sign a short description of the facts and the resolution that was agreed upon by ICTC and the Design-Builder.

19.2.2.3 Level Two Review

If the Dispute is not resolved by the tenth day, the Dispute shall be escalated to ICTC's District Construction Engineer and the Design-Builder's equivalent manager who shall meet and review the Dispute within five (5) days. ICTC's District Construction Engineer and the Design-Builder's equivalent manager shall attempt to resolve the Dispute within ten (10) days of their initial meeting. If the Dispute is resolved, ICTC and the Design-Builder shall create and sign a short description of the facts and the resolution that was agreed upon by ICTC and the Design-Builder.

19.2.2.4 Level Three Review

If the Dispute is not resolved by the tenth day, ICTC's Executive Director and the Design-Builder's equivalent manager shall meet and review the Dispute within five (5) days. ICTC's Executive Director and the Design-Builder's equivalent manager shall attempt to resolve the Dispute within ten (10) days of the initial meeting. If the Dispute is resolved, ICTC and the Design-Builder shall create and sign a short description of the facts and the resolution that was agreed upon by ICTC and the Design-Builder.

19.2.2.5 Unresolved Disputes

If the Dispute is not resolved by the tenth day by ICTC's Executive Director and the Design-Builder's equivalent manager, ICTC and the Design-Builder may proceed with the provisions of Section 19.2.3.

19.2.3 Dispute Resolution Board

Before any Dispute Resolution Board (DRB) proceeding, ICTC and the Design-Builder shall engage in informal dispute resolution, as provided in Section 19.2.2, to resolve the Dispute.

At this point and upon mutual agreement of ICTC and the Design-Builder, the DRB may be established. If so established, the DRB is a three-member board established jointly by ICTC and Design-Builder to assist in the resolution of Disputes described in Section 19.2.1. A Dispute shall be referred to the DRB by either ICTC or Design-Builder within ten (10) days after the expiration of the time set forth in Section 19.2.2.4. The party initiating the process shall notify the other party of its intent to convene the DRB.

DRB members shall be knowledgeable in the type of construction and contract documents anticipated by the Contract and shall have completed training through the Dispute Resolution Board Foundation.

No DRB member shall have prior direct involvement in the Contract. No DRB member shall have a financial interest in this Contract; ICTC; the Design-Builder, Design-Builder-Related Entities, or Affiliates; or legal and business service providers to either ICTC and/or the Design-Builder, at any time within twenty four (24) months before Contract execution or during the term of the Contract.

DRB members shall fully disclose, and continue to make future disclosures relating to, any and all direct or indirect professional or personal relationships with any and all key members and personnel of ICTC and/or the Design-Builder, including any designated representative as specified in Section 23.5.1.

While both ICTC and Design-Builder should consider the DRB's recommendation, it is not binding on ICTC nor the Design-Builder.

Design-Builder shall not use or permit use of the DRB for disputes between the Design-Builder and its Subcontractors or Suppliers that have no grounds for a lawsuit against ICTC.

ICTC and the Design-Builder agree that each DRB member shall act in the capacity of an independent agent and not as an employee of either ICTC or the Design-Builder.

Neither ICTC nor the Design-Builder shall bear a greater responsibility for damages or personal injury than is normally provided by Federal or State of California Law.

Notwithstanding the provisions of this Contract that require the Design-Builder to indemnify and hold harmless ICTC, ICTC and the Design-Builder shall jointly indemnify and hold harmless the DRB members from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of and resulting from the finding(s), conclusion(s), and/or recommendation(s) of the DRB.

19.2.4 Establishment of the DRB

19.2.4.1 ICTC and Design-Builder Selections

The DRB shall consist of one member selected by ICTC and approved by Design-Builder, one member selected by Design-Builder and Approved by ICTC, and a third member selected by the first two (2) DRB members and approved by both ICTC and Design-Builder. The approval of the third (3rd) DRB nominee is subject to compliance with Section 19.2.3

ICTC and Design-Builder shall provide the other written notification requesting approval of the name of its DRB nominee along with the DRB nominee's disclosure statement. Disclosure statements shall include a résumé of the DRB nominee's experience and a declaration statement describing past, present, anticipated, and planned relationships with all parties involved in this Contract. Objections to DRB nominees shall be based on a specific breach or violation of DRB nominee responsibilities or DRB nominee qualifications. ICTC or Design-Builder may object to the other's DRB nominee in the event there is a failure on the part of the DRB nominee in making the required disclosure provided in Section 19.2.3. ICTC or the Design-Builder may also, on a one-time basis, object to the other's nominee without specifying a reason and this nominee shall not be selected for the DRB. Objection to such nomination shall be made within five (5) days of the written notification of the DRB nominee. If ICTC and/or the Design-Builder objects to the other's DRB nominee, the nominating party shall nominate another DRB nominee within five (5) days of such objection.

19.2.4.2 Selection of Third Member

The two DRB members selected and subsequently approved by ICTC and Design-Builder, respectively, shall proceed with the selection of the third (3rd) DRB member immediately after receiving written notification from both ICTC and the Design-Builder confirming approval of the first two DRB nominees. The two (2) DRB members shall provide their recommendation simultaneously to ICTC and the Design-Builder within fifteen (15) days of their approval. The third (3rd) DRB nominee shall provide a disclosure statement to the first two (2) DRB members, ICTC, and Design-Builder. The professional experience of the third DRB member shall complement that of the first two DRB members. The third DRB member shall be subject to the mutual approval of ICTC and Design-Builder.

If the two (2) DRB members do not agree on the third (3rd) DRB nominee, or if ICTC and Design-Builder cannot mutually approve the third DRB nominee, the two (2) DRB members shall submit a list of nominees, comprised of three names from each DRB member, to ICTC and Design-Builder for final selection and approval.

If ICTC and Design-Builder cannot agree on the third (3rd) DRB member nomination selected from the list provided pursuant to the immediately preceding paragraph, ICTC and Design-Builder shall each select three (3) names from the current list of arbitrators certified by the Public Works Contract Arbitration Committee established by Public Contract Code Section 10245 et seq. The two (2) DRB members shall then select one (1) of the six (6) names by a blind draw. The selected DRB member shall submit a disclosure in compliance with Section 19.2.3. The selected DRB member shall be appointed as a third (3rd) DRB member unless Design-Builder or ICTC object to the nomination based on a failure to disclose as provided in Section 19.2.3, or failure to otherwise comply with Section 19.2.3, no later than five (5) days following written notice of such appointment. If there is an objection against the selection of the third (3rd) DRB member ICTC and the Design-Builder shall repeat the blind draw until a third (3rd) DRB member is selected and approved by both ICTC and the Design-Builder

19.2.4.3 DRB Chairperson

If there is no objection from either ICTC or the Design-Builder based on Section 19.2.3, the third (3rd) DRB member shall become the DRB Chairperson.

19.2.5 Termination, Replacement of DRB Member

19.2.5.1 Termination

A DRB member may be terminated immediately, by either ICTC or the Design-Builder, for failing to comply at all times with all required employment or financial disclosure conditions of DRB membership in conformance with the terms of the DRB Agreement (see Exhibit J), and for violation of Section 19.2.3.

Service of a DRB member may be terminated at any time upon not less than fifteen (15) days prior written notice to the DRB members, ICTC, and the Design-Builder, as follows:

- a) ICTC may unilaterally terminate service of ICTC-appointed member.
- b) Design-Builder may unilaterally terminate service of the Design-Builder-appointed member.

- c) Upon the written recommendation of ICTC and Design-Builder appointed members and the mutual written approval of ICTC and the Design-Builder, the appointed DRB members may replace the third member.

Each party shall document the need for the replacement and substantiate the replacement request in writing to the other party and DRB members before the removal of a DRB member.

19.2.5.2 Resignation

A DRB member may resign upon not less than fifteen (15) days written notice of resignation to ICTC and Design-Builder.

19.2.5.3 Replacement of DRB Member

When a member of the DRB is replaced, the replacement member shall be appointed in the same manner as the replaced member was appointed. The appointment of a replacement DRB member will begin promptly upon determination of the need for replacement and shall be completed within fifteen (15) days.

19.2.6 Role of the DRB

The DRB shall fairly and impartially consider Disputes placed before it and provide recommendations to ICTC and the Design-Builder for resolution of these Disputes. The DRB shall provide recommendations based on the facts related to the Dispute, and the Contract Documents.

Except for those Persons who provide technical services and are directly involved in the Project or who have direct knowledge of the Dispute, only ICTC's Contract Manager, District Construction Engineer, and Executive Director, and the Design-Builder's equivalent managers, may present information at the DRB meeting.

The DRB shall govern the conduct of its business and reporting procedures in accordance with the terms and conditions of this Contract and the DRB Agreement. The DRB may establish further operating procedures that conform to the requirements of this Contract and the DRB Agreement.

ICTC will provide conference facilities for DRB meetings at no cost to Design-Builder. The DRB Chairperson shall schedule DRB meetings and any other DRB activities.

DRB members shall have no claim against ICTC or Design-Builder from any alleged harm arising out of ICTC's and/or the Design-Builder's discussions and evaluations of the DRB's opinions and recommendations.

DRB members shall refrain, at all times, from expressing opinions on the merits of evidence and statements on matters under Dispute, except in the private sessions of the DRB members. Opinions of DRB members expressed in private sessions shall be kept strictly confidential. Individual DRB members shall not meet with or discuss Disputes or other issues under the Contract Documents with the ICC and/or the Design-Builder. Any discussions regarding the Project and/or Disputes, which involve the DRB members and ICTC and/or the Design-Builder shall be in the presence of all three DRB members and both ICTC and the Design-Builder. Individual DRB members shall not undertake independent investigations of any kind pertaining to Disputes, except with the knowledge and approval of both ICTC and the Design-Builder and as expressly directed by the DRB Chairperson. No DRB member shall have any ex parte communication with ICTC, the Design-Builder, or their managers or agents regarding any material issues in Dispute. Any such ex parte

communications with either ICTC, the Design-Builder, or their managers or agents shall result in the immediate removal of the DRB member.

19.2.7 DRB Meeting Procedures and Recommendations

19.2.7.1 Referral of Disputes to DRB

If ICTC and the Design-Builder are unable to reach resolution of their Dispute as provided in Section 19.2.2, and consistent with the other provisions of the Contract, the Dispute is governed by Section 19.2, either ICTC or the Design-Builder may submit its Dispute to the DRB. The referring party shall submit a written request for the DRB to consider the Dispute. The party initiating the request for the DRB shall simultaneously make the written request to the DRB Chairperson and the other party.

The written Dispute referral shall describe the Disputed matter in individual discrete segments, so that it will be clear to ICTC, the Design-Builder, and the DRB what discrete elements of the Dispute have been resolved, and which remain unresolved, and shall include an estimate of the impacts on cost of the affected Work and impacts, if any, on controlling items of work, Critical Path and Completion Deadlines.

19.2.7.2 Written Documentation

ICTC and the Design-Builder shall each be afforded an opportunity to be present and to be heard by the DRB, and to offer evidence. Either party furnishing written evidence (primary or additional) or documentation to the DRB shall furnish copies of such information to the other party a minimum of fifteen (15) days before the date the DRB is scheduled to convene the meeting for the Dispute. Either party shall produce such additional evidence as the DRB may deem necessary to reach an understanding and a recommendation regarding the Dispute. The party furnishing additional evidence shall furnish copies of such additional evidence to the other party at the same time the evidence is provided to the DRB. The DRB shall not consider evidence that is not furnished in conformance with the terms specified herein.

19.2.7.3 DRB Meeting

Upon receipt by the DRB of a written referral of a Dispute, the DRB shall convene to review and consider the Dispute. The DRB meeting shall be held no later than sixty (60) days after receipt of the written request unless otherwise agreed to by ICTC and the Design-Builder.

19.2.7.4 Clarification of Written Documentation

The DRB may request clarifying information from either ICTC or the Design-Builder within ten (10) days after the DRB meeting. Requested information shall be submitted to the DRB within ten (10) days of the DRB request, unless extended with the written approval of the DRB and the other party.

19.2.7.5 DRB Report

The DRB shall furnish a written report to ICTC and the Design-Builder with its finding(s), conclusion(s) and recommendation(s). The DRB shall complete its report (DRB Report) (including any minority opinion) and submit it to ICTC and the Design-Builder within thirty (30) days after the DRB meeting, except that time extensions may be granted at the request of the DRB with the written concurrence of ICTC and the Design-Builder. The DRB Report shall summarize the facts considered, and the Contract language reviewed by the DRB as pertinent to the Dispute, and the DRB's interpretation and reasoning in arriving at its finding(s), conclusion(s), and recommendation(s). If appropriate, the DRB Report also may recommend

guidelines for determining compensation. The DRB Report shall stand on its own, without attachments or appendices.

19.2.7.6 Response to DRB Report

Within thirty (30) days after receiving the DRB Report, ICTC and the Design-Builder shall respond to the DRB in writing stating whether the Dispute is resolved or remains unresolved. Failure to provide the written response within the time specified, including, a written acceptance of the DRB's recommendation, or a written request that the DRB reconsider its recommendation, shall conclusively indicate that the party and/or parties failing to respond reject(s) the DRB recommendation. Immediately after responses have been received from ICTC and/or the Design-Builder, the DRB shall provide copies of the responses to ICTC and the Design-Builder simultaneously.

19.2.7.7 Clarifications of DRB Report

Either ICTC or the Design-Builder may request clarification of elements of the DRB Report from the DRB before responding to the DRB Report. The DRB shall consider any clarification request only if submitted within ten (10) days after receipt of the DRB Report, and if submitted simultaneously in writing to both the DRB and the other party. Each party may submit only one (1) request for clarification for any individual DRB Report. The DRB shall respond, in writing, to requests for clarification within ten (10) days of receipt of such requests.

19.2.7.8 Reconsideration

Either ICTC or the Design-Builder may seek a reconsideration of the DRB's recommendation. The DRB shall only grant reconsideration if the party seeking the reconsideration submits new evidence and if the request is submitted within the thirty (30) Day time limit specified in Section 19.2.7.6 for response to the DRB Report. Each party may submit only one (1) request for reconsideration regarding an individual DRB Report. Any such request must be simultaneously transmitted to the DRB and the other party.

19.2.7.9 Resolution of Dispute

If ICTC and the Design-Builder are able to resolve their Dispute with the aid of the DRB Report, they shall promptly accept and implement the terms and conditions of the resolution. If ICTC and the Design-Builder cannot agree on compensation within sixty (60) days of the acceptance by both ICTC and the Design-Builder of the resolution, either ICTC or the Design-Builder may request that the DRB provide written guidance regarding compensation.

19.2.8 Payment of DRB Members and DRB Costs

19.2.8.1 DRB Member Compensation

Each DRB member shall be compensated at an agreed rate of two thousand dollars (\$2,000) per day for each in-person, approved DRB meeting (and shall not include meetings attended via telephone or other remote communication method). A member serving on more than one (1) ICTC DRB or as an ICTC dispute resolution advisor (regardless of the number of meetings per day) shall not be paid more than the agreed rate per day. The agreed rate shall be considered full compensation for on-site time, travel expenses, transportation, lodging, time for travel, and incidentals for each day or portion thereof that the DRB member attends (in person) an authorized DRB meeting.

No additional compensation will be made for time spent by DRB members in regard to review and research activities outside the official DRB meetings unless that time (such as time spent evaluating evidence and preparing recommendations and a DRB Report on Disputes presented to the DRB) has been specifically agreed upon in writing by ICTC and Design-Builder in advance, in which case, time away from the Project, which has been specifically agreed upon by ICTC and Design-Builder in advance, will be compensated at an agreed rate of two hundred dollars (\$200) per hour. The agreed amount of two hundred dollars (\$200) per hour shall include all incidentals, including expenses for telephone, fax, and computer services. From time to time ICTC and the Design-Builder may reconsider and mutually revise the agreed rate, in which case they shall document the revised agreed rate in writing.

DRB members may submit invoices to ICTC and Design-Builder for payment for work performed and services rendered for their participation in authorized meetings not more often than once per month. The invoices shall be in a format approved by ICTC and the Design-Builder and accompanied by a general description of activities performed during that billing period. Payment for hourly fees, at the agreed rate, shall not be paid to a DRB member until the amount and extent of those fees are mutually approved by ICTC and Design-Builder.

19.2.8.2 Technical Services

If the DRB needs outside technical services, these technical services shall be preapproved by both ICTC and Design-Builder. The cost of the preapproved technical services shall be borne equally by ICTC and Design-Builder.

19.2.8.3 Cost Sharing

ICTC and Design-Builder shall equally bear the costs and expenses of the DRB. There shall be no markups applied to expenses connected with the DRB.

Regardless of the DRB recommendation, neither party shall be entitled to reimbursement of DRB costs from the other party.

19.2.9 Confidentiality

ICTC and the Design-Builder agree that all documents and records provided by ICTC and/or the Design-Builder to the DRB that are marked "Confidential - for use by the DRB only" related to the Dispute shall be kept in confidence and used only for the purpose of resolution of the Dispute, and for assisting in development of DRB findings and recommendations; and that such documents and records shall not be utilized or revealed to others, except to officials of ICTC and the Design-Builder who are authorized to act on the subject Disputes, for any purposes, during the life of the DRB Agreement. The foregoing shall not apply, however, to documents and records that before submission to the DRB were already subject to the Public Records Act. Upon termination of the DRB Agreement, such confidential documents and records, and all copies thereof (whether in hardcopy or electronic form), shall be returned to the respective parties who furnished them to the DRB.

However, ICTC and the Design-Builder understand that such documents may be subsequently discoverable and admissible in legal proceedings to the extent provided by law.

Notwithstanding the foregoing, the FHWA shall have the right to review the work of the DRB in progress (except for private meetings or deliberations of the DRB that do not become part of the Project records).

19.2.10 Continuance of Work During Dispute

During the course of any and all dispute resolution procedures/processes, Design-Builder shall proceed with the performance of the Work, including Disputed Work, unless otherwise specified or directed by ICTC in accordance with the Contract Documents. Throughout the Disputed Work, Design-Builder shall maintain records that provide a clear distinction between the incurred direct costs of Disputed Work and that of undisputed Work. The Design-Builder shall allow ICTC access to Design-Builder's Project records on an open book basis as ICTC desires to evaluate the Dispute.

19.3 Formal Legal Action(s)

19.3.1 Right to Litigate Dispute

ICTC and Design-Builder agree that the Design-Builder's submission of a Dispute to the informal dispute resolution process and/or the DRB procedures/processes (as applicable) under Section 19.2 is a condition precedent to the Design-Builder's right to file a formal legal action with respect to the Dispute.

ICTC and Design-Builder further agree that Design-Builder's failure to comply with the other Claim and/or Dispute related requirements set forth in this Contract is a bar to any legal action against ICTC, for failure to exhaust administrative remedies. This specifically includes the other Claim and/or Dispute related requirements set forth in this Contract, such as requirements related to the Design-Builder's provision of notice to ICTC pertaining to any Claim, Dispute, or potential Claim or potential Dispute, for example, the requirements of Section 13 (see, e.g., Section 13.3, "Design-Builder Initiated Change Orders").

ICTC and Design-Builder shall not call DRB members who served on the DRB for this Contract as witness in litigation proceedings which may arise from this Contract, and all documents created by the DRB shall be inadmissible as evidence in such proceedings; except the DRB's final written reports on each issue brought before it, to the extent otherwise provided by law.

19.3.2 Jurisdiction and Venue

ICTC and the Design-Builder agree to exclusive jurisdiction and venue in the San Diego County Superior Court in any action by or against ICTC or its successors and assigns arising out of the Contract, the Contract Documents, the Project, or the Work.

20. ACCEPTANCE OF PROJECT

20.1 Reserved

20.2 Substantial Completion

20.2.1 Notice by Design-Builder

Design-Builder shall provide written notice to ICTC when all of the following have occurred with respect to the Project:

- a) Design-Builder has completed all Work (except for Punch List items, maintenance, final cleanup, and other items only included in the requirements for Final Acceptance).
- b) Design-Builder has ensured that the Work has been performed in accordance with the requirements of the Contract Documents.
- c) Design-Builder has received all applicable Governmental Approvals required for Project use.
- d) Design-Builder has furnished to ICTC certifications from its Design Manager, in form and substance satisfactory to ICTC, certifying conformity of the Design Documents with the requirements of the Contract Documents.
- e) Design-Builder has furnished to ICTC certifications from the Project Manager, in form and substance satisfactory to ICTC, certifying conformity of the construction with the Design Documents.
- f) Design-Builder has furnished to ICTC certifications from its Construction Quality Validation Manager, in form and substance satisfactory to ICTC, certifying that there are no outstanding nonconformances other than those identified on the Punch List.
- g) Design-Builder has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person.
- h) Design-Builder has obtained all applicable third-party approvals relating to the Work (including Utility Owners as required under any applicable Utility Agreements and Book 2, Section 12, "Utilities"), and all third parties have completed all work that involves obligations by Design-Builder (including Utility Owners under any Utility Agreements and Book 2, Section 12, "Utilities").
- i) The Project is fully opened to traffic and Design-Builder has ensured that no further work is required which would involve any lane or shoulder closure.
- j) Quality Manager certifies the Work is completed in accordance with the Contract Documents.

20.2.2 Correction of Defects

Upon receipt of Design-Builder's notice under Section 20.2.1, ICTC will conduct such inspections, surveys, and/or testing as ICTC deems desirable. If such inspections, surveys, and/or tests disclose that any Work

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

20.2.3 Notice of Substantial Completion

ICTC will issue a Notice of Substantial Completion at such time as:

- a) ICTC determines that all conditions set forth in Section 20.2.1 have been satisfied.
- b) ICTC determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected.
- c) Design-Builder prepared and ICTC Approved a Punch List.

20.3 Final Acceptance

20.3.1 Conditions to Final Acceptance

20.3.1.1 Performance of Work after Substantial Completion

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

20.3.1.2 Conditions to Affidavit of Final Completion

Design-Builder shall provide to ICTC an executed sworn Affidavit of Final Completion in accordance with Section 20.3.1.3 when all of the following have occurred:

- a) All requirements for Substantial Completion have been fully satisfied.
- b) ICTC has received all Released for Construction Documents, Design Documents, As-Built Documents, right-of-way record maps, surveys, material certifications, test data, and other deliverables required under the Contract Documents.
- c) ICTC has received and Approved the Final Acceptance Submittal in accordance with Book 2, Section 6.5.3, "Final Acceptance Submittal."
- d) All special tools, equipment, furnishings and supplies purchased by and/or used by Design-Builder as provided in the Contract Documents have been delivered to ICTC and all replacement spare parts have been purchased and delivered to ICTC free and clear of Liens.

- e) All of Design-Builder's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities have been removed from the Site, Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of ICTC and the Site is in good working order and condition.
- f) Design-Builder has furnished to ICTC certifications from its Design Manager, in form and substance satisfactory to ICTC, certifying conformity of the Design Documents with the requirements of the Contract Documents.
- g) Design-Builder has furnished to ICTC certifications from the Project Manager, in form and substance satisfactory to ICTC, certifying conformity of the construction with the Design Documents.
- h) Design-Builder has furnished to ICTC certifications from its Construction Quality Validation Manager, in form and substance satisfactory to ICTC, certifying that there are no outstanding nonconformances.
- i) Design-Builder has delivered to ICTC a notice of completion for the Project in recordable form and meeting all statutory requirements.
- j) The Punch List items have been completed to the satisfaction of ICTC.
- k) All of Design-Builder's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by ICTC) have been satisfied in full or waived in writing by ICTC.
- l) Design-Builder has identified a single point of contact to address the Warranty requirements of Section 21 throughout the duration of the Project Warranty term.

20.3.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Section 20.3.1.2 shall include the following statement:

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

If Design-Builder is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by ICTC. The affidavit shall include a representation of Design-Builder that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide

a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

20.3.2 Inspection and Issuance of Notice of Final Acceptance

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

20.3.3 Overpayments; No Relief from Continuing Obligations

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

20.4 Opening of Sections of Project to Traffic

20.4.1 Plan for Opening to Traffic

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

20.4.2 Direction to Open Following Design-Builder Failure to Perform

If Design-Builder is delinquent in completing shoulders, drainage structures, or other features of the Work, ICTC may, but is not obligated to, order all or a portion of the Project opened to traffic notwithstanding such incomplete elements. Design-Builder shall then conduct the remainder of the construction operations, minimizing obstruction to traffic. Except as provided in Section 20.4.1, Design-Builder shall not receive any added compensation due to the added costs attributable to the opening of the Project to traffic. Should ICTC open the Project to traffic, Design-Builder is not relieved of any responsibility for ensuring public safety, public convenience, or Site security; nor is Design-Builder relieved from any insurance or indemnification obligations pursuant to this Contract. ICTC's decision to open the road following Design-Builder's failure to perform shall not be construed as a waiver of any of ICTC's rights under this Contract.

20.4.3 No Waiver

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

20.5 Assignment of Causes of Action

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

21. WARRANTIES

21.1 Warranties by Design-Builder

21.1.1 Project Warranties

Design-Builder warrants that:

- a) All design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State.
- b) The Project shall be free of defects (except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, unless (i) Design-Builder has actual or constructive knowledge of such defects, and (ii) Design-Builder fails to request a change thereto by ICTC).
- c) Materials and equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new.
- d) The Work shall meet all of the requirements of the Contract Documents.
- e) The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.
- f) The Project shall be fit for use for the intended function pursuant to and in accordance with the specifications of the Contract Documents.

21.1.2 Project Warranty Term

The Warranty term shall begin upon Substantial Completion or, if earlier, upon final acceptance of specific elements of the Project by a third-party owner. Subject to extension under Section 21.2 and notwithstanding any shorter Warranty term for specific Project elements that may be set forth elsewhere in the Contract Documents, the Warranties regarding structures and pavements of the Project shall remain in effect until three (3) years after Substantial Completion. The Warranties regarding all other elements of the Project shall remain in effect until two (2) years after Final Acceptance.

If ICTC determines that any of the Work has not met the standards set forth in this Section 21.1 at any time within the Warranty period, then Design-Builder shall correct such Work as specified below, even if the performance of such corrective Work extends beyond the stated Warranty period.

21.1.3 Reserved

21.1.4 Corrective Work

ICTC and Design-Builder shall conduct a walkthrough of the Site together at least one (1) time per year before the expiration of the Warranty period. On each walkthrough, ICTC will produce a punch list of items requiring Warranty Work. In addition, ICTC reserves the right at any time during the Warranty period to identify Work that fails to meet the Warranty.

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

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

For all corrective actions required, Design-Builder shall provide a written proposal for performing Warranty Work within ten (10) Working Days from receiving notification from ICTC that corrective Work is required. Design-Builder shall also provide a written proposal for performing the corrective Work if Design-Builder elects to perform this Work based on Design-Builder's assessment of the Site.

The proposal shall include, as a minimum:

- a) The proposed construction remedy.
- b) The proposed schedule for prosecution and completion of the Work.
- c) The proposed Transportation Management Memorandum.

ICTC shall respond as to the adequacy and suitability of the proposal within ten (10) Working Days of the date of Design-Builder's submittal. ICTC may agree to accept Nonconforming Work in accordance with Section 5.7.2.

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

Design-Builder shall begin corrective action Work within thirty (30) Calendar Days after notice by ICTC of acceptance of the written plan for Warranty correction. If the Work cannot be started then because of seasonal limitations, Design-Builder shall so notify ICTC and submit (for ICTC Approval) a schedule for completion of the corrective action Work. If Design-Builder does not use its best efforts to proceed to effectuate that corrective action Work within the agreed time, or if Design-Builder and ICTC fail to reach such an agreement, ICTC, after notice to 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 Design-Builder. Design-Builder shall be responsible for the inspection and testing of the Warranty Work.

If ICTC determines that emergency repairs are necessary for public safety or Site security, ICTC may perform the corrective Work. Any such emergency repairs will be authorized by ICTC's Contract Manager, or his/her representative. Before making the emergency repairs, ICTC will contact Design-Builder and document the basis for the emergency action, and will preserve evidence, such as photographs or videotapes, of the defective condition. Emergency repairs will be coordinated with Design-Builder when possible. All costs associated with the emergency repairs that are covered by the Warranty Work shall be borne by Design-Builder.

21.1.5 Costs of Correction of Work

All costs of correcting such rejected Work, including additional testing and inspections, shall be deemed included in the Contract Price. Design-Builder shall reimburse ICTC and pay ICTC's expenses made necessary thereby within ten (10) Days after Design-Builder's receipt of invoice therefor. Design-Builder shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

21.2 Warranty of Corrected Work

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

21.3 Subcontractor Warranties

21.3.1 Assignment

Without in any way derogating Design-Builder's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, Design-Builder shall obtain from all Subcontractors and cause to be extended to ICTC, appropriate representations, warranties, guarantees, and obligations with respect to the design, materials, workmanship, equipment, tools, and supplies furnished by such Subcontractors, including all such representations, warranties, guarantees, and obligations required to be furnished by Subcontractors under Book 2. All representations, warranties, guarantees, and obligations of Subcontractors (a) shall be written so as to survive all ICTC and Design-Builder inspections, tests and approvals, and (b) shall run directly to and be enforceable by Design-Builder and/or ICTC and their respective successors and assigns. Design-Builder hereby assigns to ICTC all of Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Design-Builder from any of its Subcontractors.

21.3.2 Enforcement

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

21.4 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 Design-Builder's liability or responsibility imposed by the Contract

Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud; provided, however, that, upon expiration of the Warranties, Design-Builder shall have no further liability to ICTC hereunder for patent construction defects.

21.5 Warranty Beneficiaries

In addition to benefiting ICTC and its successors and assigns, the Warranties and Subcontractor warranties provided under this Section 21 shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Owners with respect to those portions of the Work owned or controlled by each such Person.

21.6 Remedies for Breach of Warranty

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

21.7 Disputes

Any disagreement between ICTC and Design-Builder relating to this Section 21 shall be subject to the dispute resolution provisions contained in Section 19, provided that Design-Builder shall proceed as directed by ICTC pending resolution of the dispute.

22. DOCUMENTS AND RECORDS

22.1 Escrowed Proposal Documents

Design-Builder shall submit the Escrowed Proposal Documents (EPD) to ICTC in a container suitable for secure sealing no later than ten (10) Days following award and execution of the Contract by ICTC.

The container shall be clearly marked "Price Proposal Documentation for the Calexico East Port of Entry Bridge Widening Design-Build Project" and shall have entered on the face of the container, Design-Builder's name, the date of submittal, and the ICTC Contract No, Project ID, and Federal Aid Project Number. Failure to submit the EPD may result in cancellation of the award, in which case ICTC will retain the Proposal Bond.

Upon receipt of the EPD, authorized representatives of ICTC and Design-Builder will review the EPD for accuracy and completeness. Should a discrepancy exist, Design-Builder shall furnish ICTC with any other needed Price Proposal documentation within three (3) Working Days. ICTC, upon determining that the EPD appear to be complete, will immediately place the EPD and affidavit in the container in the presence of Design-Builder's representative, and seal it.

ICTC will retain the EPD for placement in a safety deposit box, vault, or other secure accommodation. The cost of accommodation will be borne by ICTC. Payment for compilation of the data, container, cost of verification of the EPD, or any other costs that may be incurred by Design-Builder in fulfilling these requirements shall be considered incidental to the Contract and paid by the Design-Builder. The EPD container will be returned to Design-Builder following Final Acceptance.

22.1.1 Review of EPD

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

22.1.2 Property of Design-Builder

The EPD are, and shall always remain, the property of Design-Builder, and shall be considered to be in Design-Builder's possession, subject to ICTC's right to review the EPD as provided herein. ICTC acknowledges that Design-Builder considers that the EPD constitute trade secrets or proprietary information. This acknowledgment is based upon ICTC's understanding that the information contained in the EPD are not known outside Design-Builder's business, is known only to a limited extent and by a limited number of employees of Design-Builder, is safeguarded while in Design-Builder's possession, and may be valuable to Design-Builder's business strategies, assumptions and intended means, methods, and techniques. ICTC further acknowledges that Design-Builder expended money in developing the information included in the EPD and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. ICTC acknowledges that the EPD and the information contained therein are being provided to ICTC only because it is an express prerequisite to award of the Contract.

22.1.3 Representation and Warranty

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

22.1.4 Contents of EPD

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

22.1.5 Format of EPD

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

22.1.6 Review by ICTC

ICTC may, upon reasonable notice to Design-Builder and in Design-Builder's presence, conduct a review of the EPD to determine whether it is complete. If ICTC determines that the EPD are incomplete, ICTC may request Design-Builder to supply data to make the EPD complete. Design-Builder shall provide all such data within three (3) Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information, and added to the sealed EPD. Design-Builder shall have no right to add

documents to the EPD except upon ICTC's request. At ICTC's option, which may be exercised at any time, the EPD associated with any Change Order or Contract amendment shall be reviewed, organized, and indexed as described in Instructions to Proposers.

22.1.7 Confidentiality Agreement

Confidentiality agreements will be executed by all ICTC employees or agents who review or have access to the EPD.

22.2 Subcontractor Pricing Documents

Design-Builder shall require each Subcontractor of a Subcontract over one-half of one (1/2 of 1) percent of the Contract Price to submit to Design-Builder a copy of all documentary information used in determining its Subcontract price, within ten (10) Days after executing the Subcontract or change orders or amendments thereto, to be held in the same manner as the EPD and which shall be accessible by Design-Builder, ICTC, and other dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EPD constitutes all the documentary information used in establishing its Subcontract price. Each Subcontract that is not subject to the foregoing requirement shall include a provision that requires the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Design-Builder and/or ICTC in connection with any claim made by such Subcontractor.

22.3 Project Records

22.3.1 Maintenance of Records

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

22.3.2 Audit and Inspection Rights

Design-Builder grants to ICTC, FHWA, the U.S. Comptroller General and Utility Owners, and their respective authorized representatives, such audit and inspection rights and allows such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Persons) as such Persons may request from time to time in connection with the issuance of Change Orders, the resolution of disputes, and such other matters as such Persons reasonably deems necessary for purposes of complying or verifying compliance with the Contract and Governmental Rules.

22.3.3 Audit of Time and Materials Work

Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Design- Builder has been over credited under a previous progress report or progress payment, that over credit will be credited against current progress reports or payments.

22.3.4 Change Order Pricing Data

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

22.3.5 Claims Audits

All Claims filed against ICTC shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of ICTC or by an auditor under contract with ICTC. No notice is required before commencing any audit before sixty (60) Days after Final Acceptance. Thereafter, ICTC shall provide twenty (20) Days' notice to Design-Builder, any Subcontractors, or their respective agents before commencing an audit. Design-Builder, Subcontractors, or their agents shall provide adequate facilities, acceptable to ICTC, for the audit during normal business hours. Design-Builder, Subcontractors and their agents shall cooperate with the auditors. Failure of Design-Builder, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of Design-Builder, Subcontractors, or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

- a) Daily time sheets and supervisor's daily reports.
- b) Union agreements.
- c) Insurance, welfare, and benefits records.
- d) Payroll registers.
- e) Earnings records.
- f) Payroll tax forms.
- g) Material invoices and requisitions.
- h) Material cost distribution worksheet.
- i) Equipment records (list of company equipment, rates, etc.).
- j) Subcontractors' (including Suppliers) and agents' invoices.
- k) Subcontractors' and agents' payment certificates.
- l) Canceled checks (payroll and Suppliers).
- m) Job cost report.
- n) Job payroll ledger.
- o) General ledger.
- p) Cash disbursements journal.
- q) E-mail, letters and correspondence.
- r) Network servers, data storage devices, backup media.
- s) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim.

- t) Work sheets used to prepare the Claim establishing the cost components for items of the Claim, including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

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

22.4 Retention of Records

Design-Builder shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to ICTC) at the Project Manager's office in the State until seven (7) years after the earlier to occur of (a) the date Final Acceptance is achieved, or (b) the termination date. If Approved by ICTC, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. Design-Builder shall notify ICTC where such records and documents are kept.

Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books and other evidence bearing on Design-Builder's costs and expenses under the Contract Documents. Design-Builder shall make these records and documents available for audit and inspection to ICTC, at 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 Design-Builder).

22.5 California Public Records Act

22.5.1 Applicability of Act

Design-Builder acknowledges and agrees that all records, documents, drawings, Plans, specifications, and other materials in ICTC's possession or those to which ICTC is entitled to access, including materials submitted by Design-Builder, are subject to the provisions of the California Public Records Act. Design-Builder shall be solely responsible for all determinations made by it under such act and for clearly and prominently marking each and every page or sheet of its materials with "trade secret" or "non-public" as it determines to be appropriate. Design-Builder is advised to contact legal counsel concerning such act and its application to Design-Builder.

22.5.2 Confidential Materials

If any of the materials submitted by Design-Builder to ICTC are clearly and prominently labeled "trade secret" or "non-public" by Design-Builder, ICTC will endeavor to advise Design-Builder of any request for the disclosure of such materials before making any such disclosure. Under no circumstances, however, will ICTC be responsible or liable to Design-Builder or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order, or occurs through inadvertence, mistake, or negligence on the part of ICTC, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement described in Section 22.1.7.

22.5.3 Design-Builder to Defend Against Disclosure Request

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

23. MISCELLANEOUS PROVISIONS

23.1 Amendments

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

23.2 Waiver

23.2.1 No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time (including any agreement by ICTC to accept Nonconforming Work under Section 5.7.2) shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof shall not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

23.2.2 Custom Does not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy or power of such party under 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.

23.2.3 Waivers Shall Be in Writing

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

23.3 Independent Contractor

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

23.4 Successors and Assigns

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

23.4.1 Assignment by ICTC

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

23.4.2 Assignment by Design-Builder

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

23.5 Designation of and Cooperation with Representatives

23.5.1 Designation of Representatives

ICTC and Design-Builder shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 23.10. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind ICTC or Design-Builder.

23.5.2 Cooperation

Design-Builder shall cooperate with ICTC and all representatives of ICTC designated as described above.

23.6 Officials not to Benefit

Without prior written consent of State or ICTC, as applicable, Design-Builder shall not employ any professional or technical personnel to provide services under the Contract who are or have been at any time during the time period of the Contract in the employ of State or ICTC, except retired State or ICTC employees, without written consent from State or ICTC, as applicable.

Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Design-Builder, to solicit or secure the Contract, and that Design-Builder has

not paid or agreed to pay any company or person, other than a bona fide employee working for Design-Builder, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making of the Contract.

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

23.7 Survival

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

23.8 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties (such as Utility Owners) and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 23.8, the duties, obligations, and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between ICTC and a Subcontractor or any other Person except Design-Builder.

23.9 No Personal Liability

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

23.10 Notices and Communications

23.10.1 Delivery of Notices

Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by via telephone communication followed by a hardcopy or with receipt confirmed by telephone, to the addresses below (or to such other address as may from time to time be specified in writing by such Person).

All correspondence with Design-Builder shall be sent to the Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be:

Hazard Construction Company
10529 Vine Street
Lakeside, CA 92040

Attn.: Mr. Bradley Lothers, P.E., M.E.
Telephone: (858) 587-3600 x112
FAX: (858) 453-6034
e-mail: blothers@hazardconstruction.com

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

Hazard Construction Company
10529 Vine Street
Lakeside, CA 92040

Attn.: Jason A. Mordhorst, President
Telephone: (858) 587-3600 x112
FAX: (858) 453-6034
e-mail: jmordhorst@hazardconstruction.com

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

Imperial County Transportation Commission
1503 North Imperial Avenue; Suite 104
El Centro, California 92243

Attention: Mr. Mark Baza, Executive Director
e-mail: MarkBaza @imperialctc.org
Telephone: (760) 592-4494

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

Imperial County Transportation Commission
1503 North Imperial Avenue; Suite 104
El Centro, California 92243

Attention: Mr. Mark Baza, Executive Director
e-mail: MarkBaza@imperialctc.org
Telephone: (760) 592-4494

23.10.2 Receipt of Notices

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Time and all other notices received after 5:00 p.m. Pacific Time shall be deemed received on the first Working Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax shall be received before 4:00 p.m.).

23.10.3 Copies of Correspondence to ICTC

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

23.10.4 Notification of Third Party Claims

ICTC and Design-Builder shall each provide timely written notification to the other party of the receipt of any third-party claim relating to, arising out of, or connected with Work, operations or responsibilities performed by or on behalf of Design-Builder under this Contract.

23.11 Further Assurances

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

23.12 Severability

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

23.13 Headings

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

23.14 Governing Law

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

23.15 Limit of Liability

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

23.16 Entire Agreement

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

23.17 Counterparts

This instrument may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.

23.18 Laws to be Observed

Design-Builder shall keep fully informed of all existing and future state and federal laws and county, and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same as applicable. The Design-Builder shall at all times observe and comply with and shall cause all agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Contract Documents. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such law, ordinance, regulation, order, or decree, the Design-Builder shall immediately report the same to the ICTC's Contract Manager in writing.

23.19 Specific Legal References

Any reference to specific statutes, regulations or other legal authority in Contract Documents shall not relieve the Design-Builder from the responsibility of complying with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Contract Documents.

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

IMPERIAL COUNTY TRANSPORTATION COMMISSION

By: _____

Name: Mark Baza

Title: Executive Director

Date: _____, 2021

APPROVED AS TO FORM AND EXECUTION:

By: _____

Date: _____, 2021

DESIGN-BUILDER

HAZARD CONSTRUCTION COMPANY

By: _____

Name: Jason A. Mordhorst

Title: President

Date: MARCH 23, 2021

Contractor's License No.: 750542

EXHIBIT A – ABBREVIATIONS AND DEFINITIONS

A1 Abbreviations

A2 Definitions

As used in the Design-Build Contract to which this Exhibit is attached and in the other Contract Documents (unless otherwise specified therein), the following abbreviations and terms shall have the meanings set forth below (unless the context requires otherwise).

A1 Abbreviations

Abbreviation	Definition
AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
ATC	Alternative Technical Concept
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
ALR	Area of Localized Roughness
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
AWG	American Wire Gauge
BMP	Best Management Practice
BUILD	Building Utilizing Investments to Leverage Development
Cal/OSHA	California Division of Occupational Safety and Health Administration
CAQMD	California Air Quality Management District
CBP	Customs and Border Protection
CDF	California Department of Fish and Game
CE	Categorical Exemption (Under CEQA)
CD	Categorical Exclusion (Under NEPA)
CEQA	California Environmental Quality Act
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CMS	Changeable Message Sign
CPM	Critical Path Method
CUI	Controlled Unclassified Information
DBE	Disadvantaged Business Enterprise
DCS	Document Control System

Abbreviation	Definition
DGN	MicroStation drawing file extension
DHS	Department of homeland Security
DOT	U.S. Department of Transportation
DRB	Dispute Resolution Board
EEO	Equal Employment Opportunity
EIA	Electronic Industries Alliance
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents-
ERS	Earth Retaining System
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FOIA	Freedom of Information Act
GSA	General Services Administration
HMA	Hot Mix Asphalt
HOV	High-Occupancy Vehicle
HSPD-12	Homeland Security Presidential Directive-12
IBWC	International Boundary and Water Commission
ICTC	Imperial County Transportation Commission
IID	Imperial Irrigation District
IES	Illumination Engineering Society
ITE	Institute of Transportation Engineering
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
LAPM	Local Assistance Procedures Manual
LPOE	Land Port of Entry
MOT	Maintenance of Traffic
MSE	Mechanically Stabilized Embankment
MUTCD	Manual on Uniform Traffic Control Devices
NCHRP	National Cooperative Highway Research Program
NDA	Non-Disclosure Agreement
NEMA	National Electrical Manufacturers Association

Abbreviation	Definition
NEPA	National Environmental Policy Act
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant Discharge Elimination System
NSSP	Nonstandard Special Provision
NTO	Notice to Owner
NTP1	Notice to Proceed 1
NTP2	Notice to Proceed 2
OSHA	Occupational Safety & Health Administration
PAED	Project Approval and Environmental Document
PBS	Public Building Services
PCCP	Portland Cement Concrete Pavement
PCI	Prestressed Concrete Institute
PID	Project Initiation Documents
PIO	Project Implementation Order
PLAC	Permit, License, Agreement, Certification, or any combination of these.
PM	Post Mile
POE	Port of Entry
PR	Project Report
QC	Quality Control
QV	Quality Validation
RFC	Released for Construction
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Documents
R/W	Right of Way
RWQCB	Regional Water Quality Control Board
SHPO	State Historic Preservation Officer
SOQ	Statement of Qualifications
STAA	Surface Transportation Assistance Act of 1982
SUE	Subsurface Utility Engineering
SWPPP	Stormwater Pollution Prevention Plan

Abbreviation	Definition
TCE	Temporary Construction Easement
TCEP	Trade Corridor Enhancement Program
TIA	Telecommunications Industry Association, Time Impact Analysis
UA	Utility Agreement
UL	Underwriters Laboratories, Inc.
USACE	United States Army Corps of Engineers
USBR	United States Bureau of Reclamation
USC	United States Code
USDOT	United States Department of Transportation
USFWS	U.S. Fish and Wildlife Service

A-2 Definitions

Acceleration Costs	Those fully documented increased costs reasonably incurred by Design-Builder (i.e., costs over and above what Design-Builder would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.
Addendum	Supplemental additions, deletions, and modifications to the provisions of the RFP after release of the RFP.
Additional Properties	Needed right of way identified by the Design-Builder to complete the Project Work.
Affidavit of Final Completion	Sworn statement by the Design-Builder that all Work performed under Contract complies with the requirements of the Contract and that no lawful debts for labor or materials are outstanding.
Affiliate	<ul style="list-style-type: none">a) Any Person which directly or indirectly through one or more intermediaries' controls, or is controlled by, or is under common control with, Design-Builder or any Major Participant.b) Any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, (i) Design-Builder, (ii) any Major Participant, or (iii) any Affiliate of Design-Builder under clause (a) of this definition. <p>For purposes of this definition, the term "control" means the possession directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relation, or otherwise.</p>
Alternative Technical Concept	Alternative Technical Concepts (ATCs) were not allowed during the Proposal phase.
Applicable Standards	Standards, including but not limited to those identified in Book 3, that apply to design and construction of Project.
Application for Final Payment	Request by Design-Builder to ICTC for proposed total amount due Design-Builder.
Approve, Approved, or Approval	Formal conditional determination in writing by ICTC that a particular matter or item is satisfactory for the Project.
As-Built Documents	Documents including Plans developed by the Design-Builder that depict the final completed Project.
Auxiliary Lane	The portion of the roadway for weaving, truck climbing, speed change, or for other purposes supplementary to through movement.
Baseline Schedule	The first Approved Preliminary Schedule, which incorporates activities developed in the Preliminary Schedule and fully includes the entire scope of

	Work from NTP1 to Final Acceptance. This schedule shows no completed work to date and no negative float or negative lag to any activity.
Basic Configuration	The elements defining the Project as set forth in Book 2, Section 1, "General," subject to any permitted modifications thereto contained in the Proposal.
Betterment	With respect to a particular Utility, the definition (if any) set forth in the applicable Utility Agreement(s). Where there is no such definition, the upgrading (e.g., increase in capacity) of a Utility being Relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner (not including a technological improvement which can be implemented at a cost equal to or less than the cost of a "like for like" replacement or Relocation). The use of new materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Book 1	The Contract Document designated as the Design-Build Contract (<u>Book 1</u>).
Book 2	The Contract Document designated as the Project Requirements (Book 2).
Book 3	The Contract Document designated as the Applicable Standards (Book 3).
Business Day	Day on which ICTC is officially open for business.
Calendar Day	Every day shown on the calendar, beginning and ending at midnight.
California Environmental Policy Act	California Environmental Quality Act, as set forth in § 21000 et seq of the California Public Resources Code.
Caltrans	The California Department of Transportation as defined in Streets & Highway Code § 20 and authorized in St & Hwy Code § 90; its authorized representatives.
Certificate of Compliance	A certification provided by a manufacturer, producer, or Supplier of a material that the material, as furnished to Design-Builder, complies with the pertinent specification or Contract requirements. The certification shall be signed by a Person who is authorized to bind the company supplying the material covered by the certification.
Change Notice	A written notification and subsequent notices initiated by Design-Builder which record or authorize the administrative process for a Design-Builder-initiated Change Order.
Change Order	A Contract modification signed by both parties to the Contract, and FHWA, as applicable, issued after the execution of a Contract, which adds to, deletes from, or otherwise revises the requirements, scope of Work, and/or the Contract terms and conditions.
Claim	A separate demand by Design-Builder for (a) a time extension which is disputed by ICTC, or (b) payment of money or damages arising from Work done by or on behalf of Design-Builder in connection with the Contract which is disputed by ICTC. A Claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.

