PUBLIC-PRIVATE AGREEMENT

I-69 MAJOR MOVES 2020 EXPANSION PROJECT

BETWEEN

Indiana Finance Authority

and

[Design-Build Contractor Name]

Dated as of Month XX, 2016

PUBLIC-PRIVATE AGREEMENT
I-69 Major Moves 2020 Expansion Project

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PUBLIC-PRIVATE AGREEMENT

I-69 Major Moves 2020 Expansion Project

This public-private agreement ("PPA") is entered into and effective as of **[**_____, 2016**]** by and between the Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana ("IFA") and ***[insert name of Design-Build Contractor]***, a ***[insert type of entity]*** ("Design-Build Contractor"), with reference to the definitions contained in Exhibit 1 hereto and the following facts:

A. The State of Indiana (the "State") desires to facilitate private sector investment and participation in the development of the Project via a public-private agreement, and has enacted Indiana Code 8-15.5, as amended (the "Act"), to accomplish that purpose.

B. The Act grants IFA the authority to enter into agreements with private entities to design, build, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Act, IFA issued a Request for Qualifications on March 20, 2015, as amended.

D. IFA received four (4) responsive statement of qualification submittals on or before April 20, 2015, and subsequently qualified four (4) responsive proposers.

E. On June 26, 2015, IFA issued to the qualified proposers a Request for Proposals to Design and Build the I-69 Major Moves 2020 Expansion Project through a Public-Private Agreement (as amended, the "RFP").

F. On September 21, 2015 IFA received responses to the RFP, including the response of Design-Build Contractor (the "Proposal").

G. A RFP evaluation committee determined that Design-Build Contractor was the proposer which best met the selection criteria contained in the RFP and that its Proposal was the one which provided the best value to the State.

H. On MONTH XX, 20XX, IFA on the recommendation of the Public Finance Director of the State of Indiana (the "Public Finance Director") and the RFP evaluation committee determined that the Design-Build Contractor should be designated as the Design-Build Contractor hereunder and authorized IFA staff to negotiate, execute and deliver this Agreement.

I. On MONTH XX, 20XX, Design-Build Contractor's governing body authorized Design-Build Contractor to negotiate, execute and deliver this Agreement.

J. As required by the Act, IFA held a public hearing on the preliminary selection of Design-Build Contractor and the Proposal and has received approval of such selection by the Governor of the State of Indiana and the review of such selection

by the State Budget Committee. On MONTH XX, 20XX, the Governor of the State of Indiana designated the Design-Build Contractor as the Design-Build Contractor hereunder and notice thereof was published on MONTH XX, 20XX, in accordance with the Act.

K. This Agreement and the other PPA Documents collectively constitute a public-private agreement as contemplated under the Act, and are entered into in accordance with the provisions of the RFP.

L. The Public Finance Director has been authorized to enter into this Agreement and the other PPA Documents pursuant to the Act, and IFA Resolution Nos. _____.

M. The Act authorizes IFA to provide that the Indiana Department of Transportation ("INDOT") or any other agency of the State may perform any duties or exercise powers of IFA under the Act or the public-private agreement. IFA has entered into a memorandum of understanding with INDOT ("IFA MOU") to perform certain of the duties and exercise certain of the powers of IFA under the Act and this Agreement.

NOW, THEREFORE, in consideration of the sums to be paid by IFA to Design-Build Contractor, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

SECTION 1. COMPONENTS; INTERPRETATION OF PPA DOCUMENTS

1.1 Certain Definitions

Exhibit 1 hereto contains the meaning of various terms used in the PPA Documents.

1.2 PPA Documents

The term "PPA Documents" shall mean the documents listed in Section 1.3.

1.3 Order of Precedence

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

(a) For design and other non-construction Work:

1. Change Orders and PPA amendments;

2. This PPA, including all appendices;

3. Technical Provisions including all attachments to the Technical Provisions, except that Project Standards listed in Section 3.3 of the Technical Provisions have a lower order of precedence as noted below;

4. Recurring Special Provisions;

5. Standard Specifications;

6. Standard Drawings;

7. Design-Build Contractor's Proposal Commitments (as set forth in Exhibit 7); and

8. Design-Build Contractor's Proposal (other than the Proposal Commitments set forth in Exhibit 7), to the extent compliant with the PPA Documents and excluding any qualifications, assumptions, conditions and disclaimers therein.

(b) For construction-related standards, specifications and requirements, the same order of precedence shall apply, except that the Released for Construction Documents shall also be considered PPA Documents and shall be added following the Proposal Commitments in the order of precedence; provided, however, that (i) specifications contained therein shall have precedence over plans, (ii) no conflict shall be deemed to exist between the Released for Construction Documents and the other PPA Documents with respect to requirements of the Released for Construction Documents that IFA determines are more beneficial than the requirements of the other PPA Documents; and (iii) any other Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other PPA Documents only to the extent that the conflicts are specifically identified to IFA by Design-Build Contractor and such Deviations are approved in writing by IFA.

1.3.2 Notwithstanding the order of precedence among PPA Documents set forth in Section 1.3.1, in the event and to the extent that Exhibit 7 expressly specifies that it is intended to supersede specific provisions of the PPA Documents, Exhibit 7 shall control over the specified provisions. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the PPA Documents or to perform services in addition to those otherwise required, or otherwise contains statements, offers, terms, concepts, or designs which IFA considers to be more advantageous than the requirements of the other PPA Documents, Design-Build Contractor's obligations hereunder shall include compliance with all such statements, offers, terms, concepts or designs which shall have the priority of PPA amendments and Technical Provision amendments, as applicable. The commitments set forth in Exhibit 7 hereto and Design-Build Contractor's Proposal, as described in Section 1.3.1, shall be considered part of this PPA.

1.3.3 Portions of the Reference Plans and other Reference Information Documents are referenced in the PPA Documents for the purpose of defining requirements of the PPA Documents. The Reference Information Documents shall be deemed incorporated in the PPA Documents only to the extent that they are so

expressly referenced, with the referenced aspects having the same order of priority as the PPA Document in which the reference occurs.

1.3.4 Additional details and more stringent requirements contained in a lower priority PPA Document will control except to the extent they irreconcilably conflict with the requirements of the higher level PPA Document, as determined by IFA in its good faith discretion.

1.3.5 Notwithstanding the order of precedence among PPA Documents set forth in this Section 1.3, if a PPA Document contains differing provisions on the same subject matter than another PPA Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a PPA Document or set of PPA Documents, the standard, criterion, requirement, condition, procedure, specification or other provision that use more stringent standards or better performance will apply, unless IFA, in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other Party in writing of the conflict. IFA shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.4 Interpretation of PPA Documents

In the PPA Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated, references to Codes are to the codified laws of the State; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; unless otherwise indicated, references to sections, appendices or schedules are to the PPA; words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the PPA Documents defining the Project or the Work shall not be deemed all-inclusive. Design-Build Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Proposal Date, to review the terms and conditions of the PPA Documents (including those Reference Information Documents that are referenced in the PPA Documents and, pursuant to Section 1.3.3 above, are considered PPA Documents) and to bring to the attention of IFA any conflicts, errors, inconsistencies or ambiguities contained therein. Design-Build Contractor further acknowledges and agrees that it has independently reviewed the PPA Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the PPA Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the PPA Documents, they

shall not be interpreted or construed against the Party that prepared them, and instead other rules of interpretation and construction shall be used. IFA's interim or final answers to the questions posed during the Proposal process for the PPA Documents shall in no event be deemed part of the PPA Documents and shall not be relevant in interpreting the PPA Documents except as they may clarify provisions otherwise considered ambiguous (as determined by IFA). On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.5 Referenced Standards and Specifications

1.5.1 Except as otherwise specified in the PPA Documents or otherwise directed by IFA, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Setting Date.

1.5.2 In interpreting Project Standards, the following apply:

(a) References to the project owner shall mean IFA.

(b) References to "plan(s)" shall mean the Released for Construction Documents.

(c) Cross-references to measurement and payment provisions contained in the Project Standard shall be deemed to refer to the measurement and payment provisions contained in the PPA Documents.

1.6 Explanations; Omissions and Misdescriptions

Design-Build Contractor shall not take advantage of or benefit from any apparent or actual Error in the PPA Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the PPA Documents, Design-Build Contractor shall request in writing such further written explanations from IFA as may be necessary and shall comply with the explanation provided. Design-Build Contractor shall promptly notify IFA in writing of all Errors which it may discover in the PPA Documents (including the Reference Plans and those other Reference Information Documents that are referenced in the PPA Documents, and pursuant to Section 1.3.3 above, are considered PPA Documents), and shall obtain specific instructions in writing from IFA regarding any such Error before proceeding with the Work affected thereby. The fact that the PPA Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the PPA Documents, or which are customarily performed, shall not relieve Design-Build Contractor from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the PPA Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.7 Computation of Periods

References to "days" contained in the PPA Documents shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the PPA Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day which is a Business Day. Notwithstanding the foregoing, requirements contained in the PPA Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3.1, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

1.8 Standard for Approvals

In all cases where approvals, consents, or other determinations are required to be provided by IFA or Design-Build Contractor hereunder, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution or other legal challenge; provided, however, the issue of whether the decision was arbitrary or capricious shall be subject to dispute resolution hereunder.

1.9 Reference Information Documents

1.9.1 IFA has provided and disclosed the Reference Information Documents to Design-Build Contractor. Except as expressly provided in Section 1.3.3: (a) the Reference Information Documents are not mandatory or binding on Design-Build Contractor, (b) Design-Build Contractor is not entitled to rely on the Reference Information Documents as presenting a feasible, complete, accurate, viable or desirable technical, design, engineering, construction, operations or maintenance solution or other direction, means or methods for complying with the requirements of the PPA Documents, Governmental Approvals or Governmental Rules; (c) use by Design-Build Contractor of any element, aspect or portion of the Reference Information Documents shall be at the sole risk of Design-Build Contractor; and (d) the Reference Information Documents are provided without any representation or warranty by, or recourse to, IFA, all of which representations and warranties are hereby disclaimed in their entirety.

1.9.2 Subject to Design-Build Contractor's right to schedule or monetary relief available hereunder as set forth in Section 13 of this PPA, IFA shall not be responsible or liable in any respect for any suits, judgments, proceedings, investigations, causes of action, claims or Losses whatsoever suffered or incurred by any DB-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.10 Incorporation of ATCs

1.10.1 In the event that ATCs incorporated into the PPA Documents require additional Environmental Approvals, other Governmental Approvals, analysis, or

assessment prior to implementation, Design-Build Contractor shall (a) be solely responsible for the cost and schedule impact of any related review, analysis, assessment, approvals, permits and findings; (b) be solely responsible for the risk that any approvals, permits or findings are not granted, issued, approved or obtained or timely granted, issued, approved or obtained; and (c) not be entitled to any increase in the Contract Price or extension of the Completion Deadlines as a result of any delay or cost associated with the environmental review, analysis, approvals, permits or findings related to such ATC, including the inability to obtain such approvals, permits or findings.

1.10.2 If the PPA Documents incorporate any approved ATCs and: (a) Design-Build Contractor does not comply or is unable to comply with one or more of IFA conditions of pre-approval for the ATC (including the obligation to obtain any required additional Environmental Approvals, other Governmental Approvals, analysis or assessment), (b) Design-Build Contractor is unable to obtain a third party approval required for the ATC, or (c) the ATC otherwise proves to be infeasible, then Design-Build Contractor shall comply with the PPA Document requirements that would have been applicable but for the ATC, without any increase in the Contract Price, extension of the Completion Deadlines or any other Change Order. In such case and depending upon the circumstances (including if Design-Build Contractor fails to use all reasonable efforts to implement the ATC or obtain any required Environmental Approvals or other Governmental Approvals), IFA may also be entitled to (i) a reduction in the Contract Price in an amount equal to the estimated value of the ATC on the Proposal Price, as reasonably determined by IFA, but which in no event shall be less than cost (plus mark-up and profit) of the ATC as reflected in the Proposal Price, and (ii) a reduction in the time allowed to achieve Substantial Completion in an amount equal to the estimated schedule savings as a result of the ATC not being implemented, as reasonably determined by IFA.

1.10.3 ATCs contained in proposals submitted by unsuccessful proposers may, in IFA's sole discretion, be presented to Design-Build Contractor as a Change Notice in accordance with Section 13.2.1 of this PPA.

SECTION 2. OBLIGATIONS OF DESIGN-BUILD CONTRACTOR; REPRESENTATIONS, WARRANTIES AND COVENANTS; DESIGN REQUIREMENTS

2.1 Performance Requirements

2.1.1 Performance of Work; Project Management Plan

The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the Reference Plans and otherwise complying with the requirements of the PPA Documents, except as otherwise approved in writing by IFA, in its sole discretion. All materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be Design-Build Contractor's sole responsibility, except as otherwise specifically provided in the PPA Documents. Design-Build Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly or indirectly impacted by the Work. Subject to the terms of Section 13, the costs of all Work, including all such materials, services and efforts are included in the Contract Price.

2.1.1.1 Design-Build Contractor shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in the PPA Documents, including Section 20.2.1 of the PPA, Section 1.3 of the Technical Provisions, Governmental Approvals, Governmental Rules and Good Industry Practice. The Project Management Plan shall include all the parts and other documentation identified in the Technical Provisions.

2.1.1.2 Design-Build Contractor shall submit to IFA, for approval in its sole discretion, in accordance with the procedures described in Section 3 and the time line set forth in Section 3.2 of the PPA and Section 1.3 of the Technical Provisions, each component part, plan and other documentation of the Project Management Plan, including the Project Schedule. Design-Build Contractor shall submit to IFA, for approval in its good faith discretion, (a) any proposed changes or additions to or revisions of any such component part, plan or other documentation in accordance with the procedures and time lines set forth in Section 1.4 of the Technical Provisions and (b) any updates or revisions to the Project Schedule in accordance with Section 1.4 of the Technical Provisions.

2.1.1.3 Except as authorized by the PPA, Design-Build Contractor shall not commence or permit the commencement of any aspect of the Work before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by IFA in accordance with the procedures described in this Section 2.1, Section 3 and the time line set forth in Section 1.4 of the Technical Provisions.

2.1.1.4 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or

like document, then all such referenced or incorporated materials shall be submitted to IFA for approval in its good faith discretion at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to IFA.

