APPENDIX 1

ABBREVIATIONS AND ACRONYMS

DEFINED TERMS

Unless otherwise specified, wherever the following abbreviations or terms are used in the Contract and the Technical Provisions, they shall have the meanings set forth below. References to Sections and Appendices shall mean Sections and Appendices of the Contract unless otherwise specified.

The titles and headings of the Sections and Subsections are intended for convenience and do not bear on the meaning of the text.

When a publication is specified, it refers to the most recent date of issue, including all current updates and official interpretations, prior to the date of submission of the Technical and Price Proposals for the Project unless a specific issue date or year is specified herein.

Wherever the following abbreviations, terms, or pronouns are used in the Contract, the intent and meaning shall be interpreted as follows:

ABBREVIATIONS:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWPA	American Wood-Preservers' Association
AWWA	American Water Works Association
AWS	American Welding Society
CFR	Code of Federal Regulations
CGP	Construction General Permit
CPM	Critical Path Method
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards, General Services Administration

LRFD	Load and Resistance Factor Design
MUTCD	Manual on Uniform Traffic Control Devices
NCR	Nonconformance Report
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NETTCP	Northeast Transportation Technician Certification
NTPEP	National Transportation Product Evaluation Program
NHDOT	The State of New Hampshire Department of Transportation
NPDES	National Pollutant Discharge Elimination system
OSHA	Occupational Safety and Health Administration
QA	Quality Assurance
QC	Quality Control
QCP	Quality Control Plan
QMP	Quality Management Plan
RFI	Request for Information
RFC	Release for Construction
RFC Notice	Request for Change Notice
RFP	Request for Proposals
RFQ	Request for Qualifications
RSA	The New Hampshire Revised Statutes Annotated, 1955 together with all revisions amending same to date of submission of Technical and Price Proposals
SAE	Society of Automotive Engineers
SOQ	Statement of Qualifications submitted in response to RFQ
SSPC	Steel Structures Painting Council
UL	Underwriter's Laboratory
USACOE	United States Army Corps of Engineer

DEFINITIONS:

Acceptance All factors used by NHDOT to evaluate the degree of compliance with contract requirements and to determine the corresponding value for a given product. Acceptance activities for Design include reviews of plans, specifications, and other documents prepared by the Design Builder. Construction Acceptance activities include sampling, testing, and inspection of DB Work by the Department. Unless otherwise explicitly stated, Acceptance refers to the Department's acceptance of work or materials for the purpose of initiating a Progress Payment(s) to the Design-Builder.

Acceptance/Verification activities shall also include the following:

1) Inspection of all Project elements to verify and document that the Project has been constructed in conformance with the Released-for-Construction plans, specifications, and approved working and shop drawings;

2) Authority for the NHDOT to stop portions of Project if (in the opinion of the Department) the QMP or Construction QC Plans are not being implemented correctly;

3) Acceptance/Verification material sampling and testing, to be conducted and performed at the point of acceptance as defined and in accordance with the NHDOT Standard Specifications for Road and Construction;

4) Audit of the Design-Builder's records, documentation, procedures, and processes to verify compliance with the approved QMP;

5) Review and approval of all Portland cement concrete and hot-mix asphaltic concrete mix designs by a New Hampshire Registered Professional Engineer;

6) Spot checks on construction alignment and grades;

7) Authority for the NHDOT to order a cessation of some of or the entire Project when (in the opinion of the Department) unsafe conditions occur.

Additional Properties Shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the NHDOT and Maine DOT-Provided Property, that will be acquired in connection with the Project, including (a) the Design-Builder Designated ROW and (b) any additional real property outside of the Planned ROW Limits that must be acquired due to a NHDOT-Directed Change, including any surface rights and subsurface rights within such additional real property area that NHDOT directs the Design-Builder to acquire for the Project. The term specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that the Design-Builder may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of the Design-Builder

Adjustment Increase or decrease in the Contract Time or Contract Amount.

Advertisement A public announcement inviting statements of qualifications.

Affidavit of [Project Completion] Shall mean the affidavit described in Section 20.3.1.

Affiliate Shall mean (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 of its members, partners or shareholders holding a 10% or greater interest in Design-Builder; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Design-Builder, (ii) any of Design-Builder's members, partners or 10% or greater shareholders or (iii) any Affiliate of Design-Builder under part (a) of this definition. 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 relationship or otherwise. Work performed by Affiliates shall be deemed performed by Design-Builder's own organization.

Alternative Technical Concepts Concepts that deviate from the requirements set forth in the RFP and that have been included in the Proposal with the Department's prior approval.

Amendment Revision to the RFP.

Angle of Crossing The right or acute angle formed by the intersection of the centerline of the upper roadway with a line parallel to the face of the abutment of a bridge or with the centerline of a culvert.

Application for Final Payment Shall mean Design-Builder's written request for Final Payment of the Contract Price including reconciliation of all partial payments, claims, changes or other proper adjustments to the Contract Documents, as described in Section 12.4.1.

Approved Material Material accepted by the Department for use in the work.

Asbestos, Abatement Shall mean as defined in RSA 141-E:2

Asbestos Containing Material (ACM) Shall mean any material that contains any type of Asbestos in an amount by weight, area, or volume, either alone or mixed with other fiberous or non-fiberous materials.

Asbestos Disposal Site Shall mean a site as defined in RSA 141-E:2

Authorized Representative Shall have the meaning set forth in Section 24.5.1.

Award The acceptance of a proposal from a Proposer that provides the best value to the Department pending Governor and Council approval.

Base Course One or more layers of specified or selected material of designed thickness placed on a properly prepared subbase or subgrade to support a surface course.

Baseline Schedule Shall mean the approved initial Project Schedule provided in accordance with Technical Provisions Section 2 following issuance of NTP 1.

Basic Configuration Shall mean the following elements defining the Project as set forth in the Project Schematics: the replacement of Memorial Bridge, Scott Avenue Bridge, and Kittery Approach spans as shown in the Project Schematics.

Best Value The overall combination of quality, price and other qualitative elements of the required services that are used to determine the successful Proposer.

Bid Bond See Proposal Guaranty.

Bid (Total) Total dollar amount of the Proposal.

Bid Documentation All writings, working papers, computer printouts, charts, and all other data or compilations of data that contain or reflect information or calculations used by the Proposer to determine the Total Bid and Lump Sum Bid Price indicated in a submitted and opened Proposal, including but not limited to information relating to the determination and application of:

- Equipment rates
- Overhead rates and related time schedules
- Labor rates
- Efficiency or productivity factors
- Arithmetic extensions
- Subcontractor and material supplier quotes

Any manuals standard to the industry that are used by the Proposer in determining the Proposal may be included in the bid documentation by reference and shall show the name and date of the publication and the publisher.

The term "Bid Documentation" does not include documents provided by the Department for the Proposer's use in the preparation of the Proposal.

Bid Schedule The schedule included in the Proposal, if requested, containing the estimated quantities of contract pay items for which Lump Sum Bid Price is invited.

Book 1 Shall mean the Contract and all appendices thereto.

Book 2 Shall mean the technical provisions entitled "Design-Build Technical Provisions for Design-Build Contract Book 2."

Bridge As provided by RSA 234:2, a structure having a clear span of 10 feet (3.048 m) or more measured along the center line of the roadway at the elevation of the bridge seats, spanning a water course or other opening or obstruction.

Business Day Shall mean each day on which the New Hampshire Department of Transportation is officially open for business.

Calendar Day A day shown on the calendar.

CCI or **ENR New England Region Cost Index** Shall mean the New England Region Construction Cost Index published by Engineering News Record.

Cement Unless otherwise designated, this term will refer to Portland cement.

Certificate of Compliance A document in the format prescribed in the Contract certifying that material incorporated in the Work complies with the Contract.

Certificate of Final Acceptance Shall mean the formal written acknowledgment issued by NHDOT to Design-Builder that, except for Plant Establishment, all Work has been fully completed in accordance with the Contract Documents.

Certificate of Project Completion Shall mean the formal written acknowledgment issued by NHDOT to Design-Builder that Design-Builder has achieved Project Completion.

Certificate of Substantial Completion Shall mean the formal written acknowledgment issued by NHDOT to Design-Builder that Design-Builder has achieved Substantial Completion.

Change Notice Shall mean a notice delivered by NHDOT to Design-Builder pursuant to Section 13.2.1.1.

Change Order Shall have the meaning set forth in Section 13.1.1. A Change Order is a revision to the Contract issued after Award. The Change Order establishes the increase or decrease to the Contract Quantities, Contract Amount or Contract Time, if any.

Change in Law Shall mean the enactment, adoption, modification, repeal or other change in any Governmental Rule that occurs after the Proposal Date (including any change in the judicial or administrative interpretation of any Governmental Rule, or adoption of any new Governmental Rule) which is materially inconsistent with Governmental Rules in effect on the Proposal Date, but excluding any such change in or new Governmental Rule which was passed or adopted but not yet effective as of the Proposal Date. The term “Change in Law” specifically excludes changes in Utility Standards.

Change of Control Shall mean any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Design-Builder or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of Design-Builder may constitute a Change of Control of Design-Builder if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of Design-Builder. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Design-Builder or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Design-Builder, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar

from bidding, proposing or contracting with any federal or State department or agency;

(b) An upstream reorganization or transfer of direct or indirect interests in Design-Builder so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Design-Builder;

(c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Design-Builder; or

(d) The exercise of minority veto or voting rights (whether provided by applicable Governmental Rules, by Design-Builder's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Design-Builder, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, NHDOT has received copies of such agreements.

City or Cities Shall mean the cities that have roads, streets and other facilities that lie adjacent to, cross, or otherwise have interfaces with, the Project.

Claim Shall mean a separate demand by Design-Builder for (a) a time extension which is disputed by NHDOT, or (b) payment of money or damages arising from work done by or on behalf of Design-Builder in connection with this Contract which is disputed by NHDOT.

Closures Shall mean those instances during which (a) the Memorial Bridge is closed by Design-Builder to facilitate construction of the Project, (b) ingress to or egress from the Memorial Bridge is completely blocked by Design-Builder to facilitate construction of the Project and no alternate access is provided. Any such instance shall be deemed a "Closure" during its duration regardless of whether facility users are still able to access or travel on a portion of the Memorial Bridge; or (c) the movable span does not allow for marine access.

Commissioner The Commissioner of The State of New Hampshire Department of Transportation.

Completion Deadline Shall mean the Substantial Completion Deadline, Project Completion Deadline, and/or Final Acceptance Deadline, as the case may be.

Completion (Project) Completion of the Project occurs when the Design-Builder has completed all work required by the Contract; has satisfactorily executed and delivered all documents, certificates, and proofs of compliance required by the Contract, and has received Final Acceptance from the Commissioner. The Maintenance or Warranty Bonds are normally activated at the Completion of the Project.

Conduit Unless the connotation is to the contrary, a tube intended to carry electrical or other utilities.

Construction Certificate Shall mean the certificate to be provided with each invoice in the form included in Appendix 9.

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

Construction Project Manager The Design-Builder's individual responsible for managing all construction activities during the construction process, including QC self-checks of work by construction production personnel.

Construction QC Manager The Design-Builder's individual responsible for implementation of all Construction Quality Control procedures and activities as established in the Quality Management Plan and Construction QC Plans to ensure that all materials used and work performed meet contract requirements.

Construction Work Shall mean all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Relocations. Construction Work includes landscaping.

Contaminated Groundwater Shall mean any extracted, pumped and/or ponded groundwater that contains Contaminated Materials.

Contaminated Material Material as defined by Env-Or 602.07. Can include, but is not limited to, groundwater, soil gas, Air, sediment, and surface water.

Contaminated Materials Management Shall mean sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-Site disposal of Contaminated Materials, whichever is the most cost-effective approach authorized under applicable Governmental Rules.

Contaminated Waste Shall mean material that is defined as "contaminated material" that is required to be removed to an applicable licensed disposal facility in accordance with applicable Governmental Rules.

Contract Shall mean, depending on the context, (a) that certain design-build agreement to which this Appendix 1 is attached, executed by NHDOT and Design-Builder, including any and all amendments thereto, or (b) collectively, the Contract Documents, which establish the respective rights and obligations of NHDOT and Design-Builder.

Contract Administrator (CA) The field representative of the NHDOT having direct supervision of the administration of the Contract for the State.

Contract Amount The original amount Bid by the Design-Builder, shown as the "Bid Total" in the Price Proposal.

Contract Bond The accepted form of security, in compliance with NHDOT Standard Specifications 103.05, executed by the Design-Builder and the Surety or Sureties, guaranteeing complete execution of the Contract, including the payment of all legal debts pertaining to the construction of the project.

Contract Date Shall mean the date of the Contract.

Contract Documents Shall have the meaning set forth in Section 1.2.

Contract Pay Item A specifically described item of work for which a price is provided in the Contract.

Contract Price Shall have the meaning set forth in Section 12.1.1.

Contract Time The Calendar Days (time) allowed for completion of the Work, or phase of work, or the Completion Date stated in the RFP including authorized time extensions.

Contract Total The Contract Amount plus any amount added or subtracted by contract revisions.

Contractor See Proposer and Design-Builder.

Controlled Access Highway See right-of-way terms.

Cost and Schedule Proposal Shall mean each Submittal serving to identify price and schedule modifications associated with Change Orders issued pursuant to Section 13, meeting all applicable requirements set forth in Section 13.

Critical Path Shall mean each critical path on the Project Master Schedule which ends on the Completion Deadline or the deadline for Final Acceptance, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the sequence of activities on the Project Master Schedule that shows the shortest time path for completion of the Project. The Critical Path is the longest continuous sequence of work for which the combined duration of the work's individual scheduled activities produces the minimum overall project duration. Activities on the critical path that control the project's completion:

a. **Critical Activity** Any activity on the critical path

b. **Controlling Activity** A Critical Activity that would normally be in progress at a given moment.

c. **Milestone** Fixed date marking the beginning or end of specific work; phases of work; or completion date(s) as specified in the Contract.

Cul-De-Sac A local street open at one end only and with special provision for turning around.

Culvert Any structure not classified as a Bridge that provides an opening under any roadway.

Day Unless designated as a Working Day, or unless otherwise indicated, this term will mean a Calendar Day.

DBE Performance Plan Shall have the meaning set forth in Appendix 14.

DBE Regulations Shall have the meaning set forth in Section 7.1.

Dewatering Shall mean as defined in RSA 147-A:2, III.

Discharge Shall mean as defined in Env-Or 602.09.

Disposal Facility Shall mean as defined in Env-Hw 103.37.

Disputes Review Board ("DRB") Shall have the meaning set forth in Section 19.

DB-Related Entities Shall mean Design-Builder, Subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.

Delay Any event, action, force, or factor that would cause the established Contract Time to be exceeded for performance of the Contract.

a. **Compensable Delay** An excusable delay for which the Design-Builder may be entitled to compensation.

b. **Excusable Delay** A delay beyond the Design-Builder's control and not caused by the Design-Builder's fault or negligence, which the Design-Builder could not have reasonably foreseen, and for which a Contract or phase time extension may be granted.

c. **Noncompensable Delay** Excusable delay for which the Design-Builder may be entitled to an extension of time but no additional compensation.

d. **Nonexcusable Delay** A delay that was reasonably foreseeable and within control of the Design-Builder for which no compensation or time extension will be granted.

Department The State of New Hampshire Department of Transportation, designated as the party of the first part to the Contract.

Design-Builder The individual, partnership, firm, corporation, or any combination thereof, or joint venture, contracting with the State to perform both the design and construction of prescribed work. Said person or persons, acting directly or through an authorized agent or employee, shall be designated as the party of the second part to the Contract. See Proposer and Contractor. Design-Builder shall mean the Person identified as Design-Builder on Page 1 of the Contract.

Design-Build Project Manager The individual responsible for the overall management, scheduling, design, construction, quality management and contract administration for the Project.

Design-Builder Default Shall have the meaning set forth in Section 16.1.1.

Design-Builder Initiated VECP Shall have the meaning set forth in Section 22.1.

Design-Builder's Safety Program Shall have the meaning set forth in Section 5.2.

Design Documents Shall mean all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and submittals necessary for design of the Project in accordance with the Contract Documents, following acceptance thereof by NHDOT and others as required by the Contract Documents.

Design Firm Shall mean the qualified Registered Professional Engineer's firm responsible for the design of the Project.

Design Manager The individual responsible for all aspects of the design, including QC self-checks of all design documents by design production personnel. This individual shall be a licensed, Professional Engineer in the State of New Hampshire and State of Maine.

Design QC Manager The Design-Builder's individual responsible for implementation of all Design Quality Control procedures and activities as established in the Quality Management Plan.

Design Review Shall mean the formal review of an existing or proposed design for the purpose of detection and remedy of design deficiencies that would affect fitness-for-use and environmental aspects of the product, process or service, and/or identification of potential improvements of performance, safety and economic aspects.

Deviation Shall mean any change, deviation, modification or alteration from the requirements of the Contract Documents (including deviations from standards referenced in the Contract Documents).