Completion Deadline	Each Substantial Completion Deadline and/or Final Acceptance Deadline, depending on the context.
Conceptual Design	An in-progress set of Design Documents engineered to approximately thirty (30) percent level of completeness and Structure Type Selection Reports that are submitted by the Design-Builder as a design development milestone and formally reviewed by the ICTC.
Construction Documents	All Working Drawings and other documents necessary for construction of the Project in accordance with the Contract Documents.
Construction Easement	Non-permanent easement, other than those provided by ICTC, GSA, or CBP that the Design-Builder determines are desirable to perform the Work.
Construction Quality Validation Manager	The Person designated by Design-Builder to perform the roles and responsibilities of the Construction Quality Validation Manager and who meets the minimum requirements as required in the Contract Documents.
Contaminated Groundwater	Extracted, pumped and/or ponded groundwater including contaminants above legally-permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated groundwater which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the definition.
Contract	Depending on the context, (a) the Design-Build Contract, or (b) collectively, the Contract Documents.
Contract Documents	Written documents (<u>Book 1</u> , Book 2, Book 3) that define the roles, responsibilities, and Work under the Contract, and are legally binding on the parties (ICTC and Design-Builder).
Contract Price	Full compensation for the Work and all other obligations to be performed by Design-Builder under the Contract Documents.
Critical Path	Longest continuous chain of activities for the project that has the least amount of total float of all chains. In general, a delay on the Critical Path extends the scheduled completion date.
Critical Path Method	Network-based planning technique using activity durations and relationships between activities to calculate a schedule for the entire Project.
Data Date	Day after the date through which a schedule is current. Everything occurring earlier than the data date is as-built and everything on or after the data date is planned.
Day or day	Calendar Day unless otherwise specified.
DBE Certification	Design-Builder's commitment to meet or make good faith efforts to meet Project participation goals as set forth in Form 17.
DBE Performance Plan	Proposer's plan to include firms designated as DBE in the Work and to meet Project participation goals.
ICTC-Caused Delays	Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others:

- a) A suspension order pursuant to Section 14.1 to the extent provided therein.
- b) ICTC-Directed Changes.
- c) Failure or inability of ICTC, GSA, or CBP to provide Design-Builder with access to the Site right of way on or before the deadline for such access, to the extent provided in Section 6.1.
- d) Reserved
- e) Failure or inability of ICTC to provide responses to proposed schedules, design submittals and other submittals and matters for which response by ICTC is required, within the time periods indicated in the Contract Documents.
- f) Uncovering, removing, and restoring Work, to the extent provided in Section 5.5.3.
- g) Any improper action by ICTC's designated representative with binding authority, as specified in Section 23.5.1, or improper failure to act by ICTC within a reasonable time after delivery of notice by Design-Builder to ICTC requesting such action.
- h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work, except if (i) such risk has been assumed by Design-Builder under Section 6.3.2, or (ii) arising out of, related to, or caused by the negligent or improper act, failure to act or omission, willful misconduct, recklessness, or breach of contract or Governmental Rule by any Design-Builder-Related Entity.

ICTC-Directed Changes	Any changes in the Work which ICTC has directed Design-Builder to perform as described in <u>Section 13</u> .
ICTC's Contract Manager	The Person designated by ICTC, on ICTC's behalf, to direct the Project and to receive delivery of notices to ICTC per <u>Section 23.10.1</u> .
Design-Build Contract	That certain Design-Build Contract (<u>Book 1</u>), as executed by ICTC and Design-Builder (to which this <u>Exhibit A</u> is attached), and any and all amendments thereto.
Design-Builder	Hazard Construction Company
Design-Builder-Related Entity(ies)	Design-Builder, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.
Design Documents	All drawings, specifications, reports, calculations, records, or submittals at any stage of development or revision relating to the Project.
Design Manager	Design-Builder's principal engineer in charge of the Project. The Design Manager shall initially be the individual designated in the Proposal and is considered a Key Personnel for the Project.

Detour	Temporary route for traffic around a closed road part. A passageway through a job site is not a detour.
Differing Site Conditions	<p>a) Subsurface or latent physical conditions that differ from those reasonably assumed by Design-Builder based on incorrect boring logs provided in Book 2, Section 16, "Geotechnical," to the extent that correct boring logs would have resulted in accurate assumptions, or</p> <p>b) Physical conditions of an unusual nature, differing materially from those ordinarily encountered at the Site and generally recognized as inherent in the Work provided for in the Contract, provided in all cases that Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.</p> <p>The foregoing definition shall not apply to Utilities, or Force Majeure events, nor shall it include any differences in groundwater depth or subsurface moisture content from that identified in the RFP. Clause (a) of this definition shall specifically exclude situations in which accurately reported boring data does not represent prevailing conditions in the area.</p>
Directive Letter	The letter described in <u>Section 13.1.1.2.</u>
Disadvantaged Business Enterprise	A for profit small business concern as defined in 49 CFR Part 26.
Dispute	The meaning set forth in <u>Section 19.</u>
Effective Date	The date of execution of the Contract by ICTC.
Environmental Approval(s)	The Governmental Approvals listed in Book 2, Section 7.2.3, "Permits, Licenses, Agreements, and Certifications (PLCAs)," that are identified as being ICTC's responsibility to obtain.
Environmental Document	Categorical Exemption/Categorical Exclusion Form dated April 13, 2020. The document is posted on the project webpage on the ICTC website at: http://www.imperialctc.org/
Environmental Laws	<p>Means:</p> <p>a) All Governmental Rules and laws applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment Hazardous Materials, contamination of any type whatsoever, or health and safety matters.</p> <p>b) Any requirements and standards that pertain to the protection of the environment, or to the management or release of Hazardous Materials, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, set forth in any Governmental Approval, permits, licenses, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Governmental Rules and laws applicable to the Project or the Work, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future</p>

amendments thereto and reauthorizations thereof), including those relating to:

- c) The manufacture, processing, distribution, use, re-use, treatment, storage, disposal, generation, and transportation or handling of Hazardous Materials.
- d) The protection of public health, public welfare or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air).
- e) Air, soil, surface, and subsurface strata, stream sediments, surface water, and groundwater.
- f) Releases of Hazardous Materials.
- g) Protection of wildlife; endangered, threatened, and sensitive species; wetlands, water courses, and water bodies; parks and recreation lands; cultural, historical, archeological, and paleontological resources; and natural resources.
- h) The operation and closure of underground or aboveground storage tanks.
- i) Health and safety of employees and other Persons with respect to Hazardous Materials.
- j) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Laws” shall also include the following (all as amended):

- a) The National Environmental Policy Act (42 USC § 4321 et seq.).
- b) The Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601 et seq.).
- c) The Resource Conservation and Recovery Act, amending the Solid Waste Disposal Act (42 USC § 6901 et seq.).
- d) The Emergency Planning and Community Right to Know Act of 1986 (42 USC § 11001 et seq.).
- e) The Clean Air Act (42 USC § 7401 et seq.).
- f) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 USC § 1251 et seq.).
- g) The Toxic Substances Control Act (15 USC § 2601 et seq.).
- h) The Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.).
- i) The Oil Pollution Act (33 USC § 2701, et. seq.).
- j) The Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.).

- k) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300f-300j-27 et seq.).
- l) The Federal Radon and Indoor Air Quality Research Act (42 USC § 7401 et seq.).
- m) The Occupational Safety and Health Act (29 USC § 651 et seq.).
- n) The Endangered Species Act (16 USC § 1531 et seq.).
- o) The Fish and Wildlife Coordination Act (16 USC § 661 et seq.).
- p) The Coastal Zone Management Act (16 USC § 1451 et seq.).
- q) The Rivers and Harbors Act of 1899 (33 USC §400 et seq.).
- r) The Migratory Bird Treaty Act (16 USC § 703 et seq.).
- s) The Marine Mammal Protection Act (16 USC § 1361 et seq.).
- t) Section 4f of the Department of Transportation Act (49 USC § 303).
- u) The National Historic Preservation Act (54 U.S.C.A. § 300101).
- v) 33 CFR § 114 and 125.
- w) The California Environmental Quality Act (§ 21000 et seq. of the California Public Resources Code).
- x) The California Public Resources Code §5024 (Title 14 CCR, Section 4852).
- y) California State Health and Safety Code Section 7050.5.
- z) California Public Resources Code §5097.98.
- aa) The California Clean Air Act of 1988 (§ 39000 et seq. of the California Health and Safety Code).
- bb) The California Occupational Safety and Health Act of 1973 (§6300 et seq. of the California Labor Code).
- cc) The Porter-Cologne Water Quality Act (§ 13000 et seq. of the California Water Code).
- dd) The California Coastal Act (§ 30000 et seq. of the California Public Resource Code).
- ee) The Integrated Waste Management Act (§ 40000 et seq. of the California Public Resources Code).
- ff) The California Safe Drinking Water and Toxic Enforcement Act (§ 25249.5 et seq. of the California Health and Safety Code).
- gg) Chapter 6.5 of Division 20 of the California Health and Safety Code (§ 25100 et seq.).
- hh) The California Fish and Game Code § 1600 et seq.

Error

An error, omission, inconsistency, inaccuracy, deficiency, or other defect.

Escrowed Proposal Documents	All documentary information used in preparation of the Proposal Price.
Event of Default	A default as described in <u>Section 16.1.1</u> , following notice and opportunity to cure to the extent permitted by <u>Section 16.1.2</u> , and issuance by ICTC of notice to Design-Builder and Surety that an Event of Default has occurred.
Executive Director	The Executive Director of the Imperial County Transportation Commission.
Federal Requirements	All Governmental Rules applicable to work financed with federal funds and the provisions required to be included in contracts therefor, including the provisions set forth in <u>Book 1, Exhibits D, E, and F</u> .
Final Acceptance	Acceptance of the Project as described in <u>Section 20.3</u> .
Final Acceptance Deadline	The meaning set forth in <u>Section 4.3.3</u> .
Final Design	A 100% complete set of Design Documents that is submitted by the Design-Builder as a design development milestone and formally reviewed by the ICTC with the intention of reaching ICTC Approval prior to RFC.
Float	Difference between the earliest and latest allowable start or finish times for an activity.
Force Majeure	An event beyond the control of Design-Builder, not due to an act or omission of any Design-Builder–Related Entity, which materially and adversely affects Design-Builder’s ability to meet its obligations under the Contract, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder. Notwithstanding the foregoing, the term “Force Majeure” shall not include normal weather, Differing Site Conditions, ICTC-Directed Changes, Utility Delays, or any other matter for which the Contract Documents specify how liability or risk is to be allocated between ICTC and Design-Builder, regardless of whether such matter is beyond Design-Builder’s control.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration, or ruling required by or with any Governmental Person (other than a Governmental Person in its capacity as a Utility Owner) in order to perform the Work.
Governmental Person	Any federal, State, local, or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity. The term includes the State and agencies and subdivisions thereof, other than ICTC.
Governmental Rule	All applicable federal, State, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term “Governmental Rule” does not include Governmental Approvals.

Guarantor	Each entity (if any) providing a Guaranty.
Guaranty	Each guaranty of Design-Builder's obligations under the Contract Documents (if any), provided on Proposal Form 16.
Hazardous Materials	<ul style="list-style-type: none">a) Any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law.b) Any substance, product, waste, or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds, or inorganic compounds, as defined by any Governmental Rule.c) Any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under clause (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a State or federal court.d) Petroleum hydrocarbons excluding petroleum hydrocarbon products contained within regularly operated motor vehicles.e) Asbestos, asbestos-containing materials in structures and/or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground), or a substance reasonably believed to be asbestos as defined in Labor Code Section 6501.7.f) Lead or lead-containing materials in structures and/or other improvements on or in the Site.g) A hazardous substance as defined in Health & Safety Code Section 25316 and Section 25317. <p>The term "Hazardous Materials" includes Hazardous Waste.</p>
Hazardous Waste	Waste as defined in 40 CFR 261 et seq.
Holiday	Holidays shown in the following table:

Holiday	Date Observed
Every Sunday	Every Sunday
New Year's Day	January 1st
Birthday of Martin Luther King, Jr.	3rd Monday in January
Lincoln's Birthday	February 12th
Washington's Birthday	3rd Monday in February
Cesar Chavez Day	March 31st
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October

Holiday	Date Observed
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving Day	Day after Thanksgiving Day
Christmas Day	December 25th

If January 1st, February 12th, March 31st, July 4th, November 11th, or December 25th falls on a Sunday, the Monday following is a holiday. If November 11th falls on a Saturday, the preceding Friday is a holiday

Incidental Utility Work All of the following Work that is necessary or determined by Design-Builder to be convenient for the construction and/or accommodation of the Project:

- a) Protection of Existing Utilities.
- b) Abandonment of Public Utilities.
- c) Removal of Utilities.
- d) Construction survey staking for Utility Work.

Incremental Costs Those costs, if any, which Design-Builder incurs as a result of a particular circumstance which Design-Builder would not have incurred but for the circumstance. In determining such costs, one would determine the total cost which Design-Builder would have incurred had the circumstance not occurred and subtract such amount from the costs actually incurred; the difference is the "increment." (For example, if Design-Builder originally has to Relocate three water lines, and a fourth water line is discovered in the same general area which can be Relocated by the same crew, then if Design-Builder is entitled (pursuant to Section 6.2.1.1) to a Change Order increasing the Contract Price on account of such newly discovered water line, ICTC will be charged with only the costs of keeping the crew working the additional time to Relocate the fourth water line, and will not be charged any portion of the expense of moving the crew to the Site in the first place.)

Indemnified Parties The meaning set forth in Section 18.1.1.

Industry Standard An acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard, or specification by a creditable association.

Inspection Observation, examination, testing, or gauging/measurement to determine whether an item or activity conforms to specified requirements .

Inspector Design-Builder's authorized and qualified representative assigned to make detailed Inspection of Contract performance.

Instructions to Proposers The RFP document identified as Instructions to Proposers.

Intermediate Design An in-progress set of Design Documents engineered to approximately 65% level of completeness that is submitted by the Design-Builder as a design development milestone and formally reviewed by ICTC.

Key Personnel	The Persons listed on <u>Exhibit G</u> , subject to revision in accordance with the Contract.
Latent Material Error	Errors that are material and not discovered by Design-Builder and not reasonably capable of being discovered through the exercise of due diligence
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Liquidated Damages	The damages described in <u>Section 17.1</u> .
Major Participant	Any of the following entities: all general partners or joint venture members of Proposer; any Subcontractor that will perform Work valued at fifteen (15) percent or more of the overall Contract amount; the lead engineering/design firm(s); and each engineering/design Subconsultant that will perform twenty (20) percent or more of the design Work. Notwithstanding the foregoing, references to a Major Participant's experience refer to the experience of the entity and not to any individuals working for such entity.
Milestone	Event activity that has zero (0) duration and is typically used to represent the start or end of a certain stage of the Project.
National Environmental Policy Act	National Environmental Policy Act, 42 USC §4321 et seq., as amended and as it may be amended from time to time
New Environmental Approval	Any of the following: <ul style="list-style-type: none">a) A new Governmental Approval of the same type as an Environmental Approval; andb) A revision, modification or amendment to one or more of the Environmental Approvals.
Nonconforming Work	Work performed that does not meet requirements of the Contract Documents.
Notice of Final Acceptance	The written notice issued by ICTC to Design-Builder under <u>Section 20.3.2</u> .
Notice of Substantial Completion	The written notice issued by ICTC to Design-Builder under <u>Section 20.2.3</u> .
Notice of Termination	A written notice issued by ICTC to terminate the Contract and the performance of the Work by Design-Builder, either in whole or in part, pursuant to <u>Section 15</u> .
Notice to Owner	A formal notice issued to a Utility Owner to perform work on their Utility to accommodate ICTC Work, or notice of work being performed by others, as required by Streets & Highways Code Sections 673, 680, and 720. Work may include Relocation, removal, abandonment, or protection in place. The Notice to Owner also sets forth a schedule and statement of cost liability for the work.

Notice to Proceed 1	A first written notice issued by ICTC to Design-Builder to proceed with certain limited Work as specified therein on the date specified therein.
Notice to Proceed 2	A written notice issued by ICTC to Design-Builder to proceed with the remainder of the Work on the date specified therein.
Owner Verification	ICTC's act of reviewing, inspecting, observing, sampling, testing, checking, auditing, or otherwise determining and documenting whether items, processes, services, or documents comply with specified requirements.
Payment Bond	The payment bond described in <u>Section 8.1</u> .
Performance Bond	The performance bond described in <u>Section 8.1</u> .
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including ICTC.
Plan	A drawing, such as layout, profile, typical cross-section, and supplemental drawings, that shows the locations, character, dimensions, and details of the Work to be done.
Preliminary Engineering Drawings	The documents entitled "Preliminary Engineering Drawings" included in the Reference Information Documents.
Preliminary Schedule	The schedule submitted as parties work toward Baseline Schedule Approval.
Private Utility	A Utility that is owned by a Private Utility Owner.
Private Utility Owner	Any owner or operator of a Utility which is not a Public Utility Owner.
Project	The Calexico East Port of Entry Bridge Widening Design-Build Project, as more specifically described in Book 2, Section 1, "General," and all other Work product to be provided by Design-Builder as a condition to Final Acceptance in accordance with the Contract Documents.
Project Manager	The Person designated by Design-Builder to supervise the Project and to receive delivery of notices to Design-Builder per <u>Section 23.10.1</u> .
Project Requirements	Book 2 of the Contract Documents as such provisions may be changed, added to, or replaced pursuant to the Contract, together with such documents as may be incorporated into Book 2 by reference therein.
Project Schedule	Approved schedule governing Design-Builder's delivery of the Project, including planning, design, construction, management, development, and completion and serving as basis for determining the amount of monthly progress payments. Project Schedule can refer to the Preliminary Schedule, Baseline Schedule, or Working Schedule, depending on the context.
Proposal	Those documents constituting Design-Builder's response to the RFP, including any supplements to Proposals as may have been requested by ICTC.
Proposal Due Date	The date the Proposal was due as specified in the Instructions to Proposers.
Proposal Price	The "Proposal Price" offered for the Work set forth in Form 9 (Proposal Price).

Proposer	An individual, firm, partnership, corporation, joint venture, or combination thereof that was pre-qualified under ICTC's RFQ and that submits a Proposal in response to the RFP.
Public Records Act	The California Public Records Act (California Government Code §6250 et seq.)
Public Utility	A Utility that is owned by a Public Utility Owner.
Public Utility Owner	An owner or operator of a Utility which is a municipality, county, or other political subdivision of the State.
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of Substantial Completion, as applicable, generally limited to minor incidental items of Work which have no adverse effect on the safety, Site security, or operability of the Project and which can be performed without shutting down a traffic lane or shoulder.
Quality Control	All Design-Builder/Subcontractor/Supplier/vendor operational techniques and activities (process controls) that are performed or conducted to fulfill the Contract requirements.
Quality Manager	The Person designated by Design-Builder to perform the roles and responsibilities of Quality Manager and who meets the minimum requirements as required in the Contract Documents.
Quality Manual	The quality manual provided by Design-Builder and Approved by ICTC as described in Book 2, Section 5, "Quality Program."
Quality Program	The quality policy, quality objectives, Design and Construction Quality Management Plans, procedures, Work instructions, and records to ensure the quality of the Project.
Quality Validation	All systematic monitoring and evaluation by the Design-Builder of various aspects of the Project to ensure that standards of quality are being met, thereby providing confidence that all Work complies with the Contract and that all materials incorporated in the Work, all equipment, and all elements of the Work will perform satisfactorily for the purpose intended. Quality Validation activities are performed concurrently, but independent of and in addition to the Quality Control activities.
Reference Information Documents	The documents designated as Reference Information Documents in the RFP.
Released for Construction Documents	Design-Builder's Design Documents issued for the purpose of construction which have been reviewed and Approved by ICTC authorizing construction.
Relocation or Relocate	As related to Utilities, each removal, transfer of location, abandonment, and/or protection of Utilities (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Remediation Work	Investigating, monitoring, characterizing, testing, sampling, stock-piling, storage, backfilling in place, recycling, treatment, and/or off-Site disposal of Hazardous Materials and materials containing Hazardous Materials, as

	Approved by ICTC and in accordance with the Environmental Management Plan and Book 2, Section 7, "Environmental Compliance."
Request for Change Proposal	A proposal issued by ICTC under <u>Section 13.2.1</u> .
Request for Proposals	The Request for Proposals for the Project issued by ICTC, including all addenda and clarifications thereto.
Request for Qualifications	The Request for Qualifications for the Project issued by ICTC, including all addenda thereto.
Revised Baseline Schedule	The meaning set forth in Book 2, Section 4, "Project Schedule Management."
Right of Way	<p>The real property (which term is inclusive of all estates and interests in real property, as well as licenses and permits authorizing occupancy) that is necessary for ownership and operation of the Project. The term specifically excludes any Construction Easements.</p> <p>The term "Right of Way" is sometimes used to indicate right of way and is sometimes used to indicate rights of way for other facilities.</p>
Service Line	A Utility line, the function of which is to connect an individual service location (e.g., a single-family residence or an industrial warehouse) to another Utility line which other Utility line connects more than one such individual line to a larger system. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.
Site	The parcels of right of way identified on which the Project is to be constructed and installed as well as all other areas in the vicinity used by Design-Builder for construction Work.
State	State of California, including its agencies, departments, or divisions whose conduct or action is related to the Work, or the State of California in the geographic sense, depending on the context.
Statement of Qualifications	Those documents constituting Design-Builder's response to the Request for Qualifications.
Subcontract	Any contract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person with whom Design-Builder has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Substantial Completion	Completion of the Project as described in <u>Section 20.2</u> .
Substantial Completion Deadline	The meaning set forth in <u>Section 4.3.2</u> .
Supplier	Any Person other than employees of Design-Builder not performing Work at the Site that supplies machinery, equipment, materials, or systems to Design-Builder or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry materials, personnel,

	parts, equipment, or any other items or Persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	Each properly licensed surety company Approved by ICTC which has issued the Payment and Performance Bonds.
Temporary Construction Easement	Any temporary Construction Easement required by the Design-Builder to construct the Project Work.
Time and Materials Change Order	A Change Order issued under <u>Section 13.7.</u>
Time Impact Analysis	Analysis using a CPM schedule developed specifically to demonstrate the effect a proposed or past change or delay has on the current scheduled completion date.
Total Float	Amount of time that an activity or chain of activities can be delayed before extending the scheduled completion date.
Traveled Way	Portion of the roadway for the movement of vehicles and bicycles, exclusive of the shoulders, berms, sidewalks, and parking lanes.
Unilateral Change Order	Change Order as defined in <u>Section 13.2.2.</u>
Utility	A privately, publicly, or cooperatively owned line, facility and/or system for supplying power, light, gas, telecommunications, telegraph, telephone, water, pipeline, or sewer service if such lines, facilities, or systems are authorized by law to use public highways for the location of their facilities. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. The term "Utility" is sometimes also used to refer to a "Utility Owner." The term "Utility" shall specifically exclude existing storm water facilities connected with drainage of the roadway and ICTC-owned facilities. Sometimes the term "facility" is used synonymously with "Utility" as can be determined from the context.
Utility Agreement	An agreement made between ICTC and a Utility Owner for addressing one or more Utility conflicts associated with the Project. ICTC and Utility Owner must enter into a Utility Agreement whenever ICTC is paying or receiving payment for all or a portion of the cost of a Utility, regardless of who performs the work.
Utility Conflict Maps	Plan sheets to be prepared by Design-Builder that will document the existing conditions of a Utility and location of conflict. These Plan sheets will be signed by Design-Builder.
Utility Delay	Any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner which are set forth in the applicable Utility Design Sheet or schedule agreed to pursuant to a Notice to Owner, which failure by the Utility Owner delays the Critical Path so as to impair Design-Builder's ability to meet a Completion Deadline.

Utility Easements	All permanent easements, Consent to Common Use Agreements, Joint Use Agreements, and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.
Utility Owner	The owner or operator of any Utility.
Utility Permit	All appropriate approvals, exemptions, filings, licenses, permits, and registrations and any other Governmental Approvals required by or with any Governmental Person or Utility Owner necessary for any Utility Relocation.
Utility Relocation Plans	The design Plans for Relocation of a Utility impacted by the Project to be prepared by Design-Builder or the Utility Owner.
Utility Tracking Report	The report regarding Utilities likely to be impacted by the Project which Design-Builder shall maintain on a current basis and which Design-Builder shall periodically submit to ICTC, as more particularly described in Book 2 Section 12, "Utilities."
Utility Work	<ul style="list-style-type: none">a) The work associated with Relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and Inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, materials, equipment, supplies, Utilities, and subcontracted services provided or to be provided by Design-Builder and/or the Utility Owners.b) Any Betterments added to the Work pursuant to <u>Section 6.2.4</u>. The term also includes any reimbursement of Utility Owners that is the Design-Builder's responsibility pursuant to <u>Section 6.2</u>. Any Utility Work furnished or performed by Design-Builder is part of the Work; any Utility work furnished or performed by a Utility Owner is not part of the Work.
Warranty	Any warranty made by Design-Builder in <u>Section 21</u> .
Work	All duties and services to be furnished and provided by Design-Builder as required by the Contract Documents, including the administrative, design, engineering, quality management, Relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, labor, materials, equipment, documentation, and all other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by ICTC or other Persons. In certain cases, the term is also used to mean the products of the Work.
Work Breakdown Structure	A deliverable-oriented grouping of Project components that organizes and defines the total scope of the Project.
Work Order	An ordering agreement (as the same may be amended from time to time) among ICTC, a Utility Owner, and Design-Builder, providing detailed information and terms relating to the Relocation of a particular Utility, and authorizing that Relocation, which is executed pursuant to a UA.
Working Day	Any Calendar Day except Saturday, Holidays, or a day when the Design-Builder cannot perform Work on the controlling activity for at least

fifty (50) percent of the day with at least fifty (50) percent of the normal labor and equipment due to adverse weather-related conditions or suspension of a controlling activity that the Design-Builder and ICTC agree benefits both parties.

Working Drawings

Stress sheets, shop drawings, structural steel fabrication plans, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which illustrate the construction of the Work.

Working Schedule

The current Approved schedule developed from the Approved Baseline Schedule and any subsequent Approved Working Schedules through regular monthly review to incorporate actual past progress.

EXHIBIT B – LABOR CODE REQUIREMENTS

Labor Code Requirements

A. Worker's Compensation

Design-Builder shall comply with the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code.

B. Applicable Caltrans *Standard Specifications*

Refer to Section 7-1.02 of Caltrans *Standard Specifications* for information regarding State prevailing wage rate, work hours, apprenticeship, nondiscrimination and other requirements of the Labor Code applicable to the Contract.

C. Additional Provisions

1. Prevailing Wages.

The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned; provided that if the prevailing wage rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the California Government Code. Copies of the prevailing rates of wages will be furnished to Design-Builder and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, Design-Builder may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for design-build Work.

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, Design-Builder shall pay and cause its Subcontractors to pay not less than the higher wage rate. The DIR will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage rate determinations do not contain the State wage rate determination otherwise available for use by Design-Builder and Subcontractors, the Design-Builder shall pay and cause its subcontractors to pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

2. Labor Code Section 1777.5

1777.5. (a) (1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

(2) For purposes of this chapter, "apprenticeship program" means a program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a

public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

- (c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:
 - (1) The apprenticeship standards and apprentice agreements under which he or she is training.
 - (2) The rules and regulations of the California Apprenticeship Council.
- (d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this Section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).
- (e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within sixty (60) days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the

contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for twelve (12) months.

- (f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.
- (g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five (5) hours of journeyman work.
- (h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or forty (40) hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.
- (i) A contractor covered by this Section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the one (1)-to- five (5) ratio required by subdivision (g).
- (j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five (5) hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the one (1)-to-five (5) hourly ratio, as set forth in this Section for that craft or trade.
- (k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the one (1)-to-five (5) ratio set forth in this Section when it finds that any one of the following conditions is met:
 - (1) Unemployment for the previous three (3)-month period in the area exceeds an average of fifteen (15) percent.
 - (2) The number of apprentices in training in the area exceeds a ratio of one (1) to five (5).

- (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.
- (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.
- (l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the one (1)-to-five (5) ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.
- (m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.
- (2) (A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:
 - (i) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.
 - (ii) If there are two (2) or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.
 - (iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship and preapprenticeship standards and requirements under this code.
- (B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the

expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

- (C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.
- (3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.
- (n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this Section for all apprenticeable occupations with the prime contractor.
- (o) This Section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).
- (p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

EXHIBIT C – RESERVED

EXHIBIT D – FEDERAL LAWS FOR FEDERAL-AID PROJECTS – FHWA-1273

D1 General

D2 FHWA-1273

D1 General

"Federal Laws for Federal-Aid Contracts," includes specifications required in a Federal-aid construction contract and applies to a Federal-aid contract.

Form FHWA-1273 is included in this Exhibit D, "FHWA-1273." Some Contract terms on the form are different than those used in other Contract parts as shown in the following table:

FHWA-1273 Terms and Department Equivalencies

FHWA-1273 Term	Equivalent Term Used in Other Contract Parts
SHA	ICTC
SHA contracting officer	ICTC
SHA resident engineer	ICTC

D2 FHWA-1273

**FHWA-1273
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

FHWA-1273 -- Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. **Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor 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 the contracting agency deems appropriate.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT E – DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN- BUILD PROJECTS

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL
PROVISIONS FOR DESIGN-BUILD PROJECTS**

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E1 POLICY STATEMENT

It is the policy of ICTC to encourage the participation of DBE, women-owned business enterprises, and minority business enterprises in all facets of its business activities, consistent with applicable laws and regulations. Pursuant to the provisions of 49 CFR Part 26, ICTC has adopted rules to provide certified DBEs opportunities to participate in the business activities of ICTC as service providers, vendors, contractors, subcontractors, advisors, and consultants. To ensure there is equal participation of the DBE groups specified in 49 CFR §26.5, ICTC specifies a goal for DBEs.

The DBE goal applies to all of ICTC's contracts and purchases paid with federal funds. Because ICTC has programmed federally-sourced funds for the Project, the DBE goal will apply to the Project and Design-Builder is obligated to comply with applicable federal laws and regulations related to DBEs.

The Design-Builder and its Subcontractors, Subconsultants, Suppliers, and service providers shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform on this Contract.

E2 CONTRACT ASSURANCE

The Design-Builder, and its Subcontractors, Subconsultants, Suppliers, and service providers 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 CFR Part 26 in the award and administration of federally funded 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 ICTC deems appropriate.

E3 DBE GOAL

The DBE goal established for this Contract is as shown on the DBE Certification (Form 17).

The Design-Builder shall establish individual DBE goals for each Subcontract and for each Subconsultant, Supplier, and service provider agreement in amounts to ensure the Contract DBE goal is met. ICTC will monitor the Design-Builder's activities to ensure they are conducted in a manner consistent with the requirements of 49 CFR Part 26.

Only DBE participation will count toward the DBE goal.

Credit for materials or supplies purchased from DBEs counts toward the DBE goal in the following manner:

- a) One hundred (100) percent counts if the materials or supplies are obtained from a DBE manufacturer.
- b) Sixty (60) percent counts if the materials or supplies are obtained from a DBE regular dealer.
- c) Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR §26.55 defines "manufacturer" and "regular dealer."

Credit toward the DBE goal will be received if employing a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1)-(4), (6), (7).

E4 DBE PERFORMANCE PLAN

Design-Builder shall prepare a Disadvantaged Business Enterprise Performance Plan ("DBE Performance Plan") that complies with all applicable laws and Governmental Approvals, is consistent with the Contract Documents, and includes the following elements:

- a) A policy statement, signed by Design-Builder's authorized representative, which expresses Design-Builder's commitment to utilize DBEs in all aspects of the Work, outlines the various levels of responsibility, and states the objectives of the DBE Performance Plan. Design-Builder shall obtain the written commitment of all Design-Builder-Related Entities to comply with and advance the intent of the policy statement.
- b) Design-Builder's designation of a Person responsible for the DBE Performance Plan (the "Liaison Officer"), and support staff necessary and proper to administer the program and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the DBE Performance Plan on a day-to-day basis, for providing technical assistance to DBEs, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to engage in Work as Subcontractors or Subconsultants. The Liaison Officer shall work in close coordination with ICTC and shall report quarterly on Design-Builder's success in attaining the established DBE goal during the design Work and the Construction period.
- c) A description of proposed actions to facilitate DBE engagement in Work as Subcontractors and Subconsultants, such as:
 - i. On-going quarterly strategic planning sessions with ICTC to establish DBE goals for specific Work item groups by reviewing the Work, available firms, strategies, anticipated obstacles and means to overcome obstacles.
 - ii. Conduct Work-item specific outreach meetings in coordination with ICTC for DBE firms to highlight current and upcoming appropriate subcontracting opportunities.
 - iii. Solicit statements of qualification, proposals, and/or price quotations from qualified DBE firms and arrange a time for the review of qualifications, plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of proposals and/or price quotations.
 - iv. Provide assistance, in coordination with ICTC, to DBEs so that these may overcome barriers such as the inability to obtain bonding, insurance, financing, or technical assistance.
 - v. Develop and conduct information and communication programs or workshops, in coordination with ICTC, on contracting procedures and specific contracting opportunities in a timely manner.
 - vi. Encourage eligible DBEs to apply for applicable certification.
 - vii. Contact local/regional disadvantaged, underutilized, trade-specific contractor associations and appropriate city agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for applicable certification.

E5 SUBMITTAL OF DOCUMENTATION

With the submission of the initial Proposal and for all Subcontracts subsequently awarded where DBE goals are set, regardless of contract size, the Design-Builder, Subcontractor, Subconsultant, Supplier and service provider shall be required to (a) propose the participation of specific DBEs to meet the DBE goal, or (b) demonstrate good faith efforts to meet the DBE goal. A Design-Builder, Subcontractor, Subconsultant, Supplier, and service provider shall provide justification if it rejects bids, quotes, or proposals from properly certified, qualified DBE firms.

In order to fulfill a DBE goal, the firms utilized as DBE Subcontractors, Subconsultants, Suppliers, or service providers shall be certified as DBEs by the California Unified Certification Program before the submittal of the Proposal, and/or subsequent to the award of the Contract, the advertisement of bids, or the selection of any new Subcontractors, Subconsultants, Suppliers, or service providers during the Project. For a list of DBEs certified by the California Unified Certification Program, go to: <https://dot.ca.gov/programs/civil-rights/dbe-search>

The Design-Builder shall submit the following documents to ICTC. These documents shall be submitted with the initial Proposal:

- a) Design-Builder's good faith efforts documentation.
- b) Design-Build Bidders List.
- c) Supporting documentation to verify good faith efforts, including a copy of the signed agreements with each DBE to be utilized by the Design-Builder, Subcontractor, Subconsultant, Supplier, or service provider.
- d) DBE Goal Certification Form (Form 17).

The Design-Builder shall submit a Design-Build Bidder's List regardless of whether or not it has indicated sufficient DBE participation to meet the DBE goal. The completed Design-Build Bidders List shall include information on:

- a) All DBE and non-DBE firms that submitted a bid/proposal for the Project.
- b) The proposed firms to be used on the Project as Subcontractors/Subconsultants/Suppliers/service providers.
- c) A description of the Work.
- d) Bid dollar amount.
- e) Years the company has been in business.
- f) The firm's average annual gross receipts for the past three (3) years.

The Design-Builder shall also submit additional information which supports its good faith efforts such as those typical good faith efforts listed in this Exhibit E and summaries of the Design-Builder's discussions and/or solicitation efforts of DBE firms (including the firm names, addresses and contact Persons). This information may include copies of solicitation letters, e-mails, or faxes to DBE firms.

The Design Builder's Subcontractors, Subconsultants, Suppliers, and services providers, including DBE and non-DBE firms, that subcontract part of their Work or purchase supplies from other firms are also required to demonstrate that they made good faith efforts to provide opportunities for DBE firms to participate on this Project.

E6 GOOD FAITH EFFORTS DETERMINATION

ICTC will determine whether a Design-Builder made sufficient good faith efforts to meet the DBE goal, in accordance with 49 CFR §26.53 and Appendix A thereto. The Design-Builder shall show that it took all necessary and reasonable steps to achieve the DBE goal or other requirement of 49 CFR Part 26, which, by its scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it were not fully successful. Mere pro forma efforts are not good faith efforts to meet the DBE goal. Compliance will be determined on a case-by-case, based on a review of documentation of the following types of activities:

- a) Soliciting, through all reasonable and available means (e.g., attendance at pre-proposal/pre-letting meetings, advertising, and/or written notices), the interest of all certified DBEs who have the capability to perform the Work of the Contract. The Design-Builder shall solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Design-Builder shall determine with certainty if the DBEs are interested by taking appropriate steps to follow up on the initial solicitations.
- b) Selecting portions of the Work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out Work items into economically feasible units to facilitate DBE participation even when the Design-Builder might otherwise prefer to perform these Work items with its own forces.
- c) Providing interested DBEs with adequate information about the Plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.
- d) Negotiating in good faith with interested DBEs. The Design-Builder has the responsibility to make a portion of the Work available to DBE Subcontractors, Subconsultants, Suppliers, and service providers, to select those portions of the Work or material needs consistent with the available DBE Subcontractors, Subconsultants, Suppliers, and service providers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of the DBEs that were considered; a description of information provided regarding the Plans and specifications for the Work selected for contracting; and evidence as to why additional agreements could not be reached for DBEs to perform the Work.
- e) Using good business judgment considering a number of factors in negotiating with Subcontractors, Subconsultants, Suppliers, and service providers including those who are DBEs, and taking a firm's price and capabilities, and DBE goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Design-Builder's failure to meet the DBE goal, as long as such costs are reasonable. Also, the ability or desire of the Design-Builder to perform the Work with its own organization does not relieve the Design-Builder of the responsibility to make good faith efforts. The Design-Builder is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- f) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Design-Builder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of proposals/bids in the Design-Builder's efforts to meet the DBE goal.
- g) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by ICTC or Design-Builder.
- h) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- i) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal offices of minority/women business assistance; and other organizations, as allowed on a case-by-case basis, to provide assistance in the recruitment and placement of DBEs.

E7 COUNTING DBE PARTICIPATION

In accordance with 49 CFR §26.55, ICTC will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

- a) If a firm is not currently certified as a DBE, in accordance with the standards of Subpart D of the regulations (49 CFR §26.55(f)), at the time of execution of its contract with the Design-Builder, the firm's participation toward any DBE goals will not be counted, except as provided for in 49 CFR §26.87(i).
- b) The dollar value of the Work performed under a Subcontract with a firm after it has ceased to be certified will not be counted toward the overall DBE goal.
- c) The participation of a DBE Subcontractor/Subconsultant/ Supplier/service provider toward the Design-Builder's DBE achievements or the overall DBE goal will not be counted until the amount being counted toward the DBE goal has been paid to the DBE.
- d) When a DBE participates in the Subcontract, the value of the Work actually performed will be counted as follows:
 - i. The entire amount of the Subcontract (or other contract not covered by paragraph 49 CFR §26.55) that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE for the Work of the Subcontract, and including supplies purchased or equipment leased by the DBE (except that supplies, and equipment the DBE Subcontractor purchases or leases from the Design-Builder or its affiliate(s) will not be counted).
 - ii. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, count toward DBE goals, provided that ICTC determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - iii. When a DBE subcontracts part of the Work of its Subcontract to another firm, the value of the Subcontracted Work may be counted toward DBE goals only if the DBE's Subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward the DBE goal.
 - iv. When a DBE performs as a participant in a joint venture, ICTC will count a portion of the total dollar value of the Subcontract equal to the distinct, clearly defined portion of the Work of the Subcontract that the DBE performs with its own forces toward DBE goals.
- e) ICTC will count expenditures of a DBE Subcontractor, Subconsultant, Supplier, or service provider toward DBE goals only if the DBE is performing a commercially useful function on that Subcontract in accordance with 49 CFR §26.55.

E8 CONTINUING GOOD FAITH EFFORTS

During the term of the Contract, the Design-Builder shall make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform on the Contract, and that the Design-Builder meets its DBE goal. These efforts shall include, but not be limited to, the following:

- a) Negotiating in good faith to attempt to finalize a Subcontract/Subconsultant/Supplier/service provider agreement with DBEs committed to before Contract award.

- b) Continuing to provide assistance to DBE Subcontractors/Subconsultant/Suppliers/service providers in obtaining bonding, lines of credit, etc., if required by the Contract.
- c) Notifying a DBE in writing of any potential problem and attempting to resolve the problem before formally requesting ICTC's statement of no objection to substitute the DBE.
- d) As with all Subcontractors/Subconsultants/Suppliers/service providers, timely payment of all monies due and owing to DBE Subcontractors/Subconsultants/Suppliers/service providers.
- e) Timely submittal of good faith efforts information and documentation to ICTC throughout the Contract, as Subcontracts are let and new vendors, Subcontractors, Subconsultants, Suppliers, and service providers are selected.
- f) Informing ICTC in a timely manner of any problems anticipated in attaining the DBE goal committed to in the Proposal.
- g) If the Design-Builder or any of its Subcontractors/Subconsultants/Suppliers/service providers requests a substitution of a DBE firm, the Design-Builder or its Subcontractors/Subconsultants/Suppliers/ service providers shall exert good faith efforts to replace the DBE firm with another DBE firm, subject to ICTC's statement of no objection.

E9 APPLICABILITY TO DBE BIDDERS/PROPOSERS

These good faith efforts requirements also apply to DBE bidders/proposers for contracts. The Work proposed to be performed with its own work force and Work committed to DBE Subcontractors, Subconsultants, Suppliers, and service providers will count toward the DBE goal.

E10 DBE CONTRACTS

Whenever a DBE is selected as a Subcontractor/Subconsultant/Supplier/service provider and it has not been previously reported, the Design-Builder or designated Liaison Officer shall promptly provide ICTC with the following information regarding the Subcontract:

- a) The name of the Subcontractor/Subconsultant/Supplier/service provider.
- b) The total dollar amount of the Subcontract, Subconsultant, or Supplier/service provider agreement.
- c) The specific Work items covered by the Subcontract or the Subconsultant/Supplier/service provider agreement.
- d) Estimated quantities of each Work item.
- e) Individual unit prices (if applicable).

E11 TERMINATION OF DBE CONTRACTS

ICTC requires that the Design-Builder, and its Subcontractors, Subconsultants, Suppliers, and service providers not terminate for convenience a DBE Subcontractor/Subconsultant/Supplier/service provider listed on the List of Proposed DBEs (or an Approved substitute DBE) and then perform the Work of the terminated Subcontract with its own forces or those of an affiliate, without prior written consent of ICTC. The request for removal shall be made in writing to ICTC.

If a DBE Subcontractor/Subconsultant/Supplier/service provider is terminated or fails to complete its Work on a Subcontract for any reason, the Design-Builder shall make good faith efforts to find another DBE Subcontractor/Subconsultant/Supplier/service provider to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of Work under the Contract as the DBE that was terminated, to the extent needed to meet the DBE goal.

E12 BIDDER'S LIST

A Design-Builder Bidder's List shall be submitted with the Proposal, and the successful Design-Builder shall maintain a Bidder's List throughout the life of the Project. The Bidder's List shall be created and maintained in accordance with 49 CFR §26.11(c), and all firms quoting or bidding on Subcontracts and Subconsultant or Supplier/service provider agreements for this Contract shall be identified. For every firm quoting or bidding on Subcontracts, and Subconsultant or Supplier/service provider agreements for this Contract, the following shall be obtained:

- a) The firm's name.
- b) The firm's address.
- c) The firm's status as a DBE or non-DBE.
- d) The age of the firm.
- e) The annual gross receipts of the firm.

E13 EFFECT OF SUPPLEMENTAL AGREEMENTS

The dollar amount of any supplemental agreement or any other Contract modification that increases the dollar amounts of the Contract or any Subcontract or Subconsultant agreement will be subject to the DBE goal established for this Project, and the Design-Builder and its Subcontractors and Subconsultants shall solicit DBE participation for such increases. Revised total Contract dollar values shall be reflected in the Design-Builder Payment and Subcontract Award Monthly Progress Reports submitted to ICTC.

E14 PROMPT PAYMENT

The Design-Builder agrees to pay each Subcontractor, Subconsultant, Supplier, or service provider under this Contract within ten (10) days of the Design-Builder's receipt of payment from ICTC for undisputed services provided by the Subcontractor, Subconsultant, Supplier, or service provider. The Design-Builder shall pay interest of one and one-half (1-1/2) percent per month or any part of a month to the Subcontractor, Subconsultant, Supplier, or service provider on any undisputed amount not paid on time to the Subcontractor, Subconsultant, Supplier, or service provider. This clause applies to both DBE and non-DBE firms working on this Contract.

E15 CONSEQUENCES OF NONCOMPLIANCE

E15.1 Breach of Contract

Failure to carry out the DBE requirements specified in the Contract Documents constitutes a breach of Contract. ICTC will notify the Design-Builder and the USDOT of such breach, including notification that the breach may result in termination of the Contract by ICTC or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Part 26. For purposes of this section, timely submittal means received by ICTC by the close of business on the 10th of the following month.

E15.2 Notice

If the Design-Builder or any Subcontractor, Subconsultant, Supplier, or service provider is deemed to be in non-compliance, the Design-Builder will be informed in writing, by certified mail by ICTC that sanctions will be imposed for failure to meet DBE goals and/or submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.

E16 SANCTIONS

If it is determined that the Design-Builder's failure to meet all or part of the DBE goal is due to the Design-Builder's inadequate good faith efforts throughout the life of the Contract, including failure to submit required good faith efforts information and documentation, the Design-Builder may be subject to Contract termination.

E17 DBE LIQUIDATED DAMAGES

As defined in 49 CFR Part 26, if it is determined that the Design-Builder's failure to meet all or part of the DBE goal is due to the Design-Builder's inadequate good faith efforts, the Design-Builder may be required to pay DBE liquidated damages equal to the amount of the unmet DBE goal.

E18 REPORTING

E18.1 DBE Records

The Design-Builder shall maintain records and shall require its Subcontractors/Subconsultants/Suppliers/service providers that are utilizing DBE firms in such Subcontracts to maintain records to verify DBE participation as set forth in the Proposal and as modified during the course of the Contract. Such records shall show name and business address of each DBE participating in the Subcontract and Subconsultant or Supplier/service provider agreement and the total dollar amount actually paid to each DBE and the date of payment.

E18.2 Reporting Requirements and ICTC Review

The Design-Builder shall submit ongoing progress reports to ICTC on its payments to all its Subcontractors/Suppliers/service providers, regardless of their tier or DBE status, within ten (10) days after receiving payment from ICTC until final payment is made. The Design-Builder shall submit these progress reports on its payments to Subcontractors/Subconsultants/Suppliers/service providers on the Subcontractor Payment Form developed by the Design-Builder and Approved by ICTC. The Design-Builder shall submit a copy of each Subcontractor Payment Reports to ICTC.