2.1.1.5 Design-Build Contractor shall undertake all aspects of quality assurance and quality control in accordance with the approved Project Management Plan, the PPA Documents, Governmental Approvals, Governmental Rules and Good Industry Practice.

2.1.1.6 Design-Build Contractor shall cause each of its Subcontractors at every level to comply with the applicable requirements of the approved Project Management Plan.

2.1.2 Performance Standards

2.1.2.1 Design-Build Contractor shall furnish all aspects of the Work and shall construct the Project as designed, free from defects and in accordance with: (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the PPA Documents, (c) the Project Schedule, (d) all Governmental Rules, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan and all component plans prepared or to be prepared thereunder, and (g) the Construction Documents, in each case taking into account the Planned ROW Limits and other constraints affecting the Project.

2.1.2.2 The Project design and construction shall be subject to certification pursuant to the procedure contained in the approved Project Management Plan.

2.1.2.3 Design-Build Contractor acknowledges that, prior to the Effective Date, it had the opportunity to identify any provisions of the PPA Documents, including the Technical Provisions, that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify IFA in writing of such fact and of the changes to the provision that Design-Build Contractor believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the PPA Documents, including the Technical Provisions, after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for any adjustment to the Contract Price, Completion Deadline or other Claim, unless: (a) Design-Build Contractor neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Design-Build Contractor knew of and reported to IFA the erroneous or potentially unsafe provision prior to the Effective Date and IFA did not adopt reasonable and necessary changes. If Design-Build Contractor commences or continues any Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Design-Build Contractor shall bear any additional costs and schedule delay associated with redoing the Work already performed. Inconsistent or conflicting provisions of the PPA Documents shall not be treated as erroneous provisions under this Section 2.1.2.3, but instead shall be governed by Section 1.3.

2.1.2.4 Design-Build Contractor may apply for IFA approval of Deviations from applicable requirements of the PPA Documents, including the Technical Provisions, regarding the design or construction of the Project. All applications shall be in writing. Where Design-Build Contractor requests a Deviation as part of the submittal of a component plan of the Project Management Plan, including the Project Schedule and any updates thereto, Design-Build Contractor shall specifically identify and label the proposed Deviation. IFA shall consider requested Deviations in its sole discretion, but has no obligation to approve any such application. IFA may also require Design-Build Contractor to submit the proposed Deviation as a Change Request. No Deviation shall be deemed approved or be effective unless and until stated in a writing signed by IFA's Authorized Representative. IFA's affirmative written approval of a component plan of the Project Management Plan shall constitute: (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless IFA takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. IFA's lack of issuance of a written Deviation within fourteen (14) days after Design-Build Contractor applies therefor in writing shall be deemed a disapproval of such application.

2.1.2.5 References in the Technical Provisions to manuals or other publications governing the Work shall mean the most recent editions in effect on the Setting Date, unless expressly provided otherwise. Any changes to the Technical Provisions related to the Work shall be subject to the Change Order process for an IFA-Directed Change in accordance with Section 13.

2.1.3 Performance as Directed

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

2.2 General Obligations of Design-Build Contractor

Design-Build Contractor, in addition to performing all other requirements of the PPA Documents, shall:

2.2.1 Furnish all design and other services, provide all materials, equipment, and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the PPA Documents specify will be undertaken by IFA or other Persons) (a) to design and construct the Project and maintain it during construction in accordance with the requirements of the PPA Documents, the Project Schedule, all Governmental Rules, all Governmental Approvals, the approved Project Management Plan and all component plans prepared or to be prepared thereunder, the approved Design-Build Contractor's Safety Plan, the approved Construction Documents and all other applicable safety, environmental and other requirements, taking into account the Planned ROW Limits and other constraints affecting the Project, so as to achieve Substantial Completion and Final Acceptance by the applicable Completion

Deadlines, and (b) otherwise to do everything required by and in accordance with the PPA Documents.

2.2.2 At all times provide a Project Manager approved by IFA who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Design-Build Contractor, (c) will be present (or its approved designee will be present) at the Site at all times that Work is performed, and (d) will be available to execute instructions and directions from IFA or its Authorized Representatives.

2.2.3 Use the design firm or firms identified in the Proposal to perform the design services required by the PPA Documents (or other firms approved in writing by IFA, which approval shall not be withheld provided that IFA shall first have determined, in its reasonable discretion, that such firm has the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required design services, and that the designated key personnel at such firm have sufficient experience with requirements applicable to the Project). Design-Build Contractor shall not shift design Work from one firm to another without the prior written approval of IFA, in its good faith discretion.

2.2.4 Obtain and pay the cost of obtaining all Governmental Approvals required in connection with the Project (except for IFA-Provided Approvals and New Approvals for which IFA has expressly agreed to be responsible therefor under Section 6.11); and prior to beginning any construction activities in the field, furnish IFA with fully executed copies of all Governmental Approvals (other than the Governmental Approvals obtained by IFA) required for such portion of the Project.

2.2.5 Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the PPA Documents, except to the extent that responsibility for performance of such measures is expressly assigned to another Person in the PPA Documents.

2.2.6 Provide such assistance as is reasonably requested by IFA in dealing with any Governmental Entity and/or in prosecuting and defending lawsuits in any and all matters relating to the Project. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. This provision is not intended to require Design-Build Contractor to provide legal services for the benefit of IFA.

2.2.7 Comply with, and require all Subcontractors to comply with, all requirements of all applicable Governmental Rules, including:

(a) The State labor requirements and implementing regulations and federal labor requirements, including requirements with respect to non-discrimination;

(b) All Environmental Laws, including environmental mitigation and monitoring measures required for the Project, including those set forth in the Technical Provisions,

and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Materials; and

(c) The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines.

2.2.8 Cooperate fully with IFA, IFA's consultants, and Governmental Entities with jurisdiction over the Project in review and oversight of the design or construction of the Project, performing oversight and conducting inspections during the construction of the Project, and other matters relating to the Work.

2.2.9 Supervise and be responsible to IFA for acts, omissions, negligence, fraud, recklessness, intentional misconduct, or breach of applicable Governmental Rules, contract or Governmental Approvals by any and all DB-Related Entities, as though all such Persons were directly employed by Design-Build Contractor.

2.2.10 Pay all applicable federal, State and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Entity, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

2.2.11 Mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating, or redeploying Design-Build Contractor's and its Subcontractors' forces to other Work, as appropriate.

2.2.12 Ensure labor harmony on the Site during all stages of the Project, including taking appropriate steps to prevent strikes, walkouts, Work stoppages, Work slowdowns, Work curtailments, cessations or interruptions of production due to labor disputes. If failure to maintain labor harmony results in delay in completion of the Project, Design-Build Contractor shall not be entitled to a time extension or increase in compensation under Section 13.

2.3 Representations, Warranties and Covenants

Design-Build Contractor represents, warrants and covenants that:

2.3.1 During all periods necessary for the performance of the Work, Design-Build Contractor and its design and construction Subcontractor(s) will maintain all required authority, license status, professional ability, skills, and capacity to perform the Work, and shall perform them in accordance with the requirements contained in the PPA Documents.

2.3.2 Design-Build Contractor has evaluated the constraints affecting design and construction of the Project, including the Basic Configuration, Planned ROW Limits, IFA's schedule for acquisition of property within the Planned ROW Limits, conditions of IFA-Provided Approvals, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

2.3.3 Design-Build Contractor has evaluated the feasibility of performing the Work within the time and for the amount herein, accounting for constraints affecting the

Project and has reasonable grounds for believing and does believe that such performance (including achievement of Substantial Completion and Final Acceptance by the applicable Completion Deadline, for the Contract Price) is feasible and practicable.

2.3.4 As of the Effective Date, based upon its Reasonable Investigation, Design-Build Contractor has evaluated the constraints affecting design and construction of the Project, including the Project Right of Way limits, the terms and conditions of the NEPA Documents, IFA-Provided Approvals obtained prior to the Setting Date, the surface and subsurface conditions discoverable through such Reasonable Investigation, and applicable Laws, and Design-Build Contractor has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints. Design-Build Contractor, in accordance with Good Industry Practice, conducted a Reasonable Investigation prior to the Setting Date, and as a result of such Reasonable Investigation, Design-Build Contractor is familiar with and accepts the physical requirements of the Work, subject to IFA's obligations regarding Hazardous Materials under Section 6.10 and Design-Build Contractor's rights to seek relief under Section 13. As a result of such review, inspection, examination and other activities, Design-Build Contractor is familiar with and accepts the physical requirements of the Work, subject to Design-Build Contractor's right to seek relief under Section 13. Design-Build Contractor further acknowledges and agrees that changes in conditions at the Site may occur after the date hereof, and that Design-Build Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Section 13. Before commencing any Work on a particular aspect of the Project, Design-Build Contractor shall verify all governing dimensions at the Site, and shall examine all adjoining work which may have an impact on such Work. Design-Build Contractor shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Design-Build Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Governmental Rules and the conditions of any required Governmental Approvals prior to entering into the PPA. Except as specifically permitted under Section 13, Design-Build Contractor shall be responsible for complying with the foregoing at its sole cost and without any increase in Contract Price or extension of any Completion Deadline on account of such compliance. Design-Build Contractor has no reason to believe that any Governmental Approval required to be obtained by Design-Build Contractor will not be granted in due course in a timely fashion and thereafter remain in effect so as to enable the Work to proceed in accordance with the PPA Documents.

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

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

2.3.8 Design-Build Contractor is a _____, [***to be provided with executed PPA***] duly organized and validly existing under the laws of the State of _____, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Design-Build Contractor is a duly qualified business, and is in good standing, in the State, and will remain in good standing throughout the term of the PPA and for as long thereafter as any obligations remain outstanding under the PPA Documents. [***If Design-Build Contractor is a joint venture, identify its members and provide organizational information, qualification to do business and good standing representations regarding each member***.] Guarantor is duly organized and validly existing under the laws of the State of _____, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Design-Build Contractor and each member of Design-Build Contractor are duly qualified to do business, and are in good standing, in the State of Indiana, and will remain in good standing throughout the term of the PPA and for as long thereafter as any obligations remain outstanding under the PPA Documents. [***to be conformed in execution version based on entity and whether a guarantor is used***]

2.3.9 The execution, delivery and performance of the PPA have been duly authorized by all necessary action of Design-Build Contractor, Design-Build Contractor's members, and Guarantor and will not result in a breach of or a default under Design-Build Contractor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Design-Build Contractor or any member of Design-Build Contractor or Guarantor is a party or by which its properties and assets may be bound or affected.

2.3.10 The PPA constitutes the legal, valid, and binding obligation of Design-Build Contractor and, if applicable, of each member of Design-Build Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity. **[**The Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity [*if guaranty provided*].**]**

2.3.11 There is no action, suit, proceeding, investigation or litigation pending and served on Design-Build Contractor which challenges Design-Build Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the PPA, or which challenges the authority of Design-Build Contractor's official executing the PPA Documents; and Design-Build Contractor has disclosed to IFA any pending and un-

served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Design-Build Contractor is aware.

2.3.12 As of the Proposal Date, Design-Build Contractor disclosed to IFA in writing all organizational conflicts of interest of Design-Build Contractor and DB-Related Entities of which Design-Build Contractor was actually aware; and between the Proposal Date and execution of this PPA, Design-Build Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Design-Build Contractor or its Subcontractors identified in its Proposal which have not been approved in writing by IFA. For this purpose, organizational conflict of interest has the meaning set forth in the Instructions to Proposers under which Design-Build Contractor submitted its Proposal.

2.3.13 Design-Build Contractor has been qualified by INDOT for the Work it is to perform and will maintain those qualifications at all times during the Work.

2.4 Survival of Representations and Warranties

The representations and warranties of Design-Build Contractor contained herein shall survive expiration or earlier termination of this PPA.

SECTION 3. INFORMATION SUPPLIED TO DESIGN-BUILD CONTRACTOR; SUBMITTALS, DESIGN REQUIREMENTS AND DISCLAIMER; ROLE OF FHWA; GOVERNMENTAL APPROVALS

3.1 Information Supplied

IFA has made available to Design-Build Contractor information which is described in the Technical Provisions and has allowed Design-Build Contractor access to the Site for purposes of inspection and testing.

3.2 Submittals

3.2.1 General

3.2.1.1 This Section 3.2 sets forth terms and procedures that shall govern all Submittals to IFA pursuant to the PPA Documents or Project Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 3.2 and any other provisions of the PPA Documents or Project Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section 3.2 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 3.2.

3.2.1.2 Whenever Design-Build Contractor provides FHWA, a Governmental Entity, Utility Owner, Railroad, or property owners with a submittal, notice, application, or other communication relating to the Project, Design-Build Contractor shall also concurrently submit a duplicate thereof to IFA. Design-Build Contractor shall also provide IFA with copies of all correspondence or communications by or between Design-Build Contractor and Governmental Entities, Utility Owners, Railroad, or property owners relating to the Project. Submittals and correspondence with FHWA shall only be made through IFA.

3.2.2 Time Periods

3.2.2.1 Except as otherwise provided in this Section 3.2.2, whenever IFA is entitled to review, comment on, or to affirmatively approve or accept, a Submittal, IFA shall have a period of up to twenty-one (21) days to act after the date it receives an accurate and complete Submittal in conformity with the PPA Documents, together with all necessary information and documentation concerning the subject matter to enable IFA to perform a meaningful review.

3.2.2.2 Notwithstanding the provisions of Section 3.2.2.1, and except as otherwise mutually agreed by the Parties at the Design Workshop, whenever IFA is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal consisting of Design Documents or Construction Documents, IFA shall have a period of up to fourteen (14) days to act after the date it receives an accurate and complete Submittal or re-submittal in conformity with the PPA Documents,

together with all necessary or requested information and documentation concerning the subject matter to enable IFA to perform a meaningful review. If IFA determines that a Submittal of Design Documents or Construction Documents is not complete, it will notify Design-Build Contractor of such determination within seven (7) days. The Parties shall agree in good faith upon any necessary extensions or shortening of the review-comment-and approval period to accommodate particularly complex or comprehensive Submittals, less complex Submittals, or previously reviewed Submittals.

3.2.2.3 If any other provision of the PPA Documents expressly provides a longer or shorter period for IFA to act, such period shall control over the time periods set forth in Sections 3.2.2.1 and 3.2.2.2.