Differing Site Condition Shall mean (a) subsurface or latent physical conditions that differ from those reasonably assumed by Design-Builder based on incorrect boring data provided by NHDOT, to the extent that correct boring data would have resulted in accurate assumptions, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of 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 date of execution of the Contract by Design-Builder. The term "Differing Site Condition" specifically excludes Utilities, Contaminated Materials and any differences in groundwater depth from the depths noted in the Reference Materials. The term "Differing Site Condition" specifically includes:

(i) The discovery at, near or on the Site of any archaeological, paleontological or cultural resource; provided that the existence of such resource was not disclosed in the RFP Documents, was not otherwise known to Design-Builder prior to the Contract Date and would not have become known to Design-Builder by undertaking reasonable investigation prior to the Contract Date; and

(ii) The discovery at, near or on the Site of any species listed as threatened or endangered under the federal or State Endangered Species Act, except to the extent that the Approvals noted in Section 6.5 provide for mitigation measures to be undertaken with respect thereto (regardless of whether the species is listed as threatened or endangered as of the Contract Date), and also subject to the risk

allocation provisions contained in Section 6.4 (relating to Design-Builder's obligation to obtain environmental approvals under certain circumstances).

Directive Letter Shall mean a letter issued by NHDOT pursuant to Section 13.1.1.

Disadvantaged Business Enterprise (DBE) Shall have the meaning set forth in 23 CFR Part 313.

Dispute Shall mean a disagreement between the parties as to the merits, amounts, or remedy arising out of an issue in controversy, including a disagreement regarding a Claim.

DRB Shall have the meaning set forth in Section 19.2.

Drive and Entrance See Right-of-Way terms.

Early Start of Construction Shall have the meaning set forth in Technical Provisions Section 2.

Easement A right acquired by public authority to use or control property for a designated highway purpose.

Effective Date Shall mean the date of the Contract or such other date as shall be mutually agreed upon in writing by NHDOT and Design-Builder.

Engineer A New Hampshire Licensed Professional Engineer, who is an employee of the Design-Builder, or a subcontractor, with the responsibility and authority to require that the Work be performed in conformity with the Contract.

Engineer of Record Shall mean Design-Builder's engineer in charge of the Project. The Engineer of Record shall initially be the individual designated in the Proposal and is considered a key person.

Environmental Laws Shall mean all Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport or handling of Contaminated Materials or otherwise relating to the protection of public health, public welfare or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air).

Equipment All machinery and attachments, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

Erosion **"**Wearing away of land by running water, waves, wind, ice, abrasion, and transportation." (New Hampshire Stormwater Manual (Published by NH Department of Environmental Services)).

Error Shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect.

Escrowed Proposal Documents or **EPDs** Shall have the meaning set forth in Section 21.1. EPDs are the preservation of the Proposal Documents by the successful Proposer for use by the Department and Proposer in any claims or litigation between the two parties arising out of the Contract.

Event of Default Shall have the meaning set forth in Section 16.2.

Executive Council Five-member governing body that approves NH State Contracts.

Expression: By, or to the Engineer, the Design-Builder, or the Department In order to avoid cumbersome and confusing repetition of expressions in these specifications, it is hereby provided that any and all of the following words or any form of such words, unless clearly indicated otherwise, shall be understood to be followed by the words “by the Engineer, by the Design-Builder, or by the Department” or “to the Engineer, to the Design-Builder, or to the Department”, unless the intent is clearly meant to refer to the Department:

Accepted, approved, authorized, condemned, considered, deemed necessary, contemplated, designated, determined, directed, disapproved, established, given, indicated, insufficient, ordered, permitted, rejected, required, reserved, satisfactory, specified, sufficient, suitable, suspended, unacceptable, or unsatisfactory.

Extra Work Shall mean the Work described in Appendix 2.

Federal Requirements Shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Appendix 14 to the Contract.

FHWA Shall mean the Federal Highway Administration.

Final Acceptance Shall mean acceptance of the Project by NHDOT as evidenced by issuance of a Certificate of Final Acceptance in accordance with Section 20.3.

Final Acceptance Date Shall mean the date on which Final Acceptance occurs.

Final Acceptance Deadline Shall have the meaning set forth in Section 4.2.3.

Final Design Documents Shall mean the complete final construction plans (including drawings, elevations, sections, details and diagrams) and specifications needed by Design-Builder to build the Project.

Final Payment Shall mean payment by NHDOT of the final installment of the Contract Price.

Float Shall generally mean the difference between early completion times and late completion times for activities as shown on the Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of the word "Work").

Floodplain A nearly flat, alluvial lowland bordering a stream, that is subject to inundation by floods.

Floodway Channel of a stream plus any adjacent flood plain areas that must be kept free of encroachment in order that the 100 year flood be carried without increases in flood heights of up to a maximum of 1.0 foot (0.3 m).

Force Majeure Event Shall mean any of the events listed in clauses (a) through (j) below, subject to the exclusions listed in clauses (i) through (viii) below, which materially and adversely affects Design-Builder's obligations, provided such events are beyond the control of the DB-Related Entities and are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or Law of any of the DB-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB-Related Entity:

(a) Any earthquake, tornado, hurricane or other natural disaster that causes direct physical damage to the Project;

(b) Any epidemic in the Portsmouth, NH / Kittery, Maine area;

(c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;

(d) Any major new State or federal environmental approval necessitated by the discovery at, near or on the Project ROW (excluding Design-Builder-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Builder prior to the Proposal Date and would not have become known to Design-Builder by undertaking reasonable investigation prior to the Proposal Date;

(e) Any major new State or federal environmental approval necessitated by the discovery at, near or on the Project ROW (excluding Design-Builder-Designated ROW) of any species listed as a threatened or endangered species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Design-Builder prior to the Proposal Date and would not have become known to Design-Builder by undertaking reasonable investigation prior to the Proposal Date;

(f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires Design-Builder to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in Design-Builder's costs directly attributable to the Change in Law of at least $250,000, (4) results in imposition of additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources, or (5) specifically targets the Project or Design-Builder;

(g) Any spill of Contaminated Material by a third party who is not acting in a capacity of, on behalf or under the authority of a DB-Related Entity which: (1) occurs after the Proposal Date, (2) is required to be reported to a Governmental Entity and (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

(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;

(i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any NHDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB-Related Entity to locate or design the Project or carry out the Work in accordance with the NHDOT-Provided Approvals or other Governmental Approval; and

(j) The addition of any new condition or requirement in the NEPA Approval or the final USACE Nationwide Permit based on the Project Schematics and the Planned ROW Limits, subject to the limitations and conditions described in Section 6.4.

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

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

(ii) Except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;

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

(iv) The suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;

(v) Any increased costs or delays related to Relocations or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;

(vi) The presence at, near or on the Site, of any Contaminated Material, including substances disclosed in the Reference Materials as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;

(vii) Any Change in Law which has the effect of modifying a Utility Owner's Utility Standards; and

(viii) Any matters not caused by NHDOT or beyond the control of NHDOT and not listed in clauses (a) through (j) above.

Good Industry Practice Shall mean the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, or constructor seeking in good faith to comply with its contractual obligations, complying with all applicable Governmental Rules and engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project.

Governmental Approval Shall mean any approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration or ruling, required by or with any Governmental Entity in order to perform the Work or any Relocation work being performed by a Utility Owner, including any modification or supplement to any of the foregoing, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the Contract Documents and (b) any such approvals required by or with a Governmental Entity in its capacity as a Utility Owner.

Governmental Entity Shall mean 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 other than NHDOT.

Governmental Rule Shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Work, the Project, the Site or any Relocation work being performed by a Utility Owner, whether now or hereafter in effect.

Groundwater Shall mean as defined in RSA 485-C:2, VIII.

Hazardous Waste Coordinator Shall mean as defined in RSA 147-A:2, VII.

Hazardous Waste Management Shall mean as defined in RSA 147-A:2, VIII.

Hazardous Waste Operator Shall mean as defined in RSA 147-A:2, VI.

Hazardous Waste Transporter Shall mean as defined in RSA 147-A:2, VI.

Highway, Street, or Road A public way designated for purposes of vehicular travel or vehicular and pedestrian travel, including the entire area within the right-of-way.

Holidays The following days are legal holidays in the State of New Hampshire used in determination of working days:

- New Year's Day
- Martin Luther King, Jr./Civil Rights Day
- Washington's Birthday (The third Monday in February)
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Christmas Day

If any holiday listed above falls on Sunday, the following Monday shall be considered a holiday. If any holiday listed above falls on Saturday, the preceding Friday shall be considered a holiday.

Indemnified Claim Shall have the meaning set forth in Section 18.1.1.

Indemnified Parties Shall have the meaning set forth in Section 18.1.1.

Independent Assurance (IA) Activities that are an unbiased and independent evaluation of all the sampling and testing (or inspection) procedures used in the Quality Assurance Program. IA provides an independent verification of the reliability of the Acceptance (or Verification) data obtained by the Agency and the QC data obtained by the Design-Builder. The results of IA testing or inspection are not to be used as a basis of acceptance. IA provides information for Quality System management. The Independent Assurance for the Project will be performed by NHDOT or NHDOT's representative.

Independent Assurance Testing (IAT) A test conducted to check the calibration of the testing equipment and processes being used.

Inspector The Design-Builder's authorized representative assigned to make inspections of the Work or related activities.

Instructions to Proposers Shall mean the RFP Document entitled "Instructions to Proposers."

Intellectual Property Shall mean all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and Source Code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Invasive Species An alien species whose introduction caused or is likely to cause economic or environmental harm or harm to human health (RSA 430:52 VII).

Key Personnel Shall mean the following positions:

(1) Project Manager; (2) Construction Manager; (3) Design Manager; (4) Moveable Bridge Design Engineer; (5) Moveable Bridge Mechanical Engineer; (6) Moveable Bridge Electrical Engineer (7) Safety Manager; (8) Quality Control Administrator; (9) Design Quality Control Manager; (10) Construction Quality Control Manager; (11) Environmental Compliance Manager; (12) Permitting Coordinator; (13) Public Relations Officer; (14) Project Control Manager; (15) Project Schedule Manager; and (16) Document Control Manager.

Lane The portion of the traveled way for the movement of a single line of vehicles.

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

Limited Access Highway See Right-of-Way terms.

Limits of Construction An area with established boundaries, identified within the highway right-of-way or construction easements, where the construction is permitted.

Liquidated Damages Shall have the meaning set forth in Section 17.1.

Listed Subcontractors Shall have the meaning set forth in Section 7.2.1.

Local Agencies Shall mean the Cities and Towns, and any other state or local agency owning property within the Planned ROW Limits or with jurisdiction over any such property, or that otherwise has interfaces with the Project, other than Maine DOT and NHDOT.

Losses Shall mean shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Contract)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Lump Sum Price A single amount basis of payment contained in the Price Proposal Form for completion of all Work as defined by the Contract.

Maintenance Work Plan Shall mean the plan to be provided by Design-Builder and accepted by NHDOT as described in Technical Provisions Section 2.

Major Participant The Design-Builder and any Related Legal Entities, Affiliates, and/or Subsidiaries; The Builder and all Related Legal Entities, Affiliates, and/or Subsidiaries; The Designer and all Related legal Entities, Affiliates, and/or Subsidiaries; Any firm providing more than the percentage specified in the Project Requirements in the RFP of the value of the on-site construction work; And firm providing more than the percentage specified in the Project Requirements in the RFP of the value of the design work.

Major Subcontractor Shall mean any Subcontractor that is a party to a Major Subcontract.

Major Subcontract Shall mean any Subcontract or combination of Subcontracts with a single Subcontractor for construction of the Project or for special fabrication and installation of a portion of the Work with a price in excess of $9,000,000.

Manifest Shall mean as defined in RSA 147-A:2, X.

Materials Any substances specified for use in the construction of the Project and its appurtenances.

Median That portion of a divided highway separating the traveled ways for traffic in opposite directions.

Mitigation Monitoring Plan Shall mean the plan set forth in Technical Provisions Section 6.

Modified Standard Specifications Shall mean Appendix 2.

Necessary Basic Configuration Change Shall mean a change in the Basic Configuration which is necessary to meet the requirements of the Contract Documents as the result of an Error in the Project Schematics (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Design-Builder is unable to meet the requirements of the Contract Documents without a material change in the Basic Configuration.

New Approval Shall mean any of the following: (a) a new Governmental Approval of the same type as noted in Section 6.5; and (b) a revision, modification, or amendment to one or more of the approvals noted in Section 6.5.

New Hampshire Standard Specifications Shall have the meaning set forth in Section 1.4.1.

NHDOT Shall mean the New Hampshire Department of Transportation.

NHDOT-Caused Delays Shall mean unavoidable delays, to the extent that they directly affect a Critical Path, arising from the following matters and no others: (a) NHDOT-Directed Changes; (b) failure or inability of NHDOT to make NHDOT-Provided Property available as provided in Section 6.1.2; (c) failure or inability of NHDOT to provide responses to proposed schedules, plans, Design Documents, Construction Documents and other submittals and matters for which response by NHDOT is required, within the time periods indicated in the Contract Documents; and (d) uncovering, removing and restoring Work, to the extent provided in Section 5.5.3.

NHDOT-Directed Changes Shall mean any changes in the Work (including changes in the standards applicable to the Work) which NHDOT has directed Design-Builder to perform as described in Section 13.1, and any order to suspend for convenience exceeding 48 hours per order or more than a total of 144 hours for all such orders pursuant to Section 14.1.

NHDOT Documents Shall mean the NHDOT Standard Plans, the NHDOT Standard Specifications and all other provisions of publications, manuals, handbooks, rules and regulations of NHDOT that are applicable to the type of Work required hereunder.

NHDOT-Initiated VECP Shall have the meaning set forth in Section 22.1.

NHDOT's Project Manager Shall mean the individual designated by NHDOT to manage the Project and to receive delivery of notices to NHDOT under Section 24.11.

NHDOT-Provided Property Shall mean (a) the property within the Planned ROW Limits, (b) all easements identified on the Right of Way Appraisal Maps as property that will be acquired by NHDOT (including Utility Easements identified thereon (if any) which NHDOT is required to acquire pursuant to the applicable Project Utility Agreement), and (c) [include any additional temporary easements etc. to be provided by NHDOT], as shown on the layout plans. In this context, “parcels” refers to easements as well as fee interests.

NHDOT Standard Plans Shall mean the Standard Plans, current edition, published by New Hampshire Department of Transportation.

Nonconformance Report (NCR) – A form used to capture and document Nonconformance. This form is used to initiate tracking; classify the Nonconformance, identify root cause; describe containment actions, corrections and corrective actions; and to provide corrective action plan verification for the Nonconformance.

Nonconforming Work Shall mean Work that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Governmental Rules or the Design Documents.

Non-Participating Item As used on the Plans for Federal-aid projects, an item in which the cost is not shared by the Federal Government.

Notice of Partial Termination for Convenience Shall mean written notice issued by NHDOT to Design-Builder terminating part of the Work of Design-Builder for convenience.

Notice of Project Completion Shall mean written notice issued by Design-Builder to NHDOT for the Project as a condition to Project Acceptance pursuant to Section 20.3.

Notice of Termination for Convenience Shall mean written notice issued by NHDOT to Design-Builder terminating the Work of Design-Builder for convenience.

Notice to Owner Shall mean the notice sent by NHDOT to a Utility Owner demanding a Relocation of one or more of its facilities in order to accommodate the Project, as the same may be amended from time to time.

Notice to Proceed or **NTP** Shall mean the written authorization issued by NHDOT that permits Design-Builder to proceed with the Work and starts the Contract time, when applicable.

NTP1 Shall mean a written notice issued by NHDOT to Design-Builder authorizing Design-Builder to proceed with the portion of the Work described in Section 4.1.2 of the Contract.

NTP1 Payment Bond Shall have the meaning set forth in Section 8.1.2.

NTP1 Performance Bond Shall have the meaning set forth in Section 8.1.1.

NTP2 Shall mean a written notice issued by NHDOT to Design-Builder pursuant to Section 4.1.3 of the Contract authorizing Design-Builder to proceed with the remaining Work and other activities pertaining to the Project.

NTP2 Payment Bond Shall have the meaning set forth in Section 8.1.4.

NTP2 Performance Bond Shall have the meaning set forth in Section 8.1.3.

NTP2 Payment Bond Amount Shall have the meaning set forth in Section 8.1.4.

NTP2 Performance Bond Amount Shall have the meaning set forth in Section 8.1.3.

Occurrence of Days of Bridge Closure Shall mean each day or partial day in which vehicular or pedestrian/bicyclist access between Portsmouth, NH, and Kittery, Maine, via Route 1 (i.e. the combination of Scott Avenue Bridge, Memorial Bridge, and Kittery Approach Spans) is prohibited by the Design Builder, other than when the Memorial Bridge is closed for the navigation of vessels. See definition of Closures.

Oil Shall mean as defined in Env-Or, 602.17.

Open Book Basis Shall mean providing NHDOT all underlying assumptions and data associated with pricing or compensation (whether of Design-Builder or NHDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by NHDOT to satisfy itself as to the reasonableness of the amount.

Operational Construction Signs Warning signs used to advise and guide motorists through or around areas within a construction zone. Typically these signs are mounted on portable supports for short-term, short-duration, and mobile conditions.

Owner Shall mean as defined in RSA 147-A:2, XI.

Party Shall mean Design-Builder or NHDOT, as the context may require, and “Parties” shall mean Design-Builder and NHDOT, collectively.

Pavement Structure The combination of subbase, base courses, and surface courses placed on a subgrade to support the traffic load and distribute it to the roadbed.

Payment Bond Shall mean the NTP1 Payment Bond and/or the NTP2 Payment Bond, as applicable.

Performance Bond Shall mean the NTP1 Performance Bond and/or the NTP2 Performance Bond, as applicable.

Permanent Construction Signs Warning signs used to advise motorists approaching a construction zone. Typically, these signs are mounted on posts and are in place for the duration of the project.

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

Planned ROW Limits Shall mean the boundaries of the real property that NHDOT intends to make available for permanent improvements included in the Project (excluding Utility Easements), as described in the Project Schematics.