A summary of Subcontracts, Subconsultant, and Supplier/service provider agreements awarded shall be submitted to ICTC on a monthly basis, which shall include the firm name, address, phone number, contact Person, amount of the Subcontract, Subconsultant or Supplier/service provider agreement, description of Work and length of the Subcontract, Subconsultant or Supplier/service provider agreement.

ICTC will review the Summary of Subcontract, Subconsultant, and Supplier/Service Provider Agreements Awarded Monthly Progress Report to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the Design-Builder, as stated in its Proposal.

If it is determined that the Design-Builder's DBE utilization during performance of the Contract is not consistent with the commitment thereto, the Design-Builder will be requested, in writing, to submit evidence of its good faith efforts to meet the DBE goal. The Design-Builder shall be given ten (10) Working Days to submit this documentation. Failure to respond shall place the Design-Builder in noncompliance, subject to sanctions as provided in this Contract herein.

E18.3 Summary of Subcontracts Awarded and Paid Report

As indicated in Sections E18.1 and E18.2 the Design-Builder is required to submit a summary of Subcontracts awarded on a monthly basis; by no later ten (10) days after receiving payment from ICTC.

ICTC reserves the right to withhold progress payment until the required reports have been furnished.

E18.4 Quarterly Review/DBE Work and Payment Schedule

A review of the Design-Builder's compliance with the DBE goal will be conducted on a quarterly basis as outlined below.

No later than thirty (30) days following the Notice to Proceed 1 (NTP1), the Design-Builder shall submit a DBE Work and Payment Schedule to ICTC. This schedule shall indicate, for the entire Contract period, a listing on a per month basis of the DBE firms which the Design-Builder expects to utilize, the amount of payments expected to be made to DBEs, and the percentage of each DBE firm's Subcontract that shall be completed on each month. The DBE Work and Payment Schedule shall be updated every sixty (60) days to be consistent with the updates to the Project Schedule.

During the sixty (60) days following Design-Builder's submittal of the DBE Work and Payment Schedule, ICTC will review the Monthly Disadvantaged Business Enterprises (DBE) Payment Form to determine if the Design-Builder is meeting the DBE Work and Payment Schedule requirements. If the Design-Builder has not met the DBE Work and Payment Schedule, requirements ICTC will notify the Design-Builder of the need for correction of DBE participation levels to meet the DBE Work and Payment Schedule by the next quarter.

ICTC will evaluate whether the Design-Builder has corrected DBE participation deficiencies to meet the DBE Work and Payment Schedule requirements sixty (60) days following the above-mentioned notice. If such deficiencies are not corrected and the level of DBE participation remains below that provided in the DBE Work and Payment Schedule, and the Design-Builder is unable to show it made good faith efforts to do so, ICTC may impose liquidated damages in accordance with the Contract herein.

E18.5 DBE Final Report

A DBE Final Report shall be submitted with the Request for Final Payment. The DBE Final Report shall consist of:

- a) A report listing all Subcontractors, Subconsultants, Suppliers, and service providers and DBE activity (Work performed) on the Contract.
- b) A summary of good faith efforts, covering the entire Contract period if the DBE goal has not been met for the Contract.

ICTC shall evaluate the Design-Builder's DBE Final Report and determine if the Design-builder made good faith efforts to meet the DBE goal. ICTC shall issue a final report with its determination on the Design-Builder's good faith efforts no later than sixty (60) days following the Design-Builder's submission of its DBE Final Report.

EXHIBIT F – FEDERAL AND STATE PREVAILING WAGE REQUIREMENTS

FEDERAL AND STATE PREVAILING WAGE REQUIREMENTS

The federal minimum wage rates for this Contract as determined by the United States Secretary of Labor are contained in this Exhibit F.

If the minimum wage rates as determined by the United States Secretary of Labor differs from the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Design-Builder and Subcontractors shall not pay less than the higher wage rate. ICTC does not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes helper, or other classifications based on hours of experience, or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Design-Builder and Subcontractors, the Design-Builder and Subcontractors shall not pay less than the Federal minimum wage rate that most closely approximates the duties of the employees in question.

Notices of Debarment from the Federal Highway Administration are available. For a copy of the notices go to: <http://www.dot.ca.gov/hq/construc/debarred.doc> . Additional information is listed in the Systems Award Management at:

<https://sam.gov/SAM/pages/public/searchRecords/search.jsf>.

EXHIBIT G – KEY PERSONNEL

Imperial County Transportation Commission
Instructions to Proposers

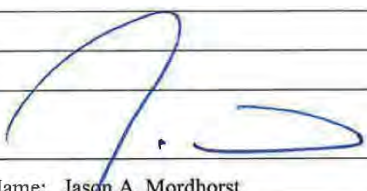
Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 2
KEY PERSONNEL COMMITMENT

Proposer's Name: Hazard Construction Company

Proposer hereby commits that, if awarded the Calexico East Port of Entry Bridge Widening Project (Project), the Proposer shall use the Key Personnel listed below for their stated positions and that, to the extent within the Proposer's control, such individuals shall be available on a full-time basis for the periods necessary to fulfill their Project-related responsibilities. Changes to Key Personnel from those proposed in the Statement of Qualifications shall be Approved by ICTC.

Position	Name
Project Manager	Bradley T. Lothers, P.E., M.E.
Quality Manager	David Timms, P.E.
Design Manager	Kirk J. Kharas, P.E.
Construction Manager	Gary Groves
Design Lead Engineer – Roadway	Alan Su, P.E.
Design Lead Engineer – Structures	Mike Bianucci, P.E.
Geotechnical Engineer	Alahesh Thurairajah, P.E. , G.E.

Signed: 

Printed Name: Jason A. Mordhorst

Title: President

Date: January 22, 2021

EXHIBIT H – ASPHALT QUANTITY CALCULATIONS FOR ASPHALT INDEX FLUCTUATIONS

ASPHALT QUANTITY CALCULATIONS FOR ASPHALT INDEX FLUCTUATIONS

Hot Mix Asphalt

ICTC calculates the quantity of asphalt in HMA using the following formula:

$$Q_h = HMATT \times X_a$$

where:

Q_h = quantity in tons of asphalt used in HMA

$HMATT$ = HMA total tons placed

X_a = theoretical asphalt content from job mix formula expressed as percentage of the total weight of HMA

Rubberized Hot Mix Asphalt

ICTC calculates the quantity of asphalt in rubberized HMA (RHMA) using the following formula:

$$Q_{rh} = RHMATT \times 0.80 \times X_{arb}$$

where:

Q_{rh} = quantity in tons of asphalt in asphalt rubber binder used in RHMA

$RHMATT$ = RHMA total tons placed

X_{arb} = theoretical asphalt rubber binder content from the job mix formula expressed as percentage of the total weight of rubberized HMA

Hot Mix Asphalt with Modified Asphalt Binder

ICTC calculates the quantity of asphalt in HMA with modified asphalt binder using the following formula:

$$Q_{mh} = MHMATT \times [(100 - X_{am}) / 100] \times X_{mab}$$

where:

Q_{mh} = quantity in tons of asphalt in modified asphalt binder used in HMA

$MHMATT$ = modified asphalt binder HMA total tons placed

X_{am} = specified percentage of asphalt modifier

X_{mab} = theoretical modified asphalt binder content from the job mix formula expressed as percentage of the total weight of HMA

Hot Mix Asphalt Containing Reclaimed Asphalt Pavement (RAP)

ICTC calculates the quantity of asphalt in HMA containing RAP using the following formulas:

$$Q_{rap} = HMATT \times X_{aa}$$

where:

$$X_{aa} = X_{ta} - [(100 - X_{new}) \times (X_{ra} / 100)]$$

and

Q_{rap} = quantity in tons of asphalt used in HMA containing RAP

$HMATT$ = HMA total tons placed

X_{aa} = asphalt content of HMA adjusted to account for the asphalt content in RAP expressed as percentage of the total weight of HMA

X_{ta} = total asphalt content of HMA expressed as percentage of the total weight of HMA

X_{new} = theoretical percentage of new aggregate in the HMA containing RAP determined from RAP percentage in the job mix formula

X_{ra} = asphalt content of RAP expressed as percentage

Tack Coat

ICTC calculates the quantity of asphalt in tack coat (Q_{tc}) as either of the following:

1. Asphalt binder using the asphalt binder total tons placed as tack coat
1. Asphaltic emulsion by applying the formula in "Asphaltic Emulsion" to the asphaltic emulsion total tons placed as tack coat

Asphaltic Emulsion

ICTC calculates the quantity of asphalt in asphaltic emulsions, including fog seals and tack coat, using the following formula:

$$Q_e = AETT \times (X_e / 100)$$

where:

Q_e = quantity in tons of asphalt used in asphaltic emulsions

$AETT$ = undiluted asphaltic emulsions total tons placed

X_e = minimum percent residue specified in Section 94, "Asphaltic Emulsions," of the Caltrans *Standard Specifications* based on the type of emulsion used

Design-Builder may determine " X_e " by submitting daily test results for asphalt residue for the asphaltic emulsion used. If Design-Builder chooses this option, Design-Builder shall:

1. Take 1 sample every two hundred (200) tons but not less than one (1) sample per day in the presence of ICTC from the delivery truck, at midload from a sampling tap or thief, and in the following order:
 - 1.1. Draw and discard the first gallon
 - 1.2. Take two separate 1/2-gallon samples
2. Submit 1st sample at the time of sampling
3. Provide 2nd sample within three (3) Business Days of sampling to an authorized laboratory that participates in the AASHTO Proficiency Sample Program
4. Submit test results from the laboratory within ten (10) Business Days of the sample date

Slurry Seal

ICTC calculates the quantity of asphalt in slurry seals (Qss) by applying the formula in "Asphaltic Emulsion" to the quantity of asphaltic emulsion used in producing the slurry seal mix.

Modified Asphalt Binder

ICTC calculates the quantity of asphalt in modified asphalt binder using the following formula:

$$Q_{mab} = MABTT \times [(100 - X_{am}) / 100]$$

where:

Q_{mab} = quantity in tons of asphalt used in modified asphalt binder
 $MABTT$ = modified asphalt binder total tons placed
 X_{am} = specified percentage of asphalt modifier

The quantity of extender oil is included in the quantity of asphalt.

Other Materials

For other materials containing asphalt not covered above, ICTC determines the method for calculating the quantity of asphalt (Q_o).

EXHIBIT I – RESERVED

EXHIBIT J – DISPUTE RESOLUTION BOARD AGREEMENT

DISPUTE RESOLUTION BOARD AGREEMENT

Project Name: Calexico East Port of Entry Bridge Widening Design-Build Project
ICTC Contract No. 20-101

THIS Dispute Resolution Board Agreement (“Agreement”) is made and entered into this [REDACTED] day of [REDACTED], 2021, between the Imperial County Transportation Commission (ICTC) and Hazard Construction Company (“Design-Builder”) and the Dispute Resolution Board (“DRB”), consisting of the following members (“DRB Members”):

(DRB Member)

(DRB Member)

(DRB Member - Chairperson)

RECITALS

WHEREAS, ICTC and the Design-Builder have executed a Contract for the Project referenced above; and

WHEREAS, Book 1, Section 19.2 of the above referenced Contract provides for the establishment and operation of the DRB to assist in resolving Disputes; and

WHEREAS, the DRB is composed of three (3) members, one (1) selected by ICTC and approved by the Design-Builder, one (1) selected by the Design-Builder and approved by ICTC, and the third (3rd) member selected by the other two (2) members and approved by ICTC and the Design-Builder; and

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, ICTC, the Design-Builder, and the DRB Members hereto agree as follows:

SECTION I: DEFINITIONS AND DESCRIPTION OF WORK

A. DEFINITIONS

All terms defined in the Contract, including but not limited to Book 1, Exhibit A, “Abbreviations and Definitions”, shall have the same definitions in this Agreement as are set forth in the Contract, except as may otherwise be noted in this Agreement.

ICTC and the Design-Builder, for purposes of this Agreement, shall hereinafter be referred to in the singular as a “Party” and/or collectively as the “Parties.”

B. DESCRIPTION OF THE WORK

In addition to Book 1, Section 19.2 of the Contract, the Parties and the DRB must comply with the provisions of this Agreement and use the DRB as part of the dispute resolution process. To the extent there is any conflict between the terms and conditions of the Contract and this Agreement, the terms and conditions of the Contract shall control.

The DRB must fairly and impartially consider Disputes placed before it and provide recommendations to ICTC and the Design-Builder for resolution of these Disputes.

The DRB shall perform the services necessary to participate in the DRB's actions as provided in Book 1, Section 19.2 of the Contract and as designated in this Agreement at Section III, “Scope of Work.” The Parties shall perform all actions necessary to assist the DRB in performing its scope of work.

The DRB Members agree, that notwithstanding any other provision in this Agreement, the DRB Members shall abide by the four (4) Canons of the March 2018, Dispute Resolution Board Foundation’s Code of Ethical Conduct, as slightly modified to comport with the terms of the Contract, and as are provided below:

Canon 1 – Conflict of Interest and Disclosure

DRB Members must avoid the appearance of, or any actual, conflict of interest during the term of the Dispute Board. DRB Members must disclose, before their appointment, any interest, past or present relationship, or association that could reasonably be considered by a Party as likely to affect that member’s independence or impartiality. If, during the term of a Dispute Board, a DRB Member becomes aware of any fact or circumstance that might reasonably be considered by a Party as likely to affect that DRB Member’s independence or impartiality, the DRB Member must inform the other DRB Members and disclose the matter to the Parties.

Canon 2 – Confidentiality

DRB Members must ensure that information acquired during the term of the Dispute Board remains confidential and must not be disclosed, unless such information is already in the public domain. Any such confidential information may only be disclosed if approved by the Parties or if compelled by law. DRB Members must not use such confidential information for any purpose beyond the activities of the Dispute Board.

Canon 3 – Board Conduct and Communications

DRB Members must conduct all Board activities in an expeditious, diligent, orderly and impartial manner. DRB Members must act honestly, with integrity and without bias. There must be no unilateral communications between a DRB Member and a Party.

Canon 4 – Board Procedures

All Board meetings and/or hearings must be conducted in accordance with the applicable Contract provisions and operating procedures, in a manner that provides procedural fairness to the Parties. Dispute Board recommendations and decisions must be made expeditiously on the basis of the provisions of the Contract, and the information, facts and circumstances submitted by the Parties.

SECTION II: DRB QUALIFICATIONS

- A. DRB Members shall be knowledgeable in the type of construction and construction documents anticipated by the Contract and shall have completed training through, and be in good standing with, the Dispute Resolution Board Foundation. DRB Members shall have substantial experience in or directly related to public works heavy highway construction projects with or on behalf of federal, state, or local government agencies. Experience shall be a minimum of ten (10) years in any combination of the following:
 - Supervisor, manager, engineer or executive in public works heavy highway construction contracts with emphasis in resolution of disputes arising out of said contracts.
 - Attorney representing parties in litigating or arbitrating public works heavy highway construction contract claims.
 - Judge or arbitrator adjudicating or otherwise resolving public works heavy highway construction contract claims.
- B. No DRB Member shall have prior direct involvement in the Contract. No DRB Member shall have a financial interest in this Contract or the Parties, including but not limited to the Design-Builder, Design-Builder Related Entities, Affiliates, Subcontractors, Suppliers, and Subconsultants; and legal and business service providers to either Party, at any time within twenty four (24) months before Contract execution or during the term of this Agreement. Exceptions to above are compensation for services on this or other DRBs, as a Dispute Resolution Advisor (DRA), or retirement payments or pensions received from ICTC, GSA, CBP, or Caltrans, Design-Builder, or Design-Builder Related Entity that are not tied to, dependent on or affected by the net worth of ICTC, GSA, CBP, or Caltrans, Design-Builder, or Design-Builder Related Entity.
- C. DRB Members shall, at all times during the term of this Agreement, fully disclose, and continue to make future disclosures relating to, any and all direct or indirect professional or personal relationships with any and all key members and personnel of ICTC, GSA, CBP, or Caltrans, and/or the Design-Builder, including any designated representative as specified in Book 1, Section 23.5.1 of the Contract.

- D. DRB Members shall ensure that they have availability to perform the services under this Agreement at all times, including attending DRB progress meetings, holding timely informal and traditional dispute meetings when requested by the Parties, and issuing timely recommendations on Disputes.

SECTION III: SCOPE OF WORK

The scope of work of the DRB includes, but is not limited to, the following:

▪ **Operating Procedures**

a) The DRB shall establish operating procedures that will govern the conduct of its business and reporting procedures, consistent with, and in conformance with, the requirements of the Contract and the terms of this Agreement. The operating procedures shall be implemented upon approval of the Parties and the DRB no later than the initial DRB progress meeting.

b) The DRB Chairperson shall schedule progress and dispute meetings and any other DRB activities. The Chairperson shall submit the following documents to the Parties:

a) Caltrans Form CEM 6202 – DRB Establishment Report (Due once the Board is established)

b) Caltrans Form CEM 6204 – DRB Dispute Meeting Report (Due within thirty five (35) days of dispute meeting)

c) DRB members shall refrain, at all times, from expressing opinions on the merits of evidence and statements on matters under Dispute, except in the private sessions of the DRB members. Opinions of DRB members expressed in private sessions shall be kept strictly confidential. Individual DRB members shall not meet with, or discuss Disputes or other issues under the Contract Documents with ICTC, GSA, CBP, Caltrans, and/or the Design-Builder. Any discussions regarding the Project and/or Disputes, which involve the DRB members and ICTC, GSA, CBP, Caltrans, and/or the Design-Builder shall be in the presence of all three (3) DRB members and both ICTC and the Design-Builder. Individual DRB members shall not undertake independent investigations of any kind pertaining to Disputes, except with the knowledge and approval of both ICTC and the Design-Builder and as expressly directed by the DRB Chairperson. No DRB member shall have any ex parte communication with ICTC, GSA, CBP, Caltrans, the Design-Builder, or their managers or agents regarding any material issues in Dispute. Any such ex parte communications with ICTC, GSA, CBP, Caltrans, the Design-Builder, or their managers or agents shall result in the immediate removal of the DRB member.

▪ **Progress Meetings**

i. DRB Members shall visit the Project Site and meet with representatives of ICTC and Design-Builder to keep abreast of construction activities and to develop familiarity with the Work in progress. Scheduled progress meetings shall be held at or near the Project Site. The DRB shall meet at least once at the start of the Project, and at least once every three (3) months thereafter. The frequency, exact time, and duration of additional Site visits and progress meetings shall be as recommended by the DRB and approved by the Parties consistent with the activities or matters under consideration. Scheduled progress meetings may be waived, if the Parties and DRB are in agreement, when the only Work remaining is plant establishment work.

ii. Each meeting shall consist of a round table discussion and a field inspection of the Work being performed on the Contract. Each meeting and field inspection shall be attended by representatives of ICTC and Design-Builder. The agenda shall generally be as follows:

- i. Meeting opened by the DRB Chairperson.
- ii. Remarks by the ICTC's representative.
- iii. A description by the Design-Builder's representative of Work accomplished since the last meeting; the current schedule status of the Work; and a forecast for the coming period.
- iv. An outline by ICTC's representative of the status of the Work as ICTC views it.
- v. An outline by the Design-Builder's representative of potential problems and a description of proposed solutions.
- vi. A brief description by the Design-Builder's and ICTC's representative of potential Claims and Disputes that have surfaced since the last meeting.
- vii. A summary by ICTC's representative, the Design-Builder's representative and/or the DRB of the status of past potential Claims and/or Disputes.
- viii. The DRB Chairperson will prepare a summary of DRB progress meetings and circulate them for revision and approval by all concerned within ten (10) days of the meeting.

▪ Dispute Meeting: General

a) The term "Dispute Meeting" as used in this subsection (Subsection III (C) of this Agreement) shall refer to both the informal and traditional dispute meeting processes, unless otherwise noted.

b) Either Party may request a Dispute Meeting with the DRB. The requesting Party shall simultaneously notify the other Party of each Dispute Meeting request. Upon being notified of the need for a Dispute Meeting, the DRB shall review and consider the Dispute. The DRB shall determine the time of the Dispute Meeting with due consideration for the needs and preferences of the Parties, while recognizing the importance of a speedy resolution to the Dispute.

c) Dispute Meetings shall be conducted at any location that would be convenient and provide required facilities and access to necessary documentation.

d) Only the following persons will be permitted to attend and present at the Dispute meeting: ICTC's Construction Engineer, Resident Engineer, Structure Representative, or Senior Bridge Engineer; the Design-Builder's Project Manager, Construction Manager, Design Manager; or any other person who is an employee, or consultant, of ICTC or Design-Builder, and who also has direct knowledge of the Dispute and direct involvement in the Project.

e) The following persons will not be permitted to attend the Dispute Meeting: attorneys, claims consultants, or technical experts who do not meet the criteria of Paragraph 4, directly above.

f) The DRB may request that either Party provide technical services necessary for the DRB to adequately review the Disputes presented, including audit, geotechnical, schedule analysis and other services. ICTC 's and/or Design-Builder's technical staff may supply those services as appropriate.

g) At the Dispute Meeting the DRB may ask questions, seek clarification, and request further clarification of data presented by either ICTC or Design-Builder as may be necessary to assist in making a fully informed recommendation. However, the DRB shall refrain from expressing opinions on the merits of statements on matters under Dispute during ICTC 's or Design-Builder's presentations.

h) The Party who referred the Dispute to the DRB shall discuss the Dispute, followed by the other Party. Each Party shall then be allowed one (1) or more rebuttals at the meeting until all aspects of the Dispute are thoroughly covered. Each Party will be given ample time to fully present its position, make rebuttals, provide relevant documents, and respond to DRB questions and requests.

i) There shall be no testimony under oath or cross-examination during Dispute Meetings. There shall be no reporting or recording of the procedures by a shorthand reporter, by electronic means, or by any other means. Documents and verbal statements shall be received by the DRB in conformance with the operating procedures.

j) After Dispute Meetings are concluded, the DRB shall meet in private and reach a recommendation supported by two (2) or more DRB Members. The DRB shall not in its recommendations ignore or re-write the terms of the Contract or propose what the DRB believes is a compromise outcome of the Dispute.

k) The DRB shall make every effort to reach a unanimous recommendation; if the DRB is not unanimous in any part of the recommendation, the dissenting member may write a minority recommendation.

▪ **Traditional Dispute Meeting: Procedure**

The following procedure shall be used for the traditional dispute meeting:

a) In compliance with Book 1, Sections 19.2.2, 19.2.3 and 19.2.7 of the Contract: if the Parties are unable to reach a resolution of their Dispute as provided in Book 1, Section 19.2.2 of the Contract; and if, consistent with the other provisions of the Contract, the Dispute is governed by Section 19.2 of the Contract, then either Party may refer its Dispute to the DRB. Pursuant to Book 1, Sections 19.2.2.4, 19.2.2.5 and 19.2.3, if a Dispute is not resolved (under a Level Three Review) within ten (10) days of the initial meeting between ICTC 's Executive Director and the Design-Builder's equivalent manager, the Parties shall then have an additional ten (10) Day period within which to refer the matter to the DRB. The referring Party shall make the referral in writing to the DRB, simultaneously copied to the other Party. The written Dispute referral shall describe the disputed matter in individual discrete segments, so that it will be clear to ICTC, the Design Builder, and the DRB what discrete elements of the Dispute have been resolved, and which remain unresolved, and shall include an estimate of the cost of the affected Work and impacts, if any, on controlling items of work, Critical Path, and Completion Deadlines.

b) ICTC and Design-Builder shall each be afforded an opportunity to be present and to be heard by the DRB, and to offer evidence. ICTC and/or Design-builder must furnish copies of any written evidence or documentation to the DRB Chairperson a minimum of fifteen (15) days prior to the date the DRB is

scheduled to convene the dispute meeting. A copy of all evidence and documentation shall be simultaneously submitted to the other Party.

c) ICTC and/or Design-Builder shall produce such additional evidence as the DRB may deem necessary to reach an understanding and a determination of the Dispute. Any additional evidence shall be furnished to the other Party at the same time the evidence is provided to the DRB. The DRB shall not consider evidence (primary or additional) not furnished in conformance with the Contract and the terms specified herein.

d) Upon receipt by the DRB of a written referral of a Dispute, which has complied with the provisions of the Contract governing proper referral to the DRB, the DRB shall convene to review and consider the Dispute. The dispute meeting shall be held no earlier than thirty (30) days and no later than sixty (60) days after receipt of the written referral unless otherwise agreed to by the Parties.

e) The DRB may request clarifying information of ICTC and/or Design-Builder within ten (10) days after the dispute meeting. Requested information, shall be specific to this Contract and shall be submitted to the DRB within ten (10) days of the DRB request, and simultaneously submitted to the other Party.

f) The DRB shall furnish a written report to ICTC and Design-Builder with its finding(s), conclusion(s) and recommendation(s). The DRB shall complete its report, including any minority report/recommendation, and submit it to ICTC and Design-Builder within thirty (30) days after the dispute meeting, except that time extensions may be granted at the request of the DRB with the written concurrence of the Parties. The report shall summarize the facts considered, the specific Contract Documents/provisions relied upon by the DRB as pertinent to the Dispute, and the DRB's interpretation and reasoning in arriving at its conclusion(s) and recommendation(s) and, if requested, recommend guidelines for determining adjustments, if any. The DRB's report shall stand on its own, without attachments or appendices. The DRB Chairperson shall furnish a copy of the written report to ICTC and the Design-Builder.

g) Within thirty (30) days after receiving the DRB's report, ICTC and Design-Builder shall endeavor to respond to the DRB in writing (with a copy sent simultaneously to the other Party) signifying that the Dispute is either resolved or remains unresolved. The response shall be specific as to the reason(s) why the Dispute remains unresolved, if any. Failure to provide the written response within the time specified, shall conclusively indicate that the Party failing to respond rejects the DRB recommendation. While both Parties should consider the DRB's recommendation, it is not binding on either Party.

h) Either Party may request clarification of elements of the DRB's report from the DRB prior to responding to the DRB's report. The DRB shall consider any clarification request only if submitted within ten (10) days after receipt of the DRB's report, and if submitted simultaneously in writing to both the DRB and the other Party. Each Party may submit only one (1) request for clarification for any individual DRB report. The DRB shall respond, in writing, to requests for clarification within ten (10) days of receipt of such requests.

i) Either Party may seek a reconsideration of the DRB's recommendation. The DRB shall only grant reconsideration based upon submission of new evidence and if the request is submitted within the thirty (30) Day time limit specified for response to the DRB's written report. Each Party may submit only one (1) request for reconsideration regarding an individual DRB recommendation. The DRB shall respond, in writing, to requests for reconsideration within ten (10) days of receipt of such requests.

j) If ICTC and Design-Builder are able to resolve their Dispute with the aid of the DRB's report, ICTC and the Design-Builder shall promptly accept and implement the resolution. If the Parties cannot agree on the time or payment adjustment, if any, within sixty (60) days of the acceptance of the recommendation, either Party may request that the DRB recommend an adjustment, if applicable.

▪ **Informal Dispute Meeting**

An informal dispute meeting shall be convened only if the Parties agree that this dispute resolution process is appropriate to resolve the Dispute. The following procedure shall be used for the informal dispute meeting:

a) ICTC and Design-Builder shall furnish the DRB with a one (1) page position paper and any pertinent documents requested by the DRB that are or may become necessary for the DRB to perform its function. The Party furnishing documents shall furnish such documents to the other Party at the same time the documents are provided to the DRB.

b) After the dispute meeting has concluded, the DRB Members shall deliberate in private the same day until a response, including a recommendation with findings, to ICTC and Design-Builder is reached or as otherwise agreed to by the Parties and the DRB.

c) The DRB shall then verbally deliver its recommendation with findings, including any minority recommendation with findings, to the Parties.

d) After the verbal recommendation(s) with findings are presented, ICTC and/or Design-Builder may ask for clarifications.

e) Within five (5) business days of the informal dispute meeting, the DRB must write a one (1) page report that includes the recommendation(s) on the Dispute. The report must be sent to the Parties.

f) Occasionally the DRB may be unable to formulate a recommendation based on the information given at an informal dispute meeting. However, the DRB may provide the Parties with feedback on strengths and weaknesses of their respective positions, to assist the Parties in reaching resolution.

g) If ICTC and Design-Builder are able to resolve their Dispute with the aid of the DRB's recommendation, ICTC and the Design-Builder shall promptly accept and implement the resolution as agreed.

h) ICTC and Design-Builder will endeavor to notify the DRB Members within five (5) business days if the Dispute remains unresolved. While both Parties should consider the DRB's recommendation, it is not binding on either Party.

i) The DRB will not be bound by its verbal or written recommendation in the event that an informal Dispute is later heard by the DRB in a traditional dispute meeting.

j) Unless the Dispute is resolved, use of the informal dispute meeting does not relieve the Parties of their responsibilities under Book 1, Section 19.2, "Dispute Resolution Procedures," of the Contract or subsection III(D), "Traditional Dispute Meeting," of this Agreement. There will be no extension of time

allowed for the process to permit the use of the informal dispute meeting, unless otherwise agreed to by the Parties.

SECTION IV: TIME FOR BEGINNING AND COMPLETION

DRB Members shall not begin work under the terms of this Agreement until authorized in writing by ICTC. Once established, the DRB shall be in operation until ICTC notifies the DRB Members that the DRB has completed its service(s) and is dissolved. If the Contract is terminated in accordance with Book 1, Section 15 "Termination for Convenience" of the Contract, the DRB will be dissolved.

SECTION V: PAYMENT

Each DRB Member shall be compensated at an agreed rate of two thousand dollars (\$2,000) per day for each in-person, approved DRB meeting (and shall not include meetings attended via telephone or other remote communication method). A member serving on more than one (1) ICTC DRB or DRA (regardless of the number of meetings per day) shall not be paid more than the agreed rate per day. The agreed rate shall be considered full compensation for on-site time, travel expenses, transportation, lodging, time for travel, and incidentals for each day or portion thereof that the DRB Member attends (in person) an authorized DRB meeting.

No additional compensation will be made for time spent by DRB Members in regard to review and research activities outside the official DRB meetings unless that time (such as time spent evaluating evidence and preparing recommendations and a DRB report on Disputes presented to the DRB) has been specifically agreed upon in writing by the Parties in advance, in which case, time away from the Project, which has been specifically agreed upon by the Parties in advance, will be compensated at an agreed rate of two hundred dollars (\$200) per hour. The agreed amount of two hundred dollars (\$200) per hour shall include all incidentals, including expenses for telephone, fax, and computer services. From time to time the Parties may reconsider and mutually revise the agreed rate, in which case they shall document the revised agreed rate in writing. ICTC will provide administrative services such as conference facilities to the DRB.

If the DRB needs outside technical services, these technical services shall be preapproved by both Parties. The cost of the preapproved technical services shall be borne equally by the Parties.

a. **Payment Processing**

a) The Parties shall make direct payments to each DRB Member for their participation in authorized meetings and approved hourly rate charges, from invoices submitted by each DRB Member, and technical services.

b) DRB Members may submit invoices to ICTC and Design-Builder for payment for work performed and services rendered for their participation in authorized meetings not more often than once per month. The invoices shall be in a format approved by the Parties and accompanied by a general description of activities performed during that billing period. Payment for hourly fees, at the agreed rate, shall not be paid to a DRB Member until the amount and extent of those fees are mutually approved by ICTC and Design-Builder.

a. Inspection of Costs Records

DRB Members and the Design-Builder shall keep available for inspection by representatives of ICTC and the United States federal government, for a period of three (3) years after final payment, the cost records and accounts pertaining to this Agreement. If any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated before the expiration of the three (3)-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

SECTION VI: ASSIGNMENT OF TASKS OF WORK

DRB Members shall not assign the work of this Agreement.

SECTION VII: REPLACEMENT OF A DRB MEMBER

A. Service of a DRB Member may end at any time with not less than fifteen (15) days' notice as follows:

- a) Upon resignation of a member.
- b) ICTC may replace its selected member.
- c) The Design-Builder may replace its selected member.
- d) The Parties' selected members may replace the third (3rd) member with mutual written approval of ICTC and Design-Builder.
- e) ICTC and/or Design-Builder may replace any member who fails to comply with specified employment contemplated in this Agreement, the financial disclosure conditions of DRB Membership, or the four Canons of the March 2018, Dispute Resolution Board Foundation's Code of Ethical Conduct.

B. When a member of the DRB is replaced, the replacement member shall be selected in the same manner as the replaced member was selected. The selection of a replacement DRB Member will begin promptly upon determination of the need for replacement and shall be completed within fifteen (15) days. Changes in either of the DRB Members chosen by the two (2) Parties will not require re-selection of the third (3rd) member, unless both Parties agree to such re-selection in writing. This Agreement shall be amended to reflect the change of a DRB Member.

C. Each Party shall document the need for replacement and substantiate the replacement request in writing to the other Party and DRB Members.

SECTION VIII: LEGAL RELATIONS

a) The Parties hereto mutually understand and agree that each DRB Member in the performance of duties is acting in the capacity of an independent agent and not as an employee of either Party.

- b) Neither Party shall bear a greater responsibility for damages or personal injury than is normally provided by Federal or State of California Law.
- c) The Parties shall not call any of the DRB Members, who served on the Contract and/or the Project, as a witness in any legal proceedings that may arise from the Contract.
- d) DRB Members waive any and all claims against ICTC and/or the Design-Builder from any alleged harm arising out of or resulting from the DRB's services in connection with this Agreement.
- e) Notwithstanding the provisions of the Contract that require the Design-Builder to indemnify and hold harmless ICTC, the Parties shall jointly indemnify and hold harmless the DRB Members from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of and resulting from the finding(s), conclusion(s), and/or recommendation(s) of the DRB.

SECTION IX: CONFIDENTIALITY

The Parties and the DRB, mutually understand and agree that all documents and records provided by the Parties in reference to issues brought before the DRB, which documents and records are marked "Confidential - for use by the DRB only," shall be kept in confidence and used only for the purpose of resolution of subject Disputes, and for assisting in development of DRB finding(s) and recommendation(s); that such documents and records will not be utilized or revealed to others, except to officials of the Parties who are authorized to act on the subject Disputes, for any purposes, during the life of this Agreement. The foregoing shall not apply, however, to documents or records that before submission to the DRB were already subject to the Public Records Act. Upon termination of this Agreement, said confidential documents and records, and all copies thereof, shall be returned to the Party who furnished them to the DRB. However, the Parties understand that such documents may be subsequently discoverable and admissible in legal proceedings to the extent provided by law.

SECTION X: DISPUTES

Disputes between the DRB and either Party, which cannot be resolved by negotiation and mutual concurrence, shall be resolved in the appropriate legal forum. In the event that ICTC, Design-Builder, or any of the DRB Member(s) deem it necessary to institute legal proceedings to enforce any right or obligation under this Agreement, the Parties and the DRB Members, agree that if such action involves ICTC it may be initiated in any court of competent jurisdiction agreed to between the Design-Builder and DRB Member(s). The Parties and the DRB Members agree that all questions shall be resolved by application of California law and that the parties to any such legal proceeding shall have the right of appeal from such decisions in conformance with the laws of the State of California.

SECTION XI: FEDERAL REVIEW AND REQUIREMENTS

- a) On Federal-Aid contracts, the Federal Highway Administration shall have the right to review the work of the DRB in progress, except for private meetings or deliberations of the DRB that do not become part of the Project records.
- b) Other Federal requirements in this Agreement shall only apply to Federal-Aid contracts.

SECTION XII: CERTIFICATION OF DESIGN-BUILDER, DRB, and ICTC

IN WITNESS WHEREOF, the signatories hereto have executed this Agreement as of the day and year first above written.

SIGNATURES TO FOLLOW

DRB MEMBER

DRB MEMBER

By: _____
[insert name]

By: _____
[insert name]

Title: _____

Title: _____

DRB CHAIRPERSON

By: _____
[insert name]

Title: _____

DESIGN-BUILDER
HAZARD CONSTRUCTION COMPANY

IMPERIAL COUNTY
TRANSPORTATION COMMISSION

By: _____
[insert name]

By: _____
[insert name]

Title: _____

Title: _____

EXHIBIT K – FORM OF PERFORMANCE BOND

Imperial County Transportation Commission
Book 1

Calexico East Port of Entry
ICTC Contract No.: 20-101
Project ID: 1118000265
Federal Aid Project BUILD L-6471 (017)

IMPERIAL COUNTY TRANSPORTATION COMMISSION

PERFORMANCE BOND FOR DESIGN-BUILD CONTRACTS Contract No. ICTC 20-101

(To Accompany a Design-Build Contract)

[Public Contract Code § 6825]

(REV. 4/2019)

Bond No. 7901040782

Premium: \$159,720.00

KNOW ALL PERSONS BY THESE PRESENTS,

THAT WHEREAS, The Imperial County Transportation Commission (ICTC) has awarded to Hazard Construction Company (Principal), a design-build contract (Contract) for the design and construction work described as follows:

Calexico East Port of Entry Bridge Widening Design-Build Project.

AND WHEREAS, The Principal is required by Section 6825 of the Public Contract Code to furnish a bond in connection with said Contract guaranteeing the faithful performance of its obligations under the Contract thereof:

NOW THEREFORE, We the undersigned Principal and Nationwide Mutual Insurance Company (Surety) are held and firmly bound unto ICTC, in the sum of nineteen million nine hundred sixty five thousand Dollars (\$19,965,000.00) to be paid to ICTC or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing Contract, including any and all amendments, supplements, and alterations thereto made as therein provided, on his/her or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless ICTC, their officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.
2. This Bond shall cover the cost to complete the said design and construction work, but shall not cover any damages of the type specified to be covered by the Principal's errors and omissions insurance for the design elements of the work required pursuant to the Contract and Section 6825 of the Public Contract Code or by any professional liability insurance, whether or not such insurance is provided in an amount sufficient to cover such damages.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or Plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications. The Surety agrees that payments made to contractors and suppliers to

Form of Performance Bond

Exhibit K-1

Imperial County Transportation Commission
Book 1

Calexico East Port of Entry
ICTC Contract No.: 20-101
Project ID: 1118000265
Federal Aid Project BUILD L-6471 (017)

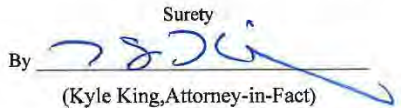
satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

WITNESS WHEREOF, We have hereunto set our hands and seals on this 22nd day of March, 2021.

Correspondence or claims relating to this
Bond should be sent to the Surety at the
following address:
Nationwide Mutual Insurance Company
8877 North Gainey Center Drive Scottsdale, AZ 85258

Hazard Construction Company
By 
(Jason A. Mordhorst, President)

Nationwide Mutual Insurance Company

Surety
By 
(Kyle King, Attorney-in-Fact)

NOTE: Signatures of those executing for the Surety must be properly acknowledged/notarized, and a Power of Attorney attached.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats.
For alternate format information, contact or write to:

Imperial County Transportation Commission
1503 North Imperial Avenue; Suite 104
El Centro, California 92243
Attention: Mr. Mark Baza, Executive Director
Telephone: (760) 592-4494.

Form of Performance Bond

Exhibit K-2

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

BILL BODENSTADT; HANNAH MCGARVEY; KIM ACEVEDO; KYLE KING; TRAVIS PEARSON; CHANEL ASFAW

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

UNLIMITED

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

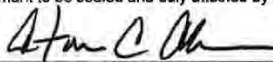
"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 27th day of February, 2019.

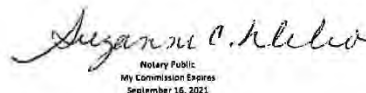
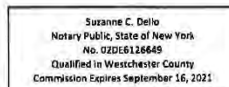


Antonio C. Albanese, Vice President of Nationwide Mutual Insurance Company

ACKNOWLEDGMENT

STATE OF NEW YORK, COUNTY OF NEW YORK: ss

On this 27th day of February, 2019, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.

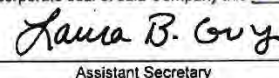


Notary Public
My Commission Expires
September 16, 2021

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 22nd day of March, 2021.



Assistant Secretary

BDJ 1(02-19)00

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of San Diego

On March 22, 2021 before me, Apryle Briede, Notary Public

Date

NAME, TITLE OF OFFICER - E.G. AJANE DOE, NOTARY PUBLIC

personally appeared

Kyle King

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 (SEAL)
NOTARY PUBLIC SIGNATURE



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of San Diego

On March 23, 2021 before me, Apryle Briede, Notary Public

Date

NAME, TITLE OF OFFICER - E.G. AJANE DOE, NOTARY PUBLIC

personally appeared

Jason A. Mordhorst

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Apryle Briede (SEAL)
NOTARY PUBLIC SIGNATURE



EXHIBIT L – FORM OF PAYMENT BOND

Imperial County Transportation Commission
Book 1

Calexico East Port of Entry
ICTC Contract No.: 20-101
Project ID: 1118000265
Federal Aid Project BUILD L-6471 (017)

IMPERIAL COUNTY TRANSPORTATION COMMISSION

PAYMENT BOND FOR DESIGN-BUILD CONTRACTS

Contract No. ICTC 20-101

(To Accompany a Design-Build Contract)

[Public Contract Code § 6825]

Bond No. 7901040782

Premium Included

(REV. 4/2019)

KNOW ALL PERSONS BY THESE PRESENTS,

THAT WHEREAS, The Imperial County Transportation Commission (ICTC) has awarded to Hazard Construction Company (Principal), a design-build contract (Contract) for the design and construction described as follows:

Calexico East Port of Entry Bridge Widening Design-Build Project.

AND WHEREAS, The Principal is required by Section 6825 of the Public Contract Code to furnish a payment bond (Bond) in connection with said Contract to secure the payment of claims of laborers, mechanics, material, men, and other persons as provided by law.

NOW THEREFORE, We the undersigned Principal and Nationwide Mutual Insurance Company (Surety) are held and firmly bound unto ICTC, in the sum of nineteen million nine hundred sixty five thousand Dollars (\$19,965,000.00) to be paid to ICTC or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if said Principal, or its heirs, executors, administrators successors or assigns or subcontractors, shall fail to pay any of the persons named in California Civil Code Section 9100, or anyone required to be paid by law, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and his subcontractors pursuant to Revenue and Taxation Code Section 18662 et seq. with respect to such work and labor, that the Surety herein will pay for the same in an amount not exceeding the sum specified in this Bond, otherwise the above obligation shall be null and void. In case suit is brought upon this Bond, the Surety will pay reasonable attorney's fee to be fixed by the court.
2. This Bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 or anyone required to be paid by law under said Contract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or Plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.
4. When this Bond had been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such

Form of Payment Bond

Exhibit L-1

Imperial County Transportation Commission
Book 1

Calexico East Port of Entry
ICTC Contract No.: 20-101
Project ID: 1118000265
Federal Aid Project BUILD L-6471 (017)

statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not a common law bond.

5. This Bond shall cover all payment obligations for the said design-build work, including warranty payment obligations unless a separate warranty bond is provided by the Principal, but shall not cover any payment obligations covered by the Principal's errors and omissions insurance for the design elements of the work required pursuant to the contract or by Section 6825 of the Public Contract Code or by any professional liability insurance whether or not such insurance is provided in an amount sufficient to cover such damages.

WITNESS WHEREOF, We have hereunto set our hands and seals on this 22nd day of March, 2021.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:
Nationwide Mutual Insurance Company
8877 North Gainey Center Drive Scottsdale, AZ 85258

Hazard Construction Company
By _____
(Jason A. Mordhorst, President)

Nationwide Mutual Insurance Company
Surety
By _____
(Kyle King, Attorney-in-Fact)

NOTE: Signatures of those executing for the surety must be properly acknowledged/notarized, and a Power of Attorney attached.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact or write to:

Imperial County Transportation Commission
1503 North Imperial Avenue; Suite 104
El Centro, California 92243
Attention: Mr. Mark Baza, Executive Director
Telephone: (760) 592-4494

Form of Payment Bond

Exhibit L-2

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

BILL BODENSTADT; HANNAH MCGARVEY; KIM ACEVEDO; KYLE KING; TRAVIS PEARSON; CHANEL ASFAW

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

UNLIMITED

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

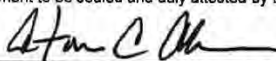
"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 27th day of February, 2019.



Antonio C. Albanese, Vice President of Nationwide Mutual Insurance Company

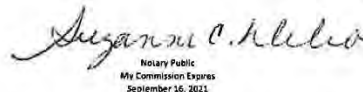
ACKNOWLEDGMENT

STATE OF NEW YORK, COUNTY OF NEW YORK: ss

On this 27th day of February, 2019, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.



Suzanne C. Delio
Notary Public, State of New York
No. 0206126649
Qualified in Westchester County
Commission Expires September 16, 2021



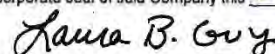
Notary Public
My Commission Expires
September 16, 2021

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 22nd day of

March 2021



Assistant Secretary

BDJ 1(02-19)00

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of San Diego

On March 22, 2021 before me, Apryle Briede, Notary Public

Date

NAME, TITLE OF OFFICER - E.G. AJANE DOE, NOTARY PUBLIC

personally appeared

Kyle King

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Apryle Briede (SEAL)
NOTARY PUBLIC SIGNATURE



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of San Diego

On March 23, 2021 before me, Apryle Briede, Notary Public

Date

NAME, TITLE OF OFFICER - E.G. AJANE DOE, NOTARY PUBLIC

personally appeared

Jason A. Mordhorst

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Apryle Briede (SEAL)
NOTARY PUBLIC SIGNATURE



EXHIBIT M – FORM OF WARRANTY BOND

IMPERIAL COUNTY TRANSPORTATION COMMISSION

WARRANTY BOND FOR DESIGN-BUILD CONTRACT

Contract No. ICTC 20-101

(After Final Acceptance has occurred, Design-Builder may obtain a release of the Performance Bond by providing to ICTC and maintaining full force and effect a warranty bond which shall guarantee performance of all obligations of Design-Builder that survive Final Acceptance under the Contract Documents.)

[Public Contract Code § 6825]

Bond No. _____

(REV. 4/2019)

KNOW ALL PERSONS BY THESE PRESENTS,

THAT WHEREAS, The Imperial County Transportation Commission (ICTC) has awarded to Hazard Construction Company (Principal), a design-build contract (Contract) for the design and construction work described as follows:

Calexico East Port of Entry Bridge Replacement Design-Build Project.

NOW THEREFORE, We the undersigned Principal and _____
(Surety) are held and firmly bound unto ICTC, in the sum of seven hundred ninety eight thousand six hundred Dollars (\$798,600), an amount equal to four percent of the Contract Price during the first two years following Substantial Completion and shall be in the sum of three hundred ninety nine thousand three hundred Dollars (\$399,300), an amount equal to two percent of the Contract Price during the third year following Substantial Completion to be paid to ICTC or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall faithfully carry out and perform the said guarantee, and shall, on due notice, repair and make good at its own expense, or shall pay over, make good and reimburse to ICTC all loss and damage which said ICTC may sustain by reason of failure or default of the above bound Principal so to do, and shall indemnify and save harmless ICTC, GSA, the State, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.

WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 2021.