3.2.2.4 If at any given time IFA is in receipt of more than (a) five concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals agreed to in writing by IFA and Design-Build Contractor) that are subject to IFA's review and comment or approval, except Submittals of parts or components of the Project Management Plan, or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the PPA Documents, IFA may extend the applicable period for it to act to that period in which IFA can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the PPA Documents, and no such extension shall constitute an IFA-Caused Delay, IFA-Directed Change or other basis for any Claim. However, if at any time IFA is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether IFA may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to IFA under this Section 3.2.2 regarding such Submittals either entirely or partially overlap. Whenever IFA is in receipt of excess concurrent Submittals, Design-Build Contractor may establish by written notice to IFA an order or priority for processing such Submittals; and IFA shall comply with such order of priority.

3.2.2.5 All time periods for IFA to act shall be extended by the period of any delay caused, in whole or in part, by the acts, omissions, negligence, fraud, recklessness, intentional misconduct, or violation of applicable Governmental Rules, breach of contract or breach of Governmental Approvals by any DB-Related Entity.

3.2.2.6 IFA shall endeavor to reasonably accommodate a written request from Design-Build Contractor for expedited action on a specific Submittal, within the reasonable and practical limitations on availability of IFA personnel appropriate for acting on the types of Submittal in question; provided Design-Build Contractor sets forth in its request specific, abnormal and exigent circumstances, not caused by any DB-Related Entity, demonstrating the need for expedited action. Such accommodation, if undertaken, may result in extension of the time period for review, response and/or approval of other Submittals. This provision shall not apply, however, during any time described in Section 3.2.2.5.

3.2.2.7 Whenever IFA is entitled to affirmatively approve a Submittal or other matter under the PPA Documents, and IFA delivers no approval, disapproval, acceptance, consent, denial, determination, decision or other action within the

applicable time period under this Section 3.2.2, then Design-Build Contractor may deliver to IFA, a written notice stating the date within which IFA was to have decided or acted and that if IFA does not decide or act within five Business Days after receipt of Design-Build Contractor's notice, delay from and after such five Business Day period may constitute a IFA-Caused Delay for which Design-Build Contractor may be entitled to relief under Section 13.

3.3 Responsibility for Design

3.3.1 Design-Build Contractor Responsibility

Design-Build Contractor agrees that it has full risk and responsibility for the design of the Project and that Design-Build Contractor will furnish the design of the Project, regardless of the fact that aspects of the Reference Plans have been provided to Design-Build Contractor prior to the Effective Date, as a preliminary basis for Design-Build Contractor's design. Design-Build Contractor specifically acknowledges and agrees that:

(a) Except to the extent specifically permitted in the PPA Documents, Design-Build Contractor is not entitled to rely on (i) the Reference Plans, except as expressly specified in Section 3.3.2.2, (ii) the other Reference Information Documents, or (iii) any other documents or information provided by or on behalf of IFA.

(b) Design-Build Contractor is responsible for correcting any Errors in the Reference Plans through the design and/or construction process without any increase in the Contract Price, extension of a Completion Deadline or any other relief, subject only to the right to a Change Order with respect to any Necessary Basic Configuration Changes to the extent permitted by Section 13.8.

(c) IFA's liability for Errors in the Reference Plans is limited to its obligations relating to Necessary Basic Configuration Changes and provision of access to parcels within IFA-Provided Property, and is subject to the requirements and limitations of Section 13.

(d) Design-Build Contractor's warranties and indemnities hereunder cover Errors in the Project even though they may be related to, result from or arise out of Errors in the Reference Plans.

(e) Design-Build Contractor is responsible for verifying all calculations and quantity takeoffs contained in the Technical Provisions or otherwise provided by IFA.

3.3.2 Reference Plans

3.3.2.1 Design-Build Contractor acknowledges and agrees that constraints set forth in the PPA Documents, including Planned ROW Limits, the Basic Configuration, IFA's schedule for acquisition of property within the Planned ROW Limits, conditions of IFA-Provided Approvals, and Site conditions, will impact Design-Build Contractor's ability to revise the concepts contained in the Reference Plans.

3.3.2.2 Design-Build Contractor may rely on the Planned ROW Limits identified in the Reference Plans, and shall have the right to obtain a Change Order for Necessary Basic Configuration Changes as provided herein, but acknowledges that the Reference Plans is otherwise conceptual in nature and cannot be relied upon as presenting a design solution that is feasible, practical or complies with all of the requirements of the PPA Documents. Design-Build Contractor's entitlement to an increase in the Contract Price or extension of Completion Deadlines in connection with any changes in the Reference Plans is limited to Necessary Basic Configuration Changes.

3.3.3 Design Review Process and Compliance with Released for Construction Documents

3.3.3.1 Design-Build Contractor, through the appropriately qualified and licensed design professionals identified in Design-Build Contractor's Project Management Plan shall prepare designs, plans, and specifications in accordance with the PPA Documents. Design-Build Contractor shall cause Responsible Engineers to sign and seal all Released for Construction Documents.

3.3.3.2 Design-Build Contractor shall furnish the Design Documents and Construction Documents to IFA and shall obtain IFA approval of any Deviations from Project Standards as specified in Section 2.1.2.4 herein and Section 2.4 of the Technical Provisions. IFA shall have the right to review and comment on all Design Documents and Construction Documents for compliance with the requirements of the PPA Documents in accordance with Section 3.2 and this Section 3.3.3 of the PPA, and Sections 2.4 of the Technical Provisions, and shall have rights to approve certain other Submittals as set forth in the PPA Documents.

3.3.4 IFA Discretionary Approvals

If the Submittal or other approval, consent, determination, acceptance, decision or other action or matter is one for which the PPA Documents indicate approval, consent, determination, acceptance, decision or other action is required from IFA in its sole discretion or good faith discretion, then IFA's lack of approval, consent, determination, acceptance, decision or other action within the applicable time period under Section 3.2.2 shall be deemed disapproval. If the approval, consent, determination, acceptance, decision or other action is subject to the sole discretion of IFA, then its approval, consent, determination, decision or other action (including a failure to act which constitutes a disapproval) shall be final, binding, and not subject to dispute resolution, and such approval, consent, determination, acceptance, decision or other action shall not constitute an IFA-Caused Delay, IFA-Directed Change or other basis for any Claim. If the approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) is subject to the good faith discretion of IFA, then its approval, consent, determination, acceptance, decision or other action shall be binding, unless it is finally determined through the Dispute Resolution Procedures by clear and convincing evidence that such approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) or matter was arbitrary or capricious, and if determined

to be arbitrary or capricious through such Dispute Resolution Procedures and causes delay, it will constitute and be treated as an IFA-Caused Delay.

3.3.5 Other IFA Approvals

3.3.5.1 Whenever the PPA Documents indicate that a Submittal or other matter is subject to IFA's approval or consent but the approval or consent is one not governed by Section 3.3.4 concerning discretionary approvals or the Submittal or other matter is subject to IFA's reasonable discretion, then the standard shall be reasonableness.

3.3.5.2 If the reasonableness standard applies and IFA delivers no approval, consent, determination, decision or other action within the applicable time period set forth in Section 3.2.2, then Design-Build Contractor must comply with the requirements of the PPA Documents, including Section 3.2.2.7, in order to be eligible for relief under Section 13.

3.3.5.3 In no event shall Design-Build Contractor proceed with any Work related to a Submittal or Hold Point without receiving IFA's affirmative approval to proceed.

3.3.6 IFA Review and Comment

Whenever the PPA Documents indicate that a Submittal or other matter is subject to IFA's review, comment, review and comment, disapproval or similar action not entailing a prior approval, including those identified as Witness Points in Technical Provision Section 2.2, and IFA delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2, then Design-Build Contractor may proceed thereafter at its election and risk, without prejudice to IFA's rights to later object or disapprove on any of the grounds set forth in Section 3.3.8.1. No such failure or delay by IFA in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2 shall constitute an IFA-Caused Delay, IFA-Directed Change or other basis for any Claim. When used in the PPA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) IFA has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without IFA providing any comments, exceptions, objections, rejections or disapprovals.

3.3.7 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the PPA Documents indicate that Design-Build Contractor is to deliver a Submittal to IFA but express no requirement for IFA to review, comment, disapprove, provide prior approval or other IFA action, then Design-Build Contractor is under no obligation to provide IFA any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and IFA shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 3.3.8.1. No failure or delay by IFA in delivering comments, exceptions, objections, rejections or disapprovals with respect to the

Submittal shall constitute an IFA-Caused Delay, IFA-Directed Change or other basis for any Claim.

3.3.8 Resolution of IFA Comments and Objections

3.3.8.1 If the Submittal or other approval, consent, determination, acceptance, decision or other action or matter is one not governed by Section 3.3.4, IFA's exception, objection, rejection or disapproval shall be deemed reasonable, valid, and binding if based on any of the following grounds or other grounds set forth elsewhere in the PPA Documents:

(a) The Submittal or subject provision thereof fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard (including Safety Standards), term or provision of the PPA Documents or Project Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than Good Industry Practice;

(c) Design-Build Contractor has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, provided that (i) IFA assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, and (ii) Design-Build Contractor shall have the subsequent opportunity to resubmit the Submittal with the required content or information;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Governmental Rule or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are (i) inconsistent with the PPA Documents, the Project Management Plan (and component plans thereunder), applicable Governmental Rules, the requirements of Good Industry Practice, or IFA's policies (except for policies that are incompatible with the Project's design-build contracting methodology) or (ii) not usual and customary arrangements that IFA or INDOT offers or accepts for addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the Project's design-build contracting methodology).

3.3.8.2 Design-Build Contractor shall respond in writing to all of IFA's comments, exceptions, disapprovals, and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals, and objections, in accordance with the review processes set forth in this Section 3.3. Design-Build Contractor

acknowledges that IFA may provide comments, exceptions, disapprovals, and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 3.3.8.1. Design-Build Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments, exceptions, disapprovals, or objections through the review processes described in this Section 3.3. However, if the Submittal is not governed by Section 3.3.4, the foregoing shall in no way be deemed to obligate Design-Build Contractor to incorporate any comments or resolve exceptions, disapprovals or objections that (a) are not on any of the grounds set forth in Section 3.3.8.1 (and not on any other grounds set forth elsewhere in the PPA Documents), (b) are otherwise not reasonable with respect to subject matter or length, and (c) would result in a significant delay to a Critical Path on the Project Schedule or significant increase in Design-Build Contractor's costs, except pursuant to an IFA-Directed Change. If, however, Design-Build Contractor does not accommodate or otherwise resolve any comment, exception, disapproval, or objection, Design-Build Contractor shall deliver to IFA within a reasonable time period, not to exceed fourteen (14) days after receipt of IFA's comments, exceptions, disapprovals or objections, a written explanation as to why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall include the facts, analyses, and reasons that support the conclusion.

3.3.8.3 The foregoing shall in no way be deemed to obligate Design-Build Contractor to incorporate any comments or resolve exceptions, disapprovals, and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to an IFA-Directed Change.

3.3.8.4 If Design-Build Contractor fails to notify IFA within the time period set forth in Section 3.3.8.2, IFA may deliver to Design-Build Contractor written notice stating the date by which Design-Build Contractor was to have addressed IFA's comments and that if Design-Build Contractor does not address those comments within five (5) Business Days after receipt of such notice, then that failure shall constitute Design-Build Contractor's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without a right to an IFA-Caused Delay, Change Order or other Claim, including any Claim that IFA assumes design or other liability.

3.3.8.5 After IFA receives Design-Build Contractor's explanation as to why the modifications are not required as provided in Sections 3.3.8.2, 3.3.8.3 and 3.3.8.4, if IFA is not satisfied with Design-Build Contractor's explanation, the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute and the Submittal or other matter is not one subject to the sole discretion of IFA under Section 3.3.4, the Dispute shall be resolved according to the Dispute Resolution Procedures; provided that if IFA elects to issue a Directive Letter pursuant to Section 13.1.1.2 with respect to the matter in Dispute, Design-Build Contractor shall proceed in accordance with IFA's Directive Letter while retaining any Claim as to the matter in Dispute.

3.3.9 Limitations on Design-Build Contractor's Right to Rely

3.3.9.1 No review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including certificates of Substantial Completion, Partial Acceptance and Final Acceptance), or oversight by or on behalf of IFA, including review and approval of the Project Management Plan, the pavement design submittal under the RFP and the Project Baseline Schedule, and no lack thereof by IFA, shall constitute acceptance by IFA of materials or Work or waiver of any legal or equitable right under the PPA Documents, Governmental Rules, or in equity. IFA shall be entitled to remedies for unapproved Deviations, Nonconforming Work, and Design-Build Contractor Defaults and to identify additional Work which must be done to bring the Work and Project into compliance with requirements of the PPA Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification, or oversight was conducted or given by IFA. Design-Build Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the PPA Documents. Design-Build Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by IFA:

(a) Is solely for the benefit and protection of IFA;

(b) Does not relieve Design-Build Contractor of its responsibility for the selection and the competent performance of all DB-Related Entities;

(c) Does not create or impose upon IFA any duty or obligation toward Design-Build Contractor to cause it to fulfill the requirements of the PPA Documents;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by IFA;

(e) May not be relied upon by Design-Build Contractor or used as evidence in determining whether Design-Build Contractor has fulfilled the requirements of the PPA Documents;

(f) Shall not be deemed or construed as any assumption of risk by IFA as to design, construction, performance or quality of Work or materials; and

(g) May not be asserted by Design-Build Contractor against IFA as a defense, legal or equitable, to, or as a waiver of or relief from, Design-Build Contractor's obligation to fulfill the requirements of the PPA Documents.

3.3.9.2 Design-Build Contractor shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the PPA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 3.3.9.1 or failure to conduct any such activity by IFA. Such activity by IFA shall not relieve Design-Build Contractor from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work, or Design-Build Contractor Defaults.

3.3.9.3 To the maximum extent permitted by applicable Governmental Rules, Design-Build Contractor hereby releases and discharges IFA from any and all duty and obligation to cause Design-Build Contractor's Work or the Project to satisfy the standards and requirements of the PPA Documents.