Points of Access See right-of-way terms.

Prequalification Statement A completed form on which the Design-Builder has furnished information as to its ability to perform and finance the Work.

Price Proposal The component of the Proposal that includes pricing information, specifically the Price Proposal Form and other submission requirements.

Professional Services Shall mean all Work performed under the Contract other than construction work, including the following services and Work: (a) design and engineering; (b) right of way acquisition services; (c) surveying; (d) Utility relocation design; and (e) environmental permitting and compliance services.

Profile Grade The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Progress Meeting Shall have the meaning set forth in Technical Provisions Section 2.

Project Shall initially mean all the permanent facilities to be constructed by Design-Builder in accordance with the Contract Documents, unless the context requires otherwise, including Utility Relocations as well as the roadway improvements.

Project (Project Site) The specific section(s) of the proposed work together, with all appurtenances to be constructed under the Contract, and other locations designated by and in which the Department will allow construction activity or disturbance and may include the following, as accepted by the Contract Administrator.

a. From the beginning to the ending station(s) of the project between the slope stakes;
b. Area within the defined boundaries of a Construction Permit(s);
c. Material sources;
d. Disposal sites;
e. Designated haul roads;

f. Plant sites;
g. Staging areas;
h. Stockpiling sites; and
i. Other locations identified or accepted by the Engineer.

Project Completion Shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.2, as and when confirmed by NHDOT's issuance of a Certificate of Project Completion.

Project Completion Deadline Shall have the meaning set forth in Section 4.2.2.

Project Management Plan Shall mean the document complying with the Contract requirements and accepted by NHDOT, describing the activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the NHDOT-accepted component parts, plans and documentation described in Technical Provisions Section 2.

Project Manager Shall mean the individual designated as such by Design-Builder pursuant to the Proposal or such other individual as is designated by Design-Builder to undertake such role, following acceptance of the change by NHDOT.

Project ROW Shall mean the property within the Planned ROW Limits and the Additional Properties, but excluding therefrom (a) any Utility Easements and (b) any portion of the Planned ROW Limits eliminated from the Project by a Change Order.

Project Schedule or Project Master Schedule Shall mean the most current project schedule accepted by NHDOT as described in Technical Provisions Section 2.

Project Schematics Shall mean Reference Documents included on Project website.

Proposal Shall mean the written offer of Design-Builder submitted in response to the Request for Proposals, as it may have been supplemented in accordance with the Instructions to Proposers.

Proposal Date Shall mean _____ ***[to be filled in with the date the Proposal was submitted].***

Proposal Guarantee The bond or other acceptable security furnished with the Proposal to guaranty that the successful Proposer will enter into the Contract if the Proposal is accepted.

Proposal Price Shall mean the total price for performance of the Work set forth in the Proposal documents.

Proposer An individual, partnership, firm, corporation, or any combination thereof, or joint venture, submitting a Design-Build Proposal in response to a Request for Proposal. After execution of the contract, the Proposer is known as the Design-Builder.

Proprietary Intellectual Property Shall mean Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Governmental Rules or from its protection under patent law.

Public Records Act Shall have the meaning set forth in Section 21.6.1.

Punch List Shall mean the list of Work that remains to be completed after achievement of Substantial Completion or Project Completion, as applicable, and shall be limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use or operability of the Project.

QC Administrator Shall mean the person named as such in the Proposal or such other individual as is designated in writing by Design-Builder to undertake the duties of the QC Audit Team, following acceptance by NHDOT.

Quality Quality is: (1) The degree of excellence of a product or service; (2) The degree to which a product or service satisfies the needs of a specific customer; (3) The degree to which a product or service conforms with a given requirement; or (4) Conformance to requirements. Quality criteria shall include, but may not be limited to, quality of design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct, and other factors that the Department considers to be in the best interest of the State, and also to minimize unintended deviations from the contract requirements.

Quality Assurance (QA) All those planned and systematic actions necessary to provide confidence that a product or facility will perform satisfactorily in service; or making sure the quality of a product is what it should be. QA includes Quality Control performed by the Design-Builder, Acceptance activities performed by NHDOT, Independent Assurance, Dispute Resolution, Laboratory Accreditation and Qualification, and Personnel Qualification/Certification.

QC Audit Team The Design-Builder's individual's and/or subconsultants responsible for performing structured, random QC audit activities, separate from the front-line QC procedures implemented by the design and construction Production Staff. QC audit activities will include random QC review of design documents and random QC inspection and testing of the Work. The design and construction QC Audit Team participants shall work directly under the QC Administrator, independent from the designers and constructors, and have the responsibility to report their audit reports and findings to the Design Builder's management team and to share this information with NHDOT.

Quality Control (QC) The system used by the Design-Builder to monitor, assess and adjust their production and placement processes to ensure that the final product will meet the specified level of quality. Quality Control includes review and checking of design and construction documents and sampling, testing, inspection, evaluation, and corrective action (where required) to maintain continuous control of a production or placement process.

Quality Control Plan (QC Plan) A project specific document prepared by the Design-Builder which identifies all Construction QC personnel and procedures that will be used to maintain all production and placement processes "in control" and meet the specification requirements for an individual Work Item in the DB Price Proposal.

Quality Management Plan (QMP) A written document that describes the overall Quality Control operating procedures of the Design-Builder and all DB Contractor parties (e.g. Design Subconsultant, Prime Contractor, Subcontractor, Producer, Fabricator, Manufacturer) to ensure quality of the design and construction. The QMP documents the internal policies for achieving Quality and the assignment of responsibility and accountability for Quality Control within the Design-Builder's organization and by its Contractors. It may also describe the minimum QC requirements expected of upper or lower tier Contractor parties preparing design documents or who supply constituent materials or who are involved in handling or processing of the Contractor's products.

Qualified Products List (QPL) A list of products prequalified by the Department as meeting the Contract requirements for specified materials to be incorporated into the Work. The list is maintained and updated yearly by the Bureau of Materials and Research.

RCRA Shall mean as defined in Env-Hw 104.31.

Record Drawings Shall mean construction drawings and related documentation revised to show significant changes made during the construction process; usually based on marked-up Final Design Documents furnished by Design-Builder; also known as as-built plans.

Recovery Schedule Shall mean the schedule Design-Builder is required to provide under Section 4.5.

Reference Materials Shall mean the documents and information contained in Volume III of the RFP.

Referenced Standard Shall mean any standard or specification applicable to the Project established by reference contained in the Contract Documents.

Registered Professional Engineer Shall mean a person who is duly licensed and registered by the New Hampshire Board of Professional Engineers to engage in the practice of engineering in the State.

Regulations Shall have the meaning set forth in Section 19.7.6, except as used in Section 7.1 and Appendix 14 it shall mean the DBE Regulations.

Released for Construction (RFC) Documents Those documents certified to have met all requirements for design quality management and construction and have been stamped and sealed "Released for Construction" by the Design Build Team. The Design Quality Control Manager shall certify that these documents are compliant with the Contract Requirements.

Release of Contaminated Materials Shall mean any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Contaminated Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Contaminated Materials contamination.

Relocate Shall mean action to undertake a Relocation.

Relocation Shall mean each removal, relocation, reconstruction, abandonment, Phased Relocation, provision of temporary services, and/or Protection in Place (whether permanent or temporary) of any existing Utility facility that is necessary in order to accommodate or permit construction of the Project, including backfilling, pavement restoration and any other work described in Technical Provisions.

Request for Change Order Shall mean a document submitted by Design-Builder in accordance with Section 13.3 requesting that a Change Order be issued.

Request for Proposal (RFP) The document issued by the Department asking for Proposals, such as when soliciting for an anticipated Design-Build Contract, and all other documents issued by the department and identified as part of the RFP.

Request for Qualifications (RFQ) Document issued by the Department as a solicitation for the qualifications of interested Design-Build teams.

Responsible Proposer A Proposer that the Department determines has the ability to perform the requirements of the Contract.

Responsible Proposer Questionnaire Shall mean the RFP Document entitled "Responsible Proposer Questionnaire."

Request for Change (RFC) Notice Shall have the meaning set forth in Section 13.3.2.

RFP See Request for Proposals.

RFP Documents Shall mean the documents issued as part of the RFP, including all addenda.

Right of Entry Agreement Shall mean a written agreement between the record title owner and Design-Builder granting NHDOT, Design-Builder or assignees permission to enter the applicable parcel that is to be acquired.

Right-of-Way A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

Right-of-Way Terms

Limited Access Highway A highway laid out under the provisions of RSA 230:45 and to which all ingress and egress from abutting tracts of land is prohibited after completion of the work.

Controlled Access Highway A highway laid out under the provisions of RSA 230:45 and to which ingress and egress from abutting tracts of land may be permitted.

Point of Access An opening in the right-of-way line through which ingress and egress from the highway to abutting tracts of land may be made. RSA 236:13.

Drive and Entrance The roadway over which a vehicle must operate for ingress and egress from the highway to abutting tracts of land. RSA 236:13.

Roadbed The graded portion of a highway prepared as a foundation for the pavement structure and shoulders.

Roadside A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

Roadside Development Those items necessary for the preservation or replacement of landscape materials and features that may include suitable plantings and other improvements or ground cover to preserve and enhance the appearance and stability of the highway right-of-way or acquired easements.

Roadway The portion of a highway within the limits of construction.

Rock Where used in these specifications, this term shall be construed to mean igneous, metamorphic, or sedimentary rock.

Sediment Shall mean as defined in Env-Ws 1700.

Shoulder The portion of the roadway contiguous with the traveled way for lateral support of base and surface courses and for accommodation of stopped vehicles, for emergency use.

Sidewalk That portion of the roadway primarily constructed for the use of pedestrians.

Sieve U.S.A. Standard Sieve, as defined in AASHTO M 92. Measure percent passing sieve by weight.

Site Shall mean those areas designated in writing by NHDOT for performance of the Work and such additional areas as may, from time to time, be designated in writing by NHDOT for Design-Builder's use in performance of the Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment, the

term "Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project accepted by NHDOT under Section 12.3.3, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Design-Builder or Subcontractors covered by the worker's compensation policy included in the insurance described in Section 9, but excluding any permanent locations of Design-Builder or such covered Subcontractors.

Solid Waste Material as defined by Env-Sw 100.

Source Code and **Source Code Documentation** Shall mean shall mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

Specified Site Contaminated Materials Allowance Shall have the meaning set forth in Technical Provisions Section 6.6.

State Shall mean the State of New Hampshire.

State Arbitration Act Shall have the meaning set forth in Section 19.6.

State Highway Shall mean US Route 1.

Standard Specifications Shall mean the current version of the NHDOT Standard Specifications for Road and Bridge Construction (August 2010), the Maine DOT Standard Specifications (Revision of 2002), and all Supplemental Specifications thereto.

Statement of Qualifications Shall mean the Statement of Qualifications submitted by Proposer in response to NHDOT's Request for Qualifications.

Stipend A fee that the Department may pay unsuccessful Proposers that submit responsive Proposals and that are otherwise in compliance with the requirements of the RFP.

Stipulated Damages Shall have the meaning set forth in Section 17.

Storage Shall mean as defined in RSA 147-A:2, XIII.

Structures Bridges, conduits, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, headwalls, end sections, buildings, sewers, service pipes, underdrains, and other features that may be encountered in the Work and not otherwise classed herein.

Stump The part of a tree remaining in the earth after the stem or trunk falls or is cut off; a standing tree trunk from which the upper part and the branches have been removed.

Subbase Layers of specified material thickness placed on a subgrade to support a base course.

Subcontract Shall mean an agreement between Design-Builder and one or more third parties providing for such third party to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at any tier.

Subcontractor Shall mean 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.

Subgrade The top surface of a roadbed upon which the pavement structure and shoulders are constructed.

Submittal Shall mean shall any document, work product or other written or electronic end product or item required under the Contract Documents to be delivered or submitted to NHDOT.

Substantial Completion Shall mean the satisfaction of the criteria for completion of construction of the facility, set forth below and when confirmed by NHDOT's issuance of a certificate in accordance with the procedures:

a. All lanes of traffic set forth in the design documents are in their final configuration and available for normal and safe use and operation;
b. All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, safety end treatments, terminal anchor sections and crash attenuators;
c. All required illumination is installed and functional in accordance with the Contract documents;
d. All required signs and signals are installed and functional in accordance with the Contract documents;
e. The need for temporary traffic controls or for lane closures at any time has ceased (except for any required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);
f. The movable bridge is installed, functional, and NHDOT has been trained in its operation;
g. Design-Builder has otherwise completed the construction work in accordance with the Contract documents, design documents and construction documents, such that the facility is in a condition that can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable movable bridge meeting the Technical Provisions, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public.

Substructure All of that part of a Bridge below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the footing, piles, backwalls and wingwalls.

Superintendent The Design-Builder's authorized representative in responsible charge of the construction work.

Superstructure The entire Bridge and approach slabs (if applicable) except the substructure.

Supplier Shall mean any Subcontractor that supplies machinery, equipment, materials or systems to Design-Builder or any Subcontractor in connection with the performance of the Work and that does not perform Work at the Site. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site. The term "Supplier" includes fabricators and material dealers.

Surcharge Temporary load placed for the purpose of consolidating the underlying soil.

Surety Shall mean each properly licensed surety company, insurance company or other Person accepted by the New Hampshire State Insurance Commissioner to do business in the State and accepted by NHDOT, which has issued the Proposal Bond, Payment Bond or the Performance Bond.

Surface Course One or more layers of a specified material of designed thickness, to accommodate the traffic load, placed on base courses. The top layer is sometimes called the "wearing course."

Technical Proposal The part of a Proposal detailing, among other things, schedule, management, organization, design, project approach and construction of the project.

Technical Provisions or **TP** Shall mean the RFP documents identified as Technical Provisions.

Term Shall mean the duration of time between the Effective Date and Final acceptance Date.

Termination for Convenience Shall mean a termination of the Contract pursuant to Section 15.

Third Party Claims Shall mean any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

Time and Materials Change Order Shall have the meaning set forth in Section 13.7.

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

Topsoil The surface layer of soil and sod encountered during construction.

Traffic The movement of vehicles, pedestrians, animals, and any other conveyance either singly or together through an area of the project or along a route.

Traffic Control Device As defined in the MUTCD, all signs, signals, markings, and devices placed on, over, or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide traffic.

Traffic Lane See Lane.

Traffic Management Plan (TMP) Shall mean the plan developed by Design-Builder for maintenance of traffic during construction in accordance with TP Section 7.9 and NHDOT Work Zone Safety and Mobility Policy.

Traveled Way The portion of the roadway provided for the movement of vehicles, exclusive of shoulders.

Uniform Act Shall mean the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Chapter 61, as amended, and all associated regulations and policies.

USACE Nationwide Permit Shall mean US Coast Guard Permit.

Utility or utility Shall mean a privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. However, when used in the context of the Relocation of facilities to accommodate the Project, the term "Utility" or "utility" excludes (a) storm water facilities that provide drainage solely for the Project Right of Way, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for the SR-91 portion of the Project. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) 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.

Utility Adjustment means each relocation (temporary or permanent), abandonment, protection in place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term “Utility Adjustment” shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project Right of Way, the Utility Adjustment Work for each crossing of the Project Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

Utility Easement shall mean a permanent replacement easement and/or other interest in real property (excluding a franchise) located outside of the Planned ROW Limits that is necessary for a Relocation.

Utility Owner Shall mean any private entity or public body (including city, county, state, public corporation or public district) that owns and/or operates a Utility, including cooperative utilities.

Utility Owner Project Shall mean the design and construction by or at the direction of a Utility Owner of a new Utility other than as part of a Relocation. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Value Engineering Change Proposal or **VECP** Shall have the meaning set forth in Section 22.

Warranty or **Warranties** Shall mean the express warranties of Design-Builder set forth in Section 11.1.

Warranty Period Letter of Credit or Warrant Period Bond Shall mean the bond or acceptable security furnished with the Proposal for a warranty fixed period.

Waste Shall mean as defined in RSA 147-A:2, XVIII.

Wetland "An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to swamps, marshes, bogs, and similar areas." (NH Code of Administrative Rules, Chapter Wt 101.87, 1997)

Work Shall mean all of the administrative, design, engineering, real property acquisition support services, Utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project and to fulfill the Warranties, except for those efforts which the Contract Documents specify will be performed by NHDOT or other Persons. In certain cases the term is also used to mean the products of the Work.

Working Day Any calendar day, except (1) Saturdays, Sundays, and Contract designated legal Holidays; (2) days where conditions identified in the Contract that require the Design-Builder to suspend construction operations; (3) days where inclement weather or other conditions beyond the Design-Builder's control, prevent prosecution of the scheduled work with at least 75 percent of the normal daily labor and equipment force on the controlling activity for at least 60 percent of the daily hours routinely worked.

Working Drawings shall have the meaning described in Section 105.02 of the *NHDOT Standard Specifications for Road and Bridge Construction.* Working Drawings may be submitted for acceptance or transmitted for documentation. The Design Quality Control Manager must certify all submittals to the Department.

APPENDIX 2

MODIFIED NHDOT STANDARD SPECIFICATIONS

PORTSMOUTH, NH – KITTERY, MAINE
13678F

Division 100 – General Provisions

for

Design-Build Projects

Replaces Division 100
of the
2010 Standard Specifications

for Road and Bridge Construction

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

June 10, 2011

PREFACE

This project shall be constructed in accordance with NHDOT Standard Specifications for Road and Bridge Construction, 2010 Edition (hereafter referred to as the 2010 Standard Specifications). The 2010 Standard Specifications shall control the work on the Project except where modified by these Division 100 General Provisions, the Request for Proposal, the contract Special Provisions, or other Design-Build Contract Documents.