Correspondence or claims relating to this
Bond should be sent to the Surety at the
following address:

(Principal's name, title, and signature)

Surety

By _____

Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged/notarized, and a Power of Attorney attached.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats.
For alternate format information, contact or write to:

Imperial County Transportation Commission
1503 North Imperial Avenue; Suite 104
El Centro, California 92243
Attention: Mr. Mark Baza, Executive Director
Telephone: (760) 592-4494

EXHIBIT N – DESIGN-BUILDER’S PROPOSAL COMMITMENTS

N-1	Form 1B	Design-Build Price Proposal Letter
N-2	Form 3	Non-Collusion Affidavit
N-3	Form 4	Conflict of Interest Disclosure Statement
N-4	Form 5	Equal Employment Opportunity Certification
N-5	Form 6	Debarment and Suspension Certification
N-6	Form 7	Certification Regarding Use of Contract Funds for Lobbying
N-7	Form 8	Buy America Certification
N-8	Forms 9 and 14	Proposal Price
N-9	Form 17	DBE Certification/Performance Plan
N-10		Technical Proposal

Exhibit N-1 Form 1B Design-Build Price Proposal Letter

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 1B
DESIGN-BUILD PRICE PROPOSAL LETTER

For the Calexico East Port of Entry Bridge Widening Design-Build Project with Price Proposals received until ~~November 20, 2020~~ January 8, 2021.

PROPOSAL OF:
Hazard Construction Company

Name of Firm
10529 Vine Street

Street Address
Lakeside, CA 92040 858-587-3600

City, State, ZIP Telephone Number

TO FURNISH AND DELIVER ALL MATERIALS AND TO PERFORM ALL WORK IN ACCORDANCE WITH THE CONTRACT AND THE REQUEST FOR PROPOSALS (RFP) DATED SEPTEMBER 21, 2020, AS AMENDED, FOR: THE CALEXICO EAST PORT OF ENTRY BRIDGE WIDENING.

Contract No.: ICTC 20-101

Project ID: 1118000265

Type of Work: Bridge widening, associated approach roadway, and miscellaneous Site improvement work.

Anticipated Start Date: ~~February 3~~ March 25, 2021

Substantial Completion Deadline: Shall be achieved no later than ~~360~~ 460 Working Days following NTP1.

NOTICE TO PROPOSERS: In submitting a Proposal, Proposers shall return this complete Proposal form and acknowledge Addenda on the signature page below.

BID RIGGING IS A SERIOUS CRIME

IF YOU HAVE ANY INFORMATION CONCERNING COLLUSIVE BIDDING, EVEN A REQUEST TO SUBMIT A COMPLIMENTARY BID, CALL THE U.S. DEPARTMENT OF TRANSPORTATION AT 800-424-9071

The undersigned hereby represents that it will keep this Proposal open for acceptance for sixty (60) Days after the Price Proposal Opening Date without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/consortium on whose behalf the Proposal is submitted without first obtaining the prior written consent of ICTC, in ICTC's sole discretion.

ITP Required Forms

Form 1B-1

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

If selected by ICTC, Proposer agrees to (a) execute the Contract with ICTC in good faith to develop the Project in accordance with the Contract Documents, including this Proposal, and (b) to satisfy all other conditions to award of the Contract.

This Proposal includes the following:

- Price Proposal
- Administrative Submittals

Proposer certifies the following: the Proposal is submitted without reservation, qualification, assumptions, or conditions; that it has carefully examined and is fully familiar with all of the provisions of all of the Request for Proposal (RFP) documents, and is satisfied that such provisions provide sufficient detail regarding the Work (as defined in the RFP) to be performed and do not contain internal inconsistencies; that it has carefully checked all the words, figures, and statements in this Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal, including a thorough review of all of the RFP documents; and that it has notified ICTC of any deficiencies in or omissions from any RFP documents or other documents provided by ICTC and of any unusual Site conditions observed prior to the date hereof.

Proposer agrees that ICTC will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.

Proposer understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer and shall not be charged retroactively to the Project.

This Proposal shall be governed by and construed in all respects according to the laws of the State of California.

The undersigned affirms that the information provided herein is true and accurate and that any misrepresentations are made under penalty of perjury.

PROPOSAL SECURITY: A bond, payable to the Imperial County Transportation Commission, in an amount equal to ten (10) percent of the Proposal Price is submitted herewith as a Proposal Security.

RECEIPT OF ADDENDA AND CLARIFICATIONS: The undersigned hereby acknowledges receipt of and has considered:

Addendum Number 1	Dated	10/09/20	Myers & Sons Quest #1 & #3 - Public	Not Dated	N/A
Addendum Number 2	Dated	10/23/20	Myers & Sons RFC #1	Dated	N/A
Addendum Number 3	Dated	10/27/20	Hazard – RFI #1	Dated	10/06/20
Addendum Number 4	Dated	10/28/20	Hazard – RFI #2	Dated	10/30/20
Addendum Number 5	Dated	11/16/20	Hazard – RFI #3	Dated	11/06/20
Addendum Number 6	Dated	12/14/20	Hazard – RFI #4	Dated	12/18/20
OHL Quest #6 General	Not Dated	N/A	Hazard – RFI #5	Dated	12/18/20

EXECUTION OF PROPOSAL

This Proposal is dated the 22 day of January 2021.

Imperial County Transportation Commission
Instructions to Proposers

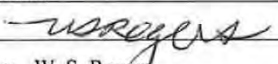
Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

Hazard Construction Company

By: 

Print Name: Jason A. Mordhorst

Title: President

By: 

Print Name: W. S. Rogers

Title: Executive Vice President

Exhibit N-2 Form 3 Non-Collusion Affidavit

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 3
NON-COLLUSION AFFIDAVIT*

STATE OF CALIFORNIA)

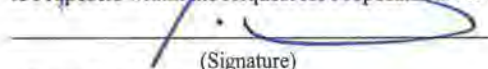

) SS

COUNTY OF SAN DIEGO)

Each of the undersigned, being first duly sworn, deposes and says that:

- Jason A. Mordhorst is the President of Hazard Construction Company and W.S. Rogers is the Executive Vice President of Hazard Construction Company the entity making the foregoing Proposal.
- The Proposal is not made in the interest of, or on behalf of, any undisclosed Person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or a sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against ICTC or anyone interested in the proposed Contract; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.
- The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Contract or rejection of all Proposals and cancellation of the Request for Proposals.

*Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Instructions to Proposers within the Request for Proposals for the Calexico East Port of Entry Bridge Widening Project.

 (Signature)	 (Signature)
Jason A. Mordhorst (Name Printed)	W.S. Rogers (Name Printed)
President (Title)	Executive Vice President (Title)

Subscribed and sworn to before me on this 20th day of January 2021.

See Attached Notaries
Notary Public in and for said County and State

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 20th
day of January, 2021, by Jason A. Mordhorst

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Apryle Briede

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

Subscribed and sworn to (or affirmed) before me on this 20th
day of January, 2021, by W.S. Rogers

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

Apryle Briede

Exhibit N-3 Form 4 Conflict of Interest Disclosure Statement

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 4
CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer's Name: Hazard Construction Company ("Proposer")

Proposer's attention is directed to Instructions to Proposers (ITP) Section 1.16.3 regarding Organizational Conflicts of Interest and the restrictions applicable to such conflicts. Proposers are advised that certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with ICTC in connection with the Project procurement. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Instructions to Proposers within the Request for Proposals for the Calexico East Port of Entry Bridge Widening Project.

1. Required Disclosure of Conflicts

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Principal/Major Participants, proposed Subconsultants and proposed Subcontractors, and their respective chief executives, directors, and other key personnel for the Project) which may result, or could be viewed as, an Organizational Conflict of Interest in connection with this RFP.

Proposer shall disclose: (a) any current contractual relationships with ICTC, (b) any past, present, or planned contractual or employment relationships with any officer or employee of ICTC, and (c) any other circumstances that might be considered to create a financial interest in the contract by any ICTC member, officer or employee if Proposer is awarded the Contract. Proposer shall also disclose matters such as ownership of ten (10) percent or more of the stock of, or having directors in common with, any of the individuals or entities involved in preparing the RFP. Proposer shall also disclose contractual relationships including joint ventures with any of the individuals or entities involved in preparing the RFP, including relationships wherein such individual or entity is a contractor or consultant (or Subcontractor or Subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

N/A – No Conflict of Interest

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps the Proposer or other entities have taken or will take to avoid, neutralize, or mitigate any Organizational Conflicts of Interest described herein.

N/A

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Jason A. Mordhorst

Name

President

Title

Hazard Construction Company

Company Name

January 22, , 2021

Date

Exhibit N-4 Form 5 Equal Employment Opportunity Certification

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 5
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Key Personnel, Principal/Major Participants, proposed Subconsultants and proposed Subcontractors]

The undersigned certifies on behalf of Hazard Construction Company, that:
(Name of entity making certification)

[Check one of the following boxes]

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[Check one of the following boxes]

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: Jason A. Mordhorst, President

Date: 01/22/22

If not Proposer, relationship to Proposer: N/A

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1) and shall be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Principal/Major Participants, proposed Subconsultants or proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 5
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Key Personnel, Principal/Major Participants, proposed Subconsultants and proposed Subcontractors]

The undersigned certifies on behalf of Mark Thomas & Company, Inc., that:
(Name of entity making certification)

[Check one of the following boxes]

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[Check one of the following boxes]

- ☒ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Title: President

Date: 01/19/2021

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)) and shall be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Principal/Major Participants, proposed Subconsultants or proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

ITP Required Forms

Form 5-1

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 5
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Key Personnel, Principal/Major Participants, proposed Subconsultants and proposed Subcontractors]


The undersigned certifies on behalf of Earth Mechanics, Inc., that:
(Name of entity making certification)

[Check one of the following boxes]

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[Check one of the following boxes]

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 
Title: Vice President of Surface Transportation

Date: January 18, 2021

If not Proposer, relationship to Proposer: Subconsultant

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)) and shall be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Principal/Major Participants, proposed Subconsultants or proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 5
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Key Personnel, Principal/Major Participants, proposed Subconsultants and proposed Subcontractors]

The undersigned certifies on behalf of Barrett's Biological Surveys, that:
(Name of entity making certification)

[Check one of the following boxes]

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[Check one of the following boxes]

- ☒ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: Marc A. Barrett

Title: Owner

Date: 19 Jan 2021

If not Proposer, relationship to Proposer: subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1) and shall be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Principal/Major Participants, proposed Subconsultants or proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

ITP Required Forms

Form 5-1

Exhibit N-5 Form 6 Debarment and Suspension Certification

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 6
DEBARMENT AND SUSPENSION CERTIFICATION

The undersigned Proposer certifies on behalf of itself and all Principal/Major Participants, Subconsultants and Subcontractors the following:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- Have not within a three (3)-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in this certification.
- Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, State or local) terminated for cause or default.

Where the Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its Proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

Date: 01/22/21

Proposer: Hazard Construction Company

Signature:

Title: Jason A. Mordhorst, President

**Exhibit N-6 Form 7 Certification Regarding Use of Contract Funds
for Lobbying**

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 7
CERTIFICATION REGARDING USE OF CONTRACT FUNDS
FOR LOBBYING

The undersigned certifies the following:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- If any funds other than Federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- Proposer shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
- The truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 USC §1352(c)(1)-(2)(A), any Person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: 01/22/21

Proposer: Hazard Construction Company

Signature: _____

Title: Jason A. Mordhorst, President

[Copy this form and modify as needed for execution by Proposer, Principal/Major Participants, and all proposed Subconsultants and Subcontractors.]

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

N/A – Hazard Construction Company

SHORT FORM-LLL
DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____ <input type="checkbox"/> d. contingent fee		
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any Person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:

Print Name: Jason A. Mordhorst

Title: President

Telephone No.: 858-587-3600 Date: 01/22/21

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

Standard Form LLL Rev. 09-12-97

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee; the first subawardee of the prime is the first tier. Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in Item 1 such as the Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency. Include prefixes such as "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in Item 4 or 5.

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial.
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04-90

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 7
CERTIFICATION REGARDING USE OF CONTRACT FUNDS
FOR LOBBYING

The undersigned certifies the following:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- If any funds other than Federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- Proposer shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
- The truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 USC §1352(c)(1)-(2)(A), any Person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: 01/19/2021

Proposer: Robert Himes

Signature: 

Title: President


[Copy this form and modify as needed for execution by Proposer, Principal/Major Participants, and all proposed Subconsultants and Subcontractors.]

Local Assistance Procedures Manual

EXHIBIT 10-Q
Disclosure of Lobbying Activities

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award <div style="text-align: center; color: red; font-weight: bold; font-size: 1.2em;">N/A</div>	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____		
5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____		
6. Federal Department/Agency: _____		
7. Federal Program Name/Description: CFDA Number, if applicable _____		
8. Federal Action Number, if known: _____		
9. Award Amount, if known: _____		
10. Name and Address of Lobby Entity (If individual, last name, first name, MI) (attach Continuation Sheet(s) if necessary)		
11. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI) (attach Continuation Sheet(s) if necessary)		
12. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____		
15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: 		Print Name: Robert Himes
Title: President		Telephone No.: (949) 477-9000 Date: 01/19/2021
Authorized for Local Reproduction Standard Form - LLL		

Federal Use Only: Standard Form LLL Rev. 04-28-06

Distribution: Orig: Local Agency Project Files

Local Assistance Procedures Manual

EXHIBIT 10-Q
Disclosure of Lobbying Activities

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 7
CERTIFICATION REGARDING USE OF CONTRACT FUNDS
FOR LOBBYING

The undersigned certifies the following:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- If any funds other than Federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- Proposer shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
- The truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 USC §1352(c)(1)-(2)(A), any Person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: January 18, 2021

Proposer: Earth Mechanics, Inc.

Signature: 

Title: Vice President of Surface Transportation

[Copy this form and modify as needed for execution by Proposer, Principal/Major Participants, and all proposed Subconsultants and Subcontractors.]

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

NOT APPLICABLE - Earth Mechanics, Inc.
SHORT FORM-LLL
DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		

ITP Required Forms

Form 7-2

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any Person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: 

Print Name: Alahesh Thuraijah, PE, GE

Title: Vice President of Surface Transportatoon

Telephone No.: 714-751-3826 Date: 01/18/21

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

Standard Form LLL Rev. 09-12-97

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee; the first subawardee of the prime is the first tier. Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in Item 1 such as the Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency. Include prefixes such as "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in Item 4 or 5.

ITP Required Forms

Form 7-4

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial.
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04-90

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 7
**CERTIFICATION REGARDING USE OF CONTRACT FUNDS
FOR LOBBYING**

The undersigned certifies the following:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- If any funds other than Federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- Proposer shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
- The truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 USC §1352(c)(1)-(2)(A), any Person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

Date: 19 Jan 21

Subcontractor: Barrett's Biological Surveys

Signature:



Title: Owner

[Copy this form and modify as needed for execution by Proposer, Principal/Major Participants, and all proposed Subconsultants and Subcontractors.]

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

SHORT FORM-LLL
DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352
Note: No lobbying activities by Barrett's Biological Surveys

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		

ITP Required Forms

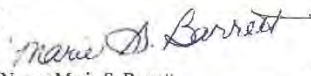
Form 7-2

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

16. Information requested through this form is authorized by Title Signature:

31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any Person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Name: Marie S. Barrett
Title: owner Telephone No.: 7604277006
Date: 19 Jan 2021

Federal Use Only:

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Standard Form - LLL

Standard Form LLL Rev. 09-12-97

**Imperial County Transportation Commission
Instructions to Proposers**

**Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee; the first subawardee of the prime is the first tier. Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in Item 1 such as the Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency. Include prefixes such as "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in Item 4 or 5.

ITP Required Forms

Form 7-4

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial.
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04-90

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 7
CERTIFICATION REGARDING USE OF CONTRACT FUNDS
FOR LOBBYING


The undersigned certifies the following:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- If any funds other than Federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- Proposer shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
- The truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 USC §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 USC §1352(c)(1)-(2)(A), any Person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: 01/18/2021

Proposer: Carlos Ortiz

Signature: 

Title: Chief Operating Officer

[Copy this form and modify as needed for execution by Proposer, Principal/Major Participants, and all proposed Subconsultants and Subcontractors.]

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

Not Applicable to ADVANTEC Consulting Engineers, Inc

SHORT FORM-LLL
DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input checked="" type="checkbox"/> Subawardee Fier _____, if known Congressional District, if known _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____			
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, if applicable _____			
8. Federal Action Number, if known:		9. Award Amount, if known:			
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)		b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)			
(attach Continuation Sheet(s) if necessary)					
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		13. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____			
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)					
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>					

ITP Required Forms

Form 7-2

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

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Signature: 

Print Name: Carlos Ortiz

Title: Chief Operating Officer

Telephone No.: 949-861-4999 Date: 01/18/2021

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Standard Form - LLL

Standard Form LLL Rev. 09-12-97

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
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ITP Required Forms

Form 7-4

**Imperial County Transportation Commission
Instructions to Proposers**

**Calexico East Port of Entry
ICTC Contract No. 20-101
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Federal Aid Project BUILD L-6471 (017)**

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Exhibit N-7 Form 8 Buy America Certification

Imperial County Transportation Commission
Instructions to Proposers

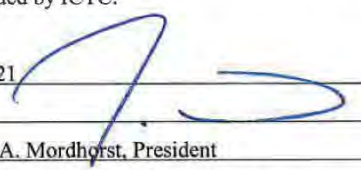
Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 8
BUY AMERICA CERTIFICATION

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) the following:

- Proposer shall comply with the Federal Highway Administration (FHWA) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron shall be produced in the United States and all manufacturing processes, including application of a coating, for these materials shall occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed the greater of 0.1 percent of the Design-Build Contract price or \$18,444.
- A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.
- At Proposer's request, ICTC may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist; however, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by ICTC.

Date: 01/22/21

Signature: 

Title: Jason A. Mordhorst, President

Proposer's Name: Hazard Construction Company

N-8 Forms 9 and 14 Proposal Price

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 9
PROPOSAL PRICE

Proposer Name: Hazard Construction Company

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

Item/Line No.	Description	Unit	Item Total
PART A	PROJECT MANAGEMENT		
1	Contract Management	Lump Sum	\$1,000,000.00
2	Quality Management	Lump Sum	\$750,000.00
3	Safety and Security Management	Lump Sum	\$250,000.00
4	Public and Stakeholder Information Management	Lump Sum	\$50,000.00
5	Mobilization	Lump Sum	\$2,000,000.00
6	Time Related Overhead	Lump Sum	\$1,200,000.00
7	Bonds and Insurance (sum of 7a, 7b, and 7c)	Lump Sum	\$365,000.00
	7a Warranty Bond	Lump Sum	\$5,000.00
	7b Payment and Performance Bond	Lump Sum	\$165,000.00
	7c Insurance	Lump Sum	\$195,000.00
8	Project Management Subtotal (Sum of Lines 1 through 7)	Lump Sum	\$5,615,000.00
PART B	ENGINEERING & CONSTRUCTION		
9	Design Services	Lump Sum	\$3,000,000.00
10	Environmental Management	Lump Sum	\$300,000.00
11	Utilities	Lump Sum	\$75,000.00
12	Geotechnical	Lump Sum	\$200,000.00
13	Surveys	Lump Sum	\$150,000.00
14	Concrete Pavement	Lump Sum	\$750,000.00
15	Hot Mix Asphalt Pavement	Lump Sum	\$150,000.00
16	Grading and Roadways	Lump Sum	\$1,050,000.00
17	Drainage	Lump Sum	\$290,000.00
18	Bridge (shall equal <u>Form 14</u> value)	Lump Sum	\$6,430,000.00
19	Minor Structures – Including the abutment tunnel extensions and wing walls	Lump Sum	\$1,000,000.00
20	Planting and Irrigation	Lump Sum	\$25,000.00
21	Signing, Striping, Lighting	Lump Sum	\$450,000.00
22	Maintenance of Traffic	Lump Sum	\$250,000.00
23	Maintenance and Site Security During Construction	Lump Sum	\$100,000.00

ITP Required Forms

Form 9-2

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

Item/Line No.	Description	Unit	Item Total
24	Asphalt Price Index Fluctuation Allowance	Lump Sum	\$80,000.00
25	Final Acceptance	Lump Sum	\$50,000.00
26	Engineering and Construction Subtotal (Sum of Lines 9 through 25)	Lump Sum	\$14,350,000.00
27	PROPOSAL PRICE (A+B) (Sum of Lines 8 and 26)	Lump Sum	\$19,965,000.00

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
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Federal Aid Project BUILD L-6471 (017)

FORM 14 BRIDGE COST ESTIMATE FOR FEDERAL AND STATE REPORTING

Bridge Number: N/A Date: 1-22-2021

Location/Description: Calexico East Port of Entry Bridge Widening

Anticipated Bridge Type: Steel girders with reinforced concrete deck

Estimated Deck Area (ft²): 10,664

Estimated Beam Spans Configuration (ft) 172

Bridge Cost – Total (\$) 6,430,000.00

(Cost associated with bridge construction, including the summation of lines a), b), and c) below.)

- | | |
|--|-------------------|
| a) Bridge Widening Substructure Construction | (\$) 2,000,000.00 |
| b) Bridge Widening Superstructure Construction | (\$) 2,800,000.00 |
| c) Bridge Widening Miscellaneous Items | (\$) 600,000.00 |
| d) Existing Bridge Maintenance Work | (\$) 1,030,000.00 |

The following is to be provided by the Preferred Proposer with Escrowed Proposal Documents:

Bridge Cost for Federal Reporting: (\$) _____
(exclude "Federal Excluded Items" listed below)

Bridge Cost for State Reporting: (\$) _____
(exclude "State Excluded Items" listed below)

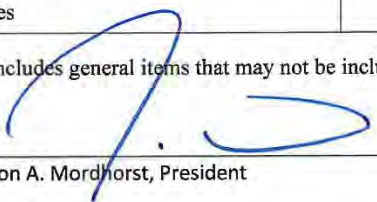
Federal Excluded Items	State Excluded Items
Mobilization	Mobilization
Demolition of Existing Bridges	Approach Slabs (except integral abutment bridges)
Approach Slabs (except integral abutment bridges)	Stream Channel Work
Stream Channel Work	Earthwork (except structural excavation and backfill)
Riprap	Clearing and Grubbing
Slope Paving	Retaining Walls not attached to the Abutment
Earthwork (except structural excavation and backfill)	Guardrail Transitions to Bridges
Clearing and Grubbing	Maintenance and Protection of Traffic
Retaining Walls not attached to the Abutment	Detour Costs
Guardrail Transitions to Bridges	Signing and Marking
Maintenance and Protection of Traffic	Inlet Frames and Grates

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
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Federal Aid Project BUILD L-6471 (017)

Federal Excluded Items	State Excluded Items
Detour Costs	Field Office
Signing and Marking	Construction Engineering Items
Lighting	Training
Electrical Conduit	Right-of-Way
Inlet Frames and Grates	Utility Relocation
Field Office	Contingencies
Construction Engineering Items	
Training	
Right-of-Way	
Utility Relocation	
Contingencies	

Note: Table includes general items that may not be included in the Project.

Signature 
Jason A. Mordhorst, President

N-9 Form 17 DBE Certification/Performance Plan

Imperial County Transportation Commission
Instructions to Proposers

Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)

FORM 17
DBE CERTIFICATION

DBE REQUIREMENTS

The following goal for participation by DBE is established for design and construction work:

- Design – five (5) percent.
- Construction – nine (9) percent.

DBE Certification

By signing below, the Proposer certifies that Design-Builder will provide a Good Faith Effort to meet the DBE goals.

Date: 1/22/2021

Signature: _____

Title: President

Proposer's Name: Hazard Construction Company

B4.7. DBE CERTIFICATION - FORM 17

DBE Commitment

Hazard Construction ("Hazard") commits in all aspects of work to provide a Good Faith Effort to meet the established DBE Project goal (Design – 5%, Construction – 9%). As specified in Exhibit E – Disadvantaged Business Enterprise, Hazard will comply with the provisions of 49 CRF Part 26 and its requirements for counting DBE credit, Good Faith Effort and outreach, and tracking and reporting of DBE's utilized on the project. A DBE Performance Plan will be created and implemented by one of Hazard's staff that are experienced in DBE outreach and reporting. The Plan will detail the DBE requirements on the Project and how Hazard plans to meet those requirements on a day-to-day basis as the project progresses through the design and construction phases.

DBE Performance Plan Overview

- Project meetings to establish DBE outreach strategies for focused outreach
- Advertise/Solicit DBE for Quotes
- On-going solicitation throughout design and construction phases
- Create/Maintain Bidder's List
- Verification of DBE certification and participation credit
- Compile/prepare Good Faith Efforts Submittal Package
- All DBE utilization reporting (Monthly and Final)

Anticipated DBE Commitments

Design Services - (Name and Address)	Scope of Work	% DBE Credit	DBE \$'s Design Services	Design % DBE Commitment
Advantec Consulting Engineers, Inc. 1200 Roosevelt Irvine, CA 92620	Lighting, Camera, Electrical Design	100%	\$122,340	4.08%
Earth Mechanics, Inc. 17800 Newhope Street, Suite B Fountain Valley, CA 92708	Geotechnical Exploration, Testing & Engineering	100%	\$218,617	7.29%
Total Design Services DBE Commitment			\$340,957	11.37%

To Be Selected - Anticipated Construction Scopes of Work (Sub/Supplier)	% DBE Credit	Anticipated DBE \$'s Construction	Anticipated % DBE Commitment
Concrete Barrier - Roadway	100%	\$240,000	1.41%
Pile Driving	100%	\$400,000	2.36%
Concrete Paving	100%	\$400,000	2.36%
Electrical	100%	\$200,000	1.18%
Striping	100%	\$25,000	0.15%
SWPPP Services	100%	\$5,000	0.03%
Environmental	100%	\$50,000	0.29%
Quality Control	100%	\$75,000	0.44%
Underground	100%	\$200,000	1.18%
Surveying	100%	\$85,000	0.50%
Construction Area Signs	100%	\$20,000	0.12%
Traffic Control Devices	100%	\$15,000	0.09%
Total Construction Services DBE Commitment		\$1,715,000	10.11%

Hazard anticipates achieving the following DBE participation for the Calexico East Port of Entry Project:

- Design – 11.37%, or \$340,957
- Construction – 10.11%, or \$1,715,000

As design progresses and the plans are finalized, Anticipated DBE \$'s for Construction will be adjusted to conform to the actual scopes of work needed to complete the project.

Good Faith Efforts Made to Date

DBE Outreach and Good Faith Efforts Hazard has made to date for this project during the Request for Proposal stage are attached at the end of this Volume.

Exhibit N-10 Technical Proposal



CALEXICO EAST PORT OF ENTRY BRIDGE WIDENING

VOLUME 2 TECHNICAL PROPOSAL

January 22, 2021

CONTENTS:

- C1 Technical Proposal Executive Summary
- C2 Management/Administration
 - C2.1 Preliminary Project Management Plan with Org Charts & Resumes
 - C2.2 Preliminary Design Approach Submittal
 - C2.3 Environmental Compliance Plan
 - C2.4 Risk Management Plan
 - C2.5 Utility Coordination
- C3 Project Schedule, Construction Phasing/Sequencing Plan, and Safety and Security Program
 - C3.1 Project Schedule
 - C3.2 Construction Phasing/Sequencing
 - C3.3 Safety and Security Program



*Imperial County Transportation Commission
Instructions to Proposers*

*Calexico East Port of Entry
ICTC Contract No. 20-101
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Federal Aid Project BUILD L-6471 (017)*

Administrative Information – Volume 1B		
Proposers shall follow the order of this checklist in their submissions. A copy of this document shall be submitted with Volume 1B – Administrative Submittals.		
Proposal Component	Form (if any)	ITP Cross-Reference
A. Proposer Information, Certifications & Documents		
Price Proposal Letter	Form 1B	§4.6; Appendix B §B4.1
Authorization Documents	No forms provided	§4.6; Appendix B §B4.1
Non-Collusion Affidavit	Form 3	§1.16.2; Appendix B §B4.2
Certification Regarding Contract Funds for Lobbying	Form 7	§1.14, Appendix B §3.6
Buy America Certification	Form 8	Appendix B §B4.3
Letter of Commitment from Surety or Bank	No forms provided	Appendix B §B4.5
DBE Certification and Program Description	Form 17	§1.13; Appendix B §B4.7
Changes in Proposer's Organization	Letter from ICTC approving the change	§1.10; Appendix B §B4.8
B. Proposal Security		
Proposal Bond or Proposal Letter(s) of Credit	Form 11	§4.10; Appendix B §B4.4
An irrevocable letter signed by the Guarantor (if applicable)	Form 16	Appendix B §B4.6

Technical Proposal		
Proposers shall follow the order of this checklist in their submissions. A copy of this document shall be submitted with Volume 2 – Technical Proposal. See Appendix I-1 for additional information regarding the components of the Technical Proposal.		
Proposal Component	Form (if any)	ITP Cross-Reference
A. Technical Proposal Executive Summary		
Technical Proposal Executive Summary	No forms provided	Appendix C §C1
B. Management/Administration		
Preliminary Project Management Plan	No forms provided	Appendix C §C2.1
Preliminary Design Approach Submittal	No forms provided	Appendix C §C2.2

Proposal Checklist

I-2

*Imperial County Transportation Commission
Instructions to Proposers*

*Calexico East Port of Entry
ICTC Contract No. 20-101
Project ID 1118000265
Federal Aid Project BUILD L-6471 (017)*

Technical Proposal		
Environmental Compliance Plan	No forms provided	Appendix C §C2.3
Risk Management Plan	No forms provided	Appendix C §C2.4
Utility Coordination	No forms provided	Appendix C §C2.5
C. Project Schedule, Construction Phasing/Sequencing Plan, and Safety and Security Program		
Project Schedule	No forms provided	Appendix C §C3.1
Construction Phasing/Sequencing Plan	No forms provided	Appendix C §C3.2
Safety and Security Program	No forms provided	Appendix C §C3.3

Price Proposal		
Proposers shall follow the order of the Price Proposal Checklist in their submissions. A copy of this document shall be submitted with Volume 3 – Price Proposal.		
Proposal Component	Form (if any)	ITP Cross-Reference
A. Price Proposal		
Price Proposal	Form 9	Appendix D §D2, 1(a)
Bridge Cost Estimate for Federal and State Reporting	Form 14	Appendix D §D2, 2(a)

C1. TECHNICAL PROPOSAL EXECUTIVE SUMMARY

CI. EXECUTIVE SUMMARY

Over the past several months, the Hazard Construction and Mark Thomas team has committed to pursuing and delivering to the Imperial Country Transportation Commission (ICTC) the Calexico East Port of Entry Bridge Widening Project. Our team has reviewed the project objectives, requirements and concerns set forth by ICTC, and others, to develop a proposal that provides a quality project while limiting impacts to GSA, CBP, IID and the traveling public.

Organization and Contents

Our Technical Proposal is organized according to Appendix I-1 and is a culmination of the design requirements you have provided, the one-on-one meetings, and questions and answers communicated through request for information (RFI) process.

Volume 1A: Administrative Information

Volume 1B: Administrative Information

Volume 2: Technical Proposal

Volume 3: Price Proposal

Volume 4: Confidential Proprietary Information

Management & Operational Structure

We bring ICTC a fully integrated team, including subcontractors and subconsultants, who have relevant experience working along the U.S./Mexico border and on similar design-build projects. Leading our integrated design-build team is Project Manager, Brad Lothers, who brings more than 30 years of construction experience along with more than 10 years of experience managing a wide variety of projects in the Imperial Valley for various agencies and owners. Brad is the single point of contact with ICTC and will work daily with the design and construction teams to coordinate project activities and forecast and mitigate any potential project issues.



Keys to a Successful Project



Safety

We will address safety by incorporating accepted design standards detailed in other sections of this proposal. Utilizing these design standards ensures that the bridge, roadway, and other key design elements are safe and enduring features for the traveling public and border crossing workers.

It is Hazard Construction's continuing policy of that the first consideration in the performance of work shall be the safety of employees. All reasonable methods, procedures, and equipment necessary to achieve this will be used. We are firmly committed to maintaining a safe and healthy working environment and plan all work activities with safety in mind.



Mobility

Mobility will be improved through the widening of the bridge and approach roadway. Maintenance of traffic will provide safe, efficient, and secure traffic flows during construction, provide local and emergency vehicles access to Route 7 at the Calexico East Port of Entry Border Crossing inspection booths, and minimize impacts to Route 7 traffic. The completed project will implement a design with improved geometry that meets Caltrans' design and construction standards.



Environmental Compliance

The team will utilize environmental specialists and consultants who will work with local, state, and federal regulatory agencies to make certain the environmental documents and permits are executed and completed for the project. Environmental inspections and surveys will take place as required to protect any wildlife and provide mitigation as the need arises. All employees working on the project are required to attend an environmental training class to make sure they are aware of any environmental concerns. The All-American Canal is a vital part of the Imperial Valley and the team understands its importance. We will implement best management practices (BMPs) as required to control sediment and storm water runoff in order to ensure the canal water quality is maintained.



Communication

Communication is critical to all projects but working in a port of entry facility on the U.S./Mexico border makes it even more crucial. The team recognizes this and is prepared to mitigate disruptions to GSA, CBP, and IID services during the project life cycle. All parties will be involved in weekly meetings where updates, concerns, and mitigation measures during design and construction will be heard. During construction, all parties will be provided weekly schedules showing what scopes of work will be active, what areas they will be working in, and any areas, or tunnels, that may be closed to traffic.



Schedule

Hazard is committed to designing and constructing the project in 460 Working Days from NTP1 as outlined in the proposal documents. The team understands the scheduling requirements and funding obligations and has planned for CBP's scheduling requirements. We will sequence the work, while always maintaining access through one tunnel to maintain patrol access along the All-American Canal bank. Since there are no lane closures allowed during the CBP's hours of operation, all work on top of the bridge that requires lane closures will be performed at night when the facility is closed. The majority of work from under the bridge, or on the canal bank, will take place during daytime working hours.

Stages of Construction

- **Stage 1:** Bridge Widening (driven pile, girders, tunnel extensions, embankment, concrete pavement, approach slabs)
- **Stage 2:** New Pedestrian Walkway (concrete barrier, concrete pavement, fencing)
- **Stage 3:** Remove Existing Walkway (demolition, concrete barrier, concrete pavement)
- **Stage 4:** Bridge Maintenance Work (rehabilitation of bridge deck, repair concrete, replace bolts, clean bridge)



Site Security

Security is of the most importance on this project to keep our country safe and secure. Following Homeland Security Presidential Directive 12, all employees on the project will be required to obtain the proper security clearance for working on the site, which includes background checks, fingerprinting and badging. The site safety/security supervisor will ensure that all requirements are met and that no employees, or subcontractors, are accessing the site without the proper clearances. Additionally, the site safety/security supervisor will work with GSA, CBP, and Border Patrol to verify the site is secure and up to the required security standards for the job site and facility.



Risk Mitigation

One of the greatest attributes of the design-build process is that the unified design-build team works together to identify, quantify, and mitigate risks early in the design development phase. Our team has already identified potential project risks and is ready to continue to monitor and mitigate those risks as the project progresses through design and into construction, while promoting improved relationships between all parties throughout the course of the project.

C2. MANAGEMENT/ADMINISTRATION

C2.1. Preliminary Project Management Plan

C2.1. PRELIMINARY PROJECT MANAGEMENT PLAN

Our team – Hazard Construction, Mark Thomas and Company, and our subconsultants – has spent the past several months working together to develop a design and construction approach for the Calexico East Port of Entry Bridge Widening Project that focuses on safety and quality while minimizing impacts to the traveling public, port of entry operations, and the environment. The project team, led by Project Manager, Brad Lothers, and Design Manager, Paul Mittica, are ready to include ICTC and Caltrans into the integrated team immediately after award.

Design Management

Design management utilizes Mark Thomas and Company and their familiarity with Caltrans' design standards, processes, requirements, and modern field processes to ensure a streamlined constructible final design that minimizes design exceptions.

Integrated Streamlined Design

The team is committed to providing a streamlined design that meets all the criteria required and previously discussed. The process has already started with the first one-on-one meeting which was held with ICTC and Caltrans. We developed questions regarding the project and listened to your responses and requirements and have taken all of that into consideration for our design. Meetings like that move design forward with minimal redesign. Additionally, our team has a functional working relationship with Caltrans in District 11. For example,

we have worked on Value Engineering Concepts on numerous Caltrans projects that includes collaborating with the Design and Construction Division to make sure all the concerns are heard. This relationship is key to making sure design is streamlined.

Design and Construction Interface

The design team will work with the construction team during the whole design process to ensure an efficiently constructible design. This will lead to a final design that is safe, cost effective, high quality, and most importantly, constructible in the field.

Technical Work Group meetings will be held throughout the design phase to review the design and criteria for construction. These work groups further reduce the likelihood of field issues arising that could potentially delay construction. Reviewing and having the construction team involved in this phase of the project gives the designer insight as to what the requirements in the field will be when it comes to constructing the work. By working together, the team has an opportunity to get out in front of any design issues, discuss them, and develop a solution before it has a chance to impact the project.

Document Control

Consistent document control is a key aspect of a design-build project and requires a strong document control system to manage the flow of data through the life of the project. The team will implement and

use a construction management software that has a proven track record. Procore, or similar software, will be used to track correspondence and create and manage RFIs, submittals, as-builts, and schedule updates. All team members will use this software, including Caltrans staff, to provide accurate and consistent document control until the project is closed out.

Construction Management

Our construction team has been involved in the project throughout this pursuit and have provided design input and constructability review. The Hazard Construction management team's approach to managing a successful project includes proper staffing with knowledgeable and motivated individuals who are willing to bring ideas to the project through effective communication with the design and Caltrans teams.

Hazard Construction has a history of working in the Imperial Valley with many different agencies to construct bridges, pave roadways, install underground utilities, and widen roadways. We are eager to partner again on this project and widen the Route 7 East Port of Entry Bridge.

Phasing and Execution

The project will follow the preliminary phasing/staging as provided in the Project Requirements. A key part to project success will be to minimize the impacts to the public and GSA throughout the stages of work. The construction team will review each stage of work (currently four stages) in detail to develop a construction work plan that limits public inconvenience while

meeting all the construction requirements.

Stages of Construction

- **Stage 1:** Bridge Widening (driven pile, girders, tunnel extensions, embankment, concrete pavement, approach slabs)
- **Stage 2:** New Pedestrian Walkway (concrete barrier, concrete pavement, fencing)
- **Stage 3:** Remove Existing Walkway (demolition, concrete barrier, concrete pavement)
- **Stage 4:** Bridge Maintenance Work (rehab bridge deck, repair concrete, replace bolts, clean bridge)

Work plans will be developed prior to the construction phase to ensure there are minimal, or no, delays during construction. These work plans will be shared with Caltrans, GSA, CBP, IID, and any other stakeholders to make sure there are no issues with construction. If an issue arises, all parties will partner and work as a team to find a common solution that benefits the project and parties.

During weekly meetings, the three-week look ahead schedules will be shared and reviewed. This will provide a real time look at allocation of resources and provide a guide for the agencies to know exactly what is going on the project, when and where we will be working, and if there are any road or tunnel closures currently in affect.

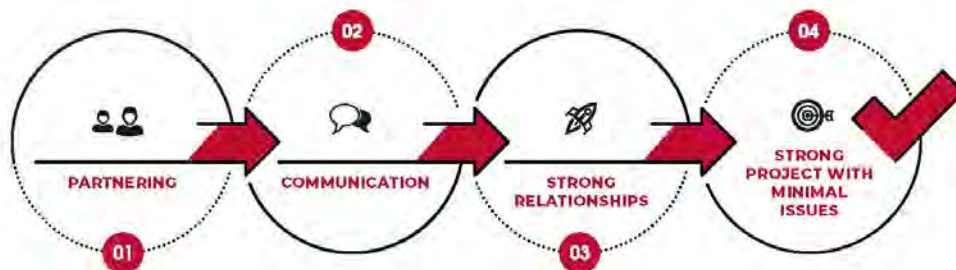
Communication

Communication is the key to a successful project. We believe that Partnering leads to stronger lines of communication and we

are committed to Partnering throughout the project. Open lines of communication build strong relationships and allow all work to be coordinated effectively, meet schedules, and avoid potential project issues.

We will hold task work group meetings to allow everyone to review the specific scopes of work and address all the critical scope areas, such as safety, traffic control, environmental control, and access through the jobsite.

The team recognizes the importance of this and is prepared to mitigate disruptions to GSA, CBP, and IID services during construction. All parties will be involved in weekly meetings where updates, concerns, and mitigation measures during design and construction will be heard. During construction, all parties will be provided weekly schedules showing what scopes of work will be going on, what areas they will be working in, and any areas, or tunnels, that may be closed to traffic.



Interface with QC/QV

Our quality manager will see that the quality validation (QV) efforts meet Caltrans' expectations. They will oversee the entire QV program for design and construction.

We will create a plan that defines the interaction between construction and QC/QV staff. The plan will include specified roles, pre-construction meetings, checklists, documentation requirements, and any required training.

Stakeholders and Public Involvement

The project team will engage the appropriate stakeholders and make sure they are involved in the crucial aspects of the project that involve them. Proper timely notification and coordination will be maintained with the agencies to ensure they are ready and available when they are needed. We will also maintain an "open door policy" when it comes to all agencies. We encourage them to participate in weekly meetings, design coordination meetings, partnering, and other project related matters. This "open door policy" fosters a team atmosphere, not just internally with the design and construction teams, but for the project as a whole. Given the current conditions due to COVID-19 and to take our

“open door policy” to another level, our consistent scheduling of group meetings will be documented and easily available for offsite members to join conveniently.

Plans and permits require extensive coordination with third party agencies. The team will diligently work with those agencies in procuring permits in a timely manner to keep the project moving forward. Some of those outside agencies include:

- County of Imperial – Traffic Control Permit
- Imperial Irrigation District – Encroachment Permit
- Environmental Permits – Local and State
- State Water Resources Board – Storm Water Permit

Public involvement and outreach is an area of focus for the project team. We will stay engaged with local agencies to make sure the public, emergency services providers, and local businesses are kept informed of any major closures, traffic modifications, or any other areas of concern that may impact the way they do business on a day-to-day basis.

DBE Performance Plan

The team has already been actively pursuing Disadvantaged Business Enterprise (DBE) subcontractors and suppliers to participate in the project. We currently have Earth Mechanics, Inc.; Advantec Consulting Engineers, Inc.; and Barrett's Biological Surveys as part of the project team. When awarded the project,

we will continue to look for opportunities to add DBE subcontractors and suppliers to the project as design progresses and explore ways to break up larger scopes of work into smaller packages to be subcontracted to DBEs.

DBE Performance Plan Overview

- Project meetings to establish DBE outreach strategies for focused outreach
- Advertise/solicit DBE for quotes
- On-going solicitation throughout design and construction phases
- Create/maintain Bidder's List
- Verify DBE certification and participation credit
- Compile/prepare Good Faith Efforts Submittal Package
- All DBE utilization reporting (monthly and final)

Preliminary Quality Plan

Our team is committed to providing a high-quality project that meets, and/or exceeds, ICTC and Caltrans requirements. To accomplish this, quality will be built into all project aspects. To ensure a quality project is provided, we will prepare and implement a Quality Management Plan for all aspects of the project, including design and construction.

QC/QV for Design Work

The team will develop a project-specific Design Quality Management Plan to serve as a guide for the QC/QV process during design. The process includes repeated

checks and input from all parties to ensure design meets the applicable Caltrans and FHWA standards.

Overview of Process

- 1. Planning:** scope definition, procedures, technical requirements
- 2. Preparing Documents:** task work groups, consultation with other agencies
- 3. Initial Review:** design standard review, constructability review
- 4. Revisions:** revise after initial review to incorporate comments
- 5. Submittal and Review:** Caltrans and other agencies
- 6. Final Review:** EOR, PM approval, Caltrans signature
- 7. Distribute Plans**

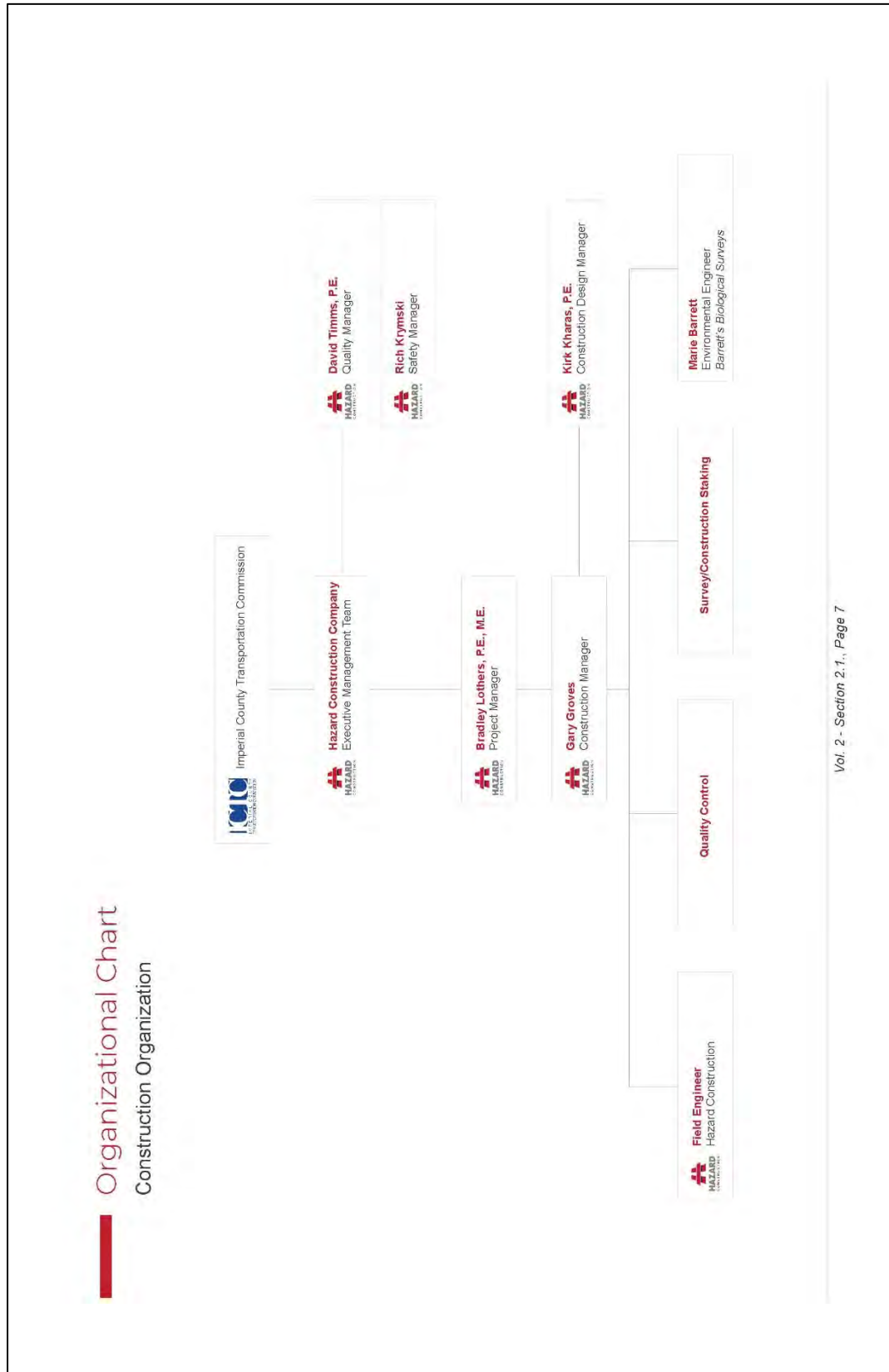
QC/QV for Construction

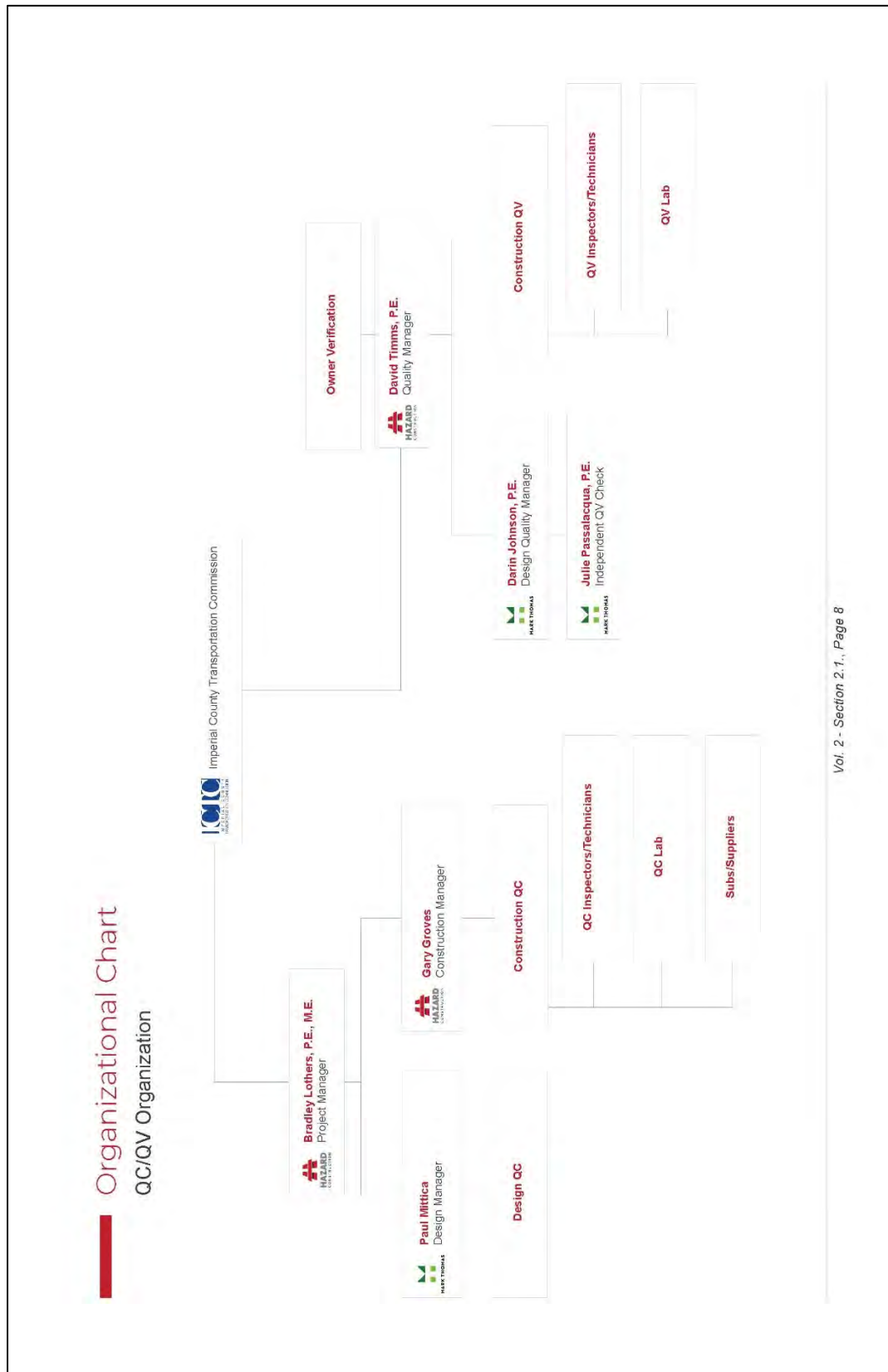
The team will develop a project-specific Construction Quality Management Plan to serve as a guide for the QC/QV process during construction. The construction manager will use the plan to control the quality of construction and verify construction is meeting or exceeding requirements. The plan will show the detailed interaction between QC and QV and requirements for independently verifying quality control on the project.