3.3.9.4 Notwithstanding the provisions of Sections 3.3.9.1, 3.3.9.2 and 3.3.9.3:

(a) Design-Build Contractor shall be entitled to rely on written approvals and acceptances from IFA (i) for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within IFA's sole or absolute discretion, but only to the extent that Design-Build Contractor is prejudiced by such approval or acceptance, or by a subsequent decision of IFA to rescind such approval or acceptance; and

(b) Design-Build Contractor shall be entitled to rely on specific written direction from IFA, including Deviations IFA approves under Section 2.1.2.4;

3.3.9.5 Design-Build Contractor shall be responsible for coordination and the timing of all design reviews by, and obtaining all required design approvals from (a) Governmental Entities (other than IFA), (b) Railroad, and (c) Utility Owners in connection with the Work in accordance with Section 13 of the Technical Provisions.

3.3.9.6 Design-Build Contractor shall construct the Project in accordance with the Released for Construction Documents and the Construction Documents. The Released for Construction Documents may be changed only with prior written approval of IFA.

3.3.10 Basic Configuration Changes

3.3.10.1 If, as the result of an Error in the Reference Plans, it becomes apparent that the Basic Configuration must be materially modified, such modification shall be considered a Necessary Basic Configuration Change and shall be eligible for a potential Change Order as provided in Section 13.8.

3.3.10.2 If a VECP results in a change in Basic Configuration, any cost savings from such VECP shall be shared in accordance with Section 22.

3.3.10.3 Design-Build Contractor shall not make any change in the Basic Configuration, except as approved by IFA and authorized by a Change Order in accordance with Section 13, and subject to the limitations contained in Section 6.11.

3.3.10.4 Except for an IFA-Directed Change or Necessary Basic Configuration Change involving more than $10,000.00 in additional direct costs or involving a delay to a Critical Path, Design-Build Contractor shall not be entitled to an adjustment in the Contract Price or a Completion Deadline or any other relief for any changes in the Basic Configuration.

3.4 Reference Information Documents

3.4.1 Except to the extent that IFA has specifically agreed herein that Design-Build Contractor shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter, Design-Build Contractor understands and agrees that IFA shall not be responsible or liable in any respect for any Losses whatsoever suffered by any DB-Related Entity by reason of any use of any information contained in the Reference Plans or other Reference Information Documents (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities, or structures and bridge design, and any interpretations, extrapolations, analyses, and recommendations contained therein), or any action or forbearance in reliance thereon. Design-Build Contractor further acknowledges and agrees that (a) if and to the extent Design-Build Contractor or anyone on Design-Build Contractor's behalf uses any of said information in any way, such use is made on the basis that Design-Build Contractor, not IFA, has approved and is responsible for said information, and (b) Design-Build Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses, and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Design-Build Contractor's own risk and at its own discretion.

3.4.2 Design-Build Contractor acknowledges and agrees that (i) the Reference Plans and/or the other Reference Information Documents may include interpretations, extrapolations, analyses, and recommendations concerning data, design solutions, technical issues and solutions and constructions means and methods; (ii) such interpretations, extrapolations, analyses and recommendations are preliminary in nature and, in many cases, are obsolete; (iii) such interpretations, extrapolations, analyses and recommendations are not intended to express the views or preferences of IFA or any other Governmental Entity or represent any statement of approval or acceptance thereof by IFA or any other Governmental Entity; (iv) such interpretations, extrapolations, analyses, and recommendations are not intended to form the basis of Design-Build Contractor's design solutions, technical solutions or construction means and methods; and (v) Design-Build Contractor is not entitled to rely on such interpretations, extrapolations, analyses and recommendations and the use or consideration thereof by Design-Build Contractor is at the sole risk of Design-Build Contractor and without representation or warranty by, or recourse to, IFA or any other Governmental Entity.

3.4.3 SUBJECT TO SECTION 1.3.3, IFA DOES NOT REPRESENT OR WARRANT, AND HEREBY DISCLAIMS, THAT THE INFORMATION CONTAINED IN THE REFERENCE PLANS OR OTHER REFERENCE INFORMATION DOCUMENTS IS EITHER COMPLETE OR ACCURATE OR SUITABLE FOR USE OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF IFA-PROVIDED APPROVALS, OTHER PPA DOCUMENTS, GOVERNMENTAL APPROVALS, OR GOVERNMENTAL RULES. IFA DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE TECHNICAL PROVISIONS.

3.5 Design Professional Licensing Requirements

IFA does not intend to contract for, pay for, or receive any Professional Services which are in violation of any professional licensing or registration laws, and by execution of the PPA. It is the intent of the Parties that Design-Build Contractor is fully responsible for furnishing the Professional Services of the Project through Subcontracts with licensed/registered/qualified Professional Services firm(s) as provided herein. Any references in the PPA Documents to Design-Build Contractor's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that Design-Build Contractor shall "furnish" the Professional Services for the Project. The terms and provisions of this Section 3.5 shall control and supersede every other provision of all PPA Documents.

3.6 Role of FHWA

3.6.1 Design-Build Contractor acknowledges and agrees that FHWA will have certain review and approval rights with respect to the Project (see Section 3.6.2), as well as the right to provide certain oversight and technical services with respect to the Project. Design-Build Contractor shall fully cooperate with FHWA in the exercise of its duties and responsibilities in connection with the Project.

3.6.2 FHWA's role includes matters regarding ramp and interchange closures, Design Exceptions, the IJR, fulfillment of NEPA requirements, implementation of federal design standards and management of traffic.

3.7 Governmental Approvals and Third Party Agreements

3.7.1 Design-Build Contractor shall obtain all Governmental Approvals other than IFA-Provided Approvals required in connection with the Project, the Project ROW or the Work, including any New Approvals for which Design-Build Contractor is responsible pursuant to Section 6.11.

3.7.2 Upon Design-Build Contractor's receipt of any Governmental Approval for which Design-Build Contractor is responsible under the PPA Documents, Design-Build Contractor shall submit to IFA a copy of the issued permit and related documentation. Prior to submitting to a Governmental Entity any application for a Major Environmental Approval, Design-Build Contractor shall submit the same, together with any supporting environmental or technical studies, data, and analyses, to IFA for review and comment. In addition, Design-Build Contractor shall submit to IFA copies of all correspondence, between the Governmental Entity and Design-Build Contractor, related to all Major Environmental Approvals

3.7.3 If Design-Build Contractor wishes to pursue Additional Properties, or any deviation from any Governmental Approvals, including IFA-Provided Approvals, Design-Build Contractor shall first comply with, and obtain any consent, approval or waiver required pursuant to, then-existing agreements between IFA and other Governmental Entities.

3.7.4 Upon Design-Build Contractor's request, IFA will reasonably cooperate with Design-Build Contractor in providing Design-Build Contractor with copies of the applicable agreements between IFA and other Governmental Entities.

3.7.5 If any Governmental Approvals required to be obtained by Design-Build Contractor must formally be issued in the name of IFA, Design-Build Contractor shall undertake all efforts to obtain such approvals subject to IFA's reasonable cooperation with Design-Build Contractor, at Design-Build Contractor's expense (except in connection with Governmental Approvals required solely due to an IFA-Directed Change), including execution and delivery of appropriate applications and other documentation in form approved by IFA. Design-Build Contractor shall assist IFA in obtaining any Government Approvals which IFA may be obligated to obtain, including providing information requested by IFA and participating in meetings regarding such approvals. In the event that IFA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of Design-Build Contractor, Design-Build Contractor shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents, and applications.

3.7.6 Design-Build Contractor shall comply with all conditions and constraints imposed by and undertake all actions required by and all actions necessary to obtain, maintain in full force and effect, and renew all Governmental Approvals, including performance of all environmental mitigation measures required by the PPA Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to IFA in the PPA Documents.

3.7.7 Design-Build Contractor shall not enter into any agreement with any Governmental Entity, Utility Owner, Railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or the Work or having any property interest affected by the Project or the Work that in any way purports to obligate IFA or states or implies that IFA has an obligation to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the expiration or termination of this PPA, unless IFA otherwise approves such agreement in writing, in its sole discretion. Design-Build Contractor has no power or authority to act as an agent or representative of IFA or to enter into any such agreement with a third party in the name or on behalf of IFA.

3.7.8 Except as provided in Section 13, Design-Build Contractor shall not be entitled to any increase in the Contract Price or extension of the Completion Deadlines as a result of any delay, inability or cost associated with securing those Governmental Approvals that the PPA Documents specify are the responsibility of the Design-Build Contractor.

SECTION 4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS

4.1 Time of Essence; Notice to Proceed

4.1.1 As a material consideration for entering into this PPA, Design-Build Contractor hereby commits, and IFA is relying upon Design-Build Contractor's commitment, to design and construct the Project in accordance with the time periods set forth in this PPA. Except where this PPA expressly provides for an extension of time, the time limitations set forth in the PPA Documents for Design-Build Contractor's performance of its covenants, conditions, and obligations are of the essence, and Design-Build Contractor waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require IFA to accept such performance.

4.1.2 Authorization allowing Design-Build Contractor to proceed with Work shall be provided by IFA's issuance of a Notice to Proceed. Issuance of the NTP authorizes Design-Build Contractor to perform the Work; provided, however, that any such activities shall be subject to Sections 4.4 and 4.5. IFA anticipates issuing the NTP concurrently with the execution and delivery of this PPA. Conditions to issuance of NTP shall be:

(a) satisfaction of all conditions to award set forth in the ITP (including Section 6.1 thereof);

(b) receipt by IFA of the Performance Bond and the Payment Bond, in form and from a surety approved by IFA, as required under Section 8, and Design-Build Contractor has delivered to IFA certified and conformed copies of the originals of each such bond, with the original of each such bond delivered to Design-Build Contractor;

(c) the Guarantees, if any, required under Section 8.3 have been obtained and delivered to IFA and are in full force and effect; and

(d) all insurance required to be in effect.

4.1.3 Design-Build Contractor shall begin performance of the Work as directed in the NTP.

4.2 Completion Deadlines

4.2.1 Interchange Completion Deadline

Design-Build Contractor shall achieve Interchange Completion of the I-69/Campus Parkway/Southern Parkway Interchange no later than 360 days after starting construction work on the interchange, including construction work on any of the associated ramps and roadways exclusive of work on I-69 mainline. Start of construction shall be the earliest date that the first temporary traffic control devices have been installed on any of the associated roadways. Construction completion shall be the latest date that temporary traffic control devices have been removed from any of the

associate roadways. Such deadline, as it may be extended hereunder, is referred to herein as the "Interchange Completion Deadline."

4.2.2 Substantial Completion Deadline

Design-Build Contractor shall achieve Substantial Completion within [___] [***to be inserted from Form L of Proposer's Proposal***] days after the effective date of the NTP. Said date for achieving Substantial Completion, as it may be extended pursuant to Section 13, is referred to herein as the "Substantial Completion Deadline."

4.2.3 Partial Acceptance Deadline

Design-Build Contractor shall achieve Partial Acceptance no later than [***to be inserted from Form L of Proposer's Proposal***]. Such deadline, as it may be extended hereunder, is referred to herein as the "Partial Acceptance Deadline."

4.2.4 Final Acceptance Deadline

Design-Build Contractor shall achieve Final Acceptance no later than [***to be inserted from Form L of Proposer's Proposal***]. Such deadline, as it may be extended hereunder, is referred to herein as the "Final Acceptance Deadline."

4.2.5 No Time Extensions

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

4.3 Scheduling of Design, Construction and Payment

4.3.1 Project Schedule

The Work shall be undertaken and completed in accordance with the Project Schedule prepared in conformance with Section 1.4 of the Technical Provisions. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Work and as the basis for determining the amount of monthly progress payments to be made to Design-Build Contractor. Design-Build Contractor shall submit to IFA, for approval in its good faith discretion, any updates or revisions to the Project Schedule in accordance with Section 1.4 of the Technical Provisions.

4.3.2 Float

All Float contained in the Project Baseline Schedule or generated thereafter shall be considered a Project resource available to either Party or both Parties as needed to absorb delays caused by any event and achieve schedule milestones, interim completion dates and/or Completion Deadlines. All Float shall be shown as such in the Project Schedule on each affected schedule path. Identification of (or failure to identify) Float on the schedule shall be examined by IFA in determining whether to approve the

Project Schedule. Once identified, Design-Build Contractor shall monitor, account for and maintain Float in accordance with critical path methodology.

4.4 Conditions to Commencement of Design

Except to the extent expressly permitted in writing by IFA, Design-Build Contractor shall not commence or permit or suffer commencement of Design Work until satisfaction of the following conditions:

(a) IFA has received and approved all the component parts, plans and documentation of the Project Management Plan, including the Project Baseline Schedule, each as described in Section 1.3 of the Technical Provisions;

(b) IFA has received and approved Design-Build Contractor's MWVBE Performance Plan;

(c) Design-Build Contractor has certified to IFA that Design-Build Contractor's relevant personnel, or Design-Build Contractor's Subcontractors' relevant personnel, hold all necessary or required registrations, permits or approvals and valid licenses to practice as are necessary for performance of relevant portions of the Work and as are otherwise necessary to comply with the Technical Provisions;

(d) Design-Build Contractor has satisfied any other requirements or conditions for commencing Design Work set forth in the Technical Provisions, including participation in an environmental orientation workshop and training as is obligated under the environmental compliance and mitigation training program as set forth in Section 5.0 of the Technical Provisions;

(e) IFA has delivered NTP to Design-Build Contractor; and

(f) Design-Build Contractor has provided to IFA at least ten (10) days advance written notification of the date Design-Build Contractor determines that it will satisfy all of the conditions set forth in this Section 4.4 and IFA has not objected in writing.