The 2010 Standard Specifications are written to govern work on Design-Bid-Build unit price construction projects. Design-Build projects are contracted on a Lump Sum basis with no allowances for any additional payment, except when specifically identified by the Contract.

The purpose of this page, which is part of the Design-Build General Provisions, is to modify the 2010 Standard Specifications. References and requirements contained in Division 100 of the 2010 Standard Specifications are modified to conform to a Lump Sum contract. References and requirements contained in Division 200-700 of the 2010 Standard Specifications are modified as follows:

The subsections “Methods of Measurement” and “Basis of Payment” are hereby deleted from each Section of Divisions 200-600 of the 2010 Standard Specifications and Supplemental Specifications because they do not apply to Lump Sum contracts. Payment for the Work on the Project will be made under a Lump Sum Bid Price except where specifically identified by the Contract.

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DIVISION 100 - GENERAL PROVISIONS FOR DESIGN-BUILD PROJECTS

SECTION 101 -- DEFINITIONS AND TERMS

101.01 – 101.30 Blank (See Contract Appendix 1).

SECTION 102 -- BIDDING REQUIREMENTS AND CONDITIONS

102. Blank (See ITP section of document).

SECTION 103 – EVALUATION OF PROPOSALS AND AWARD AND EXECUTION OF CONTRACT

103. Blank (See ITP section of document).

SECTION 104 -- SCOPE OF WORK

104.01 Intent of the Contract. The intent of the Contract is to provide for the design, construction, and completion of a functional and complete Project in conformity with the Contract. The Design-Builder shall furnish all Work to achieve this intent including all Work that may be reasonably inferred to be required from the Contract or from prevailing industry or trade custom, whether or not specifically called for.

104.01.1 Project Scope. The anticipated scope of work to be performed by the successful Design-Builder under the Design-Build Contract for this Project may include, but not be limited to, the following:

1. Interpretation and evaluation of geotechnical data,
2. Design development, documentation, coordination with public & private entities.
3. Compliance with all necessary permits and approvals,
4. Coordination and execution of required utility relocations and adjustments,
5. Bridge construction,
6. Roadway construction,
7. Quality Control for design and construction, including:
    (a) QC inspection and testing
    (b) Documentation of all design QC review activity
    (c) Documentation for all QC inspection, sampling, and testing
    (d) Documentation of administrative activities
8. Demolition and removal of the existing bridge,
9. Maintenance and protection of traffic during construction,
10. Proper implementation of all temporary and permanent environmental commitments, and
11. Overall project management.

Brief descriptions of this anticipated work are set forth below, with more detailed requirements provided in the Project Requirements in the RFP.

104.01.1.1 Anticipated Design Services. Unless otherwise specified in the Project Requirements in the RFP, design services may include, but are not limited to:

1. Surveying;
2. Geotechnical investigation and analysis;
3. Bridge design;
4. Pavement design;
5. Highway design and traffic engineering;
6. Utility coordination, protection and relocation; and
7. Design of any other necessary elements, such as:
    a. Signs,
    b. Pavement markings,
    c. Drainage facilities,
    d. Stormwater management facilities,
    e. Lighting, and
    f. Landscape treatments.

Design and subsurface information provided by the NHDOT is for reference purposes only and must be validated and augmented as necessary to provide the final design. Any additional investigative

information that the Design-Builder may need for its particular design shall be included in the Design-Builder's Technical Proposal and Price Proposal.

104.01.1.2 Anticipated Construction Services. Unless otherwise specified in the Project Requirements in the RFP, construction services may include, but are not limited to:

1. Roadway,
2. Civil/site,
3. Bridge and structures work;
4. Traffic control devices;
5. The demolition and removal of the existing bridge and approaches;
6. All necessary foundation work, substructure work, and excavation;
7. Drainage;
8. Utility relocations and coordination, erosion and sediment control; and
9. Compliance with all Federal, state, and local rules and regulations applicable to the Work. Design-Builders will also be expected to provide construction management services, work zone traffic management, and Quality Control inspection and testing.

104.01.1.3 Anticipated Environmental Services. Unless otherwise specified in the Project Requirements in the RFP, environmental services shall include, but are not limited to, any permit amendments required by the Proposal.

The selected Design-Builder shall be responsible for compliance with all permit terms and conditions, including the costs incurred in performing compliance activities. Fines associated with environmental permit or other regulatory violations shall be the sole responsibility of the Design-Builder.

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104.04 Rights In and Use of Materials Found on the Project. The NHDOT may authorize the use of materials, not previously described in the contract documentation, found in the limits of excavation that are suitable for completing the work. The removed material shall be replaced with acceptable material at no cost to the NHDOT. The authorization of such work shall be considered under 104.02 or considered as a Value Engineering Proposal under 104.11

It is expressly understood that the Design-Builder is not entitled to any compensation whatsoever, including anticipated profits on the expected use of any materials anticipated by the Design-Builder, but found to be nonexistent or unfit for use.

Unless otherwise provided, the material from any structures scheduled for demolition or removal may be used temporarily by the Design-Builder in the erection of the new structure. Such material shall not be modified or otherwise damaged without approval.

Unless otherwise specified, or except as stated in 202 and 502, the Design-Builder shall not take title to structures found on the highway. Such structures, including but not limited to, catch basin frames and grates, drop inlet frames and grates, and manhole frames and covers, curbing, beam guardrail, guardrail fittings, pipe, traffic control devices, and all other materials designated to be salvaged, unless otherwise specified in Contract documentation or directed, shall be carefully salvaged and stored within approved portions of the right-of-way or in other approved locations for loading by the Design-Builder onto State owned vehicles as directed. Care shall be taken during removal operations so as not to damage any salvaged materials. The Design-Builder shall remove and properly dispose of existing guardrail not to remain as an integral part of the highway as directed.

Structures and obstructions no longer an integral part of the work and not designated or directed for salvage, including guardrail posts, railroad ties, delineators, markers, cables, wire, light pole bases, signs, fence, gates, and any other visible obstruction to the Work, shall become the property of the Design-

Builder, who shall use, recycle, or dispose of them properly at no expense to the State. Materials to be reused on the project shall be identified and approved by the NHDOT prior to the reinstallation.

Removal and disposal of man-made materials that are not visible or designated for removal found within the limits of the project and that are not suitable for fill within the limits of the project or at a disposal site in accordance with 106.10, shall be the responsibility of the Design-Builder. Compensation for such removal and disposal will be in accordance with 104.02. All other work under this section, unless specifically provided for herein, or in other sections of the Contract, will not be paid for separately, but shall be included in the lump sum price.

104.05 Final Cleaning Up. Before final inspection and acceptance of the Work, the Project Site, borrow areas, and local material sources and all elements used and areas occupied by the Design-Builder in connection with the Work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment and all parts of the Work shall be left in an acceptable condition. The cost of final cleanup shall be included in the lump sum price.

104.06 Restoration of Surfaces Opened by Permit. Any individual, firm or corporation may be issued a permit by the proper authorities for entering the Project for the purpose of constructing or reconstructing any utility service. The Design-Builder shall allow the permit holder to enter and work within the Project limits for this purpose.

104.08 Construction Over or Adjacent to Navigable Waters. Work over, on, or adjacent to navigable waters shall be conducted without interfering with free navigation of the waterways and so that the existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard or the U.S. Army Corps of Engineers, as applicable.

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104.15 Project Design.

104.15.1 Design Documents. The Design-Builder shall prepare design documents in a format and in accordance with the standard requirements of the NHDOT and the RFP. Design Documents shall include preparation and furnishing of plans, special provisions, reports, and other documents as required for the Work.

104.15.1.1 Format of Documents. Design Documents shall be prepared in the U.S. Customary (USC) units and shall follow the conventions used by the NHDOT as specified in the NHDOT Highway Design Manual and Bridge Design Manual or as described in the RFP.

104.15.1.2 Design Standards. Project design plans shall be prepared in accordance with the requirements and standards of the NHDOT, utility and facility owners, and local agencies as required. The Design-Builder shall be responsible for identification and application of the standards to be used in preparation of design documents for layout and delineation format.

104.15.1.3 Codes, Standards, and Specifications. All Work, to the extent applicable, shall conform to the Contract and the applicable Supplemental Specifications and Special Provisions that are identified in the Appendices.

For utility work and work within the railroad Right-of-Way, the Design-Builder shall be responsible for obtaining and ensuring adherence of design and construction to the respective standards.

104.15.1.4 Project Coordination. Throughout the duration of the Project, and, except for those coordination activities specifically reserved for the NHDOT, the Design-Builder shall be responsible for coordination with local agencies, governmental approval agencies, community groups, adjacent landowners and businesses, and utility companies.

The Design-Builder shall review design plans, coordinate, and monitor adjacent work of any entity performing or proposing work on or adjacent to the Project and shall make the NHDOT aware of any impacts such work would have on the Project.

104.15.1.5 Design Exceptions. The Design-Builder may propose design exceptions to required standards as part of an Alternate Technical Concept submittal. The NHDOT may withhold approval of any and all design exceptions at its sole discretion. The Design-Builder shall allow sufficient time in the Project schedule to account for the design exception approval process (30 days) and the possibility that the exception is not approved.

Final submittal of Design Documents shall include proper documentation of approval by the NHDOT of any design exceptions.

The Design-Builder shall maintain an approved procedure for “Document Control”. The NHDOT shall have access to the tracked documents to confirm the latest revision is being supplied and constructed from.

The Design-Builder shall submit a final set of design documents (plans and special provisions) that is inclusive of early Released for Construction plans. This submittal will be the final submittal and shall supersede all previous Released for Construction packages.

104.15.1.6 Design Notes and Computations. Design notes and computations generated by the Design-Builder during preparation of the design documents (plans and specifications) shall become the property of the NHDOT and be submitted to the NHDOT with the final as-built plans.

At the Final Design Submittal, two final sets of the design notes and computations, sealed by a New Hampshire licensed Professional Engineer shall be submitted with the record set of plans, shop drawings, and special provisions.

Design notes and calculations, which shall be recorded on 8-1/2" x 11" computation sheets, appropriately titled, numbered, dated, indexed, and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced for submittal to 8-1/2" x 11" size. The data shall be bound in a hard-back folder for submittal to the NHDOT along with an electronic copy in Adobe Acrobat format, and shall include the following data:

1. Field survey notes and computations;
2. Primary and Secondary Survey Control used for Design and Construction;
3. Geometric design computations for horizontal alignment;
4. Vertical geometry computations;
5. Traffic capacity analysis (as required);
6. Drainage computations;
7. Structural design computations for each structure;
8. Geotechnical Report and geotechnical analysis for each substructure unit;
9. Bridge LRFR load ratings;
10. Documentation of decisions reached resulting from meetings, telephone conversations, site visits, or otherwise.

104.15.1.7 Design Plans. The Design-Builder shall prepare design submittals for NHDOT review in accordance with 104.15.2.

Plans shall be in accordance with the NHDOT's Bridge Design Manual, Highway Design Manual, Standard Plans, and the Standard Details, which may include, but not be limited to, the following:

1. Title Sheet
2. Key Plan, and Index Sheet
3. Typical Sections and Miscellaneous Details
4. General Layout and Geometry
5. General Notes
6. Survey Plans
7. Construction Staging and Traffic Management Plans
8. Bridge Notes
9. Plan and Elevation
10. Roadway Profiles
11. Approach Cross Sections
12. Abutment Plans and Elevations
13. Abutment Sections and Details
14. Pier Plans and Elevations
15. Pier Sections and Details
16. Pile/Drilled Shaft Group Plans and Elevations
17. Pile/Drilled Shaft Sections and Details
18. Superstructure
19. Superstructure Details
20. Span Framing Plans and Girder Elevations
21. Bearings
22. Drainage Details
23. Railing and Barrier Details
24. Expansion Joint Details
25. Bearing Details
26. Reinforcing Steel Schedules
27. Roadway Plans, Drainage Plans, Roadway Profiles, and Details
28. Cross Sections
29. Utility Plans and Details
30. Street Lighting and Traffic Signal Plans
31. Sign and Pavement Marking Plans
32. Standard Detail Sheets
33. Landscaping Plan

104.15.2 Design Submittals and Reviews.

104.15.2.1 Design Submittals. Design plans may be developed in stages to allow construction activities to begin without having a full set of final design plans completed and approved. The Design-Builder has the option of submitting a complete set of bridge, roadway, traffic or other plans or a partial set of plans for Release for Construction on particular highway or bridge elements. Should the Design-Builder choose to submit partial sets of plans, such staged design submittals shall consist of logically grouped Project elements that can be designed, reviewed, and constructed as a self-contained package. Breakout of design packages should be done so that an orderly progression of work can be scheduled by the Design-Builder. The NHDOT shall review and concur with the proposed breakout of design packages that are intended to be Released for Construction. This proposed breakout shall be prepared as part of a Design Package Work Plan submitted in conjunction with the schedule of work required. The NHDOT will issue any objections to the Work Plan within fourteen (14) Days after receiving it from the Design-Builder. Design Builder shall updated priority of all the submittals weekly in line with their projected CPM.

The Design Package Work Plan shall identify the following:

1. The Project elements that will make up each Design Package, including physical and scope of work limits and interface points;
2. The sequencing and scheduling of the design and construction of each Design Package in relation to the Schedule of Work;
3. Planned stages for the NHDOT's review of each Design Package, including:
    a. The specific information the NHDOT must review (e.g., preliminary design, final design, special provisions, etc.), including the percent complete represented by the submittal;
    b. Planned timeframe for the review (measured from Notice to Proceed), including the requested turnaround time from the NHDOT (note that as a minimum, the NHDOT will require fourteen (14) Days for design reviews);
    c. Any stakeholders that need to be consulted regarding the design; and
    d. Planned stage at which the Design Package can be Released for Construction.
4. Every Design Package shall also be submitted as an electronic file in Adobe Acrobat format.

The Design Package Work Plan shall be updated as necessary throughout the Project to provide the NHDOT advance indication of when formal design reviews will take place. The NHDOT will use this plan to allocate its design resources accordingly to expedite the review process.

104.15.2.2 Department Reviews. Department reviews of design plans and specifications will consist mainly of checks to ensure that Contract requirements and design criteria are being followed, and that the Design QC section of the Design-Builder's Quality Management Plan (QMP) is being followed as the design is developed. The reviews may, at the Department's discretion, include, but are not limited to, design plans, special provisions, reports, geotechnical information, and other relevant design information.

At its discretion, the Department may make periodic visits to the Design-Builder's project administration office and off-site design offices to discuss and verify the design and that the QMP is being adhered to in these offices. The Department reserves the right to not give advance warning for these reviews. Should the Design-Builder request an oversight visit by the Department to an off-site office, the Design-Builder shall give the Department seven (7) Days advance notice of its requested oversight visit.

104.15.2.3 Over-the-Shoulder Reviews. Over-the-shoulder reviews are intended to be reviews by the NHDOT of design documents during the design process. These reviews will be conducted in the presence of the Design-Builder's design and construction personnel with the intent to minimize disruption of ongoing design efforts. The review may be of progress prints, computer images, draft documents, working calculations, draft special provisions, reports, or other design documents.

104.15.2.4 Design Submittal Review Process. Formal design package submittals shall be made to the NHDOT. Formal review submittals shall be required at the fifty percent (50%) and eighty percent (80%) design development stage of any design package intended to be Released for Construction. Plans and required QC documentation shall be included with the submittal for review. Within fourteen (14) Days after the submittal has been made or a timeframe agreed upon in the Design Package Work Plan, the NHDOT may submit to the Design-Builder comments on the design documents and QC documents. The Design-Builder shall schedule a comment resolution meeting for all parties to discuss and resolve any comments.

The fifty percent (50%) review shall require that all comments from the design detail check completed by the Design-Builder be addressed and signed off by a senior experienced engineer and included with the fifty percent (50%) design submittal. The eighty percent (80%) submittal shall include all comments from the fifty percent (50%) review made by the NHDOT addressed and initialed by a senior experienced engineer assigned to the Project as well as comments addressed and signed off from the Design-Builders final detail check of the eighty percent (80%) plan submittal. The eighty percent (80%) submittal shall include special provisions and QC regarding the special provisions for the plan set submitted. Failure to submit the appropriate QC documentation with either the fifty percent (50%) or eighty percent (80%) submittal will result in a rejection of the submittal and require a re-submittal by the Design-Builder.

Upon successful completion of this process through the eighty percent (80%) design stage, the Design-Builder is then responsible for ensuring that all final comments to the plan package based upon the eighty percent (80%) review by the NHDOT have been incorporated into the final design documents and that required QC has been completed prior to approving the plans and special provisions to be Released for Construction.

104.15.2.4.1 Preliminary Design. The Technical Proposal will be considered the Preliminary Plan Submission for the bridge and highway.

104.15.2.4.2 Early Release for Construction. The Design-Builder has the option to provide ERC design plans for a particular bridge or highway element. Early release can be, for example, driving piles, constructing the footings and or foundation, and submission and approval of the superstructure in order to meet procurement schedules.

The Early Release process requires submission of the design plans of the particular bridge or highway element, associated computations, and QC documentation as described in the Design-Build General Provisions and a description of the elements to be released. The plans and computations shall be sealed by a New Hampshire Licensed Professional Engineer. Plans should note that they represent an early release submittal and shall identify exactly what element is to be released. Any items shown on the design plans that are not to be Released for Construction shall be clouded and cross-hatched within the clouds.