Overview of Process

- 1. Quality Validation During Construction:** Independent validation that QC is following its approved processes and procedures. Independent laboratory will validate testing and inspection on an approved frequency.
- 2. Inspection and Testing Process:** Perform testing and inspection per the work plan. QC team to perform final inspections and testing. QV team will audit and perform independent testing and verification. Any non-conformance will be followed up with and appropriate mitigation measures will be taken.
- 3. QC/QV for Procurement:** Major subcontractors and suppliers will be required to develop and submit a QC Plan for the team's approval prior to starting work.







C2. MANAGEMENT/ADMINISTRATION

C2.2. Preliminary Design Approach Submittal

C2.2 PRELIMINARY DESIGN APPROACH

The Calexico East Port of Entry (POE) project proposes to improve and enhance traffic needs at the POE. This project will improve a critical and heavily traveled access point between the United States and Mexico that has both local and regional significance. The general scope of work involves widening the existing bridge crossing over the All-American Canal by adding a total of four (4) new northbound lanes and eight-foot shoulder (two for commercial traffic and two for passenger traffic), approach roadway widening, modification to existing drainage, signage, pavement delineation, site access and lighting in the project area. The proposed project improvements are consistent with **Option B** as defined in the approved Project Report. The following sections outline the preliminary design approach submittal overview and narrative. The narrative describes key features of the Hazard Construction & Mark Thomas Team's design concepts and the proposed modifications to the conceptual design not already addressed in the Approved Project Report (PR) and its Attachments. **Our team recognizes the advanced preliminary design detail provided in the PR and its Attachments and fully incorporates the layout provided except where explicitly indicating additions or modifications.**

Bridge Widening Design

The proposed bridge widening including the additional shoulder width included with Option B will utilize built up steel plate girders consistent with the PR as

well as what is consistent with the existing bridge structure. This approach will ensure consistent performance with the existing bridge as well as streamlined approvals for structure type selection. See Appendix for the bridge general plan, typical section, and foundation plan for abutment pile layouts.

The new bridge widening consists of the following:

- Maintaining the same length (175 ft.) as the existing bridge and 5-ft. minimum soffit clearance over high water level for canal
- Abutments on driven steel pipe or precast concrete piles with battered front piles
- Extending existing sheet pile wall in front of abutment approximately 60 ft. at each bank
- Extending existing north and south box culvert tunnels and retaining wall

Overall bridge construction phasing will be consistent with the PR major traffic shifts and sequence. Relative to the specific construction phasing for the bridge widening, the following steps are necessary for widening the bridge:

- **Step 1:** Driving pile then constructing the abutment foundations and caps, completing the south approach first and then moving to north approach.
- **Step 2:** Mobilize girders and cranes to complete the girder placement.

- **Step 3:** Finalize and construct superstructure elements including diaphragms, decking using steel pan forms (eliminating falsework), deck drains, bridge parapet, wing walls and bridge lighting. Road widening will occur on the south portion of the approach and then move the north.

- **Step 4:** The closure pour between the new and existing bridge is then cast and after curing, traffic can be shifted to the new bridge.

- **Step 5:** Permanent median barriers will be constructed, and pedestrian walkway will be relocated.

The above mentioned steps will need to be complied and coordinated with General Services Administration (GSA)/U.S. Customs and Border Patrol (CBP) facility hours of operation, traffic restrictions, and maintaining at least one tunnel open at all times.

Bridge Rehabilitation

Option B work includes non-critical rehabilitation work on the existing structures and tunnels. The 2019 bridge assessment report outlines the rehabilitation work that will need to be completed. These improvements include: joint seal replacement, addition of bearing restraining devices, touch-up paint to uncoated bolts and connection plate, crack repairs, replacement of tunnel lighting, and bridge approach repaving. Portions of the bridge rehabilitation work will require lane closures including bridge approach repaving. Some of these rehabilitation items will need to be completed after the

widening is constructed to maintain current traffic capacity.

Roadway Design

Consistent with the Build Alternative (Option B) in the PR, the proposed roadway improvements tasks include the following:

- Four (4) additional northbound lanes and an eight-foot shoulder,
- Widening the existing Calexico Bridge by approximately 60.5 ft.,
- Relocating the existing pedestrian walkway,
- Improvements will join the existing condition approximately 800 ft. north of the US and Mexico border,
- Extending existing reinforced concrete box (RCB) tunnels,
- Documenting and obtaining Caltrans' approval on the nonstandard design features in a Design Standard Decision Document (DSDD).



Figure 1: Existing North Tunnel

The proposed improvements will join the similar improvements procured by the Mexican government. See Construction Interface at the US/Mexico Border section for additional discussion regarding temporary transition for the project.

Right of way lines and additional right of way needs (fee) are not required for the widening and therefore not identified on the typical roadway cross-section above.

Right of Way

Temporary construction easement will be required for the proposed improvements. Our team proposes early access for the Imperial Irrigation District (IID) encroachment permit through a written request to Imperial County Transportation Commission (ICTC) and include early release items for construction such as: surveys, geotechnical investigations, bridge abutment work, and girder placement. The goal is to obtain early Released for Construction (RFC) for these items, along with the required Right of Way certification from Caltrans, and meet the required total working days as specified in the RFP.

The table below outlines the properties and property interests within the project limits.

No.	Property Owner(s)	APN	Address	Property Interests	Existing Improvements
1	United States Bureau of Reclamation (USBR)	059-513-018	All-American Canal	License Agreement	Tunnel Access
2	United States of America	059-220-010	1699 Carr Road	TCE for construction access	Existing fence, trees, and camera. Protect solar panels
3	Chapel L. Transporters, LLC	059-513-004	363 Nina Lee Road	TCE Hazard to Negotiate Permit to Enter for construction access	None significant

Permitting

Table below outlines the permits required for the project.

Agency	Permit Type	Action Needed
Imperial Irrigation District (IID)	Encroachment Permit for geotechnical investigation and construction efforts.	Coordinating with both IID and IID Energy.
United States Bureau of Reclamation (USBR)	Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property	Submit plans, legal descriptions including meets and bounds.
Imperial County Public Works Department (ICPWD)	Transportation permit	Coordinate with ICPWD regarding utilizing County road as one of the construction activity roads.

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Transportation Management Memorandum (TMM)

The proposed construction will occur in three major stages. The Stage Construction Plan sheets in Attachment G of the PR are consistent with our team's major stages of work and steps described in the Bridge Widening Design Approach along with the phase notes and sequence of work activities, including equipment needs. Per the RFP, closures will not be allowed for the existing access roadway, and access to both the GSA and CBP sites will need to be always maintained. Due to the continuous stream of traffic entering and exiting the POE during the day, it is anticipated that all work that will impact existing traffic will be done at night and temporary closures will not be required.

Stage 1: During the first stage, the bridge widening, roadway widening, and north and south tunnel extensions will be constructed. The existing median barrier that separates NB and SB commercial vehicles will be adjusted to provide four (4), 13-ft. lanes (approximately). The closure pour between the existing bridge and new bridge will be completed.

Stage 2: During the second stage, the four (4) lanes of commercial vehicle traffic, two (2) NB and two (2) SB lanes, will be shifted to the new structure. The deck slope of the most easterly existing bridge will be adjusted with a polyester concrete overlay. Additionally, the existing pedestrian walkway will be realigned to the post-project location.

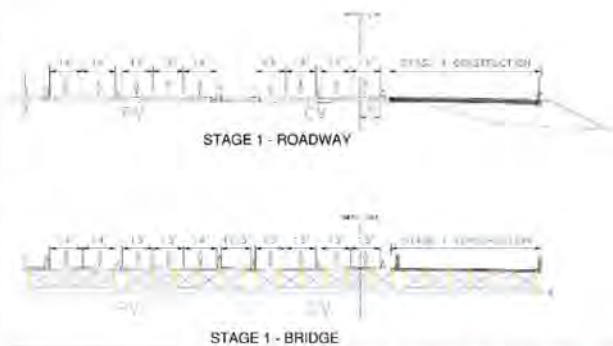


Figure 2: Stage 1 Typical Section



Figure 3: Stage 2 Typical Section

Stage 3: At the completion of the second stage, pedestrians will be shifted to the new walkway and the existing pedestrian walkway will be removed. The two (2) additional private vehicle travel lanes will be added in the NB direction.

Utilities

As noted in the PR, existing utilities are not anticipated to be impacted as part of the project, and a preliminary conflict matrix and utility relocation plan is not necessary at this time. If a utility or on-site facility is discovered near anticipated work, our team will follow the utility coordination method and, if needed, potholing will be conducted to positively identify the existing utility locations, and mitigate unforeseen relocations as stated in the PR.

Landscape

After an initial site visit and additional review, the existing trees and landscape elements near the north-easterly widening will be surveyed, inventoried, and restored based on their temporary removal to allow for construction access. Bonded fiber matrix will also be applied to the project embankment slope area and construction access road for erosion control purposes.

Drainage

The existing drainage system will be modified to perpetuate the existing drainage pattern. The work includes



Figure 4: Stage 3 Typical Section

extending culverts, relocating an existing pump station, enlarging an existing detention basin, and creating a new detention basin. The culvert extensions will be designed, procured, and constructed early during the construction sequence to convey stormwater from upstream runoff. The runoff from the bridges will flow into a deck drain system and into two (2) basins as shown in the PR. A risk level 2 PS&E level Stormwater Data Report (SWDR) will be prepared, and Best Management Practices (BMPs) will be implemented as part of the project design. The proposed design will follow Caltrans Highway Design Manual and County of Imperial Department of Public Works standards.

Pump Station Relocation

The existing pump station will be removed, and a new pump station will be installed approximately 60 ft. east of the existing pump station location on the north east quadrant of the bridge widening to allow room for construction and final project footprint. Due to the widening, this pump station and its associated pipe and

electrical wiring will need to be relocated to the new location noted on the Drainage Plan (D-1) sheet in Attachment G of the PR.

Roadway Lighting System and Access Road/Tunnel Lighting System

Our team will verify as-built plans requested from GSA at Notice to Proceed (NTP) and will conduct a thorough field investigation with GSA maintenance personnel to determine the location of the existing roadway lighting system including electroliers, conduits, conductors and electrical service point connections, camera locations, and CCTV electrical service connection. Final roadway lighting and CCTV plans will be done in conformance with GSA and CBP design requirements and will accommodate the bridge expansion.

Signage

Existing signs will need to be updated and/or replaced to align with the proposed improvements. Existing signage conditions will be visually evaluated, surveyed, and documented to determine if replacements are needed. During a field visit in October 2020, our team identified signs that will need to be replaced, as the sign messages are faded.

Construction Interface at the US/Mexico Border

Per Section 1.12 of the revised ITP, issued as part of Addendum No. 5, it is assumed a short temporary transition section may be required from the proposed roadway section to match the existing roadway cross section on the Mexico side of the Border if construction on the Mexico side is not

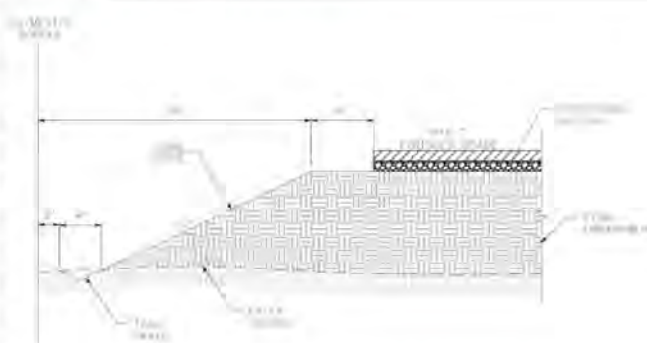


Figure 5: Temporary Slope Condition

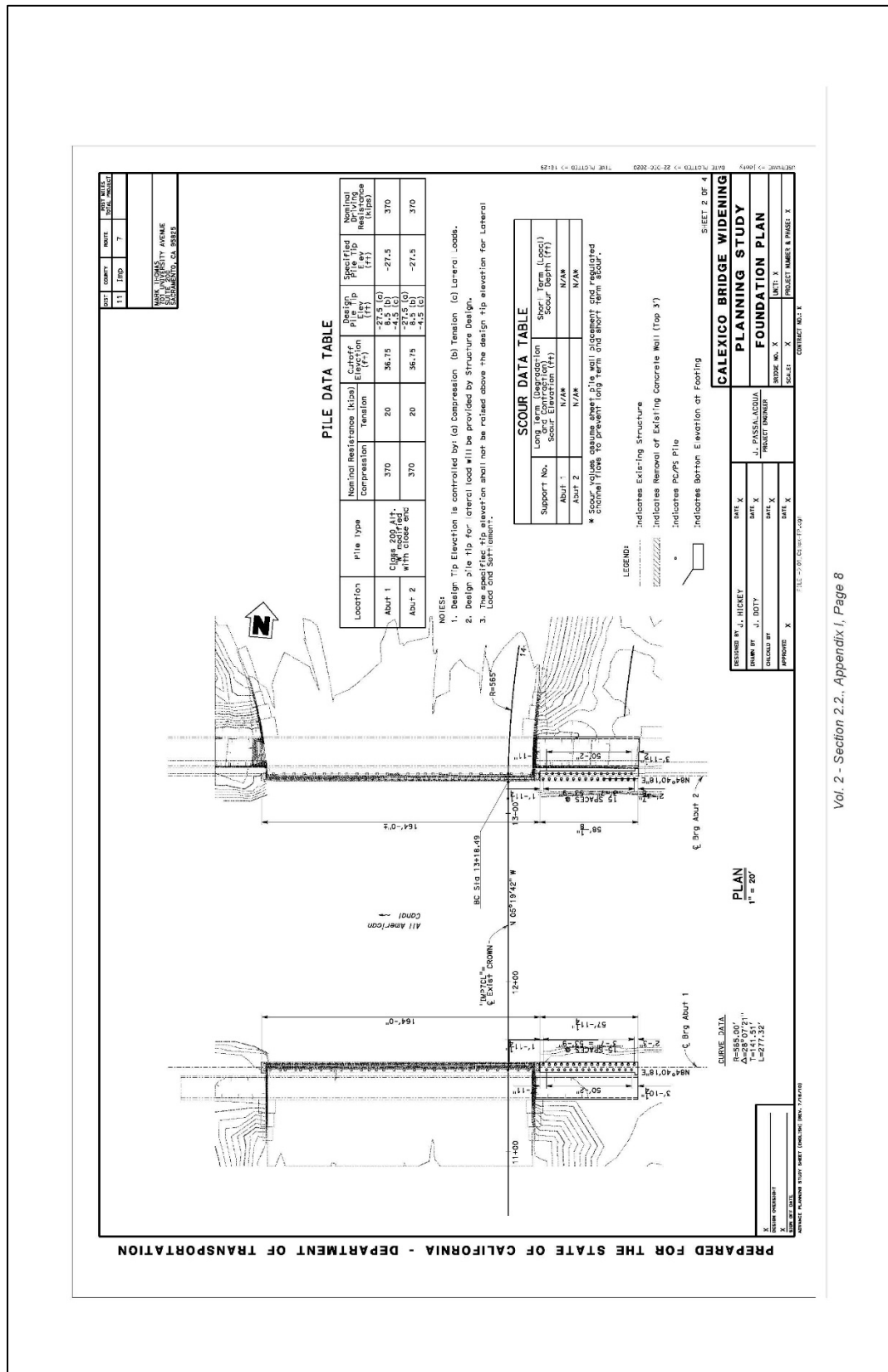
concurrent with our project. See Figure 5 for the proposed temporary slope condition to accommodate this temporary condition. The Phase 1 traffic handling configuration and existing pedestrian walkway would remain in place until the work on the Mexico side of the Border has been completed, allowing traffic to be shifted to the new widening and construction to continue.

C2.2. Preliminary Design Approach Submittal

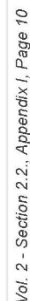
APPENDIX I

Contents:

Bridge Exhibits







C2. MANAGEMENT/ADMINISTRATION

C2.3. Environmental Compliance Plan

C2.3. ENVIRONMENTAL COMPLIANCE PLAN

The project's environmental compliance plan ensures there is an effective plan in place to eliminate or reduce any environmental permit non-compliance incidents from occurring on the project. Each member of the project team plays a role in environmental compliance even throughout the project life.

The Environmental Compliance Plan will be created based on a collaborative effort with the project design and construction team. The project manager will coordinate an initial environmental compliance meeting where all environmental permit requirements and concerns will be shared and noted so they can be incorporated into the design and constructability reviews as the project design progresses. The plan will then be prepared to incorporate and outline the various permits and their requirements, environmental protection on the site, training program, and reporting.

To ensure that all onsite construction activities are performed in accordance with the Approved Project Report and its attachments, an Environmental Management Plan will be created by utilizing a consultant, Marie Barrett, from Barrett's Biological Surveys. Marie has extensive experience working in the Imperial Valley in the agricultural and biological field with a wide variety of agencies and understands what it takes to keep a jobsite environmentally compliant. Resume attached.

This plan will include the following:

- Environmental personnel and training certificates and/or licenses
- Environmental Notification Contact List
- Schedule of Environmental Management Plan activities
- List of mitigation and monitoring actions
- Environmental Monitoring Plan and monthly reporting
- Spill Containment and Countermeasure Plan
- Noise Control and Monitoring Plan
- Vibration Monitoring and Mitigation Plan
- Air Quality Management Plan
- Asbestos Control Management Plan
- Lead-Based Paint Control Management Plan
- Aerially Deposited Lead Soils Management Plan

All employees and subcontractors will go through a site-specific environmental protection training prepared by Barrett's Biological Surveys as a requirement to work on the project and a list of those trained will be kept onsite for review. Additionally, Barrett's Biological Surveys will provide regular site visits and monthly reports documenting compliance with the requirements in addition to any special inspection/surveys for environmentally sensitive scopes of work being performed.

We will utilize the services of a consultant to create and implement a Storm Water Pollution Prevention Plan (SWPPP). Hazard has several consultants that we regularly do business with who have created many SWPPP's for Caltrans projects. They will assist in uploading the SWPPP into SMARTS for approval and obtaining the WDID Permit Number. All required stormwater training, inspections, sampling and analysis, and reporting will be performed by qualified onsite staff or the stormwater consultant.

This project will require extra precautions to protect the All-American Canal from stormwater runoff, contamination, or construction debris. Minimal dewatering is anticipated during construction activities, however if needed, we will pump into a water truck and spray onsite as dust control. We will not discharge any groundwater back into the waterways.



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MARIE S. BARRETT

2035 Forrester Road, El Centro, CA 92243 (760) 352 4159 mariebarrett@roadrunner.com

LICENSES/CERTIFICATES

Flat Tailed Horn Lizard Surveyor CDFW/BLM
Burrowing Owl Surveyor (CDFW/USFWS)
USFW Desert Tortoise Egg Handling Desert Tortoise Council Survey Techniques Workshop Certificate
BCI Bat Conservation and Management Workshop (Acoustic) Certificate
Southwestern Willow Flycatcher Workshop Kernville, CA 2010
CA Scientific Collection Permit 126/USFWS Salvage Permit MB52633B-1

CAREER HISTORY

Barrett's Biological Surveys, El Centro, California B/IOLOGIST 3/95 -present

Have performed numerous (over 40,000 acres) surveys involving varied wildlife including burrowing owl and plant species and written reports and biological assessments. Certified to perform Flat Tailed Horned Lizard Surveys; completed Desert Tortoise workshops; approved to handle desert tortoise (American Girl Mine/BLM project, 1/2013). Work closely with governmental agencies such as Bureau of Land Management, State Office of Mining Reclamation, California Department of Fish and Wildlife. Over 150 days spent in field monitoring/surveying for FTHL; 98 days in field monitoring/surveying for desert tortoise and 40,000 acres surveyed for burrowing owl; 3 IID Burrowing owl surveys with AECOM (2011/12- 275 hrs). Wrote Imperial Irrigation District (IID) Artificial Burrow Installation Manual (2009). Over 25 active burrowing owl burrows passively relocated and 50 artificial burrows installed. Volunteered for desert tortoise work (20 hrs) with Dr. Jeff Lovich. Coachella Valley Projects: Torres-Martinez (Desert Cahuilla Composting Facility Biological Resource Technical Report/Surveys 60 acres, SR 86/Ave 84, 2013; Augustine Tribe (Solar Farm Biological Resource Technical Report/Surveys 10 acres, La Quinta, CA, 2010); Benitez Family Trust Therapeutic Community, Dillon and Cabazon Roads, 10 acres, 2008; Chandri Group (Dairy Queen Chill/Grill Project, 1.5 acres, Date Palm Drive/I-10, La Quinta, CA, 2014). Blythe 8Minutenergy Mt. Signal Solar 4500 acres. Preconstruction surveys/construction monitoring and BUOW Post construction monitoring; Biological report. 2010-2020 Black Mt. MetTower Installation: desert tortoise survey and monitoring approved by BLM, El Centro office. Salton City Burretec Landfill FTHL monitoring/clearance 2010-2014 (42.5 hrs); Superior Redi Mix: FTHL surveys, Oat Pit Environmental Assessment for BLM, El Centro, 2009-20. (20 hours) SDG&E La Rosite Pole Replacement FTHL Monitoring 2012-2013(410 hrs); Imperial County Department of Public Works 4 Bridge biological assessments/reports and applicable permitting (2018-present) All American Aggregates, FTHL surveys, Boyd Road Mine Environmental Assessment, BLM El Centro, 2007. (9.5 hours) All American Aggregates, FTHL surveys, Wheeler Road Mine Environmental Assessment, BLM, El Centro, 2006. (8.5 hours); ValRock, FTHL surveys, Ocotillo ByPass Road Environmental Assessment, County of Imperial/BLM, El Centro, 2004. (7 hours). USFWS Authorized desert tortoise biologist: American Girl Mine and Mesquite Mine.

Citizens' Congressional Task Force on the New River, Brawley, Ca PROGRAM COORDINATOR 1/98 - present

Assisted with design, construction, planting and monitoring of four constructed wetlands in Imperial County. Responsible for coordinating activities relating to student and public outreach education to promote the water quality opportunities of wetlands ponding systems on the New River.

Imperial Valley College, Imperial, California ENVIRONMENTAL MANAGEMENT PROJECT COORDINATOR 9/95-12/99

Responsible for establishing an Environmental Technology curriculum, presenting public forums, short courses and certificate courses in hazardous materials and safety areas. In conjunction with Division Chairman, established a budget for 96-98 program and obtained funding of \$131,000 based on 95-96 program performance. Established short courses that trained over 700 people in hazardous materials safety programs. Compiled a survey of employers, which provided direction for the program.

VOLUNTEER ORGANIZATIONS

CALIFORNIA NATIVE PLANT SOCIETY: Imperial Valley Coordinator, 2006-2019.
SALTON SEA INTERNATIONAL BIRD FESTIVAL: Coordinator: 2001-2010. Organized bird festival in the Imperial Valley that attracted over 300 birders.
COLORADO RIVER WATER QUALITY CONTROL BOARD: Board member Dec 05-Sept 06.
FRIENDS OF SONNY BONO NATIONAL WILDLIFE REFUGE: Board Chairman, May 2015-2017

EDUCATION

University of Arizona, Tucson, Arizona
Masters of Science Degree - AGRICULTURAL EDUCATION
Thesis: Survey and training protocol for documenting burrowing owls and habitat in Imperial County, California
California State Polytechnic College, Kellogg-Voorhis Campus, Pomona, California
Bachelor of Science Degree - AGRICULTURAL BIOLOGY
Imperial Valley College, Imperial, California Associate of Science Degree. AGRICULTURE

C2. MANAGEMENT/ADMINISTRATION

C2.4. Risk Management Plan

C2.4. RISK MANAGEMENT PLAN

We will prepare a risk matrix to identify project elements that can impact the scope of work, schedule, cost, quality, environmental, safety, or other risks in design and construction. The risk matrix will identify the probability of occurrence (high, medium, low) and will continue for the project duration as the risks can change as the project matures or anticipated risks disappear.

Our team will identify risks or opportunities and assess each one qualitatively. The risk matrix will track risk owners and triggers along with a draft mitigation approach, if required. Avoidance and mitigation measures will be developed by the whole team to reduce the overall project risk. An example of this is developing a strategy that is project-specific, like the approach to avoid IID relocations during bridge construction. The risk matrix assists with a strategy like early coordination with utility agencies, such as IID, to discuss construction clearances and help mitigate the potential risk to the project schedule.

The risk register will be updated and reviewed at team meetings to ensure that everyone is well aware of all risks and opportunities as the project progresses and measures are being taken to mitigate those risks.

Project Risk Management Plan									
Agency	Status	ID #	Task Phase	Mitigation			On-Track		
				Task Assigned	Task Description	Task Impact	Task Priority	Task Status	Task Comments
1	Active	(2)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
2	Active	(3)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
3	Active	(4)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
4	Active	(5)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
5	Active	(6)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
6	Active	(7)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
7	Active	(8)	(8)	(5)	(4)	(7)	(6)	(13)	(18)
8	Active	(9)	(8)	(5)	(4)	(7)	(6)	(13)	(18)

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C2. MANAGEMENT/ADMINISTRATION

C2.5. Utility Coordination

C2.5. UTILITY COORDINATION

The team will approach the utility coordination effort utilizing the Utility A-B-C Process. Based upon an initial examination of available records, field inspection, and a dig alert, a utility conflict matrix will be developed. An early request for general GSA and CBP on-site utility service facilities, solar field appurtenances, and IID as-built mapping within the project limits will be made and coordinated at NTP. The matrix will include disposition of each utility within the project limits and serve as a tracking record throughout the project. After additional review of the matrix with ICTC, Caltrans and GSA, the team will draft initial letters ("A" Letter) to the utility owners requesting current and planned facilities within and near the project area. The utilities will then be mapped in CAD and overlaid with the current bridge/roadway widening design. If it is determined that potholing existing utilities is necessary to confirm the protect-in-place assumption, especially high-risk facilities; underground exploratory potholes will be conducted to verify locations of existing utility facilities. If a conflict is determined, the team will counteract immediately by sending a claim letter to the current utility owner and coordinate with the Caltrans Right-of-Way. The claim letter begins a process to determine associated rights, develop a path for liability and agreement language, understand schedule implications and review the best course of action for the utility relocation plan and estimate. It is noted later that permanent conflicts are not anticipated, and the team is documenting

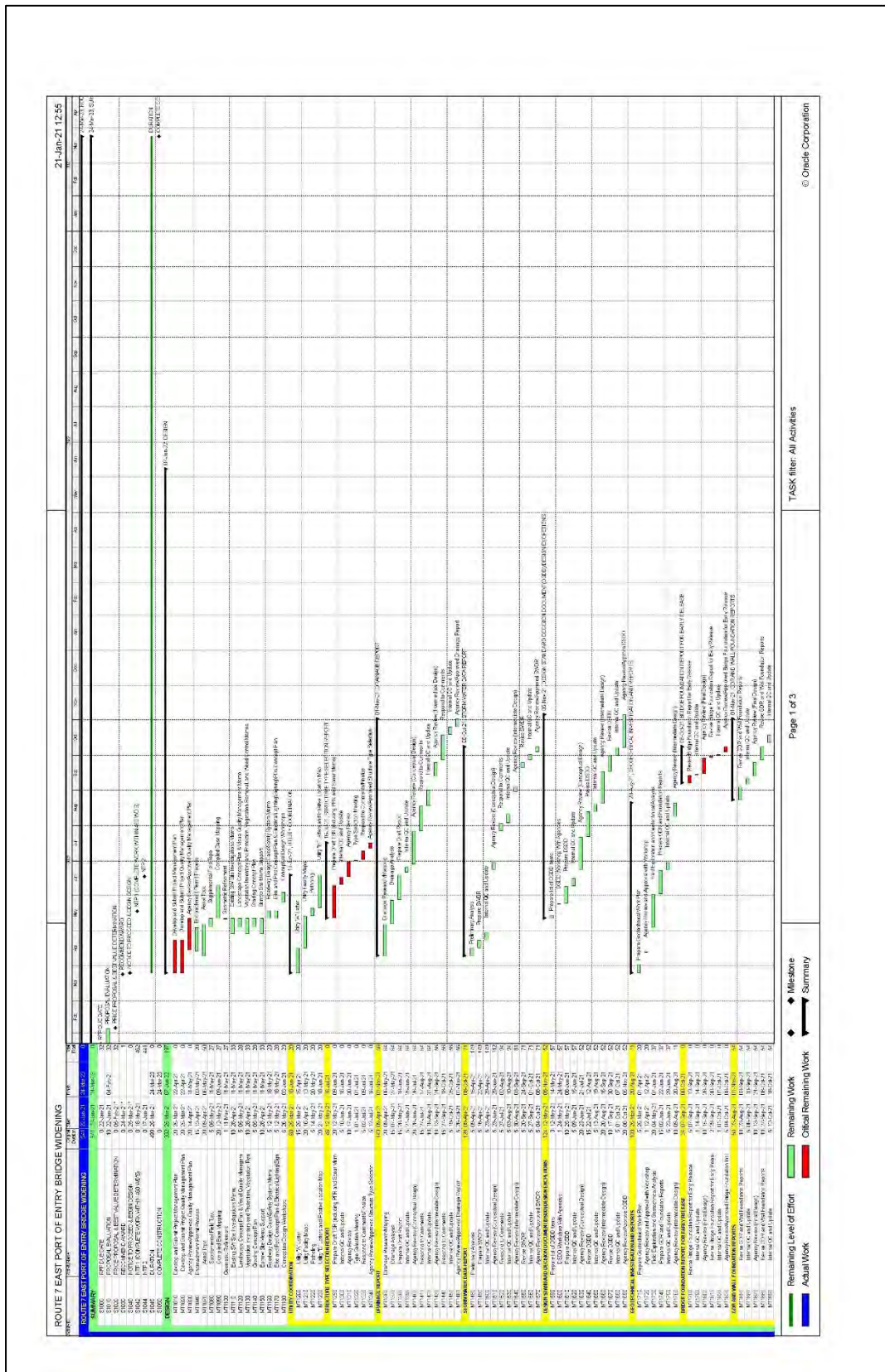
our project approach and understanding if such a case does occur. In most "no conflict" cases according to the PR, once the utility maps have been drawn in CAD and plotted based on the response to the "A" letters, the team will send "B" letters requesting that the utility owner verify the accuracy of the new maps. Once Caltrans Right-of-Way has reviewed the utility matrix, corresponding letters, and mapping and agree that conflicts are unlikely, the team will send final "No Conflict" letters for the project team's and owner's records. Should a conflict arise from early review/potholing or after a "B" letter review, the team will continue the claim letter process, review rights/liability, and discuss relocation plans through a "meeting of minds" with all stakeholders. At that meeting, the team will come prepared to discuss all economically feasible design refinements to avoid relocation with the utility owner. Once a clear path has been determined for liability and/or relocation, and if a utility agreement is required based on a Report of Investigation, the team, with Caltrans Right-of-Way approval, will send subsequent "C" letters with contract agreement language and a Notice to Owner formatted language. If needed, the team arrangements will be made within the construction sequence schedule, widening design, and updates to the Standard Special Provisions, allowing for utility relocation window or preconstruction activities.



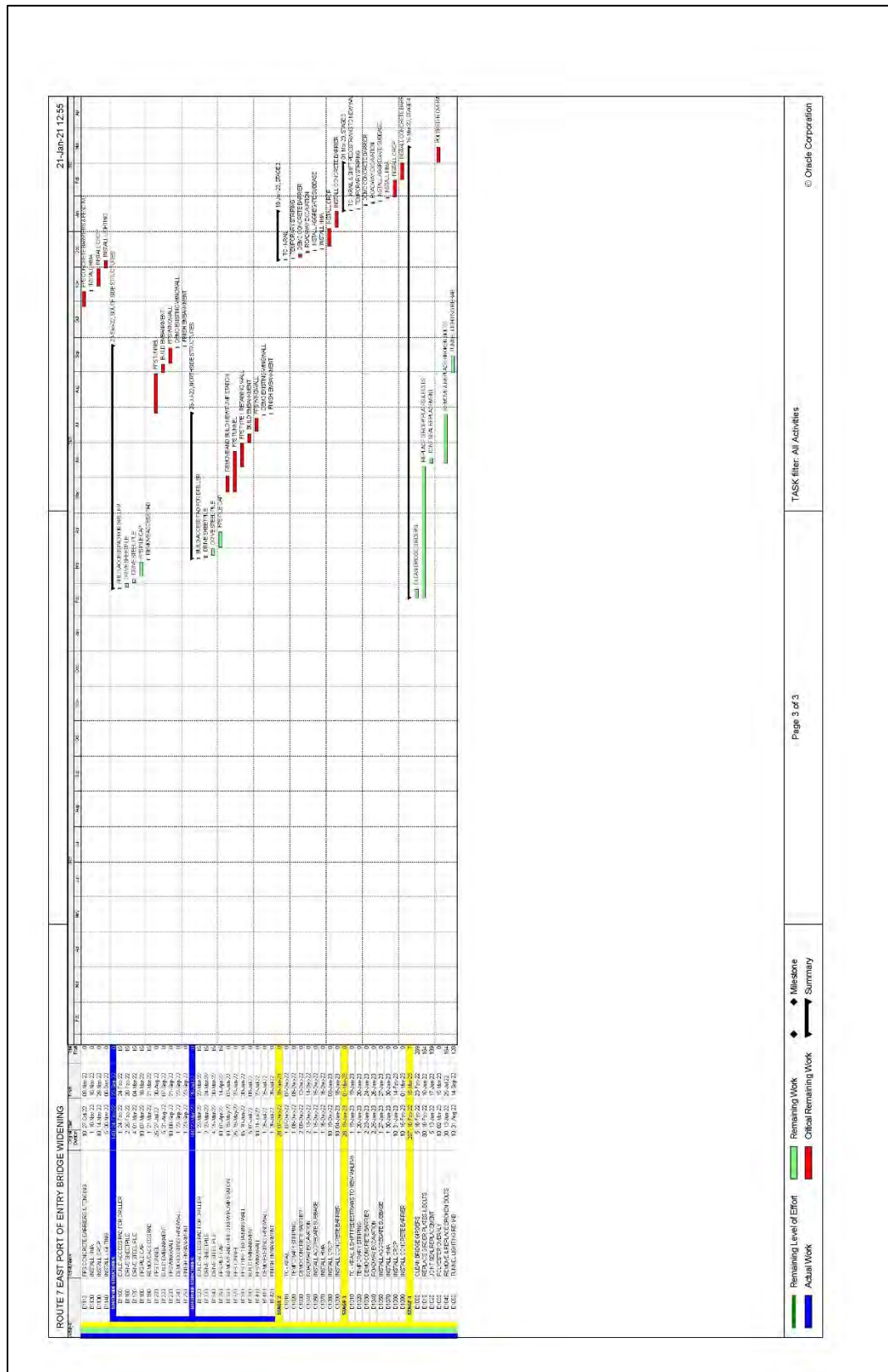
As noted in the Project Report, existing utilities are not anticipated to be impacted as part of the project and a preliminary conflict matrix and utility relocation plan are not expected to be necessary. As noted above, if a utility or on-site facility is discovered near anticipated work, the team will follow the utility coordination method previously outlined and, if needed, will conduct positive identification potholing to mitigate unforeseen relocations. There is an existing 230 kV overhead power line supported by steel poles, as part of the IID Energy Transmission system, that runs parallel to the All-American Canal and spans across the existing roadway. An existing steel electrical pole is located approximately 100 feet east of the current road. Based on the May 2020 Project Report, it is anticipated that the existing

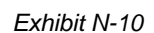
steel poles will not be impacted and will remain in place. Field survey of these existing steel poles as well as the electrical lines, will be completed to confirm the actual locations and clearance elevations. Obtaining survey data will assist in verifying the no impact assumption for the roadway widening design and construction equipment conflicts; eliminating risks in the schedule. As shown in the adjacent figure, our team has been working diligently with crane subcontractors to position the crane(s), depicted by red rectangles, and girder lifts so that the existing overhead lines will not be impacted during staging and girder placement operations. Crane operation will follow the required clearance needs as stated on the Section III, Table 1 of the California Public Utility Commission (CPUC) General Order 95 (GO 95).

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**C3. PROJECT SCHEDULE, CONSTRUCTION
PHASING/SEQUENCING PLAN, AND SAFETY AND
SECURITY PROGRAM**

C3.1. Project Schedule

C3.1. PROJECT SCHEDULE

The schedule includes significant level of detail showing our understanding and complexity of activities and relationships required to deliver the project. The schedule was created considering the design and construction requirements specified by ICTC. We commit to finishing construction within 460 Working Days from NTP 1 as specified in the Instruction To Bidders.

The schedule is broken down into three groups of work:

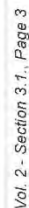
- **Summary:** Project summary highlighting contract milestone dates including award, NTP and construction completion
- **Design:** Is broken down into the specific scopes of design and work. This includes all QC/QV design requirements including conceptual, intermediate and final design process.
- **Construction:** Shows the construction of work broken down based on stages of construction work as well as north and south of canal.

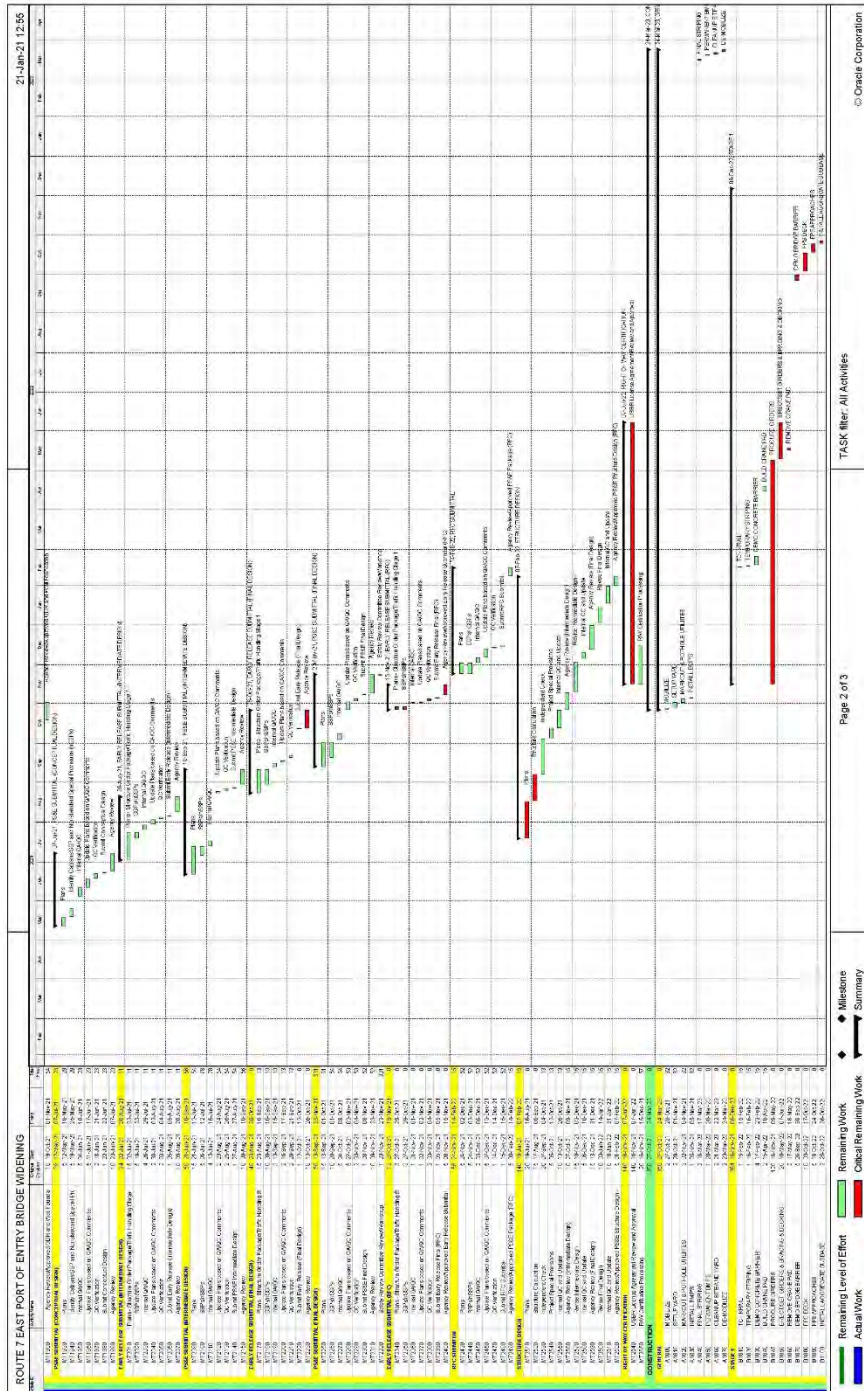
EXAMPLE OF DESIGN SUBMITTAL BREAKDOWN	PS&E SUBMITTAL (CONCEPTUAL DESIGN)		39
	MT1930	Plans	5
	MT1940	Identify Caltrans SSP and Nonstandard Special f	5
	MT1950	Internal QA/QC	5
	MT1960	Update Plans based on QA/QC Comments	5
	MT1970	QC Verification	2
	MT1980	Submit Conceptual Design	1
	MT1990	Agency Review	10
	EARLY RELEASE SUBMITTAL (INTERMEDIATE DESIGN)		34
	MT2010	Plans - Structure Girder Package/Traffic Handling Stag	15
	MT2020	SSPs/nSSPs	5
	MT2030	Internal QA/QC	4
	MT2040	Update Plans based on QA/QC Comments	2
	MT2050	QC Verification	2
	MT2060	Submit Early Release (Intermediate Design)	1
	MT2070	Agency Review	10
	PS&E SUBMITTAL (INTERMEDIATE DESIGN)		49
	MT2090	Plans	15
	MT2100	SSPs/nSSPs	5
	MT2110	Internal QA/QC	4
	MT2120	Update Plans based on QA/QC Comments	2
	MT2130	QC Verification	2
	MT2140	Submit PS&E Intermediate Design	1
	MT2150	Agency Review	10

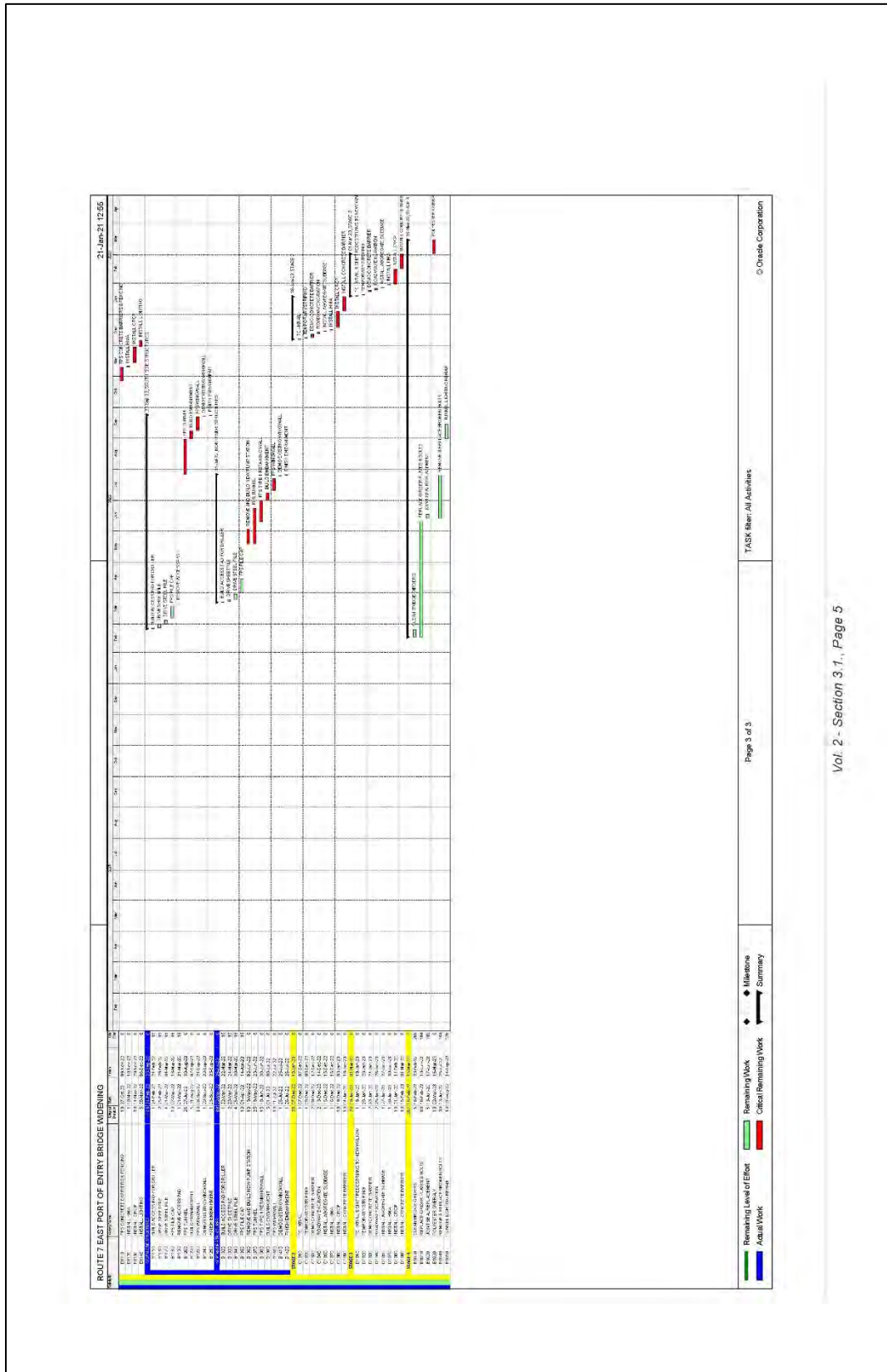
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The job is very linear in nature; therefore, the majority of construction activities are on the critical path. This is also caused by the requirements of keeping one tunnel open at all times which limits working on both sides of the canal at once. Our schedule separates this work to show that we are leaving one tunnel always open to conform with the agencies access requirements.