4.5 Conditions to Commencement of Construction

4.5.1 Construction Work Generally

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

(a) IFA shall have delivered the NTP to Design-Build Contractor;

(b) IFA has approved the deliverables set forth in Section 2.3 of the Technical Provisions that are designated as requiring approval prior to commencement of Construction relating to such portion of the Project;

(c) IFA shall have approved the Transportation Management Plan in accordance with Section 11.0 of the Technical Provisions;

(d) All requirements of the Construction Quality Management Plan which are a condition to commencement of construction shall have been met;

(e) Design-Build Contractor has delivered to IFA, and obtained all required approvals from IFA and any other applicable Governmental Entity with respect to, the Submittals relating to the construction Work required by the Project Management Plan and PPA Documents, in the form and content required by the Project Management Plan and PPA Documents, as applicable;

(f) IFA has reviewed and commented on all applicable Construction Documents, including Released for Construction Documents relating to such portion of the Project and Design-Build Contractor has addressed and incorporated such comments in accordance with Section 3.3;

(g) All Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and Design-Build Contractor has furnished to IFA fully executed copies of such Governmental Approvals;

(h) All conditions of Governmental Approvals necessary for construction of the applicable portion of the Project which are a prerequisite to commencement of such construction shall have been performed and satisfied;

(i) All rights of access acceptable to IFA in its good faith discretion for such portion of the Project ROW necessary for commencement of construction of the applicable portion of the Project shall have been identified, conveyed, and recorded to IFA, IFA has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to IFA and IFA or Design-Build Contractor, as applicable, has issued the ROW Certification for the applicable portion of the Project;

(j) All pre-construction environmental surveys and mitigation have been completed as required by the Governmental Approvals or otherwise under the PPA Documents for the area(s) proposed for construction, and Design-Build Contractor shall have performed all other survey work and delivered all notices required by the PPA Documents to be delivered prior to commencement of construction on such portion of the Project;

(k) All representations and warranties of Design-Build Contractor set forth in Section 2.3 shall be and remain true and correct in all material respects;

(l) There exists no uncured Event of Default for which Design-Build Contractor has received written notice from IFA; and

(m) Design-Build Contractor has provided to IFA at least ten (10) days advance written notification of the date Design-Build Contractor determines that it will

satisfy all of the conditions set forth in this Section 4.4 and IFA has not objected in writing.

As used in this Section 4.5.1, the term "construction" specifically excludes potholing and geotechnical investigations incidental to design Work, Hazardous Materials Management, mobilization, Site security and establishment of work yard(s) and storage sites.

4.5.2 DB Utility Work

Design-Build Contractor shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the construction Work until IFA issues the NTP, all of the conditions set forth in Section 4.5.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

(a) The Utility Adjustment is covered by an executed Utility Agreement;

(b) The review and comment process has been completed or IFA's approval has been obtained, as applicable for the Utility Plans covering the Utility Adjustment; and

(c) Any other required approvals have been obtained for the Utility Plans covering the Utility Adjustment.

4.6 Recovery Schedule

4.6.1 If at any time, the Work on any Critical Path item is delayed for a period which exceeds the greater of either thirty (30) days in the aggregate or that number of days in the aggregate equal to 5% of the days remaining until a Completion Deadline (including delays to which Design-Build Contractor may be entitled to a time extension under Section 13), then Design-Build Contractor, within ten (10) days after Design-Build Contractor first becomes aware of such schedule delay or otherwise at the request of IFA, shall prepare and submit to IFA for review and approval a Recovery Schedule demonstrating Design-Build Contractor's proposed plan to regain lost schedule progress and to achieve the original contractual milestones in accordance with this PPA, including Substantial Completion by the Substantial Completion Deadline. Design-Build Contractor's submittal shall comply with Section 1.4 of the Technical Provisions. IFA shall notify Design-Build Contractor within ten (10) days after receipt of each such Recovery Schedule whether the schedule is accepted or rejected. Within five (5) days after IFA's rejection of the schedule, Design-Build Contractor will resubmit a revised Recovery Schedule incorporating IFA's comments. When IFA accepts Design-Build Contractor's Recovery Schedule, Design-Build Contractor shall, within five (5) days after IFA's acceptance, incorporate and fully include such schedule into the Project Schedule and deliver same to IFA.

4.6.2 All costs incurred by Design-Build Contractor in preparing, implementing and achieving the Recovery Schedule shall be borne by Design-Build Contractor and

shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Section 13.

4.6.3 In the event that Design-Build Contractor fails to provide an acceptable Recovery Schedule within thirty (30) days of Design-Build Contractor's receipt of a notice to do so, Design-Build Contractor shall have no right to receive progress payments until such time as Design-Build Contractor has prepared and IFA has approved such Recovery Schedule. Any failure or delay in the submittal or approval of a Recovery Schedule shall not result in any time extension or increase in the Contract Price or other compensation under the PPA Documents.

SECTION 5. CONTROL OF WORK

5.1 Control and Coordination of Work

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

5.2 Safety

5.2.1 Design-Build Contractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of IFA and its consultants, employees of FHWA, visitors to the Site and members of the public who may be affected by the Work. Design-Build Contractor shall at all times comply with all safety requirements of the PPA Documents, the approved Safety Plan, and all such requirements under applicable Governmental Rules.

5.2.2 IFA has the authority to stop any Work activity that constitutes or is perceived to present a threat of imminent danger. If, in the discretion of IFA, any conditions or activities may present an imminent danger that could result in serious injury, death or extensive property damage, the affected portion of the Work will be stopped immediately and shall not recommence until the practices or conditions are corrected to the satisfaction of IFA. In the event the Work or any portion thereof is suspended by IFA or any other Governmental Entity because of an unsafe condition, such suspension shall be treated in accordance with Section 14.2, and Design-Build Contractor shall have no right to any Change Order, including any adjustment in the Contract Price or Completion Deadline(s) in connection with such suspension.

5.3 Process To Be Followed Upon Discovery of Certain Site Conditions

5.3.1 Notification to IFA

5.3.1.1 If Design-Build Contractor becomes aware of (a) any on-Site material that Design-Build Contractor believes may contain Hazardous Materials required to be removed or treated, or (b) any Differing Site Conditions, as a condition precedent to Design-Build Contractor's right to a potential Change Order, Design-Build Contractor shall immediately notify IFA thereof telephonically or in person, to be followed immediately by written notification. Design-Build Contractor shall immediately stop Work in and secure the area. In such event, IFA will view the location within five Business Days of receipt of notification and shall advise Design-Build Contractor at that time whether Work should be resumed or whether further investigation or other action is required.

5.3.1.2 Notwithstanding the foregoing, Design-Build Contractor shall not be obligated to stop Work upon discovery of any materials or conditions that the PPA Documents or Technical Provisions indicate are present in the location in question; provided, however, that Design-Build Contractor shall provide prompt notice to IFA of any such discovery. Furthermore, if any Governmental Approval specifies a procedure to be followed which differs from the procedure set forth herein, Design-Build Contractor shall follow the procedure set forth in the Governmental Approval. Refer to Section 6.10.1 for additional requirements relating to Hazardous Materials.

5.3.2 Further Investigation

IFA shall promptly conduct such further investigation as IFA deems appropriate. IFA shall use reasonable efforts to determine within three Business Days after receipt of such notification whether the situation falls within the scope of Section 5.3.1.1(a) or (b), and shall notify Design-Build Contractor of its determination once it is made. IFA shall, at that time, also advise Design-Build Contractor of any action to be taken regarding the situation. If Hazardous Materials or Contaminated Groundwater is involved, the notice shall describe the type of remediation measures, if any, which Design-Build Contractor is to undertake with respect thereto.

5.3.3 Recommencement of Work

IFA shall have the right to require Design-Build Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing. Design-Build Contractor shall promptly recommence Work in the area upon receipt of notification from IFA to do so.

5.4 Obligation to Minimize Impacts

Design-Build Contractor shall ensure that all of its activities and the activities of DB-Related Entities are undertaken in a manner that will minimize any adverse effect on surrounding property and the public to the maximum extent practicable.

5.5 Quality Assurance, Quality Control, Oversight, Inspection and Testing

5.5.1 IFA Responsibilities

5.5.1.1 IFA will perform quality assurance and acceptance testing as described in the Technical Provisions, Standard Specifications and Recurring Special Provisions. IFA and FHWA representatives shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, as set forth in the Technical Provisions to the extent necessary or advisable (as determined by each of such entities) to comply with FHWA or other applicable federal agency requirements and verify Design-Build Contractor's compliance with the PPA Documents and Project Management Plan. IFA shall use reasonable efforts to conduct such activity in accordance with Design-Build Contractor's reasonable safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

5.5.1.2 IFA shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and the Project Management Plan. Design-Build Contractor shall provide to IFA all test results and reports within five days after Design-Build Contractor receives them.

5.5.1.3 All materials and each part or detail of the Work shall also be subject to oversight, inspection and testing by IFA, FHWA, and other Persons designated by IFA. At all points in performance of the Work at which specific inspections or approvals by IFA or FHWA are required by the PPA Documents or Project Management Plan, Design-Build Contractor shall not proceed beyond that point until IFA or FHWA, as applicable, have made such inspection or approval or waived their respective rights to inspect or approve, which waiver shall be in writing. In addition, when any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the Work. Such oversight, inspection and/or testing does not make such Person a party to this PPA nor will it change the rights of the Parties hereto. Design-Build Contractor hereby irrevocably consents to such oversight, inspection and testing. Upon request from IFA, Design-Build Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.5.1.4 Design-Build Contractor at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and fully cooperate, with IFA and FHWA to facilitate the inspection, review, and oversight activities of IFA and FHWA. Design-Build Contractor shall cause its representatives to be available at all reasonable times for consultation with IFA.

5.5.1.5 Without limiting the foregoing, Design-Build Contractor shall afford IFA and FHWA, and their respective authorized representatives: (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to Design-Build Contractor's Project offices and operations buildings, and (c) unrestricted access to data related to the Work, subject to Section 21.4. Without limiting the foregoing, Design-Build Contractor shall deliver to IFA upon request accurate and complete books, records, data, and information regarding the Work, the Project, and the Utility Adjustment work, in the format required by the Technical Provisions.

5.5.2 Design-Build Contractor Responsibilities

Design-Build Contractor shall perform any inspection, sampling, testing, quality control and quality assurance that is required to be performed by Design-Build Contractor by the Technical Provisions and the approved Design-Build Contractor's Quality Management Plan.

5.5.3 Obligation to Uncover Finished Work

Design-Build Contractor shall inform IFA of any part of the Work which is about to be covered or otherwise hidden from view and offer a full and adequate opportunity to IFA to inspect and test such part of the Work before it is covered. At all times before Final Acceptance, Design-Build Contractor shall remove or uncover such portions of the finished or covered construction Work as directed by IFA. After examination by IFA and

any other Persons designated by IFA, Design-Build Contractor shall restore the Work to the standard required by the PPA Documents. If the Work exposed or examined is not in conformance with the requirements of the PPA Documents, then uncovering, removing, and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Design-Build Contractor's cost and Design-Build Contractor shall not be entitled to any adjustment to the Contract Price or any time extension or any other relief. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by IFA or without inspection in accordance with the Technical Provisions, including failure to provide notice of matters subject to Witness and Hold Points, may be ordered uncovered, removed or restored by IFA at Design-Build Contractor's cost and without an adjustment to the Contract Price or a time extension, or any other relief, even if the Work proves acceptable and in compliance after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.2 is in conformance with the requirements of the PPA Documents, then any delay in any Critical Path caused by uncovering, removing and restoring Work shall be considered an IFA-Caused Delay, and Design-Build Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

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

5.6.1 Oversight and Acceptance

The oversight, spot checks, audits, tests, acceptances, and approvals conducted by IFA and others do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. IFA may request remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with the requirements of the PPA Documents, whether or not previous oversight, spot checks, inspections, verifications, audits, reviews, tests, acceptances or approvals were conducted or waived by IFA or any such Persons.

5.6.2 No Estoppel

Design-Build Contractor shall not be relieved of obligations to perform the Work in accordance with the PPA Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, verifications, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. IFA shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by Design-Build Contractor, or from showing that the Work or materials do not conform in fact to the requirements of the PPA Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, IFA shall not be precluded or estopped from recovering from Design-Build Contractor and its Guarantor(s) or Surety(ies) such

damages as IFA may sustain by reason of Design-Build Contractor's failure to comply or to have complied with the terms of the PPA Documents.

5.7 Nonconforming Work

Nonconforming Work rejected by IFA shall be removed and replaced so as to conform to the requirements of the PPA Documents, at Design-Build Contractor's cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Build Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that IFA may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Design-Build Contractor fails to correct any Nonconforming Work within ten (10) days of receipt of notice from IFA requesting correction, or if such Nonconforming Work cannot be corrected within ten (10) days, and Design-Build Contractor fails to (a) provide to IFA a schedule for correcting any such Nonconforming Work acceptable to IFA within such ten (10) day period, (b) commence such corrective Work within such ten (10) day period and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then IFA may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so (plus an administrative charge equal to ten percent (10%) of the cost) from any moneys due or to become due Design-Build Contractor and/or obtain reimbursement from Design-Build Contractor for such cost (plus an administrative charge equal to ten percent (10%) of the cost).

SECTION 6. ACCESS TO SITE; UTILITY ADJUSTMENTS; ENVIRONMENTAL MITIGATION; COOPERATION WITH LOCAL AGENCIES

6.1 Access to Site

6.1.1 Planned ROW Limits

The Reference Plans identifies the Planned ROW Limits. In the event of any changes in right-of-way requirements in connection with any IFA-Directed Change or Necessary Basic Configuration Change, the Planned ROW Limits shall automatically be deemed modified to incorporate the changed requirements.

6.1.2 Access to IFA-Provided Property

6.1.2.1 Design-Build Contractor shall have the right and license to enter the Project ROW subject to the provisions of the PPA Documents. IFA shall be responsible for ensuring that access to each parcel included in IFA-Provided Property is provided on or before the latest date construction is scheduled to start on such parcel as set forth in the Project Schedule; provided, however, that Design-Build Contractor (not IFA) shall be responsible for obtaining encroachment permits and other permits and rights of entry to gain access to areas within the jurisdiction of a Governmental Entity. Design-Build Contractor shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Project ROW.

6.1.2.2 IFA shall notify Design-Build Contractor in writing within ten (10) Business Days after it becomes clearly apparent to IFA that IFA will not be able to obtain any parcel(s) included in IFA-Provided Property, and shall provide a Directive Letter requiring Design-Build Contractor to take action as necessary to accommodate the change.

6.1.2.3 Concurrently with review of the Project Baseline Schedule, Design-Build Contractor and IFA shall discuss the access requirements associated with the scheduled activities, which shall in all events allow the minimum time for provision of access as specified in Section 1.4 of the Technical Provisions. The Project Baseline Schedule shall provide reasonable work-arounds, re-sequencing and redeployments to progress the Project until the scheduled access date for each parcel.