The Early Release for Construction process does not relieve the Design-Builder from the requirements of the Design Submittal Process indicated in Section 104.15.2.1 and Section104.14.2.4. Specifically, a 50% Design Submittal and an 80% Design Submittal are still required.

Upon submittal of the design documents, the NHDOT will determine if all the necessary documentation is present. If all the information is included in the submittal, the submittal will be reviewed. If all the required documentation is not included in the submittal, the Design-Builder will be asked to supply the necessary information. Review of the submittal will not commence until all of the required documentation has been submitted. After a fourteen (14) Day review period, the review team may notify the Design-Builder that the review is complete and the particular bridge or highway element may be Released for Construction. If there are comments and questions, the comments will be provided to the Design-Builder. The Design-Builder is then responsible for ensuring that all final comments to the plan package based upon the review have been incorporated into the design documents and that required QC has been completed prior to approving the plans and special provisions to be Released for Construction. The NHDOT may at its discretion require a re-submittal.

104.15.2.4.3 Release for Construction - Final Design Documents. Released for Construction for the entire package consists of the final set of design plans, computations, special provisions, and QC documentation for the complete design package. The plans shall be in accordance with the Bridge Design Manual and NHDOT's standard MicroStation/InRoads policies and practices. The plans and computations shall be sealed by a New Hampshire Licensed Professional Engineer.

Upon submittal of the design documents, the NHDOT will determine if all necessary documentation is present. If all the information is included, the submittal will be reviewed. If all the required documentation is not included, the Design-Builder will be asked to supply the necessary information. Review of the submittal will not commence until all of the required documentation has been submitted. After a fourteen (14) Day review period, the NHDOT will notify the Design-Builder that the review is complete and the final bridge design may be Released for Construction. If there are comments, the comments will be provided to the Design-Builder. The Design-Builder is then responsible for ensuring that all final comments to the plan package based upon the review have been incorporated into the design documents and that required QC has been completed prior to approving the plans and special provisions to be Released for Construction. At its discretion, the NHDOT may require a re-submittal.

104.15.2.5 As-Built Drawings. The Design-Builder shall submit As-Built drawings within thirty (30) days of receiving Final Acceptance from the NHDOT stamped by the Design-Builder's Engineer.

104.15.3 Re-submittal Process. Re-submittal of any design review submittal may be required if deemed necessary by the NHDOT. Each re-submittal shall address all comments from the prior review and corresponding QC documentation shall be included. The Design-Builder shall not be entitled to any additional compensation or time extensions due to a re-submittal request by the NHDOT.

The Design-Builder acknowledges and agrees that re-submittal of design packages including the final design plans may be required. Each resubmission including requests for additional information shall be treated as a new submission and may require up to a fourteen (14) Days for review. The Design-Builder shall resubmit as many times as necessary to obtain concurrence from the NHDOT regarding the design submittal.

Each resubmission including request for additional information will be treated as a new submission and may require 14 Days for review by NHDOT.

104.15.4 Release for Construction. Upon completion of the eighty percent (80%) review comment responses to the design plans and special provisions for roadway or partial or final design plans and special provisions for bridge structures, a final QC review shall be completed by the Design QC Manager. When the review is completed the design package may be approved for Released for Construction by the QC Administrator.

The Design-Builder is responsible to release the plans to field personnel and is responsible to ensure that there is a tracking mechanism in place so that all parties, field and office, have the same set of plans. The process for the final audit prior to Released for Construction shall be included in the Quality Management Plan and shall include a method of tracking plans for Released for Construction. The Design-Builder's construction QC shall include the method for tracking plans Released for Construction to field personnel.

104.15.5 Design Changes. The NHDOT or the Design-Builder may initiate changes to the design after a design package has been Released for Construction or to the final plan set. If these changes require amendments to environmental permits and/or additional Right-of-Way and other activities, they shall be addressed prior to implementing the change. If such design changes are at the sole option of the Design-Builder, they are not scope changes and shall not be cause for additional time or compensation.

Design changes to segments that have been Released for Construction or to the final plans shall be approved in writing by the designer responsible for the original design or by a New Hampshire Licensed Professional Engineer of equal or greater experience than the original designer, if the original designer is no longer available. The changes shall be tracked and documented accordingly. This process shall be included in the Quality Management Plan and the NHDOT shall be given the time specified for a review of Released for Construction to comment on these changes.

All plans, special provisions and calculations prepared for design changes shall be sealed, signed and dated by a New Hampshire Licensed Professional Engineer who possesses the requirements stated in the preceding paragraph. The Design QC Manager shall certify through the audit process that the design change has been designed in accordance with the contract and appropriate design criteria and checked in accordance with the Quality Management Plan process for design. Once approved by the QC Administrator, the change will be issued for Released for Construction and must be tracked as described in 104.15.4. The Design-Builder is responsible to send the change to the NHDOT and appropriate field personnel and ensure that it is tracked via the process as described in Section 104.15.4.

The NHDOT reserves the right, but not the duty, to review and approve all design changes.

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SECTION 105 -- CONTROL OF THE WORK

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SECTION 106 -- CONTROL OF MATERIAL/QUALITY

106. Blank. (See Volume 2, Contract, of the documents)

SECTION 107 -- LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107. Blanks. (See Volume 2, Contract, of the documents)

SECTION 108 -- PROSECUTION AND PROGRESS

108. Blank (See Volume 2, Contract, of the documents)

SECTION 109 -- MEASUREMENT AND PAYMENT

109. Blank. (See Volume 2, Contract, of the documents)

SECTION 110- GENERAL RIGHTS AND RESPONSIBILITIES

110. Blank. (See Volume 2, Contract, of the documents)

APPENDIX 3

NOT USED

APPENDIX 4

ON-THE-JOB TRAINING (OJT) SPECIAL PROVISIONS

As part of the Contractor's specific Equal Employment Opportunity Affirmative Action Program, training shall be provided as follows:

The Contractor shall provide on-the-job training aimed at developing full journeyworker workers in the type of trade or job classification involved.

The number of trainees to be trained under the special provision will be **_8_**.

In the event that a Contractor subcontracts a portion of the contract work, it shall determine how many, if any, of the trainees are to be trained by the Subcontractor, provided, however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and availability of journeyworkers in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to the NHDOT Labor Compliance Office for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee employed on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journey worker status is a primary objective of this Training Special Provision. Accordingly the Contractor shall make every effort to enroll minority and women trainees (e.g. by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyworker status or in

which they have been employed as a journeyworker. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the New Hampshire Department of Transportation and the Federal Highway Administration. The New Hampshire Department of Transportation and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyworker status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the NHDOT Labor Compliance Office prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the Contractor received additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for off-site training indicated above may only be made to the Contractor where they do one or more of the following and the trainees are concurrently employed on a Federal-aid project: contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the off-site training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyworker, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin training on the project as soon as feasible after start of work

utilizing the skill involved and remain on the project as long as training opportunities exist in this work classification or until the training program is completed. It is not required that all trainees be on board for the entire length of the contract. A Contractor will have fulfilled their responsibilities under this Training Special Provision if they have provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The Contractor shall furnish the trainee a copy of the program to be followed in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed. The Contractor will provide for the maintenance of records and furnish weekly reports documenting performance under this Training Special Provision.

APPENDIX 5

LISTED SUBCONTRACTORS

[from Proposal]

APPENDIX 6

MEMORIAL BRIDGE REPLACEMENT PROJECT

SUBCONTRACTOR IDENTIFICATION FORM

Subcontractor Name, Address, Teleph No., License Number	Description of Subcontract Work	Dollar Amount of Subcontract	Est. Time of Performance

Contractor: _____
DATE: _____

APPENDIX 7

KEY PERSONNEL

Project Manager	_____
Construction Manager	_____
Design Manager	_____
Movable Bridge Engineer	_____
Movable Bridge Mechanical Engineer	_____
Movable Bridge Electrical Engineer	_____
Safety Manager	_____
Quality Control Administrator	_____
Design Quality Control Manager	_____
Construction Quality Manager	_____
Environmental Compliance Manager	_____
Permitting Coordinator	_____
Public Relations Officer	_____
Project Control Manager	_____
Project Schedule Manager	_____
Document Control Manager	_____

APPENDIX 8

BONDS

8-A FORM OF NTP1 PERFORMANCE BOND
8-B FORM OF NTP2 PERFORMANCE BOND
8-C FORM OF NTP1 PAYMENT BOND
8-D FORM OF NTP2 PAYMENT BOND

APPENDIX 8-A

FORM OF NTP1 PERFORMANCE BOND

[*EXECUTED COPY OF NTP1 PERFORMANCE BOND TO BE ATTACHED TO EXECUTED CONTRACT AS APPENDIX 8-A*]

Memorial Bridge Replacement Project

Bond No. _____

WHEREAS, the New Hampshire Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for the Memorial Bridge Replacement Project dated as of _____, 2011 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of New Hampshire, are held and firmly bound unto Obligee in the amount of $_____ [**Insert bond amount**] (the "Bonded Sum"), for payment of which sum Principal and the Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. If Principal shall faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, and shall indemnify and hold harmless Obligee, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The Contract Documents are incorporated by reference herein.

3. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to the obligation to provide the NTP2 Performance Bond and NTP2 Payment Bond and the insurance thereunder; provided that, Principal's obligation to provide the NTP2 Performance Bond and NTP2 Payment Bond is subject to the Surety's approval of changes to the Contract between issuance of NTP1 and issuance of NTP2 that would materially reduce Principal's rights or enlarge Principal's responsibilities under the Contract.

4. In the event that Principal is in default, is declared by Obligee to be in default under the Contract Documents, and provided that Obligee is not then in material default thereunder, the Surety (or Co-Sureties) shall:

a. Remedy such default; or

b. Complete the Contract in accordance with the terms and conditions of the Contract Documents then in effect; or

c. Select a contractor or contractors to complete all Work for which a notice to proceed has been issued in accordance with the terms and conditions of the Contract Documents then in effect, using a procurement methodology approved by Obligee, arrange for a contract between such contractor or contractors and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the Contract Price, accounting for Obligee's right to defer payments set forth in the Contract; but not exceeding, including other costs and damages for which the Surety (or Co-Sureties) are liable hereunder, the Bonded Sum.

5. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of the Surety (or Co-Sureties) under this bond and the Surety (or Co-Sureties) hereby waive notice thereof.

6. [**Use in case of multiple or co-sureties**] The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____, and the initial agent for service of process shall be _____.

7. No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and the Surety have caused this bond to be executed and delivered as of _____, 2011.

Principal: _____

By:_____

Its:_____

(Seal)

Surety: _____

By:_____

Its:_____

(Seal)

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

FORM OF ADDITIONAL OBLIGEE RIDER
(NTP1 Performance Bond)

TO BE ATTACHED TO AND FORM PART OF Performance Bond No. _____ dated _____, 2011, issued by _____ ("Principal"), and _____ (the "Surety" or "Co-Sureties"), in favor of the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, a public entity of the State of New Hampshire (the "Primary Obligee").

IT IS HEREBY UNDERSTOOD AND AGREED THAT the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION [and _____], are hereby added as Additional Obligees under the above-described bond.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the Surety shall not be liable under the above-described bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the above-described bond is hereby amended to include the following Additional Obligee clause:

"In no event shall the Surety be liable to the Primary Obligee or Additional Obligee in the aggregate for more than the Bonded Sum as a result of the Additional Obligee Rider, nor shall it be liable except for a single payment for each single breach or default. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due to any Obligee may be made by its check issued jointly to all."

IT IS FURTHER UNDERSTOOD AND AGREED that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above-described bond except as hereinbefore set forth.

SIGNED, SEALED AND DATED this ____ day of _____, 2011.

"SURETY" _____

By: _____

Its:_____

"PRINCIPAL" _____

By: _____

Its:_____

"OBLIGEE" NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: _____

Its:_____

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

APPENDIX 8-B

FORM OF NTP2 PERFORMANCE BOND

[*EXECUTED COPY OF NTP2 PERFORMANCE BOND TO BE ATTACHED TO EXECUTED CONTRACT AS APPENDIX __8-B*]

Memorial Bridge Replacement Project

Bond No. _____

WHEREAS, the New Hampshire Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for the Memorial Bridge Replacement Project dated as of _____, 2011 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of New Hampshire, are held and firmly bound unto Obligee in the amount of $_____ [**Insert bond amount**] (the "Bonded Sum"), for payment of which sum Principal and the Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. If Principal shall faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, and shall indemnify and hold harmless Obligee, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The Contract Documents are incorporated by reference herein.

3. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to its liability for Liquidated Damages and Warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.

4. The guarantee contained herein shall survive the Final Acceptance of the design and construction called for in the Contract Documents with respect to those obligations of Principal which survive such Final Acceptance.

5. In the event that Principal is in default, is declared by Obligee to be in default under the Contract Documents, and provided that Obligee is not then in material default thereunder, the Surety (or Co-Sureties) shall:

a. Remedy such default; or

b. Complete the Contract in accordance with the terms and conditions of the Contract Documents then in effect; or

c. Select a contractor or contractors to complete all Work for which a notice to proceed has been issued in accordance with the terms and conditions of the Contract Documents then in effect, using a procurement methodology approved by Obligee, arrange for a contract between such contractor or contractors and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the Contract Price, accounting for Obligee's right to defer payments set forth in the Contract; but not exceeding, including other costs and damages for which the Surety (or Co-Sureties) are liable hereunder, the Bonded Sum.

6. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of the Surety (or Co-Sureties) under this bond and the Surety (or Co-Sureties) hereby waive notice thereof.

7. [**Use in case of multiple or co-sureties**] The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____, and the initial agent for service of process shall be _____.

8. No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and the Surety have caused this bond to be executed and delivered as of _____, 2011.

Principal: _____

By:_____

Its:_____

(Seal)

Surety: _____

By:_____

Its:_____

(Seal)

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

FORM OF ADDITIONAL OBLIGEE RIDER
(NTP2 Performance Bond)

TO BE ATTACHED TO AND FORM PART OF Performance Bond No. _____ dated _____, 2011, issued by _____ ("Principal"), and _____ (the "Surety" or "Co-Sureties"), in favor of the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, a public entity of the State of New Hampshire (the "Primary Obligee").

IT IS HEREBY UNDERSTOOD AND AGREED THAT the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION [and _____], are hereby added as Additional Obligees under the above-described bond.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the Surety shall not be liable under the above-described bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the above-described bond is hereby amended to include the following Additional Obligee clause:

"In no event shall the Surety be liable to the Primary Obligee or Additional Obligee in the aggregate for more than the Bonded Sum as a result of the Additional Obligee Rider, nor shall it be liable except for a single payment for each single breach or default. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due to any Obligee may be made by its check issued jointly to all."

IT IS FURTHER UNDERSTOOD AND AGREED that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above-described bond except as hereinbefore set forth.

SIGNED, SEALED AND DATED this ____ day of _____, 2011.

"SURETY" _____

By: _____

Its:_____

"PRINCIPAL" _____

By: _____

Its:_____

"OBLIGEE" NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: _____

Its:_____

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____

NOTARY PUBLIC

APPENDIX 8-C

FORM OF NTP1 PAYMENT BOND

[*EXECUTED COPY OF NTP1 PAYMENT BOND TO BE ATTACHED TO EXECUTED CONTRACT AS APPENDIX 8-C*]

Memorial Bridge Replacement Project

Bond No. _____

WHEREAS, the New Hampshire Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for the Memorial Bridge Replacement Project dated as of _____, 2011 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, it is one of the conditions of the Contract that Principal furnish this bond concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____, (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of New Hampshire, are held and firmly bound unto Obligee in the amount of $_____ [**Insert Bond Amount**] (the "Bonded Sum"), for payment of which sum Principal and the Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. If Principal shall fail to pay:

(a) Any of the persons named in Civil Code section 3181, or

(b) Any amounts due under the Unemployment Insurance Code, or

(c) Any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of Principal and subcontractors pursuant to the Unemployment Insurance Code section 13020, with respect to the Work

(d) Anyone required to be paid by law

then the Surety (or Co-Sureties) shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void. In case suit is brought upon this bond, the Surety (or Co-Sureties) will pay reasonable attorney's fees to be fixed by the court.

2. The Contract Documents (as defined in the Contract) are incorporated by reference herein.

3. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of the Surety (or Co-Sureties) under this bond and the Surety (or Co-Sureties) hereby waives notice thereof.

4. [**Use in case of multiple or co-sureties**] The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____, and the initial agent for service of process shall be _____.

5. This bond shall inure to the benefit of the persons named in Civil Code section 3181 so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of _____, 2011.

Principal: _____

By:_____

Its:_____

Surety: _____

By:_____

Its:_____

(Seal)

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

FORM OF ADDITIONAL OBLIGEE RIDER
(NTP1 Payment Bond)

TO BE ATTACHED TO AND FORM PART OF Payment Bond No. _____ dated _____, 2011, issued by _____ ("Principal"), and _____ (the "Surety" or "Co-Sureties"), in favor of the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, a public entity of the State of New Hampshire (the "Primary Obligee").

IT IS HEREBY UNDERSTOOD AND AGREED THAT [the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION and _____], are hereby added as Additional Obligees under the above-described bond.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the Surety shall not be liable under the above-described bond to the Primary Obligee, the Additional Obligees, the claimants under the above-described bond, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the above-described bond is hereby amended to include the following Additional Obligee clause:

"In no event shall the Surety be liable to the Primary Obligee or Additional Obligee in the aggregate for more than the Bonded Sum as a result of the Additional Obligee Rider, nor shall it be liable except for a single payment for each single breach or default. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due to any Obligee may be made by its check issued jointly to all."