NORTH AND SOUTH SIDE WORK SEPARATED	SOUTH SIDE STRUCTURES		182
	B1150	BUILD ACCESS PAD FOR DRILLER	1
	B1160	DRIVE SHEETPILE	2
	B1170	DRIVE STEEL PILE	4
	B1180	FPS PILE CAP	10
	B1190	REMOVE ACCESS PAD	1
	B1200	FPS TUNNEL	25
	B1210	FPS TYPE 1 RETAINING WALL	15
	B1220	BUILD EMBANKMENT	5
	B1230	FPS WINGWALL	10
	B1240	DEMO EXISTING WINGWALL	1
	B1250	FINISH EMBANKMENT	1
	NORTHSIDE STRUCTURES		107
	B1320	BUILD ACCESS PAD FOR DRILLER	1
	B1330	DRIVE SHEETPILE	2
	B1340	DRIVE STEEL PILE	4
	B1350	FPS PILE CAP	10
	B1360	REMOVE AND BUILD NEW PUMP STATION	10
	B1370	FPS TUNNEL	25
	B1380	FPS TYPE 1 RETAINING WALL	15
	B1390	BUILD EMBANKMENT	5
	B1400	FPS WINGWALL	10
	B1410	DEMO EXISTING WINGWALL	1
	B1420	FINISH EMBANKMENT	1







**C3. PROJECT SCHEDULE, CONSTRUCTION
PHASING/SEQUENCING PLAN, AND SAFETY AND
SECURITY PROGRAM**

C3.2 Construction Phasing/Sequencing

C3.2. CONSTRUCTION PHASING/SEQUENCING

The design phase of the construction phasing/sequencing will begin at the onset of the project's Notice of Award and NTP and will utilize and be consistent with the draft of the Traffic Management Memorandum.

The Traffic Management Memorandum (TMM) as noted in C2.2. Preliminary Design Approach will provide the guidelines for minimizing impact to the traveling public and the CBP inspection station operations. This will be achieved by following the guidance already provided within the PR, PR Attachment G plans, CBP requirements, and by exceeding CAMUTCD requirements. During the development of the TMM, our team will proactively engage the CBP, GSA and emergency responders to understand their needs for work window requirements, access, egress, TMM strategies and set a plan for continuous communication during the project. A key item to discuss and include in the Traffic Management Memorandum will be the contingency plan as it relates to the construction phasing. The contingency plans should cover additional scenarios and/or emergencies that are not typically covered in the traffic handling plans. These plans provide the best line of communication and course of action should an emergency or unplanned event arise thus minimizing impacts.

Once the TMM has been approved after the concept review and meeting, the project design schedule will progress immediately to an Early Release package which will include Stage 1 traffic handling

and construction activities discussed within the TMM. Our team proposes that an Early Release package which includes direct correlation with Stage 1 activities will be critical to gaining momentum for the project.

The following items are **considered critical path** for the design phase of the project:

- **Early Release Package –**

- » Stage 1 Stage Construction Plan and Traffic Handling Plan
- » Bridge/Girder package – critical to steel girder procurement and beginning pile driving activities

- **Coordination with utility owners and GSA** to identify and verify existing on-site facilities that need to be protected in place

- **Early coordination with IID** to survey and verify existing 230 kV overhead power lines will not be in conflict

As noted previously, obtaining a licensing agreement with the United States Bureau of Reclamation (USBR) for construction activity is a potential schedule risk, and our team will be monitoring and communicating the activity between ICTC and USBR on a weekly basis at a minimum.

Due to the timing and critical path milestone activities and reviews that need to take place, the above listed items will need to happen and be approved within the first four (4) to seven (7) months of the project Notice of Proceed.

The construction phase of the project is very linear due to the scope of work and requirement to always maintain access through at least one tunnel. The work is broken down into four phases as follows:

- **Stage 1** – Bridge Widening (driven pile, girders, tunnel extensions, embankment, concrete pavement, approach slabs)
- **Stage 2** – New Pedestrian Walkway (concrete barrier, concrete pavement, fencing)
- **Stage 3** – Remove Existing Walkway (demolition, concrete barrier, concrete pavement)
- **Stage 4** – Bridge Maintenance Work (rehabilitation of bridge deck, repair concrete, replace girder plates, clean bridge)

The first three stages of work will have to be constructed sequentially in order to maintain vehicular access through the port of entry lanes without reducing capacity. We have figured that most of the Stage 4 work, aside from deck rehab work can and will be performed during construction of the first three stages.

Existing truck lanes will be maintained during construction.



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**C3. PROJECT SCHEDULE, CONSTRUCTION
PHASING/SEQUENCING PLAN, AND SAFETY AND
SECURITY PROGRAM**

C3.3. Safety and Security Program

C3.3. SAFETY AND SECURITY PROGRAM

Safety

It is Hazard Construction's continuing policy that the first consideration in performing work is the safety of employees. All reasonable methods, procedures, and equipment necessary to achieve this will be used.

Hazard Construction will operate under all ICTC, Caltrans, GSA, OSHA, and Hazard Construction safety requirements for the duration of the project. Hazard's site personnel have 40-Hour OSHA, first-aid, and confined space training. In addition to the comprehensive Illness and Injury Prevention Program currently in place, we will develop a site-specific Safety Plan that includes weekly review of the site and contractor operations. Hazard Construction will also conduct daily job hazard analysis during the course of the project.

Working around the All-American Canal and other canals in the Imperial Valley is something Hazard has done on numerous occasions. The Safety Officer and team will work with the IID to make sure all requirements for working around the canal are covered and installed per the IID's requirements. These requirements include personal flotation devices (PFD's) for employees working near or over the water, life rings installed throughout the work area, and a floating lifeline placed across the canal on the downstream side of the job. Work will not begin until all safety concerns are planned and addressed.



Experience Modification Rating:

- 2021: 77%
- 2020: 79%
- 2019: 79%

Safety Record:

THREE YEAR AVERAGE	
Total Case Incident Rate (TCIR)	4.68
Lost Time Incident Rate (LTIR)	1.03
Lost Work Day Rate (LWDR)	2.05
Days Away Restricted or Transferred Rate (DART)	2.61
Total Recordable Injury Frequency Rate (TRIFR)	4.68
Lost Time Injury Frequency Rate (LTIFR)	0.00
Severity	75.98

2020		2019		2019	
Description	Number	Description	Number	Description	Number
Manhours Worked	261,822.47	Manhours Worked	259,711.00	Manhours Worked	239,558.00
Factor	200,000	Factor	200,000	Factor	200,000
Total Recordables	4	Total Recordables	11	Total Recordables	3
Total Lost Time Cases	0	Total Lost Time Cases	4	Total Lost Time Cases	0
Total Lost Workdays	0	Total Lost Workdays	8	Total Lost Workdays	0
Total Days Away	0	Total Days Away	60	Total Days Away	0
Total Incidents from OSHA 300A log (G,H, I, J)	4	Total Incidents from OSHA 300A log (G,H, I, J)	11	Total Incidents from OSHA 300A log (G,H, I, J)	3
Total Restricted or Transferred Days	0	Total Restricted or Transferred Days	198	Total Restricted or Transferred Days	83
Total Restricted or Transferred Cases	0	Total Restricted or Transferred Cases	4	Total Restricted or Transferred Cases	2
TCIR	3.06	TCIR	8.47	TCIR	2.50
LTIR	0.00	LTIR	3.08	LTIR	0.00
LWDR	0.00	LWDR	6.16	LWDR	0.00
DART	0.00	DART	6.16	DART	1.67
TRIFR	3.06	TRIFR	8.47	TRIFR	2.50
LTIFR	-	LTIFR	-	LTIFR	-
SEVERITY	0.00	SEVERITY	158.64	SEVERITY	69.29

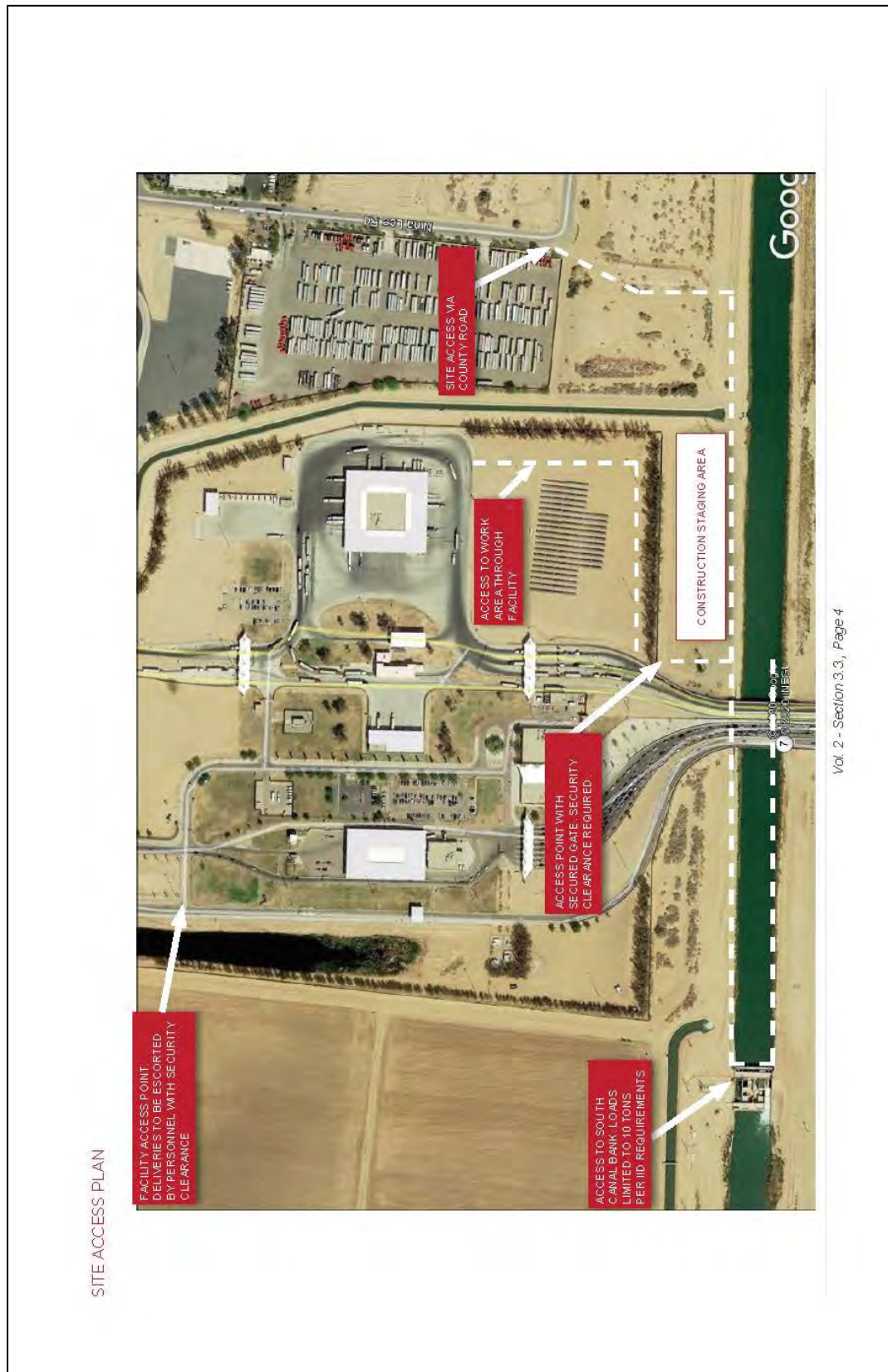
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Security

Security is the most important item on this project to keep our country safe and secure. Following Homeland Security Presidential Directive 12, all employees will be required to obtain the proper security clearance for working on the project, which includes background checks, fingerprinting, and badging. Temporary measures will need to be installed in all areas where the existing security fencing is removed for construction purposes. This work will be coordinated and approved by GSA to provide continuous site security to their facility.

The Safety Officer is responsible for ensuring the site is secure by implementing a site-specific security plan. The plan details:

- CBP vetting and GSA HSPD-12 requirements and process and includes a log of all personnel cleared through that process.
- Site access plan with detailed information on how personnel, vehicles, and deliveries will enter/exit the site.
- Temporary security measures during operations when security fences are removed/replaced and continually review/protect existing cameras and monitoring measures with GSA.
- Staging area security details.
- Interaction guidelines with CBP and GSA to keep them informed on where workers will be working and how they intend to access the site.
- Escort procedure for deliveries or personnel without proper security clearance.



RICHARD KRYMSKI

San Diego • (360) 672-1932 • richard.krymski@outlook.com • www.linkedin.com/in/richard-krymski

SAFETY MANAGER

- 25+year's dedicated safety professional with rapid adaptability, collaboration, data analysis, communication skills, and managing for productivity
- Knowledgeable in identifying and abating safety workplace hazards, coordinating the general organization of all safety programs, safety inspections, and accident investigations
- Manage Safety records and policy development/implementation: Proficient in Computer software to include the Microsoft Office Suite of Word, Excel, and PowerPoint

SKILLS

Safety Program Management	Safety Training	Safety Inspections/ Audits
Process Improvements	Safety Compliance	Customer Service
Incident Investigation	Recordkeeping	Quality Assurance
Analytical thinking	Job site Hazard Analysis	Hazard Abatement

PROFESSIONAL EXPERIENCE

HAZARD COMPANIES

Safety Manager

November 2019 – Present

- Administer, direct, and manage compliance with the company safety program and incident prevention efforts to ensure company safety goals are met. Including the authority and ability to change and/or adjust work procedures as required to ensure the safety of affected employees and the general public.
- Provide a strategic vision for creating safe work areas for affected employees and the general public, including conducting initial work area assessments and the development and facilitation of appropriate training programs.
- Develop, organize, and implement safety-related programs and training for 150 employees.
- Initiate, perform, and document daily, weekly, and monthly Jobsite inspections and audits with particular emphasis on hazard recognition, unsafe behaviors, and facilitate the implementation of corrections/behaviors.
- Initiate, coordinate, and conduct safety meetings and training programs to ensure the effective communication of company policy and safety standards.
- Coordinate and control the development and review of standard operating procedures, master and daily job hazard analysis for each major phase of work to ensure its safe completion, including assessing the need for and facilitating the training for each JHA as may be required.
- Ensure the proper reporting, investigation, and corrective action for vehicle accidents, personal injury accidents, property damage, near-miss incidents.

STRATEGOS CONSULTING, LLC

Transportation Department HazMat/HazWaste Coordinator LOGSU-1

May 2019 – November 2019

- Responsible for and ensured compliance, with "cradle to grave" provisions as a "generator of hazardous waste." Scope of responsibility is proper disposal, storage, labeling, and management of the Transportation Dept. Hazardous Material/Hazardous Waste program as specified by applicable Federal, State, and local Hazardous Waste/Hazardous Material regulations
- Maintained records for the Hazardous Material/Hazardous Waste Program, letters of designation, personnel environmental training documentation, hazardous waste turn-in documents, storage area/tank inspection records, business plans, waste profile sheets, lab analysis, and copies of manifests or bill of lading
- Ensured all hazardous waste and or recyclable materials were correctly identified, labeled, contained, segregated by hazard class, and turned-in for compliant hazardous waste disposal before the 90-day storage limit or other applicable waste storage limits
- Communicated and coordinated with NSWG-1 & NAVSUP Environmental and Base Environmental for routine assessments and policy adherence.

UNITED STATES NAVY

Safety Manager

July 2008 – May 2019

- Organizations Safety committee lead ensuring proper focus, monitoring, safety control, education, investigation and evaluation of an organization safety requirements of 350 personnel to ensure best practices
- Identify, evaluate and devise measures to address physical, environmental, chemical, biological, and ergonomic hazards/risks for fifteen facilities and an organization of 350 personnel
- Developed and maintained working relations with existing and prospective external and internal clients
- Conducted building assessments for designated substances and other hazardous materials, including but not limited to asbestos, lead, and mold
- Developed and conducted health and construction safety training with a successful overall on-site compliance
- Effectively maintained the safety, training, licensing, and maintenance of three 40-ton Link-belt cranes per Navy, NAVOSH, NAVAIR, OSHA regulations.
- Conducted external accident/ incident investigations, identified the root cause and other contributing factors, prepared reports and submitted finding and recommendations promptly

Occupation Health and Safety Specialist

June 2004 – July 2008

- Reviewed, evaluated, and analyzed work environments and design programs and procedures to control, eliminate, and prevent disease and injuries caused by chemical, physical, and biological agents
- Set up, coordinated, and facilitated safety training for 125+ personnel
- Developed and monitored safety standards, policies and procedures to ensure safety or compliance
- Responsible for multiple daily inspections and audits to assure federal, state, and local compliance
- Conducted safety orientations, training, and refresher classes as needed
- Maintained environmental, health, safety, compliance records including incidents, injuries, spills, site inspections
- Coordinated with the clients, employees, and contractors to plan for on-site activities, ensuring all safety procedures were addressed

Safety Technician

September 2000 – June 2004

- Oversaw the training and budget for all organization personnel of all environmental, health, and safety issues, and conducted safety training to educate and assist workers with safety policies, laws/ practices, and awareness programs keeping with the organization's vision
- Determined requirements for personal protective equipment, machine guarding, and engineering controls
- Developed safety programs and policies in accordance with the safety manual, safety news, other safety-related manuals, reports, and videos to assist with day to day operations
- Recognized, monitored, and made recommendations to ensure the correction of all workplace safety hazards through on-site audits, consulting ergonomic assessments, and interventions; collaborated on safety policy development and training

EDUCATION

Bachelor of Arts – Business Administration
Ashford, University, San Diego, CA

June 2018

Associates of Science – Business Administration
Coastline Community College, Fountain Valley, CA

June 2013

PROFESSIONAL CREDENTIALS & AWARDS

Navy and Marine Corps Achievement Medal (10)
Navy and Marine Corps Commendation Medal (1)
OSHA 10 Hour Construction Safety
OSHA 30 Hour Construction Safety
OSHA 510 Occupational Safety and Health Standards for the Construction Industry
OASH 500 Trainer Course in Occupational Safety & Health Standards for Construction
California Hazardous Waste Management Certified
Bachelor of Arts – *summa cum laude*
Associates of Science – *with honors*

**Exhibit O Project Oversight Agreement between the Federal Highway
Administration (FHWA), the California Department of
Transportation (Caltrans), and the Imperial County
Transportation Commission**

Project Oversight Agreement
between Federal Highway Administration,
the California Department of Transportation,
and the Imperial County Transportation Commission

Project Name: Calexico East Port of Entry (POE) Bridge Expansion Project

FPN: 6471017

EA(s): 11-43050

Project ID Number(s): 1118000265

A. GENERAL

This Project Oversight Agreement (POA) serves as a supplement to the Stewardship and Oversight Agreement on Project Assumption and Program Oversight between the Federal Highway Administration (FHWA) California Division and the State of California Department of Transportation (Caltrans) dated May 28, 2015.

A POA is required for any project that has been classified as a Project of Division Interest (PoDI). The POA assigns specific project responsibilities among FHWA, Caltrans, and the Imperial County Transportation Commission that are necessary for the development and delivery of a PoDI.

This project has been selected as a PoDI by meeting the following criteria:

- ☐ Major Project (Total costs > \$500 million) - **Insert total project cost**
- ☐ Potential Major Project (Total costs have possibility to be > \$500 million due to risk) - **Insert total project cost**
- ☒ Innovative Financing (FY 2018 BUILD TRANSPORTATION DISCRETIONARY GRANTS)
- ☒ Innovative Contracting (Design-Build)
- ☐ Other Risk-based criteria:

B. PROJECT DESCRIPTION

This Project proposes to widen the existing off-system Calexico East Port of Entry bridge over the All American Canal at the U.S./Mexico border approximately 0.7 miles south of State Route (SR) 7. The project will add two additional northbound commercial truck lanes (from two to four lanes), two additional northbound passenger vehicle lanes (from four to six lanes), and will provide an eight-foot outside shoulder on both the east and west sides of the bridge. There will be new

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barriers and installation of a security fence in each direction. The project also includes improvements to the bicycle and pedestrian facilities at the border crossing.

The Local Project Sponsor is the Imperial County Transportation Commission (ICTC) in partnership with the California Department of Transportation (Caltrans) and U.S. Customs and the U.S. General Services Administration (GSA). The total amount of 2018 BUILD funds awarded are \$20,000,000.

The project is located off the National Highway System and as such FHWA's Title 23 responsibilities for design, PS&Es, contract awards, and inspections have been delegated and assumed by Caltrans. These assumptions are documented in Attachment A and B of this document. Under 23 U.S.C. 106(c), Caltrans may permit local public agencies (LPAs) to carry out Caltrans's assumed responsibilities on locally administered projects. Any approval or related responsibilities where FHWA is listed in Attachment A or described in Section VII of the FHWA/Caltrans Stewardship and Oversight Agreement (SOA) cannot be assumed by Caltrans.

The project will be delivered using the Design-Build project delivery method. See Attachment B for additional Design-Build actions and approval responsibilities assigned to FHWA, Caltrans and if applicable, the local public agency.

C. PROJECT RISK ASSESSMENT

FHWA considers the risks to the delivery of the project in the determination of the level of oversight would be provided to each project. A risk assessment is performed for each project for the following categories:

- | | |
|---------------------------------|-----------------------------------|
| 1. Complexity | 6. Project Administration |
| 2. Cost | 7. National/Regional Significance |
| 3. Schedule | 8. Urgency |
| 4. Funding | 9. Corporate Actions |
| 5. Environmental Considerations | 10. Local Considerations |

The results from the risk analysis tool highlights the major risk areas on the project and provides a categorical triage (i.e., High, Medium, or Low) as to how each of those risk areas impact the project. The following table summarizes the risk analysis results for this project:

Risk Analysis Results Summary Table

Risk Area	Ranking (H/M/L)	Risk Description/ Comments
Complexity	H	<ul style="list-style-type: none"> The project is routine in nature, however it is being procured as a Design-Build Project (H) and require the coordination between multiple stakeholders including other federal agencies (i.e. GSA and CBP). Since it is a border project, it may also require the coordination with Mexico during the construction of the project.
Cost	L	The total costs are expected to be approximately \$32 million. We have \$25 million committed and we will be pursuing an additional \$7

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		million in State funds to complete a Phase 2 (Deferred maintenance improvements, pedestrian canopy, and 8' foot shoulders)
Schedule	H	<ul style="list-style-type: none"> July 31st, 2020 is the DEADLINE to obligate BUILD Grant for Construction. E76 approval by FHWA is expected prior to this date. Design-Build procurement process need expedited schedules.
Urgency	H	<ul style="list-style-type: none"> Project is currently proceeding as planned BUT requires collaborative efforts from ALL Stakeholders to meet July 31st, 2020 Deadline for construction funding obligation.
Environmental Considerations	L	<ul style="list-style-type: none"> Project requires a Categorical Exclusion (CE), i.e. minimum environmental impacts and project mitigation (L) Little opposition to project and low risk of project lawsuits (L)
Funding	L	<ul style="list-style-type: none"> Project is funded with 2018 BUILD Grant, State, and Local funds (L) All project funding will be identified in a state planning document such as a State Transportation Improvement Plan (STIP) (L)
Project Administration	M	<ul style="list-style-type: none"> Project sponsor has adequate resources to deliver the project (M) Project design-build procurement is expected to follow Caltrans process with medium issues meeting Federal Regulations, e.g. DBE, Buy America, Uniform Act, improper payments, and construction quality assurance (M)
National/Regional Significance	M	<ul style="list-style-type: none"> Provides congestion relief and air quality improvement (M)
Corporate Actions	L	<ul style="list-style-type: none"> No significant project elements, protocols or features have been identified that will impact or influence a FHWA national goal and no corporate activities are anticipated in the next year (L)

D. PROJECT ELEMENTS FOR FHWA INVOLVEMENT

Based on the areas identified as having a heightened risk, FHWA has considered the following elements of program delivery as providing an opportunity for added value by its involvement. The specific activities that FHWA will be involvement are listed in Section E, but the elements target for involvement are the following:

- ☐ Planning and Programming
- ☒ Financial Management
 - ☒ Project Authorization(s) and Project Agreement
 - ☐ Cost Estimate Reviews
 - ☐ Financial Plans (Initial Financial Plan and its Annual Updates)
- ☐ Environmental Clearances (i.e., NEPA)
- ☒ Design-Build Procurement
 - ☒ Advertising (i.e. Request for Proposals and Award)
 - ☒ Alternate Technical Concepts
- ☐ Design Development and Services
 - ☐ Consultant Contracts
 - ☐ Design Exceptions
 - ☐ Interstate System Access
 - ☐ Project Management Plan

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- ☐ Design Plans and Release for Construction Packages
- ☐ System Engineering Analysis (for ITS projects): SEMP, SERF, and ConOps
- ☐ **Construction Contract Administration**
 - ☐ Contract Administration (i.e., CCOs, Claims, Buy America Requirements)
 - ☒ Construction Inspection & Quality (Verification of System)
 - ☐ Construction Quality Assurance Plan
 - ☐ Final Inspection/Acceptance of completed work
- ☐ **Other – Describe:**

E. PROJECT ACTIVITIES FOR FHWA INVOLVMENT

Based on project risks and project elements, FHWA has considered what involvement would add value and which specific actions will be taken by FHWA on this Project. FHWA involvement and a detailed description of what those actions will entail is as follows:

NOTE: This is a Design-Build Project. FHWA and Caltrans Design-Build's project approvals and related responsibilities are identified in Attachment B – Design-Build Project Action Responsibility Matrix. Attachment B supplements and those approval and related responsibilities identified in Attachment A - Project Action Responsibility.

☒ **Retained Project Approval Actions**

A detailed accounting of who will take responsibility for each project approval action is provided in Attachment A. By checking this box, FHWA has indicated that optional approval actions highlighted in blue in the Attachment have been retained as indicated. Attachment B supplements Attachment A and indicates approval actions and responsibilities tailored to this Design-Build project.

It has been determined under 23 U.S.C. 106(c) that Caltrans may permit local public agencies (LPAs) to carry out Caltrans's assumed responsibilities on locally administered projects. Any delegation must be documented in a separate agreement between Caltrans and that Local Agency. Caltrans is responsible and accountable for LPA compliance with all applicable Federal laws and requirements.

☐ **Project/Technical Meetings**

FHWA has determined that it will not be involved in these activities.

☒ **Field Review/Inspection & Report**

FHWA will conduct construction inspection to verify that Buy American Requirements and Labor Compliances are met on this project.

☐ **Program/Process Reviews & Report**

FHWA may plan to include projects as part of risk-based program or process reviews. If this project is selected as part of a program or process review, Caltrans

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will be notified as soon as possible.

☒ **Other – Describe:**

FHWA may plan other specific project level actions and involvement not otherwise reflected in this POA. It selected for other specific project level actions and involvement, Caltrans will be notified as soon as possible.

FHWA, in collaboration with Caltrans, shall work to ensure reporting requirements outlined in the Grant Agreement are met by Imperial County Transportation Commission.

F. FHWA PROJECT OVERSIGHT MANAGER (POM) AND OTHER OVERSIGHT RESOURCES

A POM has been designated to provide federal oversight of the project. The POM will be responsible for coordinating all FHWA project actions described in this POA. When necessary, the POM will coordinate with other federal staff resources to obtain technical assistance and ensure expeditious reviews and approvals of project actions. As part of this agreement, Caltrans and Imperial County Transportation Commission agrees to include the POM in any regularly scheduled activities as indicated in this POA. In addition, Caltrans and Imperial County Transportation Commission agrees to inform the POM of any major changes to the project risk, which might impact FHWA's role in the project. The POM contact information is as follows:

Tay Dam
Sr. Transportation Engineer
FHWA California Division CalSouth Office
888 S. Figueroa St, Suite 440
Los Angeles, CA 90017
Phone: 213-894-5919
Email: tay.dam@dot.gov

All records pertaining to this project must be available to the POM for review in accordance with applicable laws. In addition, the United States Department of Transportation (USDOT) Office of Inspector General (OIG) may also perform audits on the project.

G. UPDATES TO THE AGREEMENT

It is anticipated that instances, such as changes in Federal/State laws or guidance, evolving levels of project risk, and project specific modifications, may require an update of this Agreement during

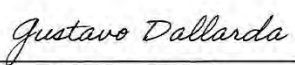
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its implementation. In order to facilitate any such changes, the Caltrans Project Manager, the Imperial County Transportation Commission Official Local Agency Name Project Manager, and the FHWA POM will ensure this Agreement is kept current and will coordinate the negotiation of any changes.

This Project Oversight Agreement is being executed on August 19, 2020.


Mark Baza
Executive Director
Imperial County Transportation
Commission


Gustavo Dallarda
District 11 Director
California Department of
Transportation

MATTHEW T. SCHMITZ
Digitally signed by
MATTHEW T. SCHMITZ
Date: 2020.08.19
16:52:59 -07'00'
Matthew Schmitz
Director, Project Delivery
Federal Highway Administration

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**ATTACHMENT A
PROJECT ACTION RESPONSIBILITY MATRIX**

NOTE: See Attachment B – Design-Build Project Action Responsibility Matrix for additional Caltrans and FHWA approvals and related responsibilities specific to this Design-Build Project.

The following matrix identifies Federal-aid highway program (FAHP) project approvals and related responsibilities. The matrix specifies which ones are subject to State DOT assumption under the provisions of 23 U.S.C. 106(c) or other statutory or regulatory authority, as well as those which are reserved to FHWA. The highlighted boxes indicate when there is an option for that action to be delegated to Caltrans or retained by FHWA. The appropriate choice of the approval authority should be selected in all those instances and shown under the "Agency Responsible" column.

Project oversight responsibilities for this project are assigned by this Attachment, which replaces the default Project Action Responsibility Matrix in the FHWA/Caltrans Stewardship and Oversight Agreement (SOA). Additional Project oversight responsibilities are supplemented in Attachment B Design-Build Project Action Responsibility Matrix.

Note that with any responsibilities delegated to Caltrans, Caltrans may have the option to further delegate these responsibilities to a Local Agency in accordance with any applicable State and Federal laws and regulations as specified in Section V of the FHWA/Caltrans SOA.

PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
PROGRAMMING (All phases)	
Ensure project in Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP)	STATE
Identify proposed funding category	STATE (1)
FINANCIAL MANAGMENT (All phases)	
Obligate funds/approve Federal-aid project agreement, modifications, and project closures (project authorizations) <i>(Note: this action cannot be assumed by State)</i>	FHWA
Authorize current bill <i>(Note: this action cannot be assumed by State)</i>	FHWA

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PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
Review and Accept Financial Plan and Annual Updates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] <i>(Note: this action cannot be assumed by State)</i>	N/A
Review Cost Estimates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] <i>(Note: this action cannot be assumed by State)</i>	N/A
Develop Financial Plan for Federal Projects between \$100 million and \$500 million. [23 U.S.C. 106(i)]	N/A
ENVIRONMENT (All phases)	
All EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations. <i>(Note: this action cannot be assumed by STATE except under 23 U.S.C. 327)</i>	N/A
Categorical Exclusion approval actions <i>(Note this action cannot be assumed by the State except through an assignment under 23 U.S.C. 326 or 327, or through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and 23 CFR 771.117(g))</i>	STATE (3)
PRELIMINARY DESIGN (Design Phase)	
Consultant Contract Selection	STATE (4)
Sole source Consultant Contract Selection	STATE (4)
Approve hiring of consultant to serve in a "management" role [23 CFR 172.9] <i>(Note: this action cannot be assumed by State)</i>	FHWA
Approve consultant agreements and agreement revisions (Federal non-Major Projects) [23 CFR 172.9]	STATE
Approve consultant agreements and agreement revisions on Federal Major Projects [23 CFR 172.9] <i>(Note: this action cannot be assumed by State)</i>	N/A
Approve exceptions to design standards [23 CFR 625.3(f)]	STATE

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PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
Interstate System Access Change [23 USC 111] (Note: this action cannot be assumed by State)	N/A
Interstate System Access Justification Report [23 USC 111] (Note: action may be assumed by State pursuant to 23 USC 111(e))	N/A
Airport highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104]	STATE
Approve Project Management Plan for Federal Major Projects over \$500 million [23 USC 106(h)] (Note: this action cannot be assumed by State)	N/A
Approve innovative and Public-Private Partnership projects in accordance with SEP-14 and SEP-15 (Note: this action cannot be assumed by State)	N/A
Provide pre-approval for preventive maintenance project (until FHWA concurs with STATE procedures) (Note: this action cannot be assumed by State)	N/A
DETAILED / FINAL DESIGN (Design Phase)	
Provide approval of preliminary plans for unusual/complex bridges or structures on the Interstate. [23 USC 109(a) and FHWA Policy]	N/A
Provide approval of preliminary plans for unusual/complex bridges or structures (non-Interstate). [23 USC 109(a) and FHWA Policy]	STATE
Approve retaining right-of-way encroachments [23 CFR 1.23 (b) & (c)]	STATE
Approve use of local force account agreements [23 CFR 635.104 & 204]	STATE
Approve use of publicly owned equipment [23 CFR 635.106]	STATE
Approve the use of proprietary products, processes [23 CFR 635.411]	STATE
Concur in use of publicly furnished materials [23 CFR 635.407]	STATE
RIGHT-OF-WAY (Design and Operational Phases)	

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PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
Make feasibility/practicability determination for allowing authorization of construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	STATE
Make public interest finding on whether State may proceed with bid advertisement even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)(3)]	STATE
Ensure compliant ROW certificate is in place [23 CFR 635.309(c)]	STATE
Approve Hardship and Protective Buying [23 CFR 710.503] (If a Federal-aid project) (Note: this action cannot be assumed by State)	FHWA
Approve Interstate Real Property Interest Use Agreements [23 CFR 710.405] (Note: this action cannot be assumed by State)	N/A
Approve non-highway use and occupancy [23 CFR 1.23(c)]	STATE (4)
Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156] (Note: this action cannot be assumed by State)	FHWA
Approve disposal at fair market value of federally funded right-of-way, including disposals of access control [23 CFR 710.409] (Note: 23 CFR 710.201 authorizes FHWA and STATE to agree to scope of property-related oversight and approvals for all actions except those on the Interstate System)	STATE (4)
Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project (Note: this action cannot be assumed by State)	FHWA
Federal land transfers [23 CFR 710, Subpart F] (Note: this action cannot be assumed by State)	FHWA
Functional replacement of property [23 CFR 710.509] (Note: this action cannot be assumed by State)	FHWA

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PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
SYSTEM OPERATIONS AND PRESERVATION (Design Phase)	
Accept Transportation Management Plans [23 CFR 630.1012(b)]	STATE
Approval of System Engineering Analysis (for ITS) [23 CFR 940.11]	STATE
PS&E AND ADVERTISING (Design Phase)	
Approve PS&E [23 CFR 630.201]	N/A (5)
Authorize advance construction and conversions [23 CFR 630.703 & 709] (Note: this action cannot be assumed by State)	FHWA
Approve utility or railroad force account work [23 CFR 645.113 & 646.216]	STATE
Approve utility and railroad agreements [23 CFR 645.113 & 646.216]	STATE
Approve use of consultants by utility companies [23 CFR 645.109(b)]	STATE
Approve exceptions to maximum railroad protective insurance limits [23 CFR 646.111]	STATE
Authorize (approve) advertising for bids [23 CFR 635.112, 309]	N/A (6)
CONTRACT ADVERTISEMENT AND AWARD (Design Phase)	
All contracts to be done by competitive bidding unless otherwise authorized by law	
Approve cost-effectiveness determinations for construction work performed by force account or by contract awarded by other than competitive bidding [23 CFR 635.104 & 204]	STATE
Approve emergency determinations for contracts awarded by other than competitive bidding [23 CFR 635.104 & 204]	STATE
Approve construction engineering by local agency [23 CFR 635.105]	STATE
Approve advertising period less than 3 weeks [23 CFR 635.112]	N/A

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PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
Approve addenda during advertising period [23 CFR 635.112]	N/A (5)
Concur in award of contract [23 CFR 635.114]	STATE
Concur in rejection of all bids [23 CFR 635.114]	N/A (5)
Approval of Design-Build Requests-for-Proposals and Addenda [23 CFR 635.112]	STATE
CONSTRUCTION (Construction Phase)	
Approve major changes and extra work [23 CFR 635.120]	STATE
Approve major contract time extensions [23 CFR 635.120]	STATE
Concur in use of mandatory borrow/disposal sites [23 CFR 635.407]	STATE
Accept materials certification [23 CFR 637.207]	STATE
Concur in settlement of contract claims [23 CFR 635.124]	STATE
Concur in termination of construction contracts [23 CFR 635.125]	STATE
Waive Buy America provisions [23 CFR 635.410] (Note: this action cannot be assumed by State)	FHWA
Final inspection/acceptance of completed work [23 USC 114(a)]	STATE
CIVIL RIGHTS (All phases)	
Approval of Disadvantaged Business Enterprise (DBE) Project Contract Goal set by the State DOT under 49 CFR 26.51(d). [49 CFR 26.51(e)(3)]	STATE
Acceptance of Bidder's Good Faith Efforts to Meet Contract Goal [49 CFR 26.53] or of Prime Contractor's Good Faith Efforts to Find Another DBE Subcontractor When a DBE Subcontractor is Terminated or Fails to Complete Its Work [49 CFR 26.53(g)] (Note: this action cannot be performed by the FHWA)	STATE

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PROJECT ACTION RESPONSIBILITY MATRIX	
ACTION	AGENCY RESPONSIBLE
	PROJECTS OFF THE NHS
Equal Employment Opportunity (EEO) Contract Compliance Review [23 CFR Part 230, Subpart D]	STATE
Training Special Provision – Approval of Project Goal for training slots or hours [23 CFR Part 230, Subpart A]	STATE
Training Special Provision – Approval of New Project Training Programs [23 CFR 230.111(d), (e)] (Note: this action cannot be assumed by State)	FHWA
FOOTNOTES:	
<p>(1) Caltrans is responsible for ensuring that all individual elements of the project are eligible. FHWA will check that the scope of the project as described in submitted project agreement is eligible for the category of funding sought. All final eligibility and participation determinations are retained by FHWA.</p> <p>(2) The USDOT Build America Bureau may have requirements that impact this action (applies to projects in which innovative financing is used).</p> <p>(3) If there is a 23 U.S.C. 326 or 325 assignment or PCE agreement, decisions are handled in accordance with those assignments or agreements.</p> <p>(4) State's process and modifications to, or variation in process, require FHWA approval.</p> <p>(5) This project action is not applicable to Design-build projects and it's superseded with project action(s) included in Attachment B.</p> <p>(6) This project action is not applicable to Design-Build projects. However, requirements under 23 CFR 635.112, 309 still applies.</p>	

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ATTACHMENT B
Design-Build Project Action Responsibility Matrix

The following matrix identifies additional Federal-aid highway program (FAHP) project approvals and related responsibilities for Design-Build projects. This matrix is tailored to this Design-Build project and it specifies FHWA, Caltrans, and Local Agency actions.

Additional Project oversight responsibilities for this Design-Build project are assigned by this Attachment, which supplements the Project Action Responsibility Matrix (Attachment A) in this Agreement.

Note that with any responsibilities delegated to Caltrans, Caltrans may have the option to further delegate these responsibilities to a Local Agency in accordance with any applicable State and Federal laws and regulations as specified in Section V of the FHWA/Caltrans Stewardship and Oversight Agreement.

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Note the following:

- Times provided are suggested turnaround times.
- Caltrans and Local Agency Actions were populated and in blue. Final Action responsibilities to be agreed by Caltrans and Local Agency.

DESIGN-BUILD PROJECT ACTIONS RESPONSIBILITY MATRIX (OFF NHS)			
ACTIVITY	Local Agency	CALTRANS ACTION	FHWA ACTION
Project Delivery Selection	Determine and Notify	Notify	None
Potential Conflict of Interest	Determine and Notify	Notify	None
Preliminary Engineering Authorization	Prepare	Review & Recommend	Authorize (5 Days) ¹
Request for Qualifications (RFQ) ⁸	Prepare	Review	None
RFQ Clarifications	Prepare	None	None
RFQ Addenda	Prepare	Review & Concur	None
Major RFQ Addenda	Prepare	Review & Recommend	None
Short-List	Prepare	None	None
Statement of Qualifications Evaluation (SOQ) Evaluations	Review	Observe	None
Draft Request for Proposals (RFP)	Prepare	None	None
Value Engineering Analysis	Prepare	Review	No longer required by FHWA
Final RFP	Prepare	Review and Approve	Review
RFP Addenda	Prepare	Approval	None
Alternate Technical Concepts (ATC)	Review	Review and Approve	None
Technical Proposal Review and Scoring	Conduct	Notify	None ²
Price Proposal Opening	Conduct	Notify	None
Price Proposal Review	Review	None	None
Design-builder Selection	Determine and Notify	Notify	None
Request for Concurrence in Award ⁶	Prepare	None	None
Contract Award ⁹	Award	None	None
Debriefing	Conduct	None	None
Initial Financial Plan (IFP) and Financial Plan Annual Updates ^{3,4}	Prepare	Review and Approve	None
Request for Construction Authorization (E-76) ⁷	Prepare	Review & Recommend	Authorize (7 Days) ¹

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DESIGN-BUILD PROJECT ACTIONS RESPONSIBILITY MATRIX (OFF NHS)			
ACTIVITY	Local Agency	CALTRANS ACTION	FHWA ACTION
Design Reviews - Definitive, Interim, & Final	Review	None ⁶	None
Release for Construction (RFC) Plans	Review	None	None
Terminate DB Contract	Determine and Notify	Notify	None
Cancelling Procurement	Determine & Notify	Notify	None
FOOTNOTES:			
<p>(1) Timeframes for FHWA's actions will be discussed and agreed between all applicable parties. Days are business days.</p> <p>(2) FHWA may observe the process based on availability of the POM and outcome of FHWA's risk assessment.</p> <p>(3) See Financial Plan Checklist and Financial Plan Guidance. Documents can be found here: https://www.fhwa.dot.gov/majorprojects/financial_plans/guidance14.cfm#contents</p> <p>(4) Financial Plans approval by FHWA is required if estimated total cost (including all project phases) is greater than \$500 Million. Financial Plans for projects with total estimated costs between \$100 and less than \$500 Million are still required but do not require approval by FHWA. Consult with the FHWA's POM for additional information.</p> <p>(5) Documents to include in the request for concurrence in award: Finding of Price reasonableness by contracting Agency; Post-award tabulation of Proposals price; Tabulation of Technical and Price Proposals scoring for all proposers; Identification of all addenda issued, including minor addenda; Assurance that all proposers have received all issued addenda.</p> <p>(6) Design reviews will be only done by Caltrans or FHWA if requested by Local Agency. Review of design packages for adherence to the SHPP MOA will be completed by Caltrans as applicable.</p> <p>(7) Caltrans DLA will provide FHWA a copy of the approved Initial Financial Plan when requesting E-76 for construction authorization.</p> <p>(8) If RFQ is issued prior to the completion of the NEPA process, the RFQ must inform proposers of the general status of the NEPA review. (23 CFR 636.109(a)(1))</p> <p>(9) Additional contract requirements apply when Caltrans/Local Agency proceeds with contract award prior to the conclusion of the NEPA process. See 23 CFR 636.109(b).</p> <p>(10)Limited to preliminary design and such additional activities as may be necessary to complete the NEPA process.</p> <p>(11)Only applicable if the NEPA process has not been completed. This activity occurs after the completion of the NEPA process.</p> <p>(12)FHWA's approval of Initial Financial Plan is required to authorize funds for construction (NTP2).</p> <p>(13)When the Final RFP is issued prior to the completion of the NEPA process, the RFP approval only constitutes FHWA's approval of Caltrans/Local Agency's request to release the document.</p>			

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**Exhibit P Grant Agreement Under the Consolidated Appropriations Act,
2018 for the National Infrastructure Investments Discretionary
Grant Program**

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE
CONSOLIDATED APPROPRIATIONS ACT, 2018
(PUB. L. 115-141, MARCH 23, 2018)
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS
DISCRETIONARY GRANT PROGRAM
(FY 2018 BUILD TRANSPORTATION DISCRETIONARY GRANTS)

IMPERIAL COUNTY TRANSPORTATION COMMISSION
CALEXICO EAST PORT OF ENTRY BRIDGE EXPANSION

FHWA FY 2018 BUILD Grant No. 32

This agreement is between the United States Department of Transportation (the “USDOT”) and Imperial County Transportation Commission (the “**Recipient**”). It reflects the selection of the Recipient for an award under the provisions of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, March 23, 2018), regarding National Infrastructure Investments, as described in the Notice of Funding Opportunity for the Department of Transportation’s National Infrastructure Investments Under the Consolidated Appropriations Act, 2018, 83 FR 18651 (April 27, 2018) (the “NOFO”). In this agreement, “FY 2018 BUILD Transportation Discretionary Grant” means an award under those provisions.

ARTICLE 1. AWARD TERMS AND CONDITIONS

- 1.1 **Operating Administration.** The Federal Highway Administration (the “FHWA”) will administer this agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means the FHWA.
- 1.2 **Application.**
 - (a) The application for funding was dated July 19, 2018 and titled “Calexico East Port of Entry Bridge Expansion.” It contained Standard Form 424 and all information and attachments submitted with that form through Grants.gov.
 - (b) The Recipient states that:
 - (1) all material statements of fact in the application were accurate when that application was submitted; and
 - (2) Attachment E documents all material changes in the information contained in that application.

- 1.3 **Purpose.** The purpose of this award is to advance capital investments in surface transportation infrastructure that will have a significant local or regional impact. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the application identified in section 1.2, as modified by section 2.3 and Attachment C.