6.1.2.4 Within ten (10) Business Days after IFA determines that it will be unable to provide access to a particular parcel or parcels of IFA-Provided Property by the scheduled date, IFA shall notify Design-Build Contractor regarding the revised projected date for delivery of access. Design-Build Contractor shall fully cooperate with IFA to work around and re-sequence and redeploy around such parcel until access can be provided, including rescheduling Work so as to avoid any delay to the overall Project. As a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to IFA's delay in delivery of access, within ten (10) days after Design-Build Contractor is advised of a projected delay, Design-Build

Contractor shall provide IFA with a written notice specifying the Project Schedule activity number, late finish date, and current total Float associated with the parcel in question, and advising IFA of any potential impacts to a Critical Path and potential costs that may be incurred as the result of a delay. Subject to the provisions of Section 13.5, if notice has been timely provided, any unavoidable delay to a Critical Path which is directly attributable to the delay in provision of access shall be considered an IFA-Caused Delay. If such a delay occurs, Design-Build Contractor shall take appropriate action to minimize the cost and time impact thereof. an IFA

6.1.3 Additional Properties

6.1.3.1 In addition to provision of access to IFA-Provided Property, IFA will obtain access rights to certain other parcels (the "Additional Properties"), as provided herein. Acquisition of Additional Properties, except those required solely due to an IFA Change, shall be solely at Design-Build Contractor's expense as more particularly provided in Section 6.1.3.4.

6.1.3.2 If Design-Build Contractor identifies Additional Properties as permanently needed to construct or maintain the Project, Design-Build Contractor shall submit to IFA in writing a request, including a drawing of the limits necessary for each parcel and any other information necessary for IFA's review, to acquire the Additional Properties. The request, drawing and information are subject to IFA's approval. IFA shall undertake and complete acquisition of Additional Properties, including undertaking eminent domain proceedings, if necessary, after IFA approves Design-Build Contractor's written request, drawing and information for the requested Additional Properties.

6.1.3.3 IFA shall not be obligated to approve a request for acquisition of any other Additional Property where, in IFA's good faith judgment, (a) to do so would materially adversely affect political, community or public relations, or (b) successful timely completion of the acquisition is not likely. Within fourteen (14) days after receipt of a written request from Design-Build Contractor identifying an Additional Property for acquisition, IFA will state in writing to Design-Build Contractor whether IFA regards acquisition (whether by negotiation or condemnation) of the Additional Property as potentially materially adversely affecting political, community or public relations, or regards successful timely acquisition as not likely. No such statement, or lack thereof, shall preclude IFA from later changing its determination based on changed political, community or public relations events or circumstances.

6.1.3.4 Design-Build Contractor shall be responsible for all costs and expenses associated with IFA's acquisition of Additional Properties, except those costs and expenses actually and properly incurred solely due to an IFA Change. In paying all such costs and expenses, Design-Build Contractor is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Design-Build Contractor. Such costs and expenses include:

(1) The cost of acquisition services and document preparation;

(2) The cost of negotiations;

(3) The cost of condemnation proceedings handled by the Attorney General of the State of Indiana through master proceedings, jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;

(4) The purchase prices, master awards, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, and attorney's fees, or other consideration for interests in real property for all parcels required for the Project or the Work, whether within or outside of the Project Right of Way;

(5) The cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, Project Specific Locations, and any other convenience of Design-Build Contractor;

(6) The cost of permitting;

(7) Closing costs associated with parcel acquisitions in accordance with the Uniform Act, IC 32-24-1 *et seq*. and IFA and INDOT policies;

(8) Relocation assistance payments and costs, in accordance with the Uniform Act and IC 8-23-17-1 *et seq*.

6.1.3.5 If IFA incurs any such reasonable costs and expenses on Design-Build Contractor's behalf, IFA may submit to Design-Build Contractor, not more often than monthly, invoices for such costs and expenses. Design-Build Contractor shall reimburse IFA within thirty (30) days of IFA's submittal to Design-Build Contractor of each such invoice. In addition to any other remedy, IFA shall have the right to curtail or suspend acquisition activities if Design-Build Contractor for any reason fails to pay any such invoice in full when due. IFA will resume acquisition activities promptly after delinquent amounts are paid in full with interest.

6.1.3.6 Design-Build Contractor shall solely bear the risk of any time and cost impacts to the Work related to IFA's acquisition of Additional Properties.

6.1.3.7 Design-Build Contractor shall not negotiate with any owners or occupants of any property, including Additional Properties, with respect to activities under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

6.1.3.8 Neither IFA nor INDOT shall be obligated to acquire or exercise its power of eminent domain in connection with Design-Build Contractor's acquisition of any temporary right or interest for Project Specific Locations. Neither IFA nor INDOT shall have any obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests; and Design-Build Contractor shall have no obligation to submit acquisition packages to IFA for, or obtain IFA's approval of Design-Build Contractor's acquisition of, any such temporary right or interest.

6.1.4 Acquisition of Temporary Interests by Design-Build Contractor

6.1.4.1 Design-Build Contractor's activities with respect to (a) acquisition of interests in real property to be used in connection with the Work and (b) Utility Adjustment Work performed pursuant to Sections 6.3 through 6.9 shall be completed and documented in compliance with all applicable Governmental Rules, including the Uniform Act, and the rules and regulations implementing the Uniform Act. Design-Build Contractor shall provide IFA with a ROW Certification for all Project Specific Locations and a Utility Certification, in a form acceptable to IFA, that such activities comply with the Uniform Act and implementing regulations as well as 23 CFR § 635.309 (b) and (c). IFA reserves the right to supervise Design-Build Contractor's activities described in this Section 6.1.4.1 to ensure Design-Build Contractor acts in accordance with the INDOT ROW Manual and in compliance with all applicable Governmental Rules, including the Uniform Act and the rules and regulations implementing the Uniform Act.

6.1.4.2 Design-Build Contractor, at its sole cost, shall be solely responsible for acquisition of any Project-Specific Locations or other temporary interests in property which Design-Build Contractor determines are necessary, desirable or advisable in order to complete the Project, other than temporary interests included in IFA-Provided Property and any Additional Properties to be acquired by IFA under Section 6.1.3. Such temporary interests may include rights for temporary Project-specific activities in connection with the Construction Work outside the Project ROW, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earth work material borrow sites, equipment parking areas, as well as any property needed for any temporary utility facilities being constructed by Design-Build Contractor. Design-Build Contractor shall pay the purchase price for all such property interests directly. In the event that the property is within the limits of IFA-Provided Property, is intended to be used for permanent improvements or for temporary uses that are necessary for the construction of permanent Project improvements or Design-Build Contractor intends to request IFA to acquire such parcel, Design-Build Contractor shall not negotiate with the owner(s) of such interests. Additional requirements regarding early access are set forth in Section 4.2 of the Technical Provisions. IFA shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests or the condition of such rights or interests, and shall not be obligated to use its powers of eminent domain in connection therewith. Design-Build Contractor shall comply with all applicable Governmental Approvals and Governmental Rules in acquiring and maintaining or disposing of any such property rights or interests. Design-Build Contractor shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that IFA shall have no liability or obligations with respect thereto.

6.1.5 Conveyance Documents

Design-Build Contractor shall prepare all documents necessary to evidence any easements or other real property interests relating to the Project to be granted by IFA to Utility Owners and other Persons.

6.2 Railroad Agreements

Not used.

6.3 Utility Adjustments

6.3.1 Design-Build Contractor's Responsibility

6.3.1.1 Design-Build Contractor is responsible for (and the scope of the DB Utility Work includes) causing, in accordance with the Project Schedule, all Utility Adjustments necessary to accommodate the Project except for any efforts and costs which this Section 6 or Section 13 of the Technical Provisions specifically identifies as the responsibility of the Utility Owners or of IFA or otherwise specifically excludes from the DB Utility Work. All utility Adjustment Work performed by Design-Build Contractor shall comply with the PPA Documents. Design-Build Contractor shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the PPA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in this Section 6 or in Section 13, Design-Build Contractor shall continue to be the responsible party to IFA for timely performance of all Utility Adjustment Work. Except as provided otherwise in this Section 6 or in Section 13, Design-Build Contractor assumes all risk of increased costs and delay associated with Utility Adjustments. Accordingly, Design-Build Contractor agrees that, except as otherwise provided in this Section 6 or in Section 13, (a) the Contract Price covers all of the DB Utility Work, (b) it is feasible to obtain and/or perform all Utility Adjustments within the time deadlines of the PPA Documents, and (c) the Contract Price includes contingencies deemed adequate by Design-Build Contractor to account for the potential risks of additional costs and delays relating to Utility Adjustments, taking into consideration the constraints affecting the Project and the fact that Design-Build Contractor is entitled to Change Orders only in specified situations.

6.3.1.2 Utility Adjustments may be necessitated by: (a) a physical conflict between the Utility and the Project (including their respective construction, operation, maintenance or use), and/or (b) a conflict between the Project as designed and the Utility based on the applicable Adjustment Standards, Governmental Approvals and/or Governmental Rules (even though there is no physical conflict). The limits of Adjustment of existing Utilities extend as far as is necessary to accommodate or permit construction of the Project in accordance with the foregoing, whether inside or outside the Project ROW. Design-Build Contractor shall ensure that all Utility Adjustments are compatible with and interface properly with the Project.

6.3.1.3 Avoiding Adjustments and Minimizing IFA Costs

(a) Design-Build Contractor shall use its best efforts to minimize costs for which Design-Build Contractor is entitled to additional compensation pursuant to Sections 6.3 through 6.10, to the extent practical and allowable pursuant to the PPA Documents.

(b) Subject to Section 6.3.1.3(a), Design-Build Contractor shall consider the location of Utilities and the potential impact of Utility Adjustments in developing and finalizing the design of the Project, with the goal of minimizing Utility Adjustments to the extent practical and allowable pursuant to the PPA Documents.

(c) Design-Build Contractor shall reimburse IFA for any costs IFA incurs as a result of Design-Build Contractor's failure to comply with the requirements of this Section 6.3.1.3.

6.3.2 Utility Agreements

6.3.2.1 Design-Build Contractor is responsible for preparing, negotiating and presenting to IFA for execution instruction-specific, construction-detailed Utility Agreements with all Utility Owners, regardless of whether the Utility Owners are identified in the Reference Information Documents, prior to commencement of any Utility Adjustment Work for each such Utility Owner. The general procedures and framework for preparing Utility Agreements and processing utility issues within the Project area shall comply with Section 13 of the Technical Provisions and shall follow the standard practices of the respective Utility Owners for such Utility Agreements, which in each case shall not be less than Good Industry Practice. Design-Build Contractor shall sign each Utility Agreement acknowledging and agreeing to be bound by the terms and parameters.

6.3.2.2 Each Utility Agreement shall clearly specify and distinguish the scope of Utility Adjustment Work Design-Build Contractor is to perform, and the scope the Utility Owner is to perform. Each Design-Build Contractor Utility Agreement shall contain provisions for payments, payment terms, controlling specifications, and work description. Each Design-Build Contractor Utility Agreement shall also include specific procedures for resolving scheduling, design, construction, and payment issues arising due to errors or omissions in information the Utility Owner provides to Design-Build Contractor.

6.3.2.3 IFA agrees to cooperate as reasonably requested by Design-Build Contractor in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. Design-Build Contractor shall keep IFA informed of the status of any such negotiations. Design-Build Contractor shall submit each such Utility Agreement and supplements and amendments thereto to IFA for approval in its reasonable discretion, in accordance with the procedures described in Section 3.2.

6.3.2.4 Design-Build Contractor is solely responsible for the terms and conditions of all Utility Agreements (subject to the requirements of the PPA Documents, including Section 13 of the Technical Provisions). Design-Build Contractor is responsible for proper completion of the Utility Adjustment Work required for the Project, in accordance with the PPA Documents and applicable Governmental Rules, regardless of the nature or provisions of the Utility Agreements and regardless of whether Design-Build Contractor or the Utility Owner or its contractors, is performing the Utility Adjustment Work.

6.3.2.5 If a conflict occurs between the terms of an agreement between IFA and a Utility Owner and those of the PPA Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Design-Build Contractor and IFA; if the foregoing criteria are not relevant to the terms at issue, then the PPA Documents shall prevail, unless expressly provided otherwise in the PPA Documents.

6.3.2.6 Design-Build Contractor shall comply with and timely perform all obligations imposed on Design-Build Contractor by any Utility Agreement.

6.3.3 Allocation of Work Responsibility

6.3.3.1 For each known Utility identified as requiring Adjustment, the initial allocation of responsibility for performing Adjustment design, construction, and/or materials procurement as between Design-Build Contractor and the Utility Owner shall be determined in accordance Utility Agreement and Section 13 of the Technical Provisions. For purposes of this Section 6.3 and Section 13 of the Technical Provisions, references to responsibility for performing Utility Adjustment design and construction include all tasks customarily associated therewith; provided, however, that Design-Build Contractor shall be responsible for all coordination with Utility Owners that is necessary in order to accomplish the Utility Adjustments in compliance with the requirements of the PPA Documents.

6.3.3.2 Design-Build Contractor is responsible for scheduling all Utility Adjustments so as to meet all applicable Completion Deadlines, without regard to whether a Utility Adjustment is performed by Design-Build Contractor or by the affected Utility Owner (or its contractors). Accordingly, under no circumstances shall any reallocation of responsibility for Utility Adjustment work between Design-Build Contractor and a Utility Owner be considered grounds for a time extension.

6.3.3.3 No increase or decrease in the Contract Price shall be made pursuant to this Section 6.3.3 on account of any change in the allocation of responsibility for Incidental Utility Work, or any other matter for which the PPA Documents specify how liability, cost or risk is to be allocated between IFA and Design-Build Contractor.

6.3.4 Utility Adjustment Costs

6.3.4.1 Design-Build Contractor is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Utility Easements, Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding (a) costs for acquisition of any other real property interests shown on the ROW Plans (for which IFA is responsible to acquire), (b) costs attributable to Betterments, and (c) any other costs for which the Utility Owner is responsible under applicable Governmental Rules. Design-Build Contractor shall fulfill this responsibility either by performing at its own cost the Utility Adjustment Work itself if permitted by the Utility Owner (except that any assistance provided by any DB-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be

provided outside of the Work), or by reimbursing the Utility Owner for its Utility Adjustment Work. Design-Build Contractor is solely responsible for collecting directly from the Utility Owner any reimbursement due to Design-Build Contractor for Betterment costs or other costs incurred by Design-Build Contractor for which the Utility Owner is responsible under applicable Law.