IT IS FURTHER UNDERSTOOD AND AGREED that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above-described bond except as hereinbefore set forth.

SIGNED, SEALED AND DATED this ____ day of ____, 2011.

"SURETY" _____

By:_____

Its:_____

"PRINCIPAL" _____

By:_____

Its:_____

"OBLIGEE" NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: _____

Its:_____

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

APPENDIX 8-D

FORM OF NTP2 PAYMENT BOND

[*EXECUTED COPY OF NTP2 PAYMENT BOND TO BE ATTACHED TO EXECUTED CONTRACT AS APPENDIX 8-D*]

Memorial Bridge Replacement Project

Bond No. _____

WHEREAS, the New Hampshire Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for the Memorial Bridge Replacement Project dated as of _____, 2011 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, it is one of the conditions of the Contract that Principal furnish this bond concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____, (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of New Hampshire, are held and firmly bound unto Obligee in the amount of $_____ [**Insert Bond Amount**] (the "Bonded Sum"), for payment of which sum Principal and the Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. If Principal shall fail to pay:

(a) Any of the persons named in Civil Code section 3181, or

(b) Any amounts due under the Unemployment Insurance Code, or

(c) Any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of Principal and subcontractors pursuant to the Unemployment Insurance Code section 13020, with respect to the Work

(d) Anyone required to be paid by law

then the Surety (or Co-Sureties) shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void. In case suit is brought upon this bond, the Surety (or Co-Sureties) will pay reasonable attorney's fees to be fixed by the court.

2. The Contract Documents (as defined in the Contract) are incorporated by reference herein.

3. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of the Surety (or Co-Sureties) under this bond and the Surety (or Co-Sureties) hereby waives notice thereof.

4. [**Use in case of multiple or co-sureties**] The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____, and the initial agent for service of process shall be _____.

5. This bond shall inure to the benefit of the persons named in Civil Code section 3181 so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of _____, 2011.

Principal: _____

By:_____

Its:_____

Surety: _____

By:_____

Its:_____

(Seal)

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

FORM OF ADDITIONAL OBLIGEE RIDER
(NTP2 Payment Bond)

TO BE ATTACHED TO AND FORM PART OF Payment Bond No. _____ dated _____, 2011, issued by _____ ("Principal"), and _____ (the "Surety" or "Co-Sureties"), in favor of the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, a public entity of the State of New Hampshire (the "Primary Obligee").

IT IS HEREBY UNDERSTOOD AND AGREED THAT [the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION and _____], are hereby added as Additional Obligees under the above-described bond.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the Surety shall not be liable under the above-described bond to the Primary Obligee, the Additional Obligees, the claimants under the above-described bond, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the above-described bond is hereby amended to include the following Additional Obligee clause:

"In no event shall the Surety be liable to the Primary Obligee or Additional Obligee in the aggregate for more than the Bonded Sum as a result of the Additional Obligee Rider, nor shall it be liable except for a single payment for each single breach or default. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due to any Obligee may be made by its check issued jointly to all."

IT IS FURTHER UNDERSTOOD AND AGREED that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract.

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above-described bond except as hereinbefore set forth.

SIGNED, SEALED AND DATED this ____ day of ____, 2011.

"SURETY" _____

By:_____

Its:_____

"PRINCIPAL" _____

By:_____

Its:_____

"OBLIGEE" NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: _____

Its:_____

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

NEW HAMPSHIRE ALL PURPOSE ACKNOWLEDGEMENT

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, 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 New Hampshire that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL) _____
NOTARY PUBLIC

APPENDIX 9

INVOICE AND CONSTRUCTION CERTIFICATE

(Memorial Bridge Replacement Project)

[INSERT FORMS OF INVOICE AND CONSTRUCTION CERTIFICATE]

APPENDIX 10

DISPUTES REVIEW BOARD AGREEMENT

[See attached]

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

CONTRACT NO. _____

DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT, is made and entered into this _____, between:

The New Hampshire Department of Transportation, hereinafter called NHDOT, and _____, hereinafter called the Design-Builder, and the Disputes Review Board, hereinafter called the DRB, and consisting of three members, _____,

The total value of this Agreement is Not-To-Exceed _____ Dollars ($_____), for all three DRB Members. This amount may be increased by mutual agreement of NHDOT and Design-Builder.

WITNESSETH, that

WHEREAS, NHDOT is now engaged in the design and construction of the Memorial Bridge Replacement Project; and

WHEREAS, Contract **[_____]** _____(Contract) provides for the establishment and operation of a DRB to assist in resolving Disputes; and

WHEREAS, the DRB is composed of three members, one selected by NHDOT, one selected by the Design-Builder, and the third party member selected by the other two members;

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, or attached hereto and incorporated and made a part herein, the parties hereby agree as follows:

1. PURPOSE OF DRB

The purpose of the DRB is to fairly and impartially consider Disputes within its authority, that are placed before it and to provide written decisions to both NHDOT and the Design-Builder for settlement of Disputes. The members of the DRB shall perform services in accordance with the scope of work as described below.

2. SCOPE OF WORK

The scope of work of the DRB includes, but is not limited to, the following items of work:

A. Site Visits

Under the rules governing the DRB, members shall visit the Worksite during the regularly scheduled meetings described in Article 8 herein, unless otherwise agreed to by NHDOT and the Design-Builder, to keep abreast of design and construction activities and to develop a familiarity with the work in progress. The frequency, exact time, and duration of these visits shall be mutually agreed upon among the DRB, NHDOT, and the Design-Builder. DRB hearings shall be counted as a regular meeting.

In the case of an alleged differing site condition(s) or construction problem(s), it will be advantageous but not absolutely necessary for the DRB to personally view such conditions. If viewing by the DRB would negatively impact the Project Schedule,

photographs, videos and descriptions of these conditions provided by both parties will suffice.

B. Recommend Settlement of Disputes

Upon receipt by the DRB of a written request to hear a Dispute, dealing with a matter within the jurisdiction of the DRB as set forth in Section 19 of the Contract either from NHDOT or the Design-Builder, the DRB shall timely convene a hearing to review and consider the Dispute. Both NHDOT and the Design-Builder shall be given the opportunity to present their evidence at this hearing. Both NHDOT and the Design-Builder are required to provide exhibits, calculations, and any other pertinent material to the DRB for review prior to the hearing. All such material shall be given in the same form and content to all parties to this Agreement.

It is expressly understood that all the DRB members are to act impartially and independently in the consideration of facts and conditions surrounding any Dispute presented by NHDOT or the Design-Builder, and that the recommendations concerning any such Disputes for which the amount in controversy is less than or equal to $1,000,000 are binding. All the DRB members shall execute a Certificate of Impartiality.

The DRB decisions shall be based on the pertinent Contract provision(s), and the facts and circumstances involved in the Dispute. The DRB decision shall only settle issues involving monetary compensation or granting of additional time. The decisions shall be furnished in writing to NHDOT and the Design-Builder.

NHDOT and the Design-Builder will not solicit advice or consultation from the DRB members on matters dealing with the conduct of the Work or settlement of problems other than Disputes referred to the DRB as herein provided.

C. Member Replacement

The DRB members may withdraw from the DRB by providing a 30 day notice to their original appointer. The DRB members may be terminated for convenience only by the mutual consent of NHDOT and the Design-Builder unless a member has been found to have violated any portion of the Code of Ethics for Arbitrators, any criminal law, or NHDOT Ethics or Lobbying Policies. The DRB member shall then be terminated by NHDOT, for cause, without mutual consent.

Should the need arise to appoint a replacement DRB member, the replacement member shall be selected in the same manner as the original member requiring replacement was appointed. The selection of a replacement DRB member shall begin upon notification of the necessity for a replacement and shall be completed within four weeks of the notification. The Three Party Agreement will be amended in writing to indicate a change in the DRB membership.

3. DRB RESPONSIBILITIES

The DRB is solely organized to settle Disputes between NHDOT and the Design-Builder arising from the Contract which have not been otherwise resolved. The DRB shall only consider Disputes for which it has jurisdiction under Section 19 of the Contract.

The DRB and its individual members shall refrain from giving any advice to either NHDOT or Design-Builder on the conduct of the Work or settlement of issues other than on Disputes referred to the DRB as herein provided. Lack of adherence to this condition may be cause for termination.

The DRB members agree to the following:

A. No member shall be an Affiliate or otherwise have a financial interest in the Contract or in the outcome of any Dispute decided hereunder, except for the right to receive payment for serving on the DRB.

B. No member shall currently be, or within two years of the selection date have been, an officer, director or employee of, or have had financial ties to: (a) the Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor, (b) NHDOT or any agency represented on the NHDOT Commission, or (c) any firm under contract to the Design-Builder, any Affiliate, any Subcontractor or affiliate of a Subcontractor, NHDOT or any agency represented on the NHDOT Commission; provided that eligibility shall not be affected by past fee-based consulting services on other projects which are disclosed to all parties.

C. No member shall have had substantial prior involvement in the Project or relationship with any party or Affiliate of a nature which could compromise his or her ability to impartially resolve Disputes.

D. No member shall accept employment with NHDOT, any agency represented on the NHDOT Commission, Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor during the term of the Contract, and for so long thereafter as any obligations remain outstanding under the Contract, except as a member of other DRBs.

E. No member shall discuss employment with NHDOT, any agency represented on the NHDOT Commission, Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor or any consultants working on the Project during the term of the Contract and for so long thereafter as any obligations remain outstanding under the Contract.

4. DESIGN BUILDER RESPONSIBILITY

The Design-Builder shall furnish to each DRB member and NHDOT one copy of all documents it deems relevant to the issue in dispute, for the DRB member's review and use. The DRB may share Design-Builder-furnished documents with its experts, otherwise, the DRB members shall not release any documents they possess to any party unless they have sought and obtained written approval from NHDOT and the Design-Builder.

5. LACMTA'S RESPONSIBILITY

NHDOT shall furnish the following:

A. Contract Related Documents

NHDOT, in coordination with the Design-Builder, shall furnish each DRB member with one copy of all Contract Documents for the Contract, including, but not limited to, the Technical Specifications, Drawings, all revisions to the Technical Specifications and Drawings, Geotechnical Design Summary Report, approved project and progress schedule including schedule updates, progress reports, and other available documents pertinent to the performance of the Contract and reasonably related to the DRB's work. The DRB may share NHDOT-furnished documents with its expert consultants.

B. Coordination

NHDOT, with assistance and cooperation of the Design-Builder, will coordinate the operations of the DRB.

C. Services

NHDOT will arrange for, or provide administrative services, such as conference facilities at or near the Site and provide reasonable routine secretarial services (not including a court reporter) and copying services for the DRB meetings, and will have the right to require Design-Builder to pay for half of the cost of these services. If the Design-Builder or its Subcontractor requires use of a court reporter, they shall bear the entire cost and shall have no recourse for payment of these costs against NHDOT.

6. PERIOD OF PERFORMANCE

The DRB shall operate throughout the duration of the Contract. It shall begin operating upon written authorization of NHDOT following execution of this Agreement and the DRB operations and this Agreement shall terminate upon close-out of the Contract.

With the exception of choosing a third member by the first two members, the DRB members shall not begin any work under the terms of this Agreement until authorized in writing by NHDOT.

7. PROCEDURE AND SCHEDULE FOR DISPUTES RESOLUTION

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. As circumstances arise, steps may be omitted as agreed by both parties and the time periods stated below may be shortened to hasten settlement.

A. In accordance with the Section 19 of the Contract, if the Design-Builder objects to a final NHDOT decision regarding a Dispute within the jurisdiction of the DRB, it may request review of the Dispute by the DRB. The Design-Builder shall submit the claim to the DRB, within thirty (30) calendar days of receipt of the final NHDOT decision regarding the Dispute, including documents and all other information the Design-Builder believes necessary to substantiate its Claim. Failure of the Design-Builder to submit the Dispute to the DRB within the time specified above shall be construed as the Design-Builder's acceptance and agreement with NHDOT's decision and waiver of all its rights and obligations to challenge the Dispute.

B. When a Dispute is presented to the DRB, the DRB shall first decide when to conduct the hearing. If the matter is not urgent, the hearing may be scheduled for the time of the next regularly scheduled DRB meeting. For an urgent matter, the DRB shall meet at its earliest convenience.

C. The Design Builder and NHDOT shall each be afforded an opportunity to be heard by the DRB and to offer evidence. The DRB's decisions for settlement of Disputes will be given in writing, to both NHDOT and the Design-Builder, within two weeks of completing the hearings.

D. NHDOT and the Design-Builder shall use their best efforts to settle all disputes prior to utilization of a DRB. The DRB's final recommendation on a Dispute with an amount in controversy less than or equal to $1,000,000 heard by the DRB is binding.

8. CONDUCT OF REGULARLY SCHEDULED MEETINGS

A. Regular scheduled meetings shall be conducted in accordance with Section 19 of the Contract and as provided herein.

B. The field inspection will cover all active segments of the Work. The DRB shall be accompanied by representatives of both NHDOT and Design-Builder unless either party waives its right to attend. **Seeking the DRB members' ex parte advice or consultation or other interference with the operation of the DRB is expressly prohibited and may be cause for termination of the DRB.**

C. During site visits, regular meetings, or hearings, no DRB member shall express any opinion concerning the merit or lack of merit of any portion of a disputed claim.

9. CONDUCT OF HEARINGS

A Each Dispute under the Contract involving $375,000 or less shall be heard by the DRB or, subject to approval of both parties, the third Board Member, acting in their/his/her capacity as arbitrator(s) under the State Arbitration Act and the Regulations, as they may be amended from time to time. NHDOT and Design-Builder shall stipulate that the Board members (or third member, as appropriate) be appointed as such arbitrator(s). The Board (or third member, as appropriate) has jurisdiction to determine whether the requirements of the Contract, the State Arbitration Act and the Regulations have been met. For the convenience of the Board Members, current pertinent provisions of the State Arbitration Act and statutes referenced therein and of the Regulations are attached hereto as Exhibits B and C. If the third member is appointed as the sole arbitrator, he or she shall consult with both of the other Board Members in making his or her decision.

B Each Dispute involving more than $375,000 shall be heard by the Board in accordance with the procedures set forth in Section 19 of the Contract.

C In general, the DRB shall have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures, except for evidentiary rules pertaining to privilege. Each party shall retain the right to discovery as provided in the Contract and to present its witnesses and evidence in its own discretion, within the parameters established by the DRB.

10. PAYMENT

Fees and expenses invoiced by the DRB members shall be paid by the Design-Builder. Payments shall be full compensation for the work performed, services rendered, and for all material, supplies, and incidentals necessary to serve on the DRB but not provided by NHDOT or the Design-Builder. Invoices for payment must be approved by NHDOT and Design-Builder.

A. Payment for Services and Expenses

Payment for the services of members of the DRB will be at the rate set by NHDOT and agreed to by the Design-Builder upon award of the Contract of the attached individual rates of each DRB Member. Changes in the billing rates are subject to agreement between NHDOT and the Design-Builder.

Direct, non-salary expenses will be reimbursed per NHDOT's travel and expense guidelines (attached hereto), which are hereby incorporated by reference into this Three Party Agreement.

B. Payment for Experts

Payments for the services of the DRB's experts shall be at the rates agreed by the DRB and approved by NHDOT and the Design-Builder at the time of the expert's engagement. Changes in the billing rates are subject to the agreement of the DRB responsible for the expert's selection and subject to the approval of NHDOT and the Design-Builder.

C. Invoicing

Each DRB member and experts may submit an invoice to the Design-Builder with a copy to NHDOT for payment for work completed no more than once per month during the progress of work. Such invoices shall be in a format approved by NHDOT and Design-Builder, and accompanied by a general description of activities performed during the billing period. The value of the work accomplished for payment shall be established from the billing rate and hours expended by the DRB member together with direct, non-salary expenses. Design-Builder shall pay the invoices of all DRB members after approval by both parties. Design-Builder will then bill NHDOT for 50% of such invoices, as part of the Design-Builder's monthly invoice for progress payments. Design-Builder shall pay the DRB members within 15 calendar days from receipt of the approved invoices.

D. Inspection and Audit of Cost Record

The DRB members and experts shall permit authorized representatives of NHDOT, Design-Builder or any other government agency to inspect and audit all records and accounts relating to their performance under this Agreement for a period of three years after final payment or final termination of this Agreement.

11. INTERACTION WITH THE MEDIA AND THE PUBLIC

No material or data prepared by the DRB under this Agreement is to be released by the DRB to any other person or agency. The DRB shall not prepare any press releases or information to be published in newspapers, magazines, or electronic media.

12. ASSIGNMENT

The DRB members shall not assign, sublet, transfer or otherwise substitute their interest in this Agreement or their obligations hereunder.

13. TERMINATION OF AGREEMENT

This Agreement may be terminated at any time for convenience by either party to the Contract upon not less than four weeks written notice to the other party.

In the event of termination of this Agreement, the DRB members shall be reimbursed for expenses incurred in accordance with Article 10, up to the effective date of the notice of termination.

14. INTERPRETATION OF AGREEMENT

A. Definitions

Capitalized terms used but not defined herein shall have the meanings set forth in the Contract.

B. Contract Provisions

1. The parties intend for the Contract terms and conditions relating to Claims and Disputes and the other terms of this Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this Agreement and the Contract provisions, the Contract terms and conditions shall control.

2. With respect to Claims and Disputes up to $375,000, the parties intend for this Agreement and the exhibits attached hereto to be complementary with the terms of the Arbitration Act and Regulations. With respect to Disputes up to $375,000, in the event of any conflict between this Agreement and the terms of the Arbitration Act and Regulations, this Agreement shall control to the extent that the requirements of the Arbitration Act and Regulations are waivable; otherwise the Arbitration Act and Regulations shall control.