In this agreement, the “**Project**” means the project proposed in the application identified in section 1.2, as modified by the negotiated provisions of this agreement, including sections 2.1, 2.2, and 2.3 and the attachments referenced in section 1.9.

- 1.4 **Federal Award Amount.** The USDOT hereby awards a FY 2018 BUILD Transportation Discretionary Grant in the amount of \$20,000,000 for the period of performance. The USDOT shall not provide funding greater than this amount under this agreement. The Recipient acknowledges that USDOT is not liable for payments that exceed this amount.

1.5 **Period of Performance.**

- (a) The period of performance for this award begins on the date of this agreement and ends on the period of performance end date that is listed in section 2.2.
- (b) The Recipient shall not charge to this award costs that are incurred after the period of performance.
- (c) The Recipient may charge to this award costs that were incurred before the date of this agreement only if those costs are identified in Attachment F and would have been allowable if incurred during the period of performance award. This limitation applies to costs incurred under an advance construction authorization (23 U.S.C. 115), costs incurred prior to authorization (23 C.F.R. 1.9(b)), and pre-award costs under 2 C.F.R. 200.458. This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this award for the Project. Attachment F is the exclusive USDOT approval of costs incurred before the date of this agreement.

- 1.6 **Urban or Rural Designation.** Based on information that the Recipient provided to the USDOT, including the technical application, the USDOT hereby designates the project to be a project in a rural area, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

1.7 **Fund Obligation.**

This agreement obligates the total amount of funds stated in section 1.4.

1.8 Federal Award Identification Number.

The Federal Award Identification Number (the "FAIN") will be generated when the FHWA Division Office authorizes the project in the Fiscal Management Information System ("FMIS"). The Recipient acknowledges that it has access to FMIS and can retrieve the FAIN from FMIS.

1.9 Attachments. This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Schedule
Attachment C	Estimated Project Budget
Attachment D	Performance Measurement Table
Attachment E	Material Changes from Application
Attachment F	Approved Pre-Award Costs

ARTICLE 2. PROJECT AND RECIPIENT INFORMATION

2.1 Summary of Project's Statement of Work. (See Attachment A for additional details).

The Project will widen the Calexico East Port of Entry bridge along the US-Mexico border to accommodate two additional northbound commercial truck lanes and two additional northbound passenger vehicle lanes. The Project also includes improvements to the bicycle and pedestrian facilities at the border crossing.

2.2 Summary of Project's Estimated Schedule. (See Attachment B for additional details).

Actual Completion of NEPA:	April 13, 2020
Planned RFP Approval:	July 14, 2020
Planned Design/Build Contract Award Date:	February 2, 2021
Planned Design/Build Start Date:	February 3, 2021
Planned Construction Start Date:	February 3, 2021
Planned Construction Substantial Completion and Open to Traffic Date:	October 7, 2022
Period of Performance End Date:	April 7, 2024
Planned Project Closeout Date:	July 7, 2025

2.3 Summary of Project's Estimated Budget. (See Attachment C for additional details).

BUILD Funds and Additional Sources of Project Funds:

BUILD Grant Amount:	\$20,000,000
Other Federal Funds (if any):	\$ 0
State Funds ¹ (if any):	\$ 2,250,000
Local Funds ² (if any):	\$ 2,057,000
Private Funds (if any):	\$ 0
Other Funds (if any):	\$ 0
Total Project Cost:	\$24,307,000

¹ Trade Corridor Enhancement Program-SB 1 State Funds

² Imperial County Measure D Half-Cent Sales Tax

2.4 Recipient Cost Share Certification.

As negotiated, the Recipient hereby certifies that not less than \$4,307,000 in non-Federal funds are committed to fund the Project.

2.5 Project's State and Local Planning Requirements.

Project is identified in the following Plans and Programs:

- 2014 California-Baja California Border Master Plan, State of California
- 2016 Regional Transportation Plan/Sustainable Communities Strategy, Southern California Association of Governments (SCAG)/Imperial County Transportation Commission (ICTC)
- 2018 State Transportation Improvement Program (STIP) Caltrans/CTC
- 2017 and 2019 Federal Transportation Improvement Program, SCAG/ICTC.

2.6 Project's Environmental Approvals and Processes.

Environmental Documentation Type, Titles and Date: Categorical Exclusion, approved on April 13, 2020.

Environmental Decision Type and Date: Categorical Exclusion, approved on April 13, 2020.

Name of Agency and Office Approving each Environmental Decision Document:
FHWA California Division

2.7 Unique Entity Identifiers.

Dun and Bradstreet Data Universal Numbering System No. (the "DUNS No.") of the California Department of Transportation: 840881648

DUNS No. of Imperial County Transportation Commission: 9622953790000

2.8 Recipient Contacts.

Mark Baza
Executive Director
Imperial County Transportation Commission
1503 N. Imperial Avenue, Suite 104
El Centro, California 92243-6301
(760) 592-4494
markbaza@imperialctc.org

Nicola Bernard
Project Manager Trade Corridor
Caltrans District 11
Desk (619) 688-6708
Cell (619) 405-4520
nicola.bernard@dot.ca.gov

ARTICLE 3. GENERAL REPORTING TERMS

- 3.1 Report Submission.** The Recipient shall send all reports required by this agreement to all of the USDOT contacts who are listed in Section 9.1.
- 3.2 Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 3.3 Reporting as History of Performance.** Under 2 C.F.R. 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this agreement requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.
- 3.4 Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the "OMB"). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0563.

ARTICLE 4. PROGRESS REPORTING

- 4.1 Quarterly Project Progress Reports and Recertifications.** On or before the 20th day of the first month of each calendar year quarter and until Project Closeout, the Recipient shall submit to the USDOT a Quarterly Project Progress Report and Recertification with the form and content described in Exhibit H. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project

Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.

- 4.2 **Closeout Information.** No later than 90 days after the period of performance end date that is listed in section 2.2, the Recipient shall:
- (1) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and any other information required under the Administering Operating Administration's closeout procedures; and
 - (2) provide a report comparing the final work, schedule, and budget to the statement of work described in section 2.1, the schedule described in section 2.2, and the budget described in section 2.3.
- 4.3 **Project Closeout.** In this agreement, "**Project Closeout**" means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.343, Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in section 4.2.

ARTICLE 5. PERFORMANCE REPORTING

- 5.1 **Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment D.
- 5.2 **Pre-project Performance Measurement Report.** The Recipient shall submit to the USDOT, on or before the Pre-project Report Date that is stated in Attachment D, a Pre-project Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Pre-project Measurement Date that is stated in Attachment D; and
 - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 5.3 **Interim Performance Measurement Reports.** After project completion, the Recipient shall submit to the USDOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment D, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table. If an external factor significantly affects the value of a performance measure during a measurement period, then in the Interim Performance Measurement Report the Recipient shall identify that external factor and discuss its influence on the performance measure.
- 5.4 **Project Outcomes Report.** The Recipient shall submit to the USDOT, on or before the Project Outcomes Report Date that is stated in Attachment D, a Project Outcomes Report that contains:

- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;
- (2) all baseline and interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and
- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

ARTICLE 6. AGREEMENT MODIFICATIONS

- 6.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 6.2 **Limited Unilateral Modifications.**
 - (a) The Recipient may update the contacts who are listed in section 2.8 by written notice to all of the USDOT contacts who are listed in section 9.1.
 - (b) The USDOT may update the contacts who are listed in section 9.1 by written notice to all of the Recipient contacts who are listed in section 2.8.
- 6.3 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under section 6.1 or section 6.2. If an amendment, modification, or supplement is not permitted under section 6.1 and not permitted under section 6.2, it is void.

ARTICLE 7. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 7.1 **Statement of Work Changes.** If the Project's activities differ from the statement of work that is described in section 2.1 and Attachment A, then the Recipient shall request a modification of this agreement to update section 2.1 and Attachment A.
- 7.2 **Schedule Changes.** If the Project's substantial completion date changes to a date that is more than six months after the substantial completion date listed in section 2.2 or a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.2, then the Recipient shall request a modification of this agreement to update section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this agreement to update section 2.2 and Attachment B unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.
- 7.3 **Budget Changes.**
 - (a) If, in comparing the Project's budget to the amounts listed in section 2.3, the "Other Federal Funds" amount increases or one or more of the "State Funds," "Local Funds," "Private Funds," "Other Funds," or "Total Project Cost" amounts decrease, then the

Recipient shall request a modification of this agreement to update section 2.3 and Attachment C. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment C unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.

- (b) If the actual eligible project costs are less than the "Total Project Cost" that is listed in section 2.3, then the Recipient may propose to the USDOT, in writing consistent with the Administering Operating Administration's requirements, specific additional activities that are within the scope of this award, as defined in sections 1.3 and 2.1, and that the Recipient could complete with the difference between the "Total Project Cost" that is listed in section 2.3 and the actual eligible project costs.
- (c) If the actual eligible project costs are less than the "Total Project Cost" that is listed in section 2.3 and either the Recipient does not make a proposal under section 7.3(b) or the USDOT does not accept the Recipient's proposal under section 7.3(b), then:
 - (1) in a request under section 7.3(a), the Recipient shall reduce the Federal Share by the difference between the "Total Project Cost" that is listed in section 2.3 and the actual eligible project costs; and
 - (2) if that modification reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall refund to the USDOT the difference between the reimbursed costs and the revised award.

In this agreement, "**Federal Share**" means the sum of the "BUILD Grant Amount" and the "Other Federal Funds (if any)" amounts that are listed in section 2.3.

- (d) The Recipient acknowledges that amounts that are required to be refunded under section 7.3(c)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.345 and the Federal Claims Collection Standards (31 C.F.R. parts 900-999).

7.4 **USDOT Acceptance of Changes.** The USDOT may accept or reject modifications requested under this article 7, and in doing so may elect to consider only the interests of the BUILD Transportation Discretionary Grant program and the USDOT. The Recipient acknowledges that requesting a modification under this article 7 does not amend, modify, or supplement this agreement unless the USDOT accepts that modification request and the parties modify this agreement under section 6.1.

ARTICLE 8. TERMINATION AND EXPIRATION

8.1 **USDOT Termination.**

- (a) The USDOT may terminate this agreement and all of its obligations under this agreement if any of the following occurs:

- (1) The Recipient fails to obtain or provide any non-BUILD Transportation Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with sections 2.2, 2.3, and 2.4;
 - (2) The Recipient fails to begin the design/build project before **April 3, 2021**;
 - (3) The Recipient fails to begin expenditure of award funds by **May 15, 2021**;
 - (4) The Recipient fails to achieve the Construction Substantial Completion and Open to Traffic Date by **April 7, 2023**;
 - (5) The Recipient fails to meet the conditions and obligations specified under this agreement, including a material failure to comply with the schedule in section 2.2 even if it is beyond the reasonable control of the Recipient; or,
 - (6) The USDOT determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section the USDOT may elect to consider only the interests of the USDOT.
- 8.2 **Closeout Termination.** This agreement terminates on Project Closeout.
- 8.3 **Fund Liquidation, Adjustment, and Cancellation.**
- (a) The Recipient shall liquidate all obligations under this award not later than 90 days after the period of performance end date that is listed in section 2.2. The Recipient acknowledges that this period of availability for liquidation ends before the statutory expenditure deadline identified in section 8.3(c).
 - (b) Liquidation and adjustment of funds under this agreement follow the requirements of 2 C.F.R. 200.343–345.
 - (c) Outstanding FY 2018 BUILD Transportation Discretionary Grant balances are canceled by statute after September 30, 2025, and are then unavailable for any purpose, including adjustments and expenditures.
- 8.4 **Reporting Survival.** The reporting requirements set forth in articles 4 and 5 of this agreement survive the termination of this agreement and the expiration of award funds.

ARTICLE 9. USDOT CONTACTS

- 9.1 **USDOT Contacts.** Except as authorized by the USDOT under section 3.2, the Recipient shall send all notices, reports, and information required by this agreement to all of the following contacts:

Omar Elkassed
Senior Transportation Engineer
FHWA California Division

888 S. Figueroa Street, Suite 440
Los Angeles, California 90017
(213) 894-6718
omar.elkassed@dot.gov

and

FHWA BUILD Transportation Program Manager
Federal Highway Administration
Office of Freight Management and Operations
1200 New Jersey Avenue, SE
Room E86-206
Washington, DC 20590
(202) 366-2639
FHWA-TIGER.Reports@dot.gov

and

OST BUILD Transportation Discretionary Grants Coordinator
United States Department of Transportation
Office of the Secretary
1200 New Jersey Avenue, SE
Washington, DC 20590
(202) 366-8914
BUILDGrants@dot.gov

ARTICLE 10. ADDITIONAL TERMS AND CONDITIONS

- 10.1 **Catalog of Federal Domestic Assistance Information.** This award is under the program titled "National Infrastructure Investments," with number 20.933 in the Catalog of Federal Domestic Assistance.
- 10.2 **Research and Development Designation.** This award is not for research and development.
- 10.3 **Exhibits.** This agreement includes the following exhibits as integral parts located at: https://ops.fhwa.dot.gov/freight/infrastructure/build/fy2018_gr_exhbt/index.htm

Exhibit A	Legislative Authority
Exhibit B	General Terms and Conditions
Exhibit C	Applicable Federal Laws and Regulations
Exhibit D	Grant Assurances
Exhibit E	Responsibility and Authority of the Recipient
Exhibit F	Reimbursement of Project Costs
Exhibit G	Grant Requirements and Contract Clauses
Exhibit H	Quarterly Progress Reports: Format and Content

- 10.4 **Construction.** If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 12, then the provision in Articles 1 – 12 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

ARTICLE 11. SPECIAL GRANT REQUIREMENTS

- 11.1 **State DOT as Pass-Through Entity.** Under 2 C.F.R. part 200 and 23 U.S.C. 106(g), California Department of Transportation will serve as the pass-through entity for the purpose of administering this award.
- 11.2 **FMIS Identification.** For purpose of administering the FY 2018 BUILD funds for the project, California Department of Transportation (Caltrans) will be identified in FMIS as the recipient and the Imperial County Transportation Commission (ICTC) will be identified as the subrecipient.
- 11.3 **Advance Construction and Tapered Match Authorization.** On June 3, 2019, the California Division Office authorized environmental compliance and NEPA documentation activities for the Project to proceed under the Advance Construction provisions of 23 U.S.C. § 115. With the authorization, the Division office authorized also the use of tapered match under the FHWA's tapered match procedures in the *Federal-aid Guidance Non-Federal Matching Requirements* dated May 15, 2019 and consistent with 2 CFR 200.300(b) to allow the \$2,250,000 of non-Federal funds to be used as a match to the FY 2018 BUILD funds provided under this agreement for construction of the Project.
- Concurrently with the authorization of the Project to proceed to construction, obligation of the FY 2018 BUILD funds by the Division's execution of the BUILD grant agreement, and recordation of the BUILD funds in the FMIS, the Division shall modify the FMIS project agreement to recognize the advance construction authorized incurred tapered match costs as the non-Federal match for the Project consistent with 23 U.S.C. § 115, 23 CFR 630.106 (c), 630. 108(c)(2) and 2 CFR 200.306(b).
- 11.4 The U.S. General Services Administration (GSA) owns the bridge and is identified as a project partner in the grant application. ICTC and Caltrans will coordinate with GSA to ensure all phases of the project including, environmental, preliminary engineering, design, and construction, meet GSA requirements and standards.
- 11.5 There are no other special grant requirements for this Project.

ARTICLE 12. EXECUTION

- 12.1 **Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties shall execute this agreement in quadruplicate and intend each countersigned original to have identical legal effect.
- 12.2 **Effective Date.** This agreement is effective when fully executed by authorized representatives of the Recipient and the USDOT. The Recipient shall execute this agreement and then submit three original signed copies of the agreement to the USDOT

for execution. This instrument constitutes a FY 2018 BUILD Transportation Discretionary Grant when it is signed and dated by the authorized official of the USDOT.

EXECUTION BY THE USDOT

Executed this _____ day of _____, 202__.

MONICA GOURDINE

Digitally signed by MONICA
GOURDINE
Date: 2020.07.29 07:34:23 -07'00'

Signature of USDOT's Authorized Representative

for Vincent Mammano
Division Administrator
FHWA California Division

EXECUTION BY IMPERIAL COUNTY TRANSPORTATION COMMISSION

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this agreement.

Executed this 29th day of June, 2020.



Signature of Recipient's Authorized Representative

Mark Baza
Executive Director

EXECUTION BY STATE DEPARTMENT OF TRANSPORTATION

By signature below, the State Department of Transportation (the "SDOT") acknowledges that it agrees to act as a limited agent for the Recipient to assist in the receipt and disbursement of the FY 2018 BUILD Transportation Discretionary Grant obligated by this agreement and to perform such other administrative and oversight duties with respect to the award and the Project as the Recipient and the SDOT shall agree upon between themselves. The SDOT acknowledges the fiduciary duty owed to the parties to this agreement and will promptly disburse the award to the Recipient at Recipient's direction and instructions. Further, the SDOT will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the duties it assumes under this agreement in compliance with the agreement's terms and conditions.

Executed this 27th day of July, 2020.



Signature of California Department of Transportation
Designated Official Representative

Toks Omishakin
Director, Caltrans

**ATTACHMENT A
STATEMENT OF WORK**

The Project will widen the Calexico East Port of Entry bridge along the US-Mexico border to accommodate two additional northbound commercial truck lanes and two additional northbound passenger vehicle lanes. The Project also includes improvements to the bicycle and pedestrian facilities at the border crossing.

Major Project Activities

Preliminary Engineering – Consists of design engineering to complete the Request for Proposal (RFP) package.

Environmental – Consists of evaluations and development to studies to complete the review of the project under the NEPA.

Bridge Design & Construction – consists the removal of the existing bridge deck edge and construction of new bridge deck to accommodate two additional northbound commercial truck lanes and two additional northbound passenger vehicle lanes. The work will also include the necessary slope protection around bridge abutments and the reconfiguration of the roadway approaches to the bridge.

Bicycle & Pedestrian Improvements – Consists of replacing existing pedestrian and bicycle path on the bridge.

Construction Engineering – On-site Construction Management services on behalf of ICTC.

**ATTACHMENT B
ESTIMATED PROJECT SCHEDULE**

Actual Start of Preliminary Engineering: November 1, 2018

Actual End of Preliminary Engineering: May 26, 2020

Actual Completion of NEPA: April 13, 2020

Planned RFP Approval: July 14, 2020

Planned Design/Build Advertisement: August 2, 2020

Planned Design/Build Contract Award Date: February 2, 2021

Planned Design/Build Start Date: February 3, 2021

Planned Construction Start Date: February 3, 2021

Major Project Activity	Planned Start Date	Planned End Date
Bridge Design & Construction	February 3, 2021	October 7, 2022
Bicycle & Pedestrian Improvements	February 3, 2022	October 7, 2022
Construction Engineering	February 3, 2021	April 7, 2024

Planned Construction Substantial Completion
and Open to Traffic Date: October 7, 2022

Period of Performance End Date: April 7, 2024

Planned Project Closeout Date: July 7, 2025

**ATTACHMENT C
ESTIMATED PROJECT BUDGET**

Activity	FY 2018 BUILD Transportation Discretionary Grant Funds	Other Federal Funds	Match to Other Federal Funds	Local Funds¹	State Funds²	Other Funds	Project Cost
Preliminary Engineering & Environmental					\$2,250,000		\$2,250,000
Bridge Design & Construction	\$14,035,714			\$1,600,000			\$15,635,714
Bicycle & Pedestrian Improvements	\$250,000						\$250,000
Construction Engineering	\$5,714,286			\$457,000			\$6,171,286
Total	\$20,000,000	\$0	\$0	\$2,057,000	\$2,250,000	\$0	\$24,307,000

¹ Imperial County Measure D Half-Cent Sales Tax

² Trade Corridor Enhancement Program – SB State Funds

**ATTACHMENT D
PERFORMANCE MEASUREMENT TABLE**

Study Area: Calexico East Port of Entry Bridge, Imperial County, CA

Pre-project Measurement Date: January 3, 2021

Pre-project Report Date: April 3, 2021

Project Outcomes Report Date: October 7, 2026

Table 1: Performance Measurement Table

Measure	Description and Category of Measure	Measurement Period	Reporting Period
Average Daily Traffic (ADT)	<p>Economic Competitiveness</p> <p>The total volume of vehicle traffic on a highway or road segment per day as defined by the project study area.</p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date</p> <p>Interim Performance Measures: Accurate as of October 7, 2023 October 7, 2024 October 7, 2025</p>	<p>Baseline Measurement: Pre-project Report Date</p> <p>Interim Performance Measures: For a period of 3 years, beginning December 7, 2023 December 7, 2024 December 7, 2025</p>
Average Daily Truck Traffic (ADTT)	<p>Economic Competitiveness</p> <p>ADTT measures the total volume of truck traffic per day as defined by the project study area.</p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date</p> <p>Interim Performance Measures: Accurate as of October 7, 2023 October 7, 2024 October 7, 2025</p>	<p>Baseline Measurement: Pre-project Report Date</p> <p>Interim Performance Measures: For a period of 3 years, beginning December 7, 2023 December 7, 2024 December 7, 2025</p>

**ATTACHMENT E
MATERIAL CHANGES FROM APPLICATION**

Scope: The BUILD application contemplated a bridge width that included an 8-foot shoulder on both sides of the bridge. However, due to budget constraints, the 8-foot wide shoulders have been reduced to 2-foot wide shoulders. This minor modification to the bridge width will not impact the benefits of the project, including the planned bicycle and pedestrian improvements. The bicycle and pedestrian improvements will be located in the bridge median.

Schedule: Schedule has been modified to accommodate delivering the project via Design-Build instead of Design-Bid-Build.

The schedule contains an approximate seven-month period between the approval of the RFP package and the design-build project award date. The process to evaluate the RFP proposals takes about six months and includes the time necessary to review the proposals, make a selection, and award the design-build contract.

The schedule has also been adjusted to allow for a period of performance end date that is 18 months after the construction substantial completion and open to traffic date. FHWA and Caltrans have agreed to allow the period of performance end date to be 12 months after the construction substantial completion date; however, the ICTC and Caltrans have requested an additional six months to allow for sufficient time to coordinate final construction tasks with the selected design-build team and GSA. Therefore, the ICTC requests OST's approval of the extended period of performance to complete this grant project.

Budget: The recipient requested \$25,000,000 in BUILD funds, but received \$20,000,000. The recipient also incurred \$750,000 during the environmental phase before OST's approval of the AC with tapered match request. The reduction of the shoulder width reduced the estimated project costs to within the reasonable range of the available funding and additional non-Federal funds were used to complete the project funding package. The table below provides a summary comparison of the project budget.

[See table on following page]

Budget Item	2018 BUILD Application		Current Budget	
	Dollars	Percentage	Dollars	Percentage
Total Project Cost	\$29,844,000	100%	\$24,307,000	100%
Previously Incurred Cost (PE & Environmental Phase)	N/A	N/A	\$750,000	N/A
Eligible Costs (PE& Environmental Phase)	\$3,000,000	10.05%	\$2,250,000	9.26%
Total Design & Construction Cost	\$26,844,000	N/A	\$22,057,000	N/A
BUILD funds	\$25,000,000	83.77%	\$20,000,000	82.28%
Non-Federal funds	\$1,844,000	6.18%	\$2,057,000	8.46%
Other Federal funds	N/A	N/A	N/A	N/A
Match to Other Federal funds	N/A	N/A	N/A	N/A

ATTACHMENT F
APPROVED PRE-AWARD COSTS

On May 29, 2019, the California Department of Transportation (Caltrans) in partnership with Imperial County Transportation Commission (ICTC), sent a written request to the [FHWA](#) California (CA) Division Office for advance construction and tapered match authorization to allow ICTC to apply non-Federal funds expended for NEPA as a non-Federal match to the BUID grant funds.

On June 3, 2019, the FHWA CA Division approved the request and on July 2, 2019 a follow-up letter was provided to Caltrans indicating that OST had also approved the request. The advanced construction and tapered match authorization was finalized in the Financial Management Information System on August 13, 2019.

**Exhibit Q Donation Acceptance Agreement by and Between the United
States of America, Acting by and through the U.S. General
Services Administration, Public Building Service and the Imperial
County Transportation Commission**

The Draft Donation Acceptance Agreement follows. The final, fully executed Donation Acceptance Agreement will be incorporated by Amendment.

**DONATION ACCEPTANCE AGREEMENT
BY AND BETWEEN
THE UNITED STATES OF AMERICA,
ACTING BY AND THROUGH
THE U.S. GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDING SERVICE
AND
THE IMPERIAL COUNTY TRANSPORTATION COMMISSION**

1. PARTIES

The United States of America, acting by and through the Administrator of the General Services Administration ("GSA"), is entering into this Donation Acceptance Agreement with the Imperial County Transportation Commission ("Donor" or ICTC) to facilitate the proposed donation of 4 additional lanes (described in Appendix A), and if Donor's funding permits, the optional work described in Appendix A-1, to the existing GSA bridge crossing the All American Canal at the Calexico East Land Port of Entry ("Calexico East LPOE") in Calexico, California. GSA and Donor are collectively referred to herein as the "Parties" and each individually as a "Party."

2. PURPOSE

The purpose of this Agreement is to memorialize the mutual understanding of the Parties regarding the proposed donation to the United States of America (the "United States") and the terms and conditions of that donation.

As described in the Donor's July , 2020 donation letter and the Donor's Request for Qualifications ("RFQ"), a copy of both which are attached hereto as Exhibits A and A-1, Donor seeks to donate through an unconditional gift 4 additional lanes and re-align the pedestrian path to the existing GSA bridge traversing the All American Canal (including construction of permanent fencing and entrance gate as necessary to replace temporary fencing) at the Calexico East LPOE, and should funds be available to Donor, Donor seeks to donate an 8-ft shoulder, rehabilitation of existing structures, and a bridge canopy. The work is described as base and optional work in Exhibits A and A-1, respectively. As part of the pedestrian path re-alignment and related improvements, the Donor will construct permanent fencing and entrance gate as necessary to replace temporary fencing.

Donor has submitted the following documentation to GSA to facilitate acceptance and approval of the project:

- Request for Qualifications which explains all base work to be performed, including potential optional work consisting of an 8-ft shoulder for commercial vehicles, rehabilitation work on the existing structures & tunnels, and a bridge canopy along the northbound pedestrian walkway.

- Base contract design-build work of 4 northbound lanes is estimated to be \$18,444,000. Optional work is estimated to be \$7,500,000, as stated in the RFQ issued by ICTC dated May 20, 2020.
- Estimated construction schedule includes,
 - o Notice of Award on February 3, 2021
 - o Notice to Proceed on February 10, 2021
 - o Project Completion in October of 2022
- July 7, 2020 letter stating that the proposed donation is an unconditional gift to the United States of America through GSA

This Agreement outlines the principles, terms and conditions that will govern the proposed donation to GSA of the base and optional work described in the July 7, 2020 donation letter, the RFQ and Exhibits A and A-1 attached hereto, and defines and establishes the joint project management framework, membership, roles, and responsibilities of the GSA and Donor project teams. Upon completion of the work described in Exhibits A, and potentially A-1, by Donor, and acceptance by Donor and the United States in accordance with the procedures set forth in Donor's RFQ, Caltrans' Standard Specifications, GSA's Facilities Standards for the Public Buildings Service P100 (Current Version), Customs and Border Protection (CBP) Land Port of Entry Design Guide, all attached hereto as Exhibit B and incorporated herein by reference, the entirety of the donation, including any improvements constructed on federal property, will become the property of the United States and will be maintained by GSA.

3. AUTHORITY

Acceptance of unconditional gifts of property, 40 U.S.C. § 3175.

4. CONSIDERATION AND MUTUALITY OF OBLIGATIONS

It is the agreement of the Parties and the intention and wish of Donor that the donation under this Agreement will constitute Donor's binding obligation and will be enforceable at law and equity, including against Donor and Donor's successors and assigns. Donor acknowledges that GSA is relying, and will continue to rely, on Donor's donation subject to the terms and conditions set forth in this Agreement. In consideration for the donation, GSA will enter into a site access or other similar agreement with Donor authorizing Donor to enter onto the Calexico East LPOE property to carry out its responsibilities under this Agreement. The United States further agrees to accept the carry out the responsibilities under this Agreement. The United States further agrees to accept the donation upon completion, provided it is constructed in accordance with the terms and conditions of this Agreement.

5. SCOPE OF WORK

The agreed-upon scope of the project is described in the attached Exhibit A, and optional work if Donor has sufficient funds are described in Exhibit A-1. Donor agrees

not to deviate from the work described in Exhibits A and A-1 without prior notice to the GSA primary point of contact identified in this Agreement, which notice may be delivered either orally or in writing. If the notice is delivered orally, it must be followed up in writing, which writing may be in an e-mail. Any change to the work described in Exhibits A and A-1 that does not meet or that exceeds industry established acceptable tolerances, variances and standards of workmanship for road and bridge construction on federal or State of California projects, whichever is more strict, and any change that requires funding from GSA will require express written consent from GSA. GSA will communicate to Donor its approval or disapproval of the proposed change as soon as possible, taking into consideration the magnitude and complexity of the change. Before commencing to implement any of the proposed changes that require prior approval, Donor must obtain the written approval of GSA. GSA will only accept the donation once all terms and conditions of this Agreement are satisfied and they have verified that the property and the improvements constructed thereon meet all the terms and conditions set forth in Exhibits A and A-1.

6. ROLES AND RESPONSIBILITIES

GSA and Donor will each appoint a primary point of contact within one week after full execution of this Agreement. These points of contact will be responsible for delivery, receiving, and reviewing as applicable, verbal or written notification of any change to the work described in Exhibits A and A-1, and coordinating and facilitating the written approval of any changes, if necessary.

7. PROJECT FUNDING

Donor will be responsible for all costs and expenses to acquire, design, construct, and deliver the completed project, and all other costs and expenses associated with the project, including repair or replacement of any federal property damaged during the course of project delivery and construction and the correction of any defective or noncompliant work, until acceptance of the final project by the United States. The estimated and anticipated costs of acquiring, designing and constructing the donated property, for both base and optional work, are set forth in Exhibit C.

8. PROJECT EXECUTION

All work must be performed in a manner that either avoids or minimizes, to the extent reasonably possible, operational disruptions to the Calexico East LPOE and in a manner that will safeguard the public and Federal Government personnel and property. Donor agrees to coordinate project activities with the GSA primary points of contact to ensure that operational disruptions, if any, are mitigated and managed appropriately. GSA acknowledges that Donor intends to award a Design Build construction contract for the work described in Exhibit A and potentially Exhibit A-1 to the firm that offers the best value proposal. To ensure quality workmanship and the proper execution and timely completion of the work, Donor will require that its Design Build contractor or contractors and each of their subcontractors only employ qualified personnel to perform the work.

The Project is complete only when Donor has corrected all punch list items and noted deficiencies and has complied with all conditions in this Agreement.

Upon project completion and final acceptance by the United States, Donor agrees to provide GSA with final as-built drawings and plans of the work described in Exhibits A and, if done, A-1, and all documents necessary to effect the transfer of ownership (such as a bill of sale, American Land Title Association ("ALTA") survey and final total and itemized costs for the project), as well as a minimum of a one-year warranty of construction to be proved to GSA in the form prescribed in 48 C.F.R. § 52.246-21, and any other reasonable request for documentation related to the project.

9. SATISFACTORY TITLE AND TITLE EVIDENCE

~~TBD~~ Donor shall provide to GSA prior to acceptance of the donation an ALTA U.S. Policy 9-28-91 (Revised 12-3-12) evidencing no mechanic's or materialmen's liens or any other interest in the proposed donation that have not been specifically approved by GSA. Any interests approved by GSA are found at Exhibit D to this Agreement. The title policy shall be supplemented by Donor's declaration attesting that there are no mechanic's or materialmen's liens or any other interests in the proposed donation that have not been specifically approved by GSA.

10. BILL OF SALE AND WARRANTY DEED

Donor shall provide to GSA a Bill of Sale for the proposed donation in the form attached at Exhibit E to this Agreement.

11. MEETINGS

GSA shall have the right, but not the obligation to attend all pre-design, design and construction meetings for this project. GSA's, or its agents' or representatives', attendance at such meetings is for the sole benefit of the United States and do not relieve Donor of responsibility for providing adequate quality control measures and do not constitute or imply acceptance of any part of the work

12. INSPECTION OF CONSTRUCTION

With regard to the entirety of the property to be donated, Donor must maintain an adequate inspection system and perform such inspections as will ensure that the work performed under this Agreement conforms to the requirements set forth herein. Donor must maintain complete inspection records and make them available to GSA upon request.

GSA reserves the right, but not the obligation, to review, test or inspect the development of the design and the prosecution of Donor's work to verify compliance with the terms of

the Agreement. Donor must allow GSA and its agents and representatives access to the construction site and Donor's work for such reviews, provided such access and reviews do not unreasonably interfere with or unreasonably delay the performance of Donor's work. GSA's reviews, inspections and tests are for the sole benefit of the United States and do not relieve Donor of responsibility for providing adequate quality control measures and do not constitute or imply acceptance of any part of the work.

Donor must, without charge to the United States, replace or convert work found by GSA not to conform to contract requirements. If Donor does not promptly replace or correct rejected work, the United States may terminate this Agreement without liability to the United States and seek any other remedies permitted by this Agreement or by law.

13. SPECIFICATION AND DRAWINGS FOR CONSTRUCTION

Donor must allow GSA and its agents and representatives access to the construction documents, plans, drawings, specifications, reports and any other document during all phases of pre-design, design development and construction. Because Donor contemplates construction using the Design Build method, GSA shall have the right, but not the obligation to review the design documents at various stages of design submittals, including 30%, 60%, 90% and 100%.

Donor must keep on the work site a copy of the drawings and specifications and must at all times give GSA access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, must be of like effect as if shown or mentioned in both. In case of differences between plans, drawings and specifications, the specifications will identify which construction document governs.

Donor must, without charge to the United States, correct design found by GSA not to conform to contract requirements. If Donor does not promptly correct the rejected design, the United States may terminate this Agreement without liability to the United States and seek any other remedies permitted by this Agreement or by law.

14. CONTRACTORS AND SUBCONTRACTORS

Nothing contained in this Agreement will be construed as creating any contractual relationship between any third party (e.g., contractor, subcontractor or supplier) and the United States. Donor will be responsible to the United States for the acts and omissions of its own employees and, to the maximum extent provided by law, those of its contractors, subcontractors, suppliers, and their employees. The United States reserves the right to exclude or remove from the site or any buildings at the site any person who violates rules and regulations concerning conduct on federal property or whose continued presence on site is otherwise determined by the Government to be contrary to the public interest.

15. ENVIRONMENTAL REPRESENTATIONS

Donor represents that it has completed all required environmental analysis and determined that a categorical exclusion applied.

16. ENVIRONMENTAL RESPONSIBILITIES AND OBLIGATIONS

- A. Responsibilities and Obligations of Donor: Donor will comply with all rules, laws, regulations, ordinances and licensing or permit requirements and guidance applicable and will take all response actions necessary to protect human health and the environment. Donor provides assurances that, in accordance with and to the extent required at the location of the project by applicable federal, state and local laws, Donor will timely:
- Assess, inspect, investigate, study and remove or remediate, as appropriate, the release or threatened release of a Hazardous Substance, released due to its project work from environmental media, such as soil, subsurface soil, air, groundwater, surface water, or subsurface geological formations at levels above background; and
 - Settle or defend any claim, demand or order made by federal, state or local regulators or third parties against Donor in connection with any release or threatened release of a Hazardous Substance due to its activities.
- B. Responsibilities and Obligations of the United States: The United States will comply with all rules, laws, regulations, ordinances, and licensing or permit requirements and guidance applicable to the United States.

17. LIABILITY AND INDEMNITY

Donor is responsible for all damages to persons or property that occur as a result of its activities and the activities of its agents, representatives, contractors and subcontractors under this Agreement or otherwise in completing the work that is the subject of this Agreement, whether caused by intentional conduct, recklessness, fault, negligence or otherwise.

Donor agrees to indemnify and save harmless the United States, its agents and employees, to the maximum extent provided by law, against any and all loss, damage, claim or liability whatsoever, due to personal injury or death, or damage to property of others, directly or indirectly, arising out of or related to the privileges granted under this Agreement to Donor, including failure to comply with the obligations of this Agreement.

18. INSURANCE AND BONDS

Donor shall cause and ensure that all of its contractors obtain an endorsement naming the United States as an additional insured on all insurance required for the work that is

the subject of this Agreement. Donor shall provide to GSA a copy of the policy certificate which shows the policy coverage amount(s) and the endorsement page that documents and confirms that the United States of America has been added as an additional insured on the aforementioned policies. The insurance carrier is required to waive all subrogation rights against any of the named insured.

Additionally, Donor shall cause and ensure that all of its contractors name the United States as a co-obligee on all bonds (e.g. performance bond, payment bond) each equal to 100% of the total project cost. Donor shall provide to GSA a copy of the bonds evidencing such.

19. SITE CONDITIONS

Neither GSA nor any other agency or instrumentality of the United States shall be responsible for any unknown or unexpected site conditions encountered on its site. Also, any costs caused by any changed conditions shall be the responsibility of Donor and neither GSA nor the United States will be liable or responsible for any costs or claims for costs due to any changed conditions. If Donor elects not to modify this Agreement and bear such increased costs, this Agreement may be terminated subject to the termination and restoration provisions set out herein.

20. ACCESS TO CONTROLLED UNCLASSIFIED INFORMATION

Donor acknowledges that as a part of its project planning and execution activities, GSA may need to provide Donor with confidential sensitive information. Donor agrees to maintain the confidentiality of information designated by the Federal Government as Controlled Unclassified Information (CUI) and will sign a Non-Disclosure Agreement (NDA) (as attached in Exhibit F) to that effect, and cause its agents, representatives, contractors, subcontractors and suppliers to do so, as well.

This Agreement must be executed by all the Parties and the NDA must be executed by any individual requesting access to CUI.

The provisions in this Agreement relating to CUI will survive the termination or expiration of this Agreement.

- A. Responding to Requests for CUI. If Donor receives a request for documents related to this Agreement from a party who is not a signatory to this Agreement, Donor will assert any and all applicable defenses, privileges, exceptions and exemptions from disclosure under the California Public Records Act or any other law and to maintain the confidentiality of the information to the maximum extent permissible under law. Donor will immediately notify GSA of any such request and will draft a response, in consultation with GSA.

- B. Donor Generated Documents. Donor generated documents, including those of Donor's agents, representatives, contractors, subcontractors, and suppliers that contain controlled unclassified information must be marked as CUI on the original documents and all copies before any dissemination.
- C. Legitimate Need to Know. CUI must be protected with access strictly controlled and limited to those individuals having a legitimate business need to know such information. Any contractors or subcontractors having a legitimate business need to know such information must be registered as "active" in the System for Award Management (SAM) database at www.sam.gov. If they are not registered, they must provide to Donor their DUNS number or tax ID number and a copy of its business license and Donor shall keep this information for the duration of the contract.
- D. Public Safety Entities. Public safety entities such as fire and utility departments may require access to CUI on a need to know basis. This clause does not prevent or encumber the dissemination of CUI to public safety entities.
- E. Electronic submission of CUI: Electronic submission of CUI outside of the GSA network must use session encryption (or alternatively, file encryption). Encryption must be via an approved NIST algorithm with a valid certification, such as Advanced Encryption Standard (AES) or Triple Data Encryption Standard (3DES). In accordance with Federal Information Processing standards Publication (FIPS PUB) 140-2, Security Requirements for Cryptographic Modules per GSA policy.
- F. Non-electronic form (including paper documents among other formats) or on portable electronic data storage devices (including, but not limited to, CDs, DVDs and USB drives):
- A. By mail, Donor must utilize only methods of shipping that provide services for monitoring receipt such as track and confirm proof of delivery, signature confirmation or return receipt.
 - B. In person, Donor must provide SBU building information only to authorized recipients with a need to know such information.
- G. List of CUI Recipients. Donor must maintain a list of all entities to CUI disseminated. This list must include at a minimum: (1) name of entity, utility, firm; (2) name of the individual at the entity or firm who is responsible for protecting the CUI, with access strictly controlled and limited to those individuals having a legitimate business need to know such information; (3) contact information for the named individual; and (4) a description of the CUI provided. Once "as built" drawings are submitted, Donor must collect all lists maintained in accordance with this clause, including those maintained by any contractors/suppliers and submit them to the GSA Project Manager.

- H. Limitation on Physical Location of CUI. Donor and its agents, representatives, and contractors may not take CUI outside of GSA or their own facilities or network, except as necessary for the performance of that contract.
- I. Disposal. When no longer needed all CUI must be returned to the GSA Project Manager with along with a signed statement stating that all CUI has been returned.
- J. Improper Disclosures. All improper disclosures of CUI must be immediately reported to the GSA Project Manager and Donor will provide a corrective action plan explaining how it will rectify any noncompliance and comply with the clause in the future.
- K. Flow Down Requirement. Donor must insert the substance of the SBU clause in all of its contracts and require it be included in all sub and supplier contracts.

21. SECURITY CONSIDERATIONS

Each employee, worker and supplier will be subject to a background investigation prior to being authorized to commence work on any aspect of the Project at the discretion of GSA.

The project will incorporate and comply with all applicable changes and updates to security regulations and requirements as promulgated by the U.S. Department of Homeland Security.

Donor must comply with the following requirements pertaining to security clearances:

- A. All personnel performing work under the Contract on the Project site must obtain an Enter on Duty (EOD) determination before they will be granted access to the site.
- B. To obtain an EDO determination, donor shall submit for all such personnel fingerprints on Form SF87 and a completed Information Worksheet (CIW). Detailed information is available at <http://www/gsa.gov/portal/category/107203>. USAccess Credentialing Centers can be located at <http://www/fedidcard.gov/ceterlist.aspx>.
- C. In addition, all such personnel who will be on site 6 months or longer must apply for and receive clearance in accordance with Homeland Security Presidential Directive 12 (HSPD-12).

22. ACCESS GOVERNMENT PROPERTY

Donor, its agents and representatives, including all contractors, subcontractors, and suppliers must comply with Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

Donor shall account for all forms of Government provided identification issued to Donor employees, agents, representatives, contractors, subcontractors and suppliers in connection with the work that is the subject of this Agreement. Donor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- A. When no longer needed for project performance.
- B. Upon completion of an employee's employment.
- C. Upon contract completion or termination.

23. SAFEGUARDING SENSITIVE DATA AND INFORMATION TECHNOLOGY RESOURCES

This section applies to all users of sensitive data and information technology (IT) resources, including Donor, its agents, representatives, contractors, subcontractors, suppliers and manufacturers. The following GSA policies must be followed. They can be found at <https://www.gsa.gov/directives-library>:

- CIO 1878.3 Developing and Maintaining Privacy Threshold Assessments, Privacy Impact Assessments, Privacy Act Notices, and System of Records Notices
- CIO 2100.1 GSA Information Technology (IT) Security Policy
- CIO 2100.3C Mandatory Information Technology (IT) Security Training Requirements for Agency and Contractor employees with significant security responsibilities
- CIO 2104.1B GSA Information Technology IT General Rules of Behavior
- CIO 2180.2 GSA Rules of Behavior for Handling Personally Identifiable Information (PII)
- CIO 2182.2 Mandatory Use of Personal Identity Verification (PIV) Credentials
- CIO 2231.1 GSA Data Release Policy
- CIO 9297.2C CHGE 1 GSA Information Breach Notification Policy
- ADM P 9732.1 D Suitability and Personnel Security
- OSC 2106.2 GSA Social Media Policy

24. LIMITATIONS

Nothing in this Agreement is intended to conflict with current law, regulation, directives, or policy of the United States or GSA. If any provision of this Agreement is inconsistent with any such authority, then that provision is deemed to be invalid and subject to modification upon concurrence of the Parties, and the remaining terms and conditions of this Agreement will continue in full force and effect.

The Parties acknowledge that this Agreement is not a commitment to future funding, staffing or other resources. Nothing in this Agreement may be construed or interpreted to obligate the United States to any current or future expenditure of funds in advance of, or in excess of, the availability of appropriations, nor does this Agreement obligate the United States to spend available funds for any particular purpose.

Nothing in this Agreement constitutes or can be construed as a waiver of the sovereign immunity of the United States.

25. NOTICES

All notices and other communications arising under this Agreement must be in writing and must be furnished by (i) hand delivery; (ii) United States certified mail, postage prepaid, return receipt required; or (iii) nationally available overnight next business day courier, charges prepaid, signature or recipient required, in each instance if to GA, to the GSA Project Team Manager, and if to Donor, to the Donor Project Manager, at the addresses set forth immediately below. Any Party may change the notice address set forth below by serving five (5) days prior written notice upon the other Parties. Any such notice will be duly given upon the date it is delivered to the address (or, if delivery is refused, the date when delivery was first attempted) shown below.

GSA:
Anthony Kleppe
U.S. General Services Administration
Public Building Service (9)
50 United Nations Plaza
Mailbox 9
San Francisco, CA 94102

with a copy to:

Margaret Haggerty, Regional Counsel
U.S. General Services Administration
Office of Regional Counsel (LD9)
50 United Nations Plaza
XXXXXX
San Francisco, CA 94102

Donor:
Mark Baza, Executive Director
Imperial County Transportation Commission
1503 N. Imperial Ave., Suite 104
El Centro, CA 92243

26. EXAMINATION OF RECORDS

Donor agrees that GSA or its duly authorized representative will, until the expiration of three (3) years after the date of acceptance of the donation by the United States, have access to and the right to examine any books, documents, papers, and records of Donor involving transactions related to this Agreement or compliance with any clause thereunder.

27. UNITED STATES RIGHTS TO DATA

The United States will have unlimited rights in all the Project Documents. Donor, for a period of three (3) years after the date the United States accepts the donation, agrees to furnish the original or copies of all such Project Documents on the requests of GSA.

28. MODIFICATION

This Agreement may be modified or amended only by written, mutual agreement of the parties. Any Party can imitate the amendment process by providing written notice describing the proposed amendment to the other Parties. During the ensuing 30-day period, the Parties will actively coordinate to try to reach a consensus on the proposed amendment.

29. DISPUTE RESOLUTION

All disputes arising under or relating to this Agreement will be resolved following the procedures set for in this section 21 and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Parties agree to make good faith efforts to resolve informally disputes that may arise out of or relate to this Agreement, or the breach thereof, that affects the Parties' obligations and responsibilities under this Agreement. In the event that such a dispute arises between Donor and the United States, Donor may file a claim (a "Donor Claim") with GSA or the United States may file a claim (a "United States Claim") against Donor. A "Claim" is a United States Claim or a Donor Claim. If the disputes cannot be settled through negotiation, the parties will first try in good faith to settle the dispute by mediation, before resorting to litigation. The United States agrees that GSA will not issue any final determination regarding any Claim by either party until and unless such mediation has been concluded or either Party advises the other that a resolution of the disputes by mediation does not appear likely within a reasonable time.

30. NONCOMPLIANCE AND DEFAULT

In the event Donor, after receiving written notice from the GSA primary point of contact of non-compliance with any requirement of this Agreement, fails to imitate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, GSA will have the right to not accept the donation until Donor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time.

If Donor refuses or fails to prosecute the work or any severable part with the diligence that will ensure its completion within the time specified in this Agreement including any extension, fails to complete the work within this time, fails to complete the work in the manner or to the specifications required by this Agreement, or fails to make required payment to contractors and subcontractors (which includes laborers and suppliers), GSA will, by written notice, provide Donor a reasonable time to cure performance, which will not be less than 30 days. If Donor does not cure within the reasonable time, Donor will be in default under this Agreement.