6.3.4.2 For each Utility Adjustment under Utility Agreements, the eligibility of Utility Owner costs (both indirect and direct) for reimbursement by Design-Build Contractor, as well as the determination of any Betterment or other costs due to Design-Build Contractor, shall be established in accordance with applicable Governmental Rules, including rules pertaining to Existing Utility Property Interests, and the applicable Utility Agreement(s).

6.3.4.3 Except for costs for acquisition of any other real property interests shown on the ROW Plans (for which IFA is responsible to acquire), Design-Build Contractor shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith.

6.3.4.4 If for any reason Design-Build Contractor is unable to collect any amounts due to Design-Build Contractor from any Utility Owner, then (a) IFA shall have no liability for such amounts, (b) Design-Build Contractor shall have no right to collect such amounts from IFA or to offset such amounts against amounts otherwise owing from Design-Build Contractor to IFA, and (c) Design-Build Contractor shall have no right to stop Work, sue for mandamus, or to exercise any other remedies against IFA on account of such failure to pay.

6.3.4.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Design-Build Contractor shall coordinate with IFA and such local Governmental Entity regarding accounting for and approval of those costs.

6.3.4.6 Design-Build Contractor shall maintain a complete set of records for the costs of each Utility Adjustment under each Utility Agreement (whether incurred by Design-Build Contractor or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and Design-Build Contractor costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Design-Build Contractor shall also indicate in these records the source of funds used for each such Utility Adjustment under each Utility Agreement. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the PPA Documents.

6.3.5 Incidental Utility Work

Notwithstanding any contrary provision of the PPA Documents, Design-Build Contractor shall be responsible for all Incidental Utility Work without regard to the allocation of work responsibility otherwise established pursuant to this Section 6.3. Design-Build Contractor also shall be responsible for furnishing all designs for Incidental Utility Work which it performs, unless such designs are included in designs supplied by the Utility Owner pursuant to the applicable Utility Agreement(s). Neither IFA nor

Design-Build Contractor shall be entitled to any adjustment in the Contract Price or Completion Deadlines on account of costs incurred, cost savings or delays associated with the performance of Incidental Utility Work by Design-Build Contractor or by any Utility Owner; provided, however, that the foregoing limitation shall not apply to Contract Price increases pursuant to Sections 6.4.2 or to time extensions pursuant to Section 6.8 for which Design-Build Contractor would otherwise be eligible.

6.3.6 Bonds and Insurance; Security for Utility Adjustment Costs

6.3.6.1 All DB Utility Work shall automatically be covered by the Payment Bonds and Performance Bonds described in Section 8 and by the insurance described in Section 9.

6.3.6.2 Design-Build Contractor shall satisfy all requirements in Utility Agreements to provide security for reimbursement of Utility Adjustment costs to which the Utility Owner is entitled and that are the responsibility of Design-Build Contractor hereunder, in form, type, and amount and on terms provided by the Utility Agreements.

6.4 Accuracy of IFA-Supplied Information Concerning Existing Utility Information and Supplemental Utility Investigation by Design-Build Contractor

6.4.1 Utility Information and Supplemental Utility Investigation

IFA has provided certain Utility Information in the Reference Information Documents. Design-Build Contractor shall analyze the Utility Information, contact and make inquiries of Utility Owners, perform surface inspections of the Project ROW and such additional inspections, including potholing, as it deems appropriate to verify, fully and accurately identify all Utilities, address all field conditions, and supplement the Utility Information. Within one hundred twenty (120) days from the effective date of NTP, Design-Build Contractor shall submit to IFA for review and comment Design-Build Contractor's Utility Conflict Matrix reflecting the existence of any and all Utilities likely to be impacted by the Project; provided, however, that for any Project ROW for which IFA has not yet provided Design-Build Contractor with access within such one hundred twenty (120) day period, Design-Build Contractor shall have a period of thirty (30) days after Design-Build Contractor obtains access to the property to provide IFA with an updated Design-Build Contractor's Utility Conflict Matrix reflecting any impacted Utilities on that property.

6.4.2 Claims for Inaccuracies in Utility Information Identified in Design-Build Contractor's Utility Conflict Matrix

6.4.2.1 Subject to the provisions of this Section 6.4 and Section 13, if any Utility located within the Planned ROW Limits and requiring actual relocation is not identified in the Utility Information or is misidentified therein but is timely identified by the Design-Build Contractor in the Design-Build Contractor's Utility Conflict Matrix pursuant to this Section 6.4, then Design-Build Contractor shall be entitled to a Change Order increasing the Contract Price to compensate Design-Build Contractor for any material increase in Design-Build Contractor's costs of performing the Work that is directly

attributable to such lacking or inaccurate information. The amount of such Change Order shall be determined in accordance with Section 13.6.4.

6.4.2.2 If Design-Build Contractor's Utility Conflict Matrix (including updates to the Design-Build Contractor's Utility Conflict Matrix to the extent allowed under Section 6.4.1) indicate the existence of any Utility likely to be impacted that was not previously identified in the Utility Information or was misidentified therein and Design-Build Contractor believes that the existence of such Utility or misidentification will warrant a material increase in the Contract Price or extension of a Completion Deadline, Design-Build Contractor shall provide a DCR Notice in accordance with the timeframes and other provisions set forth in Section 13.3.2.1. Except for Non-Indiana 811-Mapped Utilities, if Design-Build Contractor fails to timely provide such DCR Notice as required by this Section 6.4.2 and Section 13 or fails to include an impacted Utility in Design-Build Contractor's Utility Conflict Matrix (including updates to the Design-Build Contractor's Utility Conflict Matrix to the extent allowed under Section 6.4.1), Design-Build Contractor shall be deemed to have waived any right to later claim for the alleged inaccuracies in the Utility Information, notwithstanding (a) any contrary provision of the PPA Documents, (b) actual notice of knowledge on the part of IFA and (c) any alleged lack of prejudice to IFA from the late notice or late identification of the alleged inaccuracy.

6.4.2.3 Design-Build Contractor shall not be entitled to any increase in the Contract Price pursuant to this Section 6.4.2 for any of the following:

(a) Increased costs of the Work attributable to unidentified or misidentified Utilities, to the extent that the existence of the facility was known to Design-Build Contractor as of the Proposal Date or could have been inferred from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the area conducted prior to the Proposal Date;

(b) Increased costs of the Work attributable to unidentified or misidentified Utilities other than Non-Indiana 811-Mapped Utilities, to the extent that the existence of the facility did not appear on Design-Build Contractor's Utility Conflict Matrix (including updates to the Design-Build Contractor's Utility Conflict Matrix to the extent allowed under this Section 6.4);

(c) Increased costs of the Work attributable to unidentified or misidentified Utilities where Design-Build Contractor failed to provide timely notice in accordance with Section 6.4.2.2;

(d) Increased costs of the Work attributable to misidentified or unidentified Utilities that can be protected in place or removed rather than physically relocated;

(e) The costs of Design-Build Contractor's supplemental utility investigation performed in accordance with Section 6.4.1;

(f) Any additional costs incurred by Utility Owners as a result of the unidentified or misidentified Utility; and

(g) Delay and disruption damages.

6.4.3 Non-Indiana 811-Mapped Utilities

Notwithstanding the provisions of Section 6.4.2, if during performance of Construction Work Design-Builder encounters any Non-Indiana 811-Mapped Utility located within the Planned ROW Limits and which requires actual relocation and such Utility was not identified in either the Utility Information or Design-Builder's Utility Conflict Matrix or is misidentified therein, then, subject to the provisions of Section 13, Design-Builder shall be entitled to a Change Order increasing the Contract Price to compensate Design-Builder for any material increase in Design-Builder's costs of performing the Work, including delay and disruption damages, that is directly attributable to such lacking or inaccurate information. The amount of such Change Order shall be determined in accordance with Section 13.6.4.

6.4.4 Inaccuracies in Other IFA-Supplied Information Concerning Existing Utilities

Except as otherwise provided in this Section 6.4, any information with respect to Utilities (including their existence, location, ownership, occupancy rights, type, material, status, usage, and/or any other characteristic) provided in the Utility Information or elsewhere in the Reference Information Documents or PPA Documents is for informational purposes only, is preliminary and has not been verified, and shall not be relied upon by Design-Build Contractor. Design-Build Contractor shall verify all information with respect to Utilities included in the Utility Information or elsewhere in the Reference Information Documents or PPA Documents and shall perform its own investigations as provided in this Section 6.4 of the Contract and Section 13 of the Technical Provisions. Accordingly, there shall be no changes in the Contract Price (either up or down) and no extensions of any Completion Deadlines on account of any inaccuracies in the Reference Information Documents or PPA Documents with respect to any Utility (including its existence, location, ownership, type, material, status, usage, and/or any other characteristic), unless otherwise expressly allowed pursuant to Section 6.4.2 and/or Section 6.8.

6.4.5 Acknowledgments and Waivers

6.4.5.1 Except as otherwise provided in Section 6.4.2 and/or Section 6.8, the Parties specifically intend by Section 6.4.3 to delegate to Design-Build Contractor the obligation to perform all responsibilities with respect to identification of Utilities, including underground public utility facilities, and to allocate to Design-Build Contractor all risk of increased costs and time of the Utility Adjustment Work assigned to Design-Build Contractor as part of the Work hereunder resulting from inaccuracies in the reputed locations of such facilities (and in any other relevant information with respect to such facilities.

6.4.5.2 Design-Build Contractor acknowledges that prior to the Proposal Date, Design-Build Contractor had ample opportunity to analyze the Utility Information provided by IFA, to contact and inquire of Utility Owners, and to perform such additional investigations as Design-Build Contractor deems appropriate to verify and supplement such information, and that such investigations constituted the basis for establishing its Proposal Price.

6.4.5.3 Design-Build Contractor acknowledges that prior to the submittal or Design-Build Contractor's Utility Conflict Matrix (including updates to the Design-Build Contractor's Utility Conflict Matrix to the extent allowed under this Section 6.4), Design-Build Contractor had ample opportunity to analyze the Utility Information provided by IFA, to contact and inquire of Utility Owners, and to perform such additional investigations as Design-Build Contractor deems appropriate to verify and supplement such information.

6.4.5.4 Design-Build Contractor further acknowledges and agrees that the acknowledgements, waivers, and agreements set forth in Section 6.4.3 and this Section 6.4.55 extend to and include any rights which Design-Build Contractor might otherwise claim under IFA's Right of Way Policies and Procedures Manual.

6.5 Changes in Design

6.5.1 For purposes of this Section 6.5, a Project design change impacting Utility Adjustments is a change in Project plans that (a) requires Adjustment of a Utility that was not listed on the Utility Matrix; or (b) necessitates acquisition of a Utility Easement not included in IFA-Provided Property.

6.5.2 Inasmuch as Design-Build Contractor is both furnishing the design of and constructing the Project, Design-Build Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work or of Utility Adjustment work to be performed by Utility Owners. In considering such opportunities, Design-Build Contractor shall consider the impact of Project design changes on Utility Adjustments with the overall goal of minimizing the necessity for Utility Adjustments to the extent practical, in compliance with Section 6.3.1.3. Accordingly, except for cost increases or decreases resulting from Necessary Basic Configuration Changes or IFA-Directed Changes in Project design affecting Utility Adjustment work, and notwithstanding any other contrary provision of the PPA Documents, the following rules shall apply with respect to Project design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature, extent, or costs of anticipated Utility Adjustments:

(a) Design-Build Contractor shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes (including delays in acquisition of Utility Easements by IFA or Utility Owners).

(b) Design-Build Contractor shall not be entitled to any increase in the Contract Price for any additional costs which Design-Build Contractor incurs as a result of such design changes (including additional costs of DB Utility Work, the costs of any

additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or minimization of Utility Adjustments, and/or increased costs resulting from any Site conditions associated with Utility Easements made necessary by such design changes).

(c) If IFA incurs any additional costs as a result of such design changes (including any increases in amounts owed by IFA to Utility Owners, e.g., for work which is unusable or which must be redone), then Design-Build Contractor shall reimburse IFA for such costs within ten (10) days after receipt of IFA's invoice therefor, or in IFA's discretion, IFA may deduct the amount of reimbursement due from the payment (or payments, if necessary) next due to Design-Build Contractor under the Contract.

(d) IFA shall not be entitled to a credit on account of reductions in the cost of the Work due to any such avoided or minimized Utility Adjustments.

This Section 6.5 shall not apply to any changes in design made to accommodate any change in Adjustment Standards or Change in Law.

6.6 Utility Enhancements

Design-Build Contractor shall be responsible for addressing any requests by Utility Owners that Design-Build Contractor design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement"). Any Betterment performed as part of a Utility Adjustment, whether by Design-Build Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the applicable Utility Agreement. Design-Build Contractor shall perform any work on a Utility Owner Project only by separate contract outside of the Work. Under no circumstances shall Design-Build Contractor proceed with any Utility Enhancement that is incompatible with the Project or is not in compliance with applicable Governmental Rules, the Governmental Approvals or the PPA Documents, including the Completion Deadlines. Under no circumstances will Design-Build Contractor be entitled to any additional compensation or time extension hereunder as the result of any Utility Enhancement, whether performed by Design-Build Contractor or by the Utility Owner. Design-Build Contractor may, but is not obligated to, design and construct Utility Enhancements. Design-Build Contractor shall provide IFA with such information, analyses, and certificates as IFA may request in order to determine compliance with this Section 6.6.

6.7 Failure of Utility Owners to Cooperate

6.7.1 Design-Build Contractor shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. Design-Build Contractor shall notify IFA immediately if (a) Design-Build Contractor is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) Design-Build Contractor reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project or in accordance with Governmental Rules, the Governmental Approvals or the PPA Documents, (c) Design-Build Contractor becomes aware that any Utility Owner is

not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between Design-Build Contractor and a Utility Owner with respect to the Project, despite Design-Build Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that IFA assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Design-Build Contractor shall provide IFA with such information as IFA requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to IFA any notice or request for assistance, Design-Build Contractor shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

6.7.2 If Design-Build Contractor requests IFA's assistance pursuant to Section 6.7.1, the following provisions apply:

(a) Design-Build Contractor shall provide evidence reasonably satisfactory to IFA that (i) the subject Utility Adjustment is necessary, (ii) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (iii) Design-Build Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (iv) the Utility Owner is not cooperating (the foregoing clauses (a)(i) through (iv) are referred to herein as the "Conditions to Assistance").