15. LEGAL RELATIONS

The parties hereto mutually understand and agree that all the DRB members, in the performance of their duties on the DRB, are acting in the capacity of independent contractors and not as employees of NHDOT, or the Design-Builder.

The DRB members shall have no personal or professional liability arising from the services provided under this Agreement.

16. DISPUTES REGARDING THIS THREE PARTY AGREEMENT

Any dispute among the parties hereto arising out of the work or other items of this Agreement shall be submitted for either mediation or arbitration. If the dispute cannot be settled by negotiation and mutual concurrence among the parties, it may be referred to a court of competent jurisdiction of the State of New Hampshire in Riverside County.

17. GOVERNING LAW

This agreement shall be governed by and interpreted in accordance with the laws of the State of New Hampshire.

By entering into this agreement, the DRB members consent and submit to the jurisdiction of the Courts of the State of New Hampshire over any action at law, suit in equity, and/or other proceeding that may arise out of the agreement.

18. ENTIRE AGREEMENT

The Agreement, and any attachments or documents, incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between NHDOT, the Design-Builder and the DRB members and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, either oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DRB MEMBER	**DRB MEMBER**	**DRB MEMBER**
_____	_____	_____
By:_____	By:_____	By:_____

DESIGN BUILDER	**NHDOT**
_____	_____
By:_____	By:_____
Title:	Title:

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

ATTACHMENT 1- CERTIFICATE OF IMPARTIALITY

I _____as a member of the DRB for Contract No.**[_____]** will remain impartial to both NHDOT and the Design-Builder in making my decisions and that I shall adhere to the following code of Code of Ethics:

1. Shall uphold the integrity and fairness of the DRB process;
2. Shall disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias;
3. Shall avoid impropriety or the appearance of impropriety in communicating with NHDOT or the Design-Builder;
4. Shall conduct the proceedings fairly and diligently;
5. Shall make decisions in a just, independent and deliberate manner; and
6. Shall be faithful to the relationship of trust and confidentiality inherent as a member of the DRB.

By attesting to the above _____ day of _____19__, I hereby acknowledge that I have read the copy of the "Code of Conduct for NHDOT contractors and consultants" **[determine NHDOT equivalent]** and the "Code of Ethics for Arbitrators in Commercial Disputes" provided to me and agree to follow the codes.

_____
(Signature)

APPENDIX 11

VECP SAMPLE CALCULATION

The following example concerns a proposal by Design-Builder to acquire additional right of way in lieu of wall construction.

Estimated Net Savings from VECP

Cost of wall		$250,000
Less cost of preparing VECP	(10,000)	
Less costs of implementing proposal		
Design-Builder's expenses	15,000	
NHDOT's cost of personnel	10,000	
NHDOT's cost of property	150,000	
Subtotal		(175,000)
Total estimated net savings from VECP		$65,000 [greater than $50,000]

Contract Adjustment

NHDOT's total cost	$160,000
Plus NHDOT's share of VECP savings	32,500

Total Reduction in Contract Price $192,500

APPENDIX 12

DESIGNATION OF INITIAL AUTHORIZED REPRESENTATIVES

NHDOT Representatives:

- _____
- **Additional representatives designated in writing by _____ for specific matters**

Design-Builder Representative:

- [*to be designated in executed Contract*]

APPENDIX 13

DESIGN-BUILDER'S PROPOSAL SCHEMATIC, COMMITMENTS AND CLARIFICATIONS

[To be completed after Proposal is received]

The following pages summarize certain commitments made by Design-Builder in its Proposal submitted for the Project, which Design-Builder agrees either meet or exceed the requirements of the other Contract Documents. The commitments set forth herein are included in the scope of the Work. This summary is an overview of certain Design-Builder commitments and is not intended to be an exhaustive list of commitments made in the Proposal that meet or exceed the requirements of the other Contract Documents. In accordance with Section 1.3, the Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents, shall be included as a Contract Document, even if a particular Design-Builder commitment is not summarized herein. Nothing contained herein shall limit, modify, eliminate or reduce the requirements of the other Contract Documents listed in Section 1.3.

Proposal Commitments & Clarifications

Design Concepts	
1	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
2	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
3	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
4	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
Environmental / Community Concerns	
1	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
2	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____

3	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
4	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
5	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
6	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____
7	**REFERENCE:** TP _____ **Design-Builder's Proposal Commitment**: _____ _____ _____ _____ **Clarification:** _____

APPENDIX 14

FEDERAL REQUIREMENTS

[NOTE: THIS APPENDIX WILL BE REVISED]

Exhibit Description	No. of Pages
Attachment 1 – Summary of Federal Requirements for Federal-Aid Construction Projects	3
Attachment 2 – FHWA Form 1273	25
Attachment 3 – Federal Wage Rate	14
Attachment 4 – Disadvantaged Business Enterprise (DBE)	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Debarment and Suspension Certification	2
Attachment 7 – Lobbying Certification	3
Attachment 8 – Compliance with Buy America Requirements	2

ATTACHMENT 1 TO APPENDIX 14
SUMMARY OF REQUIREMENTS FOR FEDERAL-AID PROJECTS

1. Subletting On Federal-aid Contracts.

a. On Federal-Aid projects, the following documents are required to be incorporated in and made a part of every subcontract agreement (including lower-tier subcontract agreements):

- NH DOT Policy on Subcontracting
- Required Contract Provisions (FHWA-1273)
- Disadvantaged Business Enterprise (DBE) Policy (SPECIAL ATTENTION item)
- DBE Program Requirements (Standard Spec 103.06)
- *41 CFR 60-4.2 – Solicitations
  *41 CFR 60-4.3 – Equal Opportunity Clauses
- Payroll/Wage Requirements Summary
- **U.S. Department of Labor wage rates entitled "GENERAL WAGE DECISION" (as contained in the contract)

  *Applicable only to contracts or subcontracts in excess of $10,000
  **Does not apply to Material Suppliers, unless performing work on site

b. Contractors shall not be approved/authorized to work until the Department's Annual Assurances requirements have been fulfilled.

c. In accordance with Form FHWA 1273, Required Contract Provisions, Section I, Paragraph 2, the Prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor. This shall include any unpaid wages found to be owed that is not paid by a subcontractor or lower-tier subcontractor.

d. Municipally Managed Projects Only: NH DOT Office of Federal Compliance is the sole approval authority for all Municipally managed construction projects. Consents to sublet shall be submitted directly to the Office of Federal Compliance.

2. **FHWA Form 1273, Required Contract Provisions**. The Department will furnish copies of the Required Contract Provisions, notices, report forms, Acknowledgment Certification and Transmittal Requests for subcontractor approval to the apparent low bidder following bid openings.

3. **OFC Form 1, Monthly Employment Utilization Report**. Contractors performing $10,000 or more work on Federal-aid construction projects are required to submit a completed Monthly Employment Utilization Report, OFC Form 1, on a monthly basis. Reports will be sent directly to the NHDOT Office of Federal Compliance no later than the 15th of each month for any such month work is performed. When the 15th falls on a weekend or a holiday, the completed report is due no later than the next business day. Prime Contractors are responsible for the collection and submission of monthly utilization reports for all subcontractors and lower-tier subcontractors.

4. **Temporary Suspensions**.

   a. Any Contractor, Subcontractor, or Lower-tier Subcontractor found to be in violation of FHWA Form 1273, Required Contract Provisions, made part of its contract, or has failed to comply with OFC Field Audit requirements, shall be required to take corrective action before participating in future projects funded by the Department. Corrective action shall include, but is not limited to, the submission of certified payrolls or other records and reports necessary to verify compliance with the Provisions.

   b. Any Contractor, Subcontractor or Lower-tier Subcontractor found to have repeatedly violated the FHWA Form 1273, Required Contract Provisions, may be required to complete 4-hours of Federal Contract Compliance Training conducted by the NH DOT Office of Federal Compliance. When mandated, a principal owner and/or company executive and his/her payroll accountant shall attend. Federal Contract Compliance Training must be completed before participation on future projects is authorized. This requirement does not relieve the Contractor of its obligations under the prime contract, nor does it prevent the Department from seeking other remedies or enforcement action, as provided by the governing Rules, Laws, and Federal Regulations.

   c. Companies are notified of suspensions in writing. Actions the company must take to have participation privileges restored will be clearly indicated. Companies will also be advised that if a satisfactory response is not received within 30 days of receipt of the suspension notice, the company will be considered "non-responsive." In cases where companies are non-responsive, and unpaid wages on the part of the subcontractor or lower-tier subcontractor are involved, the matter will then be deferred to the Prime Contractor for payment of wages as provided in Form FHWA 1273, Required Contract Provisions, Section I, Paragraph 2.

5. **Right To Withhold Payments**. The Department may withhold payments claimed by the Contractor on account of:

   a. Failure of the Contractor to make payments to Subcontractors for materials or labor.

   b. Regulatory non-compliance or enforcement.

   c. Failure to comply with NH DOT Office of Federal Compliance Field Audit Report requirements.

   d. Failure to comply with monthly reporting requirements, as applicable.

   e. For projects with an OJT requirement, failure to submit OJT 1, On-The-Job Training Acknowledgement and Statement of Intent within 30 days of the project start date.

   f. Failure to submit closeout documentation.

   g. All other causes that the Department reasonably determines negatively affect the State's interest.

6. **Final Payment Release**. Once final project records are transferred to the NH DOT Office of Federal Compliance, a final review shall be performed to determine compliance with the Federal provisions. Release of any final payment shall not be made to the Contractor until the Office of Federal Compliance issues a payment release letter (ok to pay) certifying:

   a. All required payrolls, labor, and EEO documentation have been received and deemed complete and correct.

   b. DBE requirements stipulated in the Contract and/or the Required Contract Provisions have been fulfilled.

7. **Deposits and Escrows**: Every attempt is made to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, however, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, the project can proceed to final closing provided the Prime Contractor, from payments already provided him/her, provides written evidence a deposit of an amount equal to the potential liability for wage restitution and liquidated damages, if applicable, has been deposited in a *escrow account*. When a final decision is rendered, the Prime Contractor makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

   a) Where the parties have agreed to amounts of wage restitution that are due but the employer has not yet furnished evidence that all the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers lacking payment evidence. As proper documentation is received, an amount corresponding to the documentation is returned to the depositor. Amounts for any workers who cannot be located are held in the escrow account for three (3) years. Amounts remaining in the account not disbursed by the end of this three-year period shall be returned to the Prime Contractor.

   b) Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained for a period of three (3) years and subsequently disbursed to the depositor as described above in Paragraph 7a.

   c) Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated dates, if applicable, that have been determined to be due. Once the final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Direct questions relating to any of the information above to the NH DOT Office of Federal Compliance (603-271-6752).

ATTACHMENT 2 TO APPENDIX 14

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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I.	General	1
II.	Nondiscrimination	1
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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. 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.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

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 and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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 State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his 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, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO 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 minority group employees.

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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group 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 takecorrective 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 his 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 his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best 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 SHA 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 minority and women referrals within thetime 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 minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.

8. **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.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.

b. 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.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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. Said 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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. Apprentices:

(1) 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level ofprogress, expressed as a percentage of the journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) 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 DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wagedetermination for the classification of work actually performed.

5. **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.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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 SHA contracting officer 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.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such 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 the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. 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 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).

a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.

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 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 VII 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 SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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 provideall safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA 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. 333).

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. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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, the following notice 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:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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 andsupplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary 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 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 primary 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 department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowinglyrendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary 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," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary 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 primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. 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.

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.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement 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;

c. 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 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary 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 Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

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," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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 Covered Transactions:

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 participation in this transaction 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.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(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 his or her bid or proposal that he or she 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.

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ATTACHMENT 3 TO APPENDIX 14

WAGE RATES

FEDERAL AID PROJECTS

This proposal contains minimum wage determinations as specified by the U.S. Secretary of Labor. Copies of the attached wage determination(s) shall be posted on the bulletin board at the work site and furnished to employees upon request. Furthermore, the wage determination(s) shall be incorporated into all subcontract agreements.

If the Contractor, any subcontractor or lower-tier contractor intends to employ a classification of labor not listed in the attached determination(s), it shall submit a Request for Additional Work Classification(s) to the New Hampshire Department of Transportation, Office of Federal Compliance at (603) 271-6795. The Contractor is responsible for ensuring that a Request is submitted for any additional classification of work to be employed by itself, any subcontractor or lower-tier contractor 5-6 weeks before the classification is utilized.

This contract is subject to the Work Hours Act of 1962, P.L. 87-581 and implementing regulations.

The prevailing wage rates for the Work through Final Acceptance shall be those set forth under the general wage decision for highway and heavy construction projects in New Hampshire and Maine as published by the Davis-Bacon wage determination. The Davis-Bacon General Decision County Index for New Hampshire and Maine Counties are included herein.

General Decision Number: NH100059 08/26/2011 NH59

State: New Hampshire

Construction Type: Highway

County: Rockingham County in New Hampshire.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Modification Number	Publication Date
0	08/26/2011

SUNH2011-029 08/15/2011

	Rates	Fringes
CARPENTER (Form Work Only)	$ 20.71	1.06
CARPENTER	$ 24.62	1.06
ELECTRICIAN	$ 23.22	2.78
INSTALLER - GUARDRAIL	$ 24.81	14.16
IRONWORKER, REINFORCING	$ 18.00	0.00
IRONWORKER, STRUCTURAL	$ 34.45	17.20
LABORER: BLASTER, ROCK	$ 28.38	9.46
LABORER: Common or General	$ 17.15	2.60
LABORER: Flagger	$ 10.42	1.37
LABORER: Highway/Parking Lot Striping	$ 16.77	0.00
LABORER: Landscape	$ 14.65	0.00
LABORER: Pipelayer	$ 18.29	4.33
OPERATOR: Auger	$ 26.07	0.00
OPERATOR: Backhoe	$ 27.72	4.17
OPERATOR: Bobcat/Skid Loader	$ 19.25	0.00
OPERATOR: Bucket	$ 30.00	0.00

OPERATOR: Bulldozer.....$ 24.52 7.95

OPERATOR: Crane.....$ 23.99 3.05

OPERATOR: Drill Rig Caissons....$ 36.86 19.78

OPERATOR: Excavator.....$ 25.18 6.04

OPERATOR: Grader/Blade.....$ 24.39 7.62

OPERATOR: Loader.....$ 24.94 6.23

OPERATOR: Mechanic.....$ 16.92 3.44

OPERATOR: Oiler.....$ 29.54 16.15

OPERATOR: Paver.....$ 23.43 0.00

OPERATOR: Roller.....$ 21.82 4.32

OPERATOR: Post Driver/Pounder....$ 30.32 10.42

TRUCK DRIVER: Low Bed Truck.....$ 21.43 6.30

TRUCK DRIVER: Dump Trucks/All
Axles.....$ 17.43 3.02

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Unlisted classifications needed for work not included within
the scope of the
classifications listed may be added after award only as
provided in the labor
standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates
listed under the
identifier do not reflect collectively bargained wage and
fringe benefit
rates. Other designations indicate unions whose rates have
been determined
to be prevailing.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).
Write to:

Wage and Hour Administrator
U.S. Department of Labor
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Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor

considers
relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested
party may appeal directly to the Administrative Review Board (formerly the
Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

GENERAL DECISION: NH20100042 03/25/2011 NH42

Date: March 25, 2011
General Decision Number: NH20100042 03/25/2011

State: New Hampshire

Construction Type: Heavy

County: Rockingham County in New Hampshire.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	03/25/2011

ELEC0490-003 01/01/2010

	Rates	Fringes
ELECTRICIAN	$ 26.75	3%+14.45

SUNH2011-012 02/22/2011

	Rates	Fringes
LABORER: Common or General	$ 17.24	1.54
LABORER: Landscape	$ 15.23	1.81
OPERATOR: Excavator	$ 25.03	5.35
OPERATOR: Loader	$ 24.31	5.69
TRUCK DRIVER	$ 18.17	3.24

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the

identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

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Wage and Hour Administrator
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

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Washington, DC 20210

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END OF GENERAL DECISION

GENERAL DECISION: ME20100009 09/03/2010 ME9

Date: September 3, 2010
General Decision Number: ME20100009 09/03/2010

Superseded General Decision Number: ME20080009

State: **Maine**

Construction Type: **Highway**

Counties: Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Waldo and York Counties in Maine.

HIGHWAY CONSTRUCTION PROJECTS excluding major bridging (for example: bascule, suspension and spandrel arch bridges; those bridging waters presently navigating or to be navigatable; and those involving marine construction in any degree); tunnels, building structures in rest area projects and railroad construction.

Modification Number	Publication Date
0	03/12/2010
1	03/26/2010
2	05/14/2010
3	09/03/2010

* ENGI0004-015 04/01/2010

	Rates	Fringes
Power equipment operators:		
Asphalt Roller	$ 19.43	9.06
Pavers	$ 19.43	9.06

SUME2000-008 10/24/2000

	Rates	Fringes
CARPENTER	$ 11.60	1.51
Ironworkers:		
Structural	$ 12.03	1.58
Laborers:		
Drillers	$ 10.00	2.50
Flaggers	$ 7.25	
Guardrail Installers	$ 7.92	
Landscape	$ 7.87	.16
Line Stripper	$ 8.69	.23
Pipelayers	$ 9.21	2.31
Rakers	$ 9.00	1.51
Sign Erectors	$ 10.00	
Unskilled	$ 8.66	1.38

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     Wheelman....................$  8.50              .43

Power equipment operators:
     Backhoes....................$ 11.87             2.05
     Bulldozers..................$ 12.33             2.88
     Cranes......................$ 14.06             1.75
     Excavators..................$ 12.38             2.48
     Graders.....................$ 13.06             3.73
     Loaders.....................$ 11.41             2.87
     Mechanics...................$ 13.18             2.57

Truck drivers:
     Dump........................$  9.35             3.10
     Tri axle....................$  8.70             1.18
     Two axle....................$  8.56             2.19
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WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
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Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates
listed under the identifier do not reflect collectively
bargained wage and fringe benefit rates.  Other designations
indicate unions whose rates have been determined to be
prevailing.