In the event of a default by Donor, the United States may pursue any available remedy, including on or a combination of the following: not accepting the donation, seeking reimbursement for costs and expenses the United States incurred to the date of the termination or incurs for completing the work or requiring donor to restore any altered federal property to its pre-construction conditions. Upon default, the United States may take possession of and use any tools, materials, equipment or appliances on the work site necessary for completing the work. Donor and its sureties will be liable for any damage sustained by the United States resulting from Donor's default under this Agreement, whether or not Donor's right to proceed with the work is terminated.

31. TERMINATION

Any Party may terminate its participation in this Agreement by providing written notice to the other Parties at least 30 days prior to commencement of construction activities, in which case the United States will be under no obligation to accept the donation and the Parties will thereafter have no further rights, obligations or liabilities under this Agreement other than those that expressly survive termination or expiration of this Agreement. In the event Donor has altered federal property prior to termination of this Agreement, Donor agrees, subject to the discretion of the United States, to restore the property to its prior condition. In the event Donor has received any sensitive or confidential information from GSA pertaining to the proposed donation and the donation is not consummated for any reason, Donor must promptly return all such materials. This provision survives the expiration or earlier termination of the Agreement.

32. SIGNATORIES

The GSA Commissioner of Public Buildings, or another agency official with the appropriate delegated authority, must execute this Agreement to be effective. Donor's signatory to this Agreement must have full authority to bind Donor with regard to all matters relating to this Agreement.

33. COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be deemed to be a duplicate original, and which together will constitute one and the same instrument.

34. INTEGRATION AND MERGER

This Agreement sets out all of the terms, conditions and agreements of the Parties and supersedes any previous understandings or agreement regarding the donation, whether oral or written. No modification or amendment of this Agreement will be effective unless in writing and signed by all Parties.

35. VALIDITY OF PARTS

If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, the remaining provisions will continue in full force.

36. NO PUBLIC OFFICIALS TO PARTICPATE OR BENEFIT

No member or delegate to the United States Congress, or offerors of employees of the United States or the Government of the State of California, may be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; provided, however, that this provision will not be construed as extending to any person who may be a shareholder, or other beneficial owner of any publicly held corporation or other entity, if this Agreement is for the general befit of such corporation or other entity.

37. NO PRECEDENT

The terms of this Agreement will not establish any precedent, nor will this Agreement be used as a basis to seek or justify similar terms in any subsequent situation involving the Parties.

38. EFFECTIVE DATE

This Agreement will become effective when all the Parties have signed it. The date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite that Party's signature) will be deemed to be the effective date of this Agreement. This Agreement will remain in effect until it is terminated as provided in sections 23 and 24, or the property is accepted by the United States.

[Remainder of page intentionally left blank. Signature page to follow.]76

Exhibit A

Base Scope of Work

DRAFT 8-17-20

Exhibit A-1

Optional Scope of Work Subject to Funding Availability

Exhibit B

Construction Standards

DRAFT 8-17-20

Exhibit C

Costs for Base and Optional Work

Exhibit D

Property Interests Approved by GSA

NONE

Exhibit E

Bill of Sale

BILL OF SALE

The Imperial County Transportation Commission, a _____, whose address is _____, and its successors and assigns ("Donor"), pursuant to a Donation Acceptance Agreement dated _____ ("Agreement") will transfer 4 additional lanes (described in Exhibit A to the Bill of Sale), and if Donor's funding permits, the optional work described in Exhibit A-1 to the Bill of Sale, to the existing GSA bridge crossing the All American Canal at the Calexico East Land Port of Entry ("Calexico East LPOE") in Calexico, California to the United States of America, acting by and through the General Services Administration, whose address is 50 United States Plaza, _____, San Francisco, CA 93102 ("GSA"). In consideration of the covenants contained in this Bill of Sale and in the Agreement AND IN CONSIDERATION of the sum of One Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Donor hereby transfers, conveys, and delivers to the GSA the property described as follows:

Four additional lanes and re-alignment of the pedestrian path to the existing GSA bridge traversing the All American Canal (including construction of permanent fencing and entrance gate as necessary to replace temporary fencing) at the Calexico East LPOE, and should funds be available to Donor, an 8-ft shoulder, rehabilitation of existing structures, and a bridge canopy, all of which are described as base and optional work in Exhibits A and A-1, respectively. As part of the pedestrian path re-alignment and related improvements, the Donor will construct permanent fencing and entrance gate as necessary to replace temporary fencing.

The property described above and in Exhibits A and A-1 are transferred with all applicable warranties and representations, including a minimum of a one-year warranty of construction to be proved to GSA in the form prescribed in 48 C.F.R. § 52.246-21.

This Bill of Sale shall be governed by and construed in accordance with the laws of the United States.

This Bill of Sale shall become effective between Donor and GSA on the date executed by both parties below.

This Bill of Sale shall bind and insure to the benefit of Donor and GSA and their respective successors and assigns.

IN WITNESS WHEREOF, this Bill of Sale is signed by its duly authorized [insert title],
this ____ day of ____ 2020.

Imperial County Transportation Commission

By: _____
Printed Name and Title

Acknowledgement

State of California County of _____) On
_____ before me,
_____ (insert name and title of the officer)
personally appeared

_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY
under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal. Signature _____
(Seal).

United States of America,
Acting by and through the Administrator
Of the General Services Administration

By: _____
Name and Title

**Exhibit R Caltrans Local Assistance Procedures Manual (LAPM)
Exhibit 10-O1: Consultant Proposal DBE Commitment**

The following document is available for the Design-builder to download and complete on the Caltrans website at:

[EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT \(ca.gov\)](#)

Local Assistance Procedures Manual

Exhibit 10-01
Consultant Proposal DBE Commitment

Reset Form

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section 17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. _____ _____ _____		11. TOTAL CLAIMED DBE PARTICIPATION	%
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Exhibit S LAPM Exhibit 10-O2: Consultant Contract DBE Commitment

The following document is available for the Design-builder to download and complete on the Caltrans website at:

[EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT \(ca.gov\)](#)

Local Assistance Procedures Manual

Exhibit 10-02
Consultant Contract DBE Commitment

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: _____
8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section 20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. 23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____			14. TOTAL CLAIMED DBE PARTICIPATION \$ _____ % _____ IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____

DISTRIBUTION: 1. Original – Local Agency
2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Project Location** - Enter the project location as it appears on the project advertisement.
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
8. **Total Dollar Amount for ALL Subconsultants** - Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
9. **Total number of ALL subconsultants** - Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
10. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
12. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
13. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
14. **Total Claimed DBE Participation - \$**: Enter the total dollar amounts entered in the "DBE Dollar Amount" column.
%: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
15. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
16. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
17. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
18. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
19. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

20. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed.
23. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
24. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
25. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
26. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
27. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Exhibit T LAPM Exhibit 15-G: Construction Contract DBE Commitment

The following document is available for the Design-builder to download and complete on the Caltrans website at:

[LAPM EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT \(ca.gov\)](#)

Local Assistance Procedures Manual

Exhibit 15-G
Construction Contract DBE Commitment

EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Bidder's Name: _____ 6. Prime Certified DBE: ☐ 7. Bid Amount: _____
8. Total Dollar Amount for ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount

Local Agency to Complete this Section upon Execution of Award		15. TOTAL CLAIMED DBE PARTICIPATION <div style="text-align: right; font-size: 1.2em;">\$ 0.00</div> <div style="text-align: right; font-size: 1.2em;">\$ 0.00 %</div>
21. Local Agency Contract Number: _____ 22. Federal-Aid Project Number: _____ 23. Bid Opening Date: _____ 24. Contract Award Date: _____ 25. Award Amount: _____		
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. 26. Local Agency Representative's Signature _____ 27. Date _____ 28. Local Agency Representative's Name _____ 29. Phone _____ 30. Local Agency Representative's Title _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required. 16. Preparer's Signature _____ 17. Date _____ 18. Preparer's Name _____ 19. Phone _____ 20. Preparer's Title _____

DISTRIBUTION: 1. Original – Local Agency
2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.
3. Include additional copy with award package.

Local Assistance Procedures Manual

Exhibit 15-G
Construction Contract DBE Commitment

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT

CONTRACTOR SECTION

1. **Local Agency** - Enter the name of the local agency that is administering the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** - Enter the project location(s) as it appears on the project advertisement.
4. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
5. **Bidder's Name** - Enter the contractor's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
8. **Total Dollar Amount for ALL Subcontractors** - Enter the total dollar amount for all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
9. **Total number of ALL subcontractors** - Enter the total number of all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
10. **Bid Item Number** - Enter bid item number for work, services, or materials supplied to be provided.
11. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
12. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
13. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and phone number, if the prime is a DBE.
14. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
15. **Total Claimed DBE Participation - \$**: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%**: Enter the total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
16. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the contractor's firm must sign their name.
17. **Date** - Enter the date the DBE commitment form is signed by the contractor's preparer.
18. **Preparer's Name** - Enter the name of the person preparing and signing the contractor's DBE commitment form.
19. **Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
20. **Preparer's Title** - Enter the position/title of the person signing the contractor's DBE commitment form.

LOCAL AGENCY SECTION

21. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
22. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number(s).
23. **Bid Opening Date** - Enter the date contract bids were opened.
24. **Contract Award Date** - Enter the date the contract was executed.
25. **Award Amount** - Enter the contract award amount as stated in the executed contract.
26. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
27. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
28. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the contractor's DBE commitment form.
29. **Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.

Local Assistance Procedures Manual

**Exhibit 15-G
Construction Contract DBE Commitment**

30. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the contractor's DBE commitment form.

VI. ACTION CALENDAR

B. APPOINTMENT TO THE CALIFORNIA VANPOOL AUTHORITY (CALVANS) BOARD

1. Appoint a representative and an alternate from the Commission to the (CalVans) Board.



1503 N. IMPERIAL AVE., SUITE 104
EL CENTRO, CA 92243-2875
PHONE: (760) 592-4494
FAX: (760) 592-4410

March 20, 2021

Cheryl Viegas-Walker, Chairperson
Imperial County Transportation Commission
1503 N. Imperial Ave Suite 104
El Centro, CA 92243

SUBJECT: Appointment to the California Vanpool Authority (CalVans) Board

Dear Commission Members:

The California Vanpool Authority (CalVans) Joint Powers Agency was formally established in January 2012 as a public transit agency with Board Members representing 10 agencies. The CalVans Board is made up of a Board member from each of the member agencies. The agency does not require contributions from member agencies, other than the Board Member and Staff time devoted to the monthly meetings. As a public transit agency, CalVans is simply an addition to the public transit options provided to the residents and businesses in the Board Member's jurisdiction. Guidance and input from each Board member guides CalVans staff in providing vanpool services that benefit each area, particularly those who may have difficulty finding transportation due to economic conditions.

Meetings are held monthly at 10:00 a.m. on the second Thursday. Members call in to the meeting from a location of their choice that is open to the public, meetings normally last 30 to 45 minutes. Some meetings are skipped for lack of necessary agenda items. CalVans staff has an office in El Centro to oversee local projects. Currently, there are 47 vanpools that operate in Imperial and another 60 in Yuma mostly to agricultural farmworkers.

Since 2015 Commissioner James Predmore has been representing ICTC on the CalVans Board. Mr. Predmore has represented ICTC in this capacity. We are appreciative of Mr. Predmore's commitment during these 6 years.

ICTC Staff is requesting the following action after public comment, if any:

1. Appoint a representative and an alternate from the Commission to the CalVans Board.

Sincerely,

A handwritten signature in blue ink that reads 'Mark Baza'.

MARK BAZA
Executive Director

MB/cl

VII. INFORMATION CALENDAR

A. IMPACTS OF BORDER DELAYS AT THE CALIFORNIA-BAJA CALIFORNIA LAND PORTS OF ENTRY

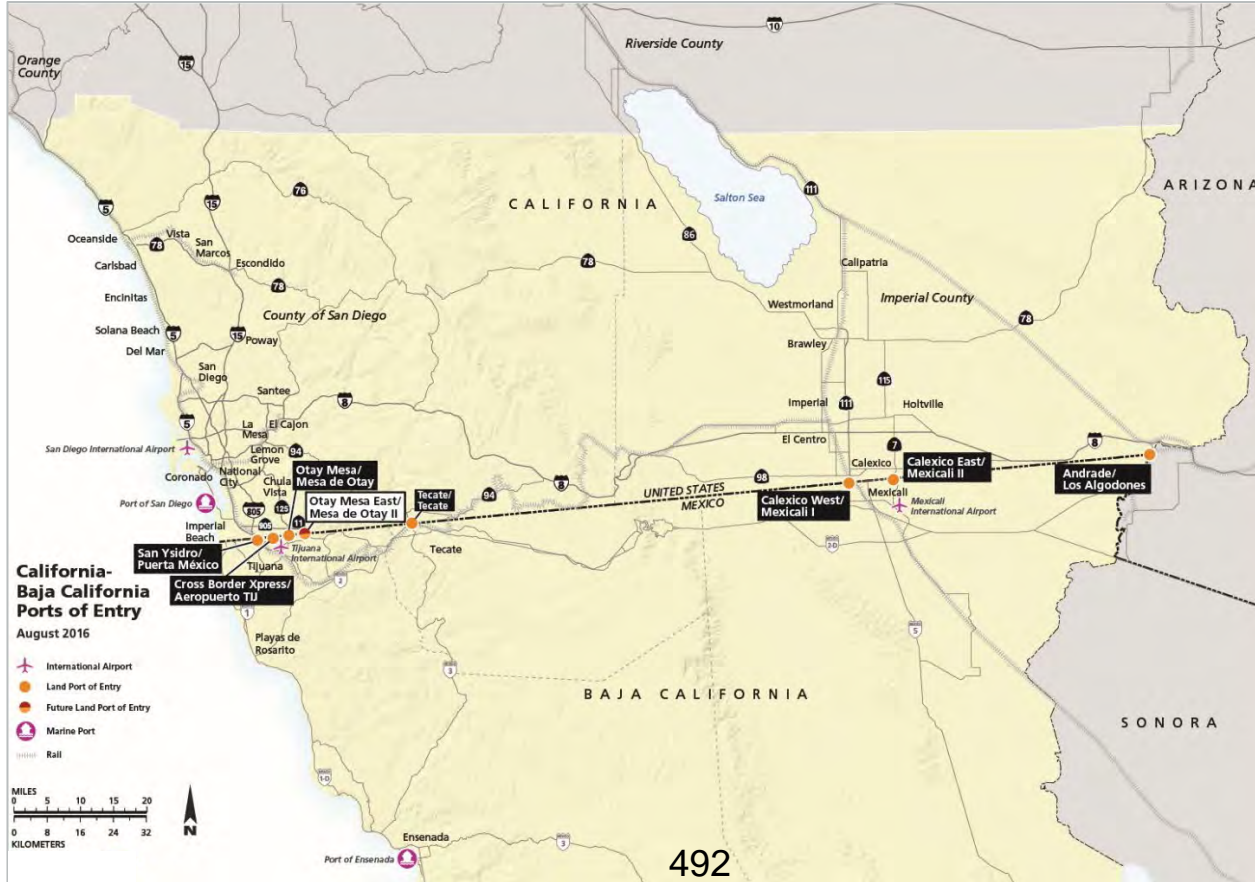
PRESENTATION BY SANDAG STAFF



IMPACTS OF BORDER DELAYS AT CALIFORNIA – BAJA CALIFORNIA LAND PORTS OF ENTRY

Imperial County Transportation Commission | March 24, 2021

OVERVIEW: CALIFORNIA – BAJA CALIFORNIA LAND PORTS OF ENTRY



CHALLENGE: BORDER CROSSING DELAY



...economic impacts

...air quality impacts

...social impacts



Pedestrian queue at the Calexico West-Mexicali I POE. (Source: U.S. Customs and Border Protection)



Commercial trucks queuing at the Otay Mesa-Mesa de Otay POE. (Source: Caltrans)



493
Northbound POV lanes at the San Ysidro-Puerta México POE. (Source: wordpress.com)

BACKGROUND: LEGACY OF STUDIES



Economic Impacts of Wait Times at the San Diego – Baja California Border (2006):

SANDAG and Caltrans study was first to quantify impacts of border delays to economic output and employment. Helped build case for the Otay Mesa East POE.



Imperial Valley – Mexicali Economic Delay Study (2007):

Imperial Valley Association of Governments (IVAG) and Caltrans study estimated economic impacts for Imperial County border crossings.



Goods Movement Border Crossing Study and Analysis (2012):

Southern California Association of Governments (SCAG) study estimated economic impacts for vehicle delay at Imperial County border crossings.

Impacts of Border Delays at California – Baja California Land Ports of Entry (2021):

Addresses need for a technically sound new assessment of **economic impacts** of delays experienced at the California – Baja California land POEs, as well as **effects on regional air quality and greenhouse gas emissions**.

Provides partner agencies, stakeholders, and public with information on the importance of reducing border crossing wait times.



BACKGROUND: WHAT HAS CHANGED SINCE THE PREVIOUS STUDIES?

1. **2008—2009 Great Recession and ripple effects on local & regional economies**
2. **Lower crossing volumes compared to “peak” years immediately prior to Great Recession**
 - » *Crossborder travel still recovering. Fewer affected crossers means less impact.*
3. **Possible change in profile of border travelers**
 - » *Elasticities (i.e., relative sensitivity to change) to wait times found to be lower than in previous studies, meaning travelers are less likely to forego trips/more likely to take the trip regardless of wait time, resulting in fewer lost expenditures.*
4. **Increased use of Technology/Trusted Traveler Programs**
 - » *Leads to reduction in average delays overall*
5. **Introduction of “baseline wait time” and “excess wait time” concept**
 - » *Accounts for time associated with required minimal CBP inspection, resulting in reduced measure of delay and lower adverse economic impact*
6. **Evolving market conditions**
 - » *For example, economic rebounding after Great Recession, increased trade flows, and integrated supply chains with Mexico under NAFTA, etc.,*

BACKGROUND:

WHAT HAS CHANGED SINCE THE PREVIOUS STUDIES? (CONT.)

7. Investments in border infrastructure have improved travel times
- » *i.e., San Ysidro Reconfiguration and Expansion Project (GSA), introduction of dedicated Ready Lane, opening of Cross Border Xpress (CBX) facility, opening of San Ysidro Ped West, Calexico West Modernization, etc.*



Calexico West-Mexicali I POE – 2018. (Source: GSA)



Northbound POV lanes at San Ysidro-Puerta México POE – 2018. (Source: GSA)

BACKGROUND: ADDITIONAL CONTEXT



Northbound POV lanes at the San Ysidro-Puerta México POE – 2020.
(Source: Alejandro Tamayo/The San Diego Union-Tribune)

The scope/intent of the study is to assess conditions and impacts experienced under a “typical” border dynamic as observed in 2016 (base year). The methodology and major data collection efforts were completed in the 2016-2017 timeframe.

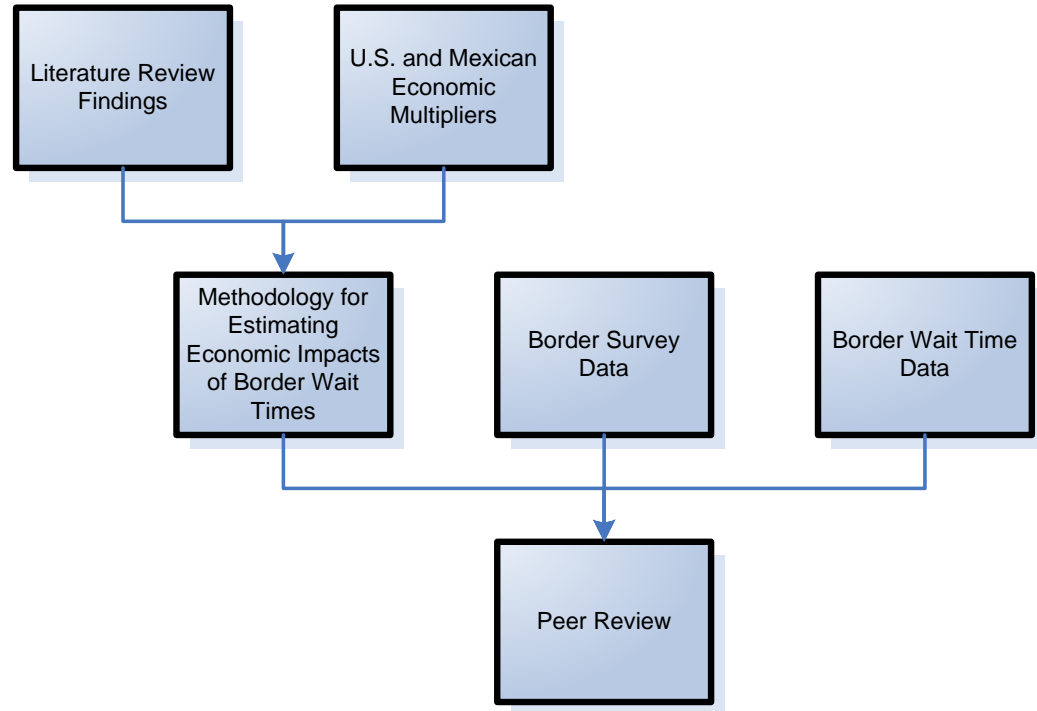
Analysis **does not** account for:

- » Impacts related to COVID-19 travel restrictions on crossing volumes.
- » Impacts of the new United States-Mexico-Canada Agreement (USMCA) on trade.
- » Impacts of recent Governor’s Executive Order (EO N-79-20) for the State of California related to sales of zero-emission personal and medium/heavy-duty vehicles.

ECONOMIC APPROACH:

OVERVIEW OF ECONOMIC IMPACT ANALYSIS (EIA) MODEL

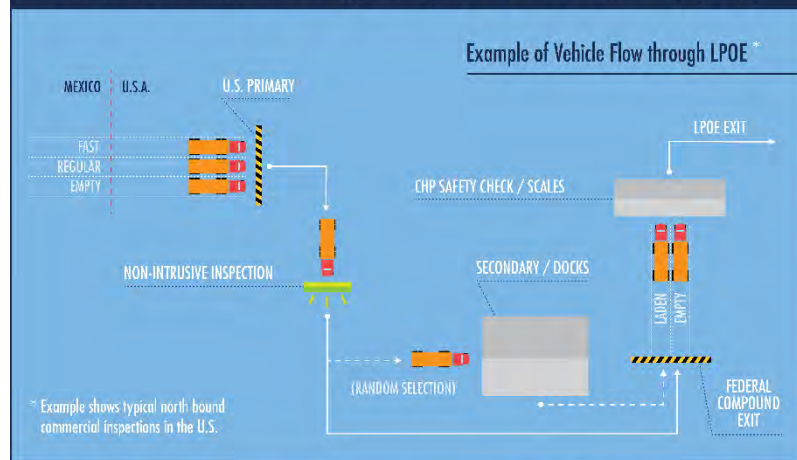
- Estimates the economic impacts on both sides of the border
- Accounts for most recent research findings
- Intensive data collection effort relying primarily on first-hand data (e.g., border survey data)
- Consensus-building and transparent process (expert peer reviews conducted April 2017)
- Uses Input-Output (I-O) Models in the U.S. and Mexico



AIR QUALITY EMISSIONS APPROACH: OVERVIEW

- Emissions analyzed include carbon dioxide (CO₂), reactive organic gases (ROG), oxides of nitrogen (NO_x), particulate matter smaller than 10 microns (PM₁₀) and 2.5 microns (PM_{2.5}), and carbon monoxide (CO)
- Relies on U.S.-Mexico Joint Working Committee (JWC) template and process descriptions based on input from CBP and Aduanas
- Uses queue models for each POE to replicate workflows
- Adjustments to JWC Template – California Implementation for vehicle activity and Emission Factors (EMFAC 2017)
- Binational consensus-building process (peer-review conducted Feb 2017)

Emission Estimate Methodology Example for Land Port-of-Entry (LPOE)



$$\text{EMISSIONS BY LANE TYPE} = \text{VEHICLE FLOW} \times \text{EMISSION FACTORS} \times \text{WEIGHTING FACTORS}$$

VEHICLE FLOW

SPECIFIC TO INSPECTION STOPS		BETWEEN INSPECTIONS
Identifying lane types specific to each LPOE, which may include:	Identifying inspection stops specific to each LPOE, which may include:	Based on volumes and processing rates, identify and quantify vehicle behaviors associated with each individual inspection stop:
<div>COMMERCIAL</div> <ul style="list-style-type: none"> FAST Regular Empty 	<div>POV</div> <ul style="list-style-type: none"> Regular Ready SENTRI <ul style="list-style-type: none"> Inspections within Aduanas U.S. Primary Non-intrusive inspection Secondary inspection/docks CHP safety check/scales Future toll collection 	<ul style="list-style-type: none"> Stop and start queue Creeping queue Extended idle Soak and restart Free-flow driving

EMISSION FACTORS

Obtain applicable emission factors specific to each vehicle class, lane type, process, vehicle age, fuel type, inspection and maintenance programs, etc., from MOVES, MOVES Mexico, and/or EMFAC.

WEIGHTING FACTORS

Weighting factors specific to each LPOE such as lane type, processes, vehicle age, fuel type, time of day, etc., derived from surveys, observations, and secondary sources.

PEER-REVIEW PROCESS: BINATIONAL CONSENSUS BUILDING

- Peer-review sessions to elicit feedback from subject matter experts and project stakeholders on the methodologies for estimating economic and emissions impacts of border delays.
- Panels with binational representation of experts from government, industry and academia.
- Emissions Peer-Review Roundtable on February 16, 2017.
- Economic Peer-Review Panel – Risk Analysis Workshops on April 20 and April 27, 2017.



Emissions Peer-Review Roundtable (February 16, 2017)



Economic Peer-Review Panel – Risk Analysis Workshop (April 20, 2017)

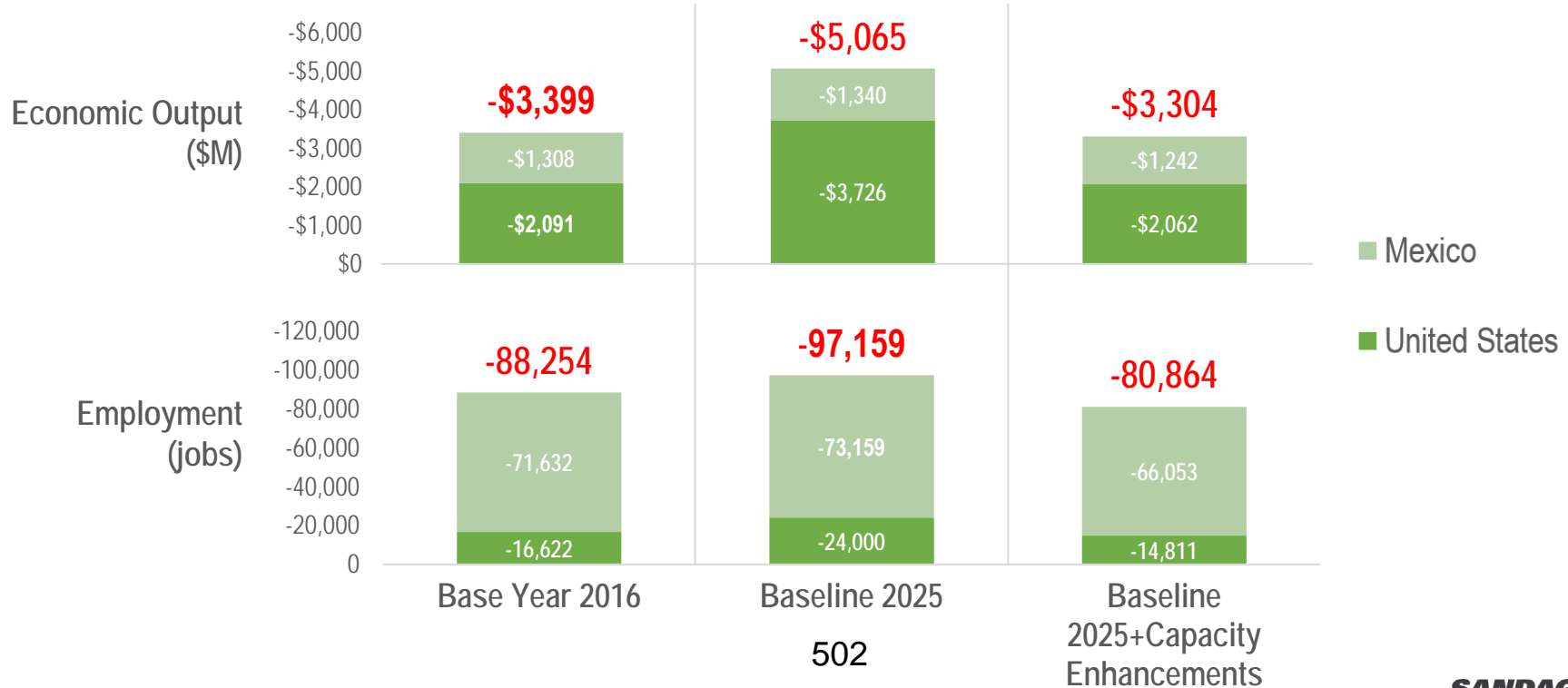
ANALYSIS SCENARIOS:

Base Year 2016 (Economic and Emissions Analyses)	2025 (Economic and Emissions Analyses)		2035 (Emissions Analysis Only)	
	Baseline	Baseline 2025 plus Capacity Enhancements, Transit, and Active Transportation	Baseline 2035 plus Capacity Enhancements, Transit, and Active Transportation	
Existing Conditions	Includes planned improvements completed by 2025, including; <ul style="list-style-type: none"> • Phase 3 improvements at San Ysidro (completed) • Modernization of the cargo and pedestrian facilities at Otay Mesa (underway) • Phase 1 improvements at Calexico West (completed) 	Includes "Baseline 2025" scenario assumptions and additional capacity improvements completed by 2025, including; <ul style="list-style-type: none"> • Otay Mesa East (as 5x5 configuration) • Expansion of All-American Canal bridge (Calexico East) • Various transit and pedestrian access improvements in the vicinity of the POEs 	Includes "Baseline 2025 plus Capacity Enhancements, Transit, and Active Transportation" scenario assumptions <ul style="list-style-type: none"> • Otay Mesa East (as 5x5 configuration) 	Includes "Baseline 2025 plus Capacity Enhancements, Transit, and Active Transportation" scenario assumptions <ul style="list-style-type: none"> • Otay Mesa East (as 10x10 configuration)

Note: The study assumes the future Otay Mesa East POE capacity will be expanded in phases. On opening day it will be in a 5x5 configuration and expanded to a 10x10 configuration at a later date. "5x5" and "10x10" refers to the number of privately owned vehicle and commercial vehicle primary lanes assumed.

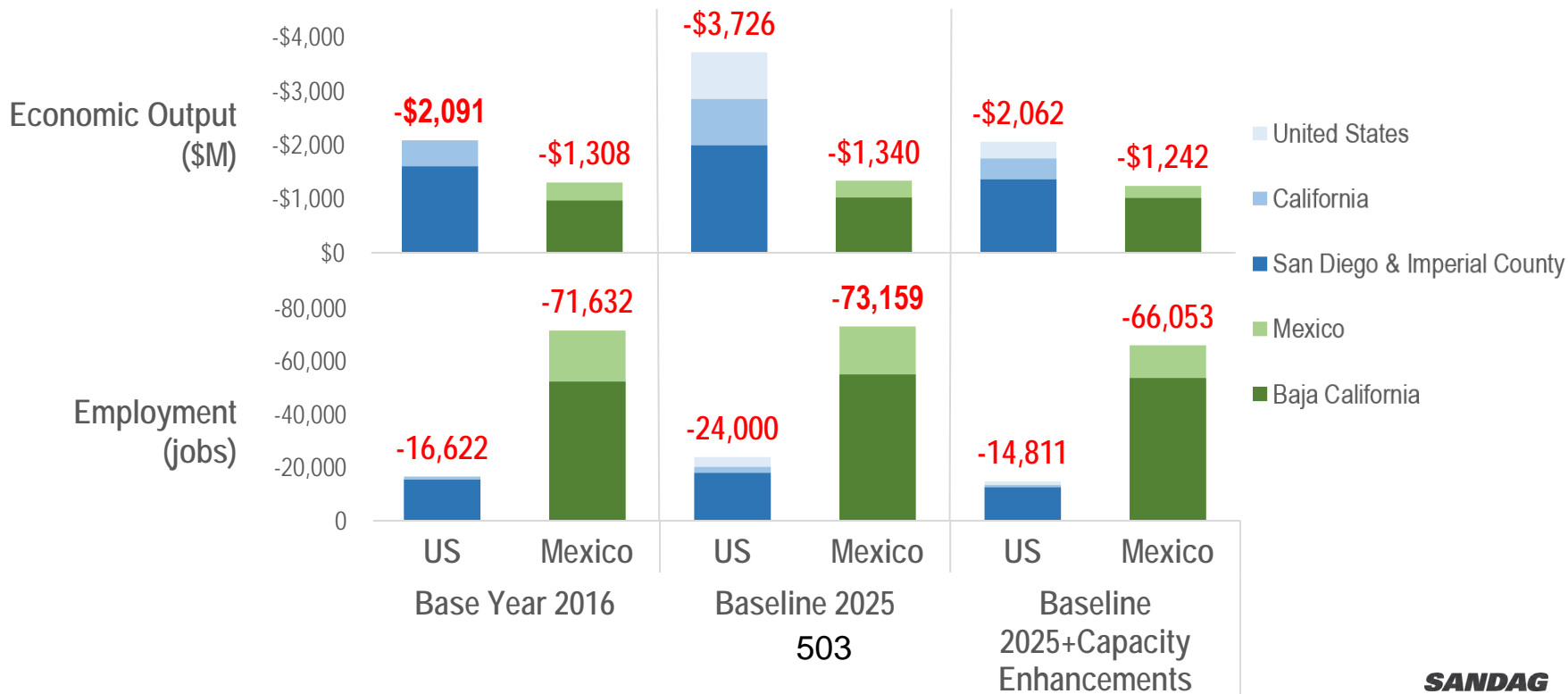
ECONOMIC IMPACTS:

IMPACTS DUE TO DELAYS IN PERSONAL TRIPS AND FREIGHT MOVEMENTS AT ALL CALIFORNIA – BAJA CALIFORNIA POE'S




ECONOMIC IMPACTS:

IMPACTS DUE TO DELAYS IN PERSONAL TRIPS AND FREIGHT MOVEMENTS AT ALL CALIFORNIA – BAJA CALIFORNIA POE'S



STUDY FINDINGS: ECONOMIC IMPACTS

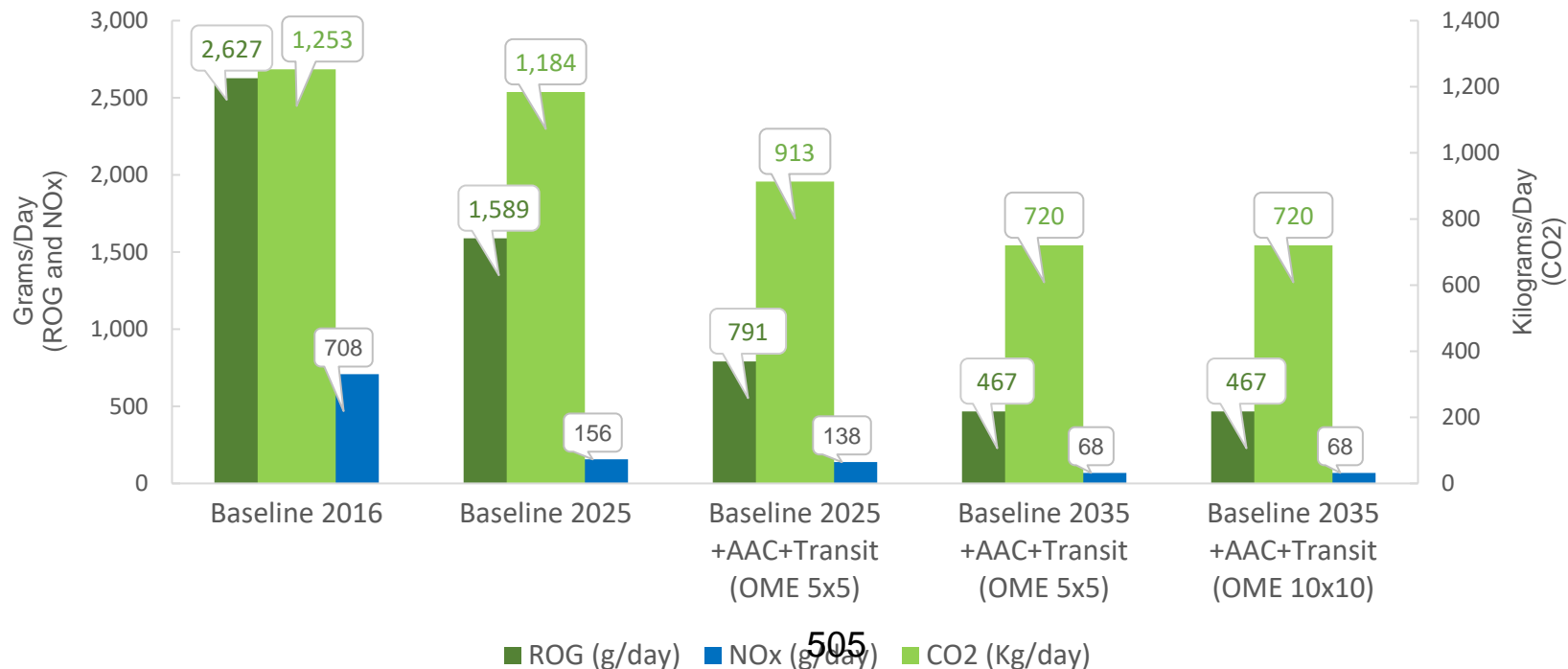
- Economic impacts in the 2025 Baseline scenario are partially mitigated by already-planned capacity increases. However, **economic losses continue to grow** in the future without additional improvements.
- **Construction of improvements** that represent large capacity increases (i.e., Otay Mesa East POE and All-American Bridge Expansion at Calexico East) **provides significant relief and may fully mitigate** economic losses anticipated in the 2025 Baseline scenario.



Completing planned POE infrastructure improvements by 2025 effectively “buys back” nearly 10 years of anticipated growth in economic loss – back down to slightly below 2016 levels.

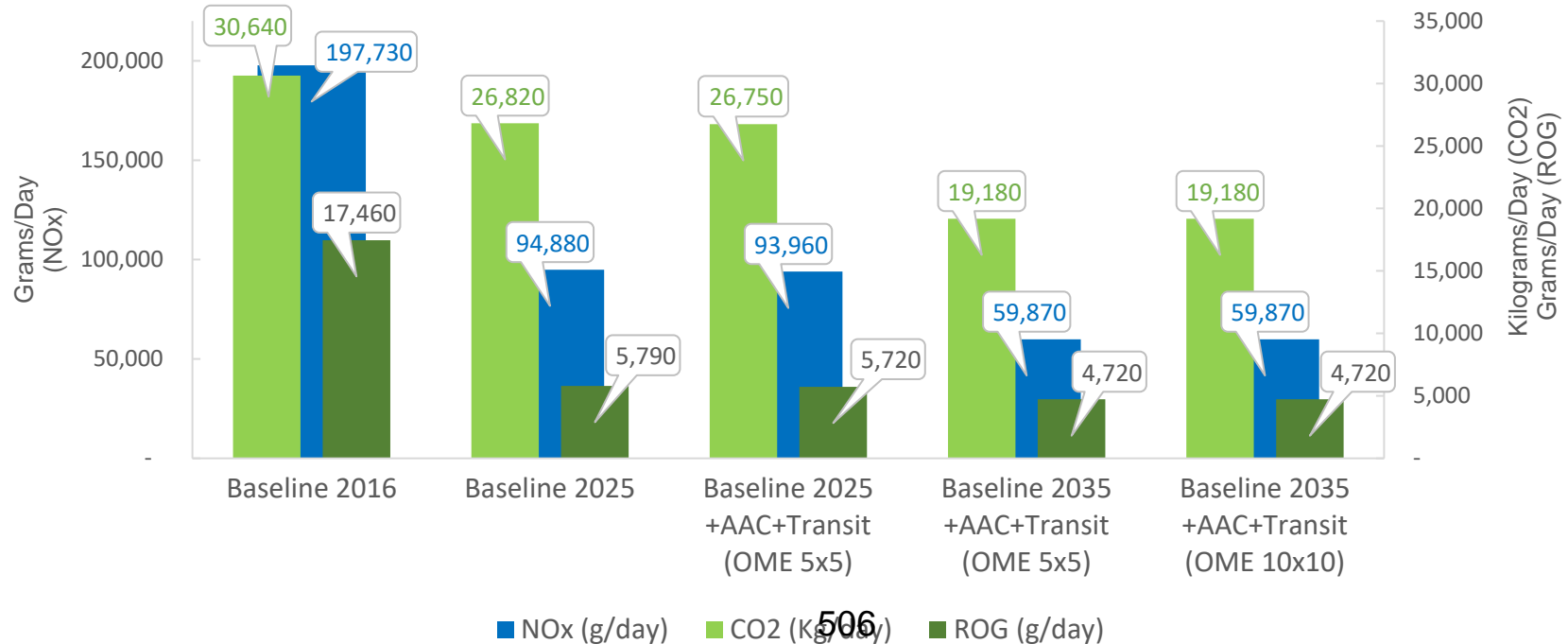
EMISSIONS IMPACTS: FROM POV BORDER CROSSINGS (IMPERIAL COUNTY)

Summer Design Day CO₂, ROG, NO_x - Imperial County POEs
(Per 1000 POV Border Crossings)



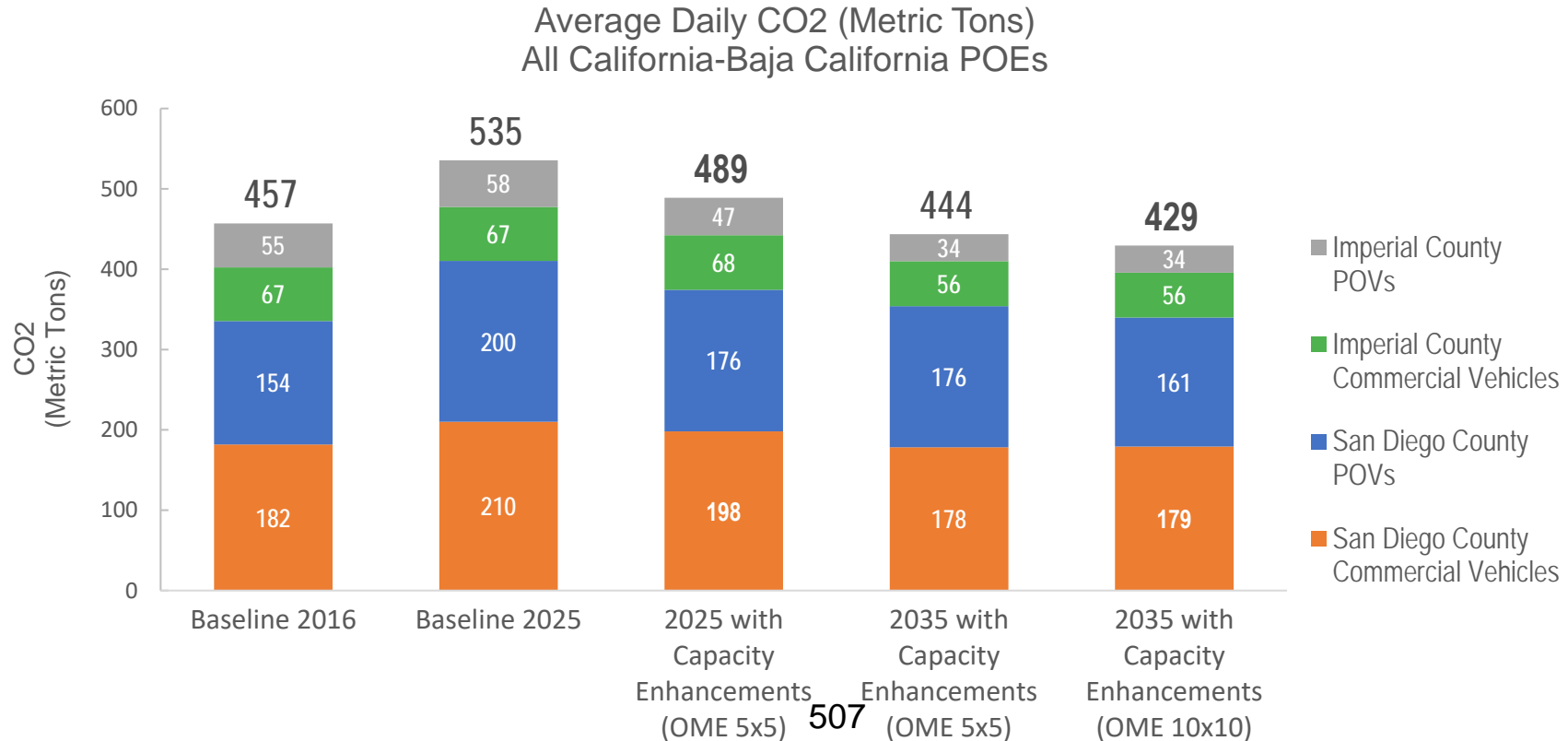
EMISSIONS IMPACTS: FROM COMMERCIAL BORDER CROSSINGS (IMPERIAL COUNTY)

Summer Design Day CO₂, ROG, NO_x - Imperial County POEs
(Per 1000 Commercial Vehicle Border Crossings)



EMISSIONS IMPACTS:

AVERAGE DAILY CO2 (FROM ALL CALIFORNIA-BAJA CALIFORNIA POE'S)



STUDY FINDINGS: AIR QUALITY/EMISSIONS IMPACTS

- Overall, **emissions drop** rapidly from 2016 to 2035 due to reduced delay resulting from **investments in border infrastructure** capacity and the multimodal transportation system, and **lower polluting/more efficient vehicles**
- The **biggest contributor** to emission reductions per vehicle crossing is ongoing **turnover of the vehicle fleet** – replacing older technology/higher polluting vehicles with newer technology/less polluting vehicles

Infrastructure improvements by 2025 make a noticeable contribution to emission reductions. To maintain the downward trajectory of emissions past 2035, innovations in vehicle technology and clean fuels should be encouraged in addition to capacity enhancements.

STUDY RECOMMENDATIONS:

STRATEGIES FOR REDUCING BORDER CROSSING DELAY

- **Investment in POE Infrastructure/ Physical Capacity**
 - » *Expand existing infrastructure (Otay Mesa Modernization, Calexico East bridge expansion, etc.)*
 - » *New facilities (Otay Mesa East-Mesa de Otay II POE)*
- **Improve Operations**
 - » *Efficiencies for customs (SAT-Aduanas PITA program, Unified Cargo Processing, dynamic lane management, appointment systems, extended hours of operations, etc.)*
- **Improve Access to POEs**
 - » *Active transportation connections, enhanced transit services (i.e., increased frequencies, Calexico West Intermodal Transit Center), zero/near-zero emission truck prioritization, etc.*
- **Corridor-Wide Improvements**
 - » *Regional Border Management System*
- **Support for Binational Coordination on Long-Term Strategies**
 - » *Leverage partnerships to develop crossborder mobility solutions*

Recommendations also align with State of California planning goals and objectives in:

-2016 California Sustainable Freight Action Plan (CSFAP)

-2020 California Freight Mobility Plan (CFMP)

-2021 California – Baja California Border Master Plan (BMP)



PROJECT LINKS AND CONTACT INFORMATION

PROJECT WEBPAGE:

<http://sandag.org/borderdelays>

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PedEast northbound pedestrian facility at San Ysidro. (Source: General Services Administration)