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            WAGE DETERMINATION APPEALS PROCESS

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be:

*  an existing published wage determination
*  a survey underlying a wage determination
*  a Wage and Hour Division letter setting forth a position on
   a wage determination matter
*  a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests
for summaries of surveys, should be with the Wage and Hour
Regional Office for the area in which the survey was conducted
because those Regional Offices have responsibility for the
Davis-Bacon survey program. If the response from this initial
contact is not satisfactory, then the process described in 2.)
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With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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END OF GENERAL DECISION

General Decision Number: ME100032 08/26/2011 ME32

State: Maine

Construction Type: Heavy

County: York County in Maine.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	04/08/2011
1	06/17/2011
2	08/26/2011

ELEC0490-007 09/01/2009

	Rates	Fringes
ELECTRICIAN (Including Industrial Work and Treatment Plants)	$ 24.90	12.40

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* ENGI0004-016 06/01/2011

	Rates	Fringes
OPERATOR: Excavator (Excluding Water and Sewer Lines)	$ 25.23	22.82

LABO0327-008 06/01/2010

	Rates	Fringes
LABORER, GENERAL OR COMMON (INDUSTRIAL WORK ONLY)	$ 19.38	15.50

SUME2011-016 03/16/2011

	Rates	Fringes
CARPENTER, Includes Form Work	$ 18.42	6.89
CEMENT MASON/CONCRETE FINISHER	$ 17.29	2.51
IRONWORKER, Reinforcing	$ 20.00	0.00
LABORER: Asphalt Raker	$ 16.32	3.06
LABORER: Common or General, Including Pipelaying	$ 14.49	3.91

LABORER: Landscape.....$ 15.00 0.58

LABORER: Flagger.....$ 12.00 0.00

LABORER: Wheelman.....$ 18.74 2.86

OPERATOR: Asphalt Paver.....$ 18.06 0.00

OPERATOR: Asphalt Roller.....$ 18.54 4.49

OPERATOR: Backhoe.....$ 22.22 6.48

OPERATOR: Bulldozer.....$ 19.12 5.19

OPERATOR: Crane.....$ 22.60 9.29

OPERATOR: Drill.....$ 17.67 0.71

OPERATOR: Excavator (Water &
Sewer Lines Only).....$ 19.01 0.00

OPERATOR: Loader.....$ 17.45 0.00

OPERATOR: Mechanic.....$ 24.35 6.66

OPERATOR: Roller.....$ 17.76 8.47

TRUCK DRIVER: Low Bed Truck.....$ 16.69 2.91

TRUCK DRIVER.....$ 14.41 2.86

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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WAGE DETERMINATION APPEALS PROCESS

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* a survey underlying a wage determination
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* a conformance (additional classification and rate) ruling

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With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction
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Washington, DC 20210

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END OF GENERAL DECISION

ATTACHMENT 4 TO APPENDIX 14

Disadvantaged Business Enterprise Policy

THIS PROJECT WILL REQUIRE A SPECIFIC DBE CONTRACT GOAL OF 4%.

Disadvantaged Business Enterprise Policy. It shall be the policy of the New Hampshire Department of Transportation (NHDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. Policy. It is the policy of the United States Department of Transportation to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 Code of Federal Regulation (CFR) Part 26, to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 applies to this contract.

2. Disadvantaged Business Enterprise (DBE) Obligation. The State and its Contractors agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Each subcontract the prime contractor signs with a subcontractor must include this assurance: *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-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 NHDOT deems appropriate.*

3. Sanctions of Non-Compliance. The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and, after notification of the United States Department of Transportation, may result in termination of this contract or such remedy as the State deems appropriate.

Disadvantaged Business Enterprise (DBE) Program Goals. The New Hampshire Department of Transportation is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBE's who submitted bids for transportation related projects, compared as a percentage of all available contractors who submitted bids for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the NHDOT website at www.nh.gov/dot.

The NHDOT currently utilizes a race/gender neutral policy to fulfill its overall DBE goals, and relies on the voluntary participation of contractors to utilize certified DBE's on every project sufficient to obtain the Departments overall DBE goal. In order for this practice to continue, contractors must be proactive and solicit bids and quotes from certified DBE's for use when submitting their own bids, and employ

certified DBE's when participating on transportation related projects. Otherwise, the Department may have to implement specified contract goals on all projects to ensure the overall DBE goals are met. The Department may include specific DBE contract goals in certain cases to ensure DBE participation, if failure to obtain the project DBE goal would negatively impact the Departments overall DBE goal because of the size of the contract.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purpose of this definition:

(1) "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.

(2) "Owned and controlled" means a business which is:
   (a) A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
   (b) A partnership, joint venture or limited liability Company in which at least 51% of the beneficial ownership interests legitimately is held by a disadvantaged person(s).
   (c) A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with the percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real economic interest and must include proportionate control over management, capital, and earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of this program, a firm is considered a bona fide DBE. A current listing of certified DBEs that may wish to participate in the highway construction program and the scope of work for which they are certified may be viewed at http://www.nh.gov/dot/business/contractors.htm

Certified DBE Directory. The current New Hampshire Unified Disadvantaged Business Enterprise (DBE) Directory is available online at www.nh.gov/dot/business/contractors.htm. This directory contains all currently certified DBE's available for work in New Hampshire, and is updated monthly. Only firm's listed in this directory are eligible for DBE credit on NH Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the DBE Coordinator at (603) 271-6612 for assistance.

Counting DBE Participation Towards Project Goals. In order for DBE contractor payments to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own work force;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's, or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart form that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold a Public Works license and any other professional or craft licenses required for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project.

Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments to a certified DBE that satisfies (CUF) requirements at the following rate.

A. A DBE Prime Contractor; count 100% of the value of work performed by own forces, equipment and materials count towards DBE goals.
B. An approved DBE subcontractor; count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
    - The cost of materials/supplies purchased from the Prime Contractor.
    - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
C. A DBE owner-operator of construction equipment; count 100% of expenditures committed.
D. A DBE manufacturer; count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
E. A regular DBE dealer/supplier; count 60% of expenditures committed.
   A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business, if the person both owns and operates distribution equipment for the products, by the means of a long term agreement, and not by a contract by contract basis.
F. A DBE Broker; count for DBE credit only the fees or commissions charged for assistance in the procurement, or, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured.
   A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies

at their place of business for resale.

G. A DBE renter of construction equipment to a contractor; count 20% of expenditures committed, with or without operator.
H. A bona fide DBE service provider; count 100% of reasonable fees or commissions.
Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract.
Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.
I. A trucking, hauling or delivery operation, count 100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
I. Any combination of the above.

Prompt payment to subcontractors. Standard Specifications for Road and Bridge Construction, Section 109.09, Payments to Subcontractors:

"Within 21 days of the issuance of progress payments, the Contractor shall pay, in full, all subcontractors and suppliers for the value of satisfactorily completed work and materials placed under the contract and for materials in accordance with 109.09 or 109.08 paid for in the progress payments. If the Contractor withholds any portion of payment from a subcontractor, the Contractor shall, within the same timeframe, demonstrate to and obtain acknowledgement from the NHDOT Compliance Review Officer that the Contractor has reasonable cause that the subcontractor failed to satisfactorily complete work, or portions thereof; or that the supplier failed to provide materials as specified above. When the Contractor is found in noncompliance with this specification, sanctions will be imposed as determined by the Department.

For the purposes of this Section, satisfactorily completed means:
The subcontractor has fulfilled the Contract requirements including the submission of all documentation required by the Specifications and the Contract."

Reporting Requirements for Payments Made To DBE's: On all Federal-aid projects, the Prime Contractor is required to report payments made to DBE's during the life of the contract, on a quarterly basis, for the periods covering January 1st–March 31st, April 1st-June 30th, July 1st-September 30th and October 1st-December 31st, The NHDOT will provide the Contractor with a quarterly DBE payments report, detailing all DBE's subcontracted by the Contractor, per project. The Contractor shall report any payments made to DBE's during the requested reporting period. This documentation shall be submitted to the Office of Federal Compliance within the time period stated on the NHDOT quarterly request. Failure of the Contractor to submit this information may result in the Department withholding progress payments.

Removal of Approved DBE From Transportation Related Project: Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the NHDOT.

On Federal-aid projects which specify a DBE contract goal in the Information Report, Bidders during the bidding stage and the low Bidder after the opening of the bids, shall make every reasonable good faith effort to use certified disadvantaged business enterprises for work

to be performed under the proposed Contract. In addition, the following is also required on Federal-aid projects, which specify a DBE contract goal.

Within 3 working days after the bid opening date, the low Bidder shall file with the NHDOT Office of Federal Compliance, a Disadvantaged Business Enterprise (DBE) Commitment Form provided by the Department. This form will list the DBE firms that will be used during the execution of the Work. The name and address of the firm, the item numbers and description of work to be completed or materials supplied, and the estimated dollar value of DBE participation. The estimated dollar value of each DBE commitment shall be totaled and a percentage determined. In addition to the commitment form, letters of intent signed by principals of the low bidder and each DBE firm listed, shall be submitted prior to Department approval of the DBE commitment.

If the low bidder cannot provide the list and accepted letters of intent showing DBE participation in the Work, within the above time frame, the Contractor may request additional time through the Department's DBE Coordinator to comply or to provide written documentation of efforts to obtain participation. Acceptable documentation showing all good faith efforts made to obtain participation may be reason to waive the goal requirement of the project.

Failure to provide the required listing with the dollar participation total or acceptable documentation of good faith efforts to obtain DBE participation within 3 working days after the bid opening date, or by another deadline established by the DBE Coordinator will be considered a lack of responsiveness on the part of the low bidder.

The submission and approval of the above forms does not constitute a formal subcontract. If for any reason during the progress of the Work the Contractor finds that DBEs included on the list are unable to perform the proposed work, the Contractor, with written approval from the Department, may substitute other DBE firms for those named on the list. If the Contractor is able to clearly document his inability to find qualified substitute firms to meet the project goal, the Contractor may request in writing a waiver of that goal.

If at any time during the life of the Contract it is determined that the Contractor is not fulfilling the goal or commitment(s) and is not making a good faith effort to fulfill the DBE requirement, the Department may withhold progress payments. Failure of the Contractor to meet the project goal or the specified DBE commitment(s), whichever is the lowest, will result in a reduction in Contract payment by an amount equal to the difference between the actual Contract dollars multiplied by the applicable commitment percentage and the dollar value of the work actually performed by the DBEs. If the Contractor's failure to meet the DBE goal or commitment(s) in the Contract is the result of circumstances clearly documented to be beyond the control of the Contractor, a written request for waiver of the goal or commitment(s) must be received. The Office of Federal Compliance may waive, in whole or part, the reduction in contract payments specified herein. Fulfillment of the goal percentage shall be determined by dividing the dollars committed to the DBEs by the actual contract dollars.

ATTACHMENT 5 TO APPENDIX 14

AFFIRMATIVE ACTION

In accordance with the section "NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)", the New Hampshire Department of Transportation has the authority and responsibility to notify the Office of Federal Contract Compliance Programs of the United States Department of Labor if they become aware of any possible violations of Executive Order 11246 and 41 Code of Federal Regulation Chapter 60.

The Office of Federal Contract Compliance Programs is the sole authority for determining compliance with Executive Order 11246 and 41 Code of Federal Regulation Chapter 60 and the Contractor should contact them regarding related compliance issues.

Source 41 CFR 60-4 Affirmative Action Requirements

Source: 41 CFR 60-4.2 Solicitations

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

	Goals for minority participation for each trade	Goals for female participation in each trade
STANDARD METROPOLITAN STATISTICAL AREAS (SMSA)		
SALEM-PLAISTOW:	4.0	6.9
MANCHESTER-NASHUA	0.7	6.9
NON-SMSA COUNTIES		
COOS, GRAFTON, SULLIVAN:	0.8	6.9
BELKNAP, MERRIMACK, CARROLL, STRAFFORD:	3.6	6.9
CHESHIRE:	5.9	6.9
ROCKINGHAM:	4.0	6.9
HILLSBOROUGH:	0.7	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation addressed as follows:

Director
Federal Contract Compliance Program
US Department of Labor
JFK Building, Room 1612-C
Boston, MA 02203

The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed **as noted within the Contract Special Provisions** for Affirmative Action to ensure Equal Employment Opportunity..

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Source 41 CFR 60-4 Affirmative Action Requirements

Source 41 CFR 60-4.3 Equal Opportunity Clauses

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

[1]. As used in these specifications:

a. ``Covered area'' means the geographical area described in the solicitation from which this contract resulted;

b. ``Director'' means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. ``Employer identification number'' means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. ``Minority'' includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

[2]. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

[3]. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

[4]. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

[5] Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

[6]. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

[7]. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have

Source 41 CFR 60-4 Affirmative Action Requirements

employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals
and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take

Source 41 CFR 60-4 Affirmative Action Requirements

affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45
FR 65978, Oct. 3, 1980]

ATTACHMENT 6 TO APPENDIX 14

CONTRACT AFFIDAVIT - CERTIFICATION REGARDING DEBARMENT SUSPENSION

The separate form entitled, CONTRACT AFFIDAVIT (As Required by Section 112(c) of Title 23 USC) has been deleted from this proposal.

Bidders are advised that the last page of the bidding proposal has been revised to include the same reference, **IN BOLD PRINT**, relative to the non-collusion statement included on the discontinued form.

The Contractor is advised that 49 CFR 29.510, Appendix A, requires that the Contractor, including all principals, certify that they are not currently under debarment or suspension or have not been under debarment or suspension within the past three years. (For certification instructions see next page).

The certification has been added, **IN BOLD PRINT,** onto the next to the last page of the bidding proposal.

The Contractor is further advised that Appendix B of 49 CFR 29.510 regarding certification of lower tier transactions has been added to Form FHWA-1273.

Appendix A - Certification regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions.

Instruction for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal,"

"proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary 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.

7. The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. 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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 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.

ATTACHMENT 7 APPENDIX 14

LOBBYING

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SUBJECT: LIMITATION ON USE OF GRANT OR CONTRACT FUNDS FOR LOBBYING

The lobbying restrictions were established by Section 319 of Public Law 101-121 (Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990).

The law prohibits Federal funds from being expended by the recipient or any lower tier subrecipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement. The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement is also covered.

Federal-aid contractors, and consultants, as well as lower tier subcontractors and subconsultants are also subject to the lobbying prohibition. To assure compliance, a certification provision is included in all Federal-aid construction solicitations and contracts, and consultant agreements exceeding $100,000 in Federal funds.

The Contractor shall be aware that by signing and submitting this proposal, he or she is attesting to the requirements of the certification provisions.

During the period of performance of a grant or contract, recipients and subrecipients must file disclosure form (Standard Form LLL) at the end of each calendar year quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any previously filed disclosure form.

Lower tier certifications should be maintained by the next tier above (i.e., prime contractors will keep the subcontractors' certification on file, etc.). Copies of Standard Form LLL will be included in the subcontract package for distribution to successful bidders.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*: 4c	**5. If Reporting Entity in No. 4 is a 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 Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which 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 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: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

PRINT

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 a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any 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. 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 followup 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 1st 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 organizationallevel 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 identified 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 commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 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 (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, 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, DC 20503.

ATTACHMENT 8 TO APPENDIX 14

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

In accordance with the **BUY AMERICA** requirements of the Federal regulations, all manufacturing processes for steel and iron materials furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.

Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail and steel supports for signs, signals and luminaires. Products of iron include, but are not limited to, such products as cast iron frames and grates. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.

A Certificate of Compliance, conforming to the requirements of Section 106.04, shall be furnished for steel and iron materials. Records to be maintained by the contractor for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Special Attention. The lack of these certifications will be justification for rejection of the steel or iron product.

The requirements of said law and regulations do not prevent a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or $2,500.00, whichever is greater.

Upon completion of the project, the Contractor shall certify in writing as to compliance with this Special Attention and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the project. The form for this certification is entitled “Buy America Certificate of Compliance” and can be found at www.NHDOT.com.

STATE OF NEW HAMPSHIRE

DEPARTMENT OF TRANSPORTATION
BUY AMERICA
CERTIFICATE OF COMPLIANCE

Date _____, 20____

WE,
_____
(Prime Contractor)

Address:
_____

Hereby certify that we are in compliance with the "Buy America" requirements of this project.

_____	_____	_____
Project Name	Federal No.	State No.

As required, we will maintain all records and documents pertinent to the Buy America requirement, at the address given above, for not less than 3 years from the date of project completion and acceptance. These files will be available for inspection and verification by the Department and/or FHWA.

We further certify that the total value of foreign steel as described in the Buy America requirements for this project is $_____, said value being less than 0.1% of the total contract price or $2,500.00, whichever is greater.

.

Signed by _____ Title _____

(Officer of Organization)
Subscribed and sworn to before me this _____ day of _____, _____.

_____ My Commission Expires: _____
Notary Public/Justice of the Peace