(b) Following IFA's receipt of satisfactory evidence, IFA shall take such reasonable steps as Design-Build Contractor may request to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, IFA shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other legal remedy available to it under applicable Governmental Rules or existing contract, unless IFA elects to do so in its sole discretion. IFA may, at its sole discretion, participate in the resolution of any dispute between Design-Build Contractor and a Utility Owner, whether or not requested to do so by Design-Build Contractor.

(c) If IFA holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and IFA shall have the right not to exercise those rights. IFA's decision not to exercise those rights shall be in its sole discretion.

6.7.3 Any assistance provided by IFA shall not relieve Design-Build Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations under the PPA Documents and its obligations with respect to timely completion of all necessary Utility Adjustments.

6.8 Utility-Related Delays

6.8.1 Definition of Utility Delay

Except as set forth in subparagraph (b) of this Section 6.8.1, the term "Utility Delay" shall mean:

(a) Any unreasonable and unjustified delay by a Utility Owner (i) with whom Design-Build Contractor has been unable to negotiate and have IFA enter into a Utility

Agreement in connection with a Utility Adjustment or (ii) with whom IFA has entered into a Utility Agreement in connection with a Utility Adjustment and such delay by a Utility Owner is contrary to or in violation of the terms and provisions of the Utility Agreement, provided that in either case all of the "Conditions to Assistance" described in Section 6.7.2 have been satisfied.

(b) Notwithstanding the foregoing, the term "Utility Delay" does not include (i) IFA-Directed Changes relating to Utilities, or (ii) any event described in this Section 6.8.1 which results from or arises out of the actions, omissions, negligence, fraud, recklessness, willful misconduct, or violation of Governmental Rules, breach of Governmental Approvals or breach of contract by any DB-Related Entity. With the exception of the Cost Liability representation and preliminary designs based on the Reference Design, Design-Build Contractor shall not rely upon any proposed schedules, durations or deadlines included in the Reference Information Documents with respect to Utility Adjustments, and Design-Build Contractor may not base any claims for a time extension or additional compensation upon such proposed schedules, durations, and deadlines.

6.8.2 Allocation of Risk of Utility Delays

6.8.2.1 Subject to the limitations and restrictions in this Section 6.8 and Section 13.5.3, any Completion Deadline(s) affected by a Utility Delay shall be extended by one day for each day of Critical Path delay caused by such Utility Delay; provided, however, that if one or more Utility Delays is or are concurrent with another delay to a Critical Path which is Design-Build Contractor's responsibility hereunder but is not a Utility Delay, then such Utility Delay(s) shall not be grounds for a time extension. Furthermore, if two Utility Delays occur that are concurrent with each other but are not concurrent with any other delay, then the period of concurrent delay shall be considered a Utility Delay but shall only be counted once for purposes of any time extension.

6.8.2.2 Design-Build Contractor shall not be entitled to extension of any Completion Deadline pursuant to Section 6.8.2.1 unless all of the following conditions are satisfied (in addition to satisfaction of any conditions specified in Section 6.8.1):

(a) Design-Build Contractor has timely complied with the monitoring and notification requirements of Section 6.8.3 and satisfied the "Conditions to Assistance" requirements described in Section 6.7.2;

(b) If applicable, Design-Build Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner that has been approved by IFA;

(c) Design-Build Contractor has provided evidence satisfactory to IFA that (i) Design-Build Contractor took advantage of Float available early in the Project Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates, (ii) Design-Build Contractor has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (iii) Design-Build Contractor has otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance;

(d) There exist no circumstances which have delayed or are delaying (including concurrent delay) the affected Utility Adjustment(s), other than those that fit within the definition of a Utility Delay; and

(e) The delay is otherwise allowable under Section 13.5.3.

6.8.2.3 Upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 6 and Section 13, if Utility Delays occur for which a time extension is allowed hereunder, then Design-Build Contractor may receive delay and disruption damages calculated in accordance with Section 13.5.2, subject to the following limitations in addition to those set forth in Section 13:

(a) Design-Build Contractor shall not be entitled to any delay or disruption damages attributable to the first 60 days of Utility Delays (in the aggregate) for which Design-Build Contractor is entitled to a time extension; and

(b) Design-Build Contractor shall be entitled to 100% of the delay and disruption damages attributable to any days of Utility Delay occurring after the aggregate days of Utility Delay for which Design-Build Contractor is entitled to a time extension exceed 60 days.

6.8.3 Monitoring and Notification

Design-Build Contractor is responsible for verifying the progress of each Utility Owner's work and for notifying IFA when Design-Build Contractor has cause to believe that any Utility Owner will fail to meet a deadline determined pursuant to Section 6.8.1. Design-Build Contractor shall notify IFA within two (2) Business Days after discovery of such potential delay.

6.8.4 Delays Relating to Utility Easements

If, pursuant to the applicable Utility Agreement(s), the Utility Owner (rather than the Design-Build Contractor) is responsible for handling acquisition efforts for a particular Utility Easement, then any failure by the Utility Owner to provide Design-Build Contractor with timely access to such Utility Easement shall not be treated as an IFA-Caused Delay. Instead, any such failure to provide Design-Build Contractor with access before the applicable deadline (determined in accordance with Section 6.8.1) shall be treated as a Utility Delay, to the extent that it affects a Critical Path and otherwise satisfies the requirements of this Section 6.8 applicable to Utility Delays.

6.8.5 Other Utility-Related Delays

Design-Build Contractor shall be entitled to an extension of any affected Completion Deadline to the extent that any delay in a Critical Path is directly attributable to a circumstance for which Design-Build Contractor is entitled to a Change Order for increased costs pursuant to Section 6.4.2 or Section 6.8.2.3.

6.8.6 Delay and Disruption Damages

Design-Build Contractor shall not be entitled to compensation for delay and disruption damages or for any other increased costs attributable to delays described in this Section 6.8, except as otherwise expressly provided in Sections 6.4.2, 6.8.2.3 or 13.5.2.

6.9 Utility-Related Claims; Additional Restrictions on Change Orders Relating to Utility Adjustments

Except as may be otherwise provided in this Section 6, Section 13 shall apply to any change in the Contract Price and/or extension of time claimed by either Party with respect to any Utility Adjustment. In addition to all of the other requirements and limitations contained in this Section 6 and/or in Section 13, Design-Build Contractor's entitlement to any Change Order relating to Utility Adjustments shall be subject to the restrictions and limitations set forth in this Section 6.9.

6.9.1 Burden of Proof

Design-Build Contractor shall provide documentation satisfactory to IFA showing that the required analysis was performed and an appropriate determination made regarding the need for the Utility Adjustment, and shall also bear the burden of proving that the amount of any additional costs and/or time incurred by Design-Build Contractor are both necessary and reasonable.

6.9.2 Incremental Costs Only

Any Change Order increasing the Contract Price pursuant to this Section 6 shall include only the incremental costs arising from the circumstances giving rise to such Change Order, i.e., the amount payable shall take into account the costs that would have been incurred absent such circumstances and a credit shall be allowed for any avoided costs.

6.9.3 Coordination Costs

Design-Build Contractor shall not be entitled to any increase in the Contract Price for any costs of coordinating with Utility Owners.

6.9.4 Orders Only as Specified

Except as specified in this Section 6 or in Section 13, Design-Build Contractor shall not be entitled to any time extension or Contract Price increase with respect to any Utility Adjustments, in either case, without regard to any act or failure to act of any Utility Owner which may result in a delay to Design-Build Contractor's planned schedule or in Design-Build Contractor's incurring costs not included in its budget or the Contract Price.

6.10 Hazardous Materials Management

6.10.1 Procedures and Compensation for Hazardous Materials Management

6.10.1.1 Subject to Section 6.10.1.3, Design-Build Contractor shall manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials and Recognized Environmental Conditions, including Contaminated Groundwater, and perform all other aspects of Hazardous Materials Management as appropriate, in accordance with applicable Governmental Rules, Governmental Approvals, , and all applicable provisions of the PPA Documents. If during the course of the Work, Design-Build Contractor encounters material quantities of Hazardous Materials or Recognized Environmental Conditions in connection with the Project, Site, or Work, Design-Build Contractor shall promptly (a) notify IFA in writing and advise IFA of any obligation to notify any Governmental Entities under applicable Governmental Rules and Governmental Approvals; and (b) develop a plan to undertake Hazardous Materials Management, which plan shall take reasonable steps, including design modifications and/or construction techniques, to avoid excavation, dewatering or other active, intrusive management in areas where Hazardous Materials or Recognized Environmental Conditions are encountered. For purposes of this Section 6.10, the term "material quantities" means quantities that trigger any reporting, investigation, remediation or other response action requirements under any Environmental Law. Where excavation, dewatering or other active, intrusive management is unavoidable, Design-Build Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by IFA. All Hazardous Material Management shall be conducted in accordance with applicable Governmental Rules, Governmental Approvals, the approved plans required to be provided under Section 1.3 of the Technical Provisions and the approved Safety Plan.

6.10.1.2 Except where Design-Build Contractor is required to take immediate action under the PPA Documents or applicable Governmental Rules, Design-Build Contractor shall afford IFA the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions and to consult with Design-Build Contractor about the recommended approach before any Hazardous Materials Management or other action is taken which would inhibit IFA's ability to ascertain the nature and extent of the contamination.

6.10.1.3 Subject to the limitations and exceptions set forth in Section 5.3, this Section 6.10.1 and Section 13, Design-Build Contractor shall be entitled to a Change Order as set forth in Section 13 with respect to additional costs and/or delays directly attributable to the discovery of (a) Unknown Hazardous Materials within the Planned ROW Limits and (b) Hazardous Materials other than Design-Build Contractor Releases of Hazardous Materials on any parcels added to the Project ROW by an IFA-Directed Change or required due to a Force Majeure Event or Necessary Basic Configuration Change. The amount of additional compensation or extension of time in any Change Order allowed hereunder shall be determined in accordance with Section 13.9.4. Entitlement to compensation or a time extension shall be limited to

costs of Work performed pursuant to this Section 6.10 and Section 104.06 of the Standard Specifications.

6.10.1.4 No compensation or time extension shall be allowed with respect to:

(a) Removal, disposal and/or remediation of (i) asbestos or asbestos-containing materials (other than mineral asbestos naturally occurring in the ground) on or in the Site, removed in accordance with Section 5.0 of the Technical Provisions and the approved Environmental Quality Management Plan, or (ii) any other Hazardous Materials not falling within the definition of Hazardous Waste that are encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site.

(b) Known or Suspected Hazardous Materials;

(c) Release(s) of Hazardous Materials or threatened Release(s) of Hazardous Materials for which Design-Build Contractor is responsible under Section 18.1.1(g);

(d) Less than ”material quantities” as defined of Hazardous Materials;

(e) Any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques; or

(f) Any Hazardous Materials on property outside of IFA-Provided Property, except that compensation will be allowed for environmental remediation work on such property to the extent that it is integrally intertwined with Hazardous Materials Management work required within IFA-Provided Property.

6.10.1.5 To the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, Design-Build Contractor shall rely on insurance to provide compensation, in lieu of requesting a Change Order.

6.10.2 Hazardous Materials Generator Responsibilities

As between Design-Build Contractor and IFA, IFA shall be considered the generator and assume generator responsibility for Hazardous Materials other than Design-Build Contractor Releases of Hazardous Materials. IFA has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials other than Design-Build Contractor Release(s) of Hazardous Materials will be transported. With regard to Hazardous Materials other than Design-Build Contractor release(s) of Hazardous Materials, IFA shall comply with the applicable standards for generators including those found at 40 CFR, Part 262, including the responsibility to sign manifests and other waste tracking records for the transport of Hazardous Wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that IFA or Design-Build Contractor may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees, and occupants of any parcel of land that is or becomes part of the Project ROW. Notwithstanding the foregoing, Design-

Build Contractor (and not IFA) shall be considered the generator with respect to any (a) Design-Build Contractor Release(s) of Hazardous Materials and (b) Release(s) of Hazardous Materials for which Design-Build Contractor is responsible under Section 18.1.1(g).

6.10.3 Materials Brought to Site by Design-Build Contractor

Design-Build Contractor shall be solely responsible for: (a) compliance with all Governmental Rules and Governmental Approvals applicable to Hazardous Materials brought onto the Site by any DB-Related Entity; (b) use, containment, storage, management, transport and disposal of all such Hazardous Materials in accordance with the PPA Documents and all Governmental Rules and Governmental Approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials.

6.10.4 Environmental Approvals Relating to Hazardous Materials

Design-Build Contractor shall obtain all Governmental Approvals relating to Hazardous Materials Management performed by Design-Build Contractor, including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Design-Build Contractor shall be solely responsible for compliance with such Governmental Approvals and applicable Governmental Rules, including those governing the preparation of waste profiles, waste manifests and bills of lading.

6.11 Environmental Compliance, Mitigation and Approval Requirements

6.11.1 Environmental Compliance

Design-Build Contractor shall comply with all Environmental Laws in performance of the Work, and with all other conditions and requirements of the PPA Documents and Governmental Approvals issued thereunder, whether obtained by IFA or Design-Build Contractor, including the requirements set forth in IFA-Provided Approvals and Section 5.0 of the Technical Provisions. The Contract Price includes compensation for Design-Build Contractor's performance of all environmental requirements and conditions, including mitigation measures, except for those items expressly described in Section 6.11.2 as being the responsibility of IFA. Throughout the course of the Work, Design-Build Contractor shall perform or cause to be performed all environmental mitigation measures required under the PPA Documents and the Environmental Approvals and similar Governmental Approvals for the Work, and shall comply with all other conditions and requirements thereof. Design-Build Contractor, at its sole cost and expense, shall also abide by and comply with the commitments contained in subsequent re-evaluations, re-validations, and modifications of Environmental Approvals. Subject to Section 13, if IFA directs Design-Build Contractor to comply with commitments contained in re-evaluations, re-validations, and modifications of Environmental Approvals submitted after the Proposal Date that affect the Work, such directive shall be deemed an IFA-Directed Change only to the extent such re-

evaluations, re-validations, and modifications are directly due to a Necessary Basic Configuration Change pursuant to Section 13. Design-Build Contractor shall reimburse IFA for IFA's costs of technical studies and documentation, including biological and cultural resource studies, prepared in connection with any such environmental re-evaluations, re-validation, and new or modified Environmental Approvals, other Governmental Approvals and any other approvals, authorizations and consents required for the Work, unless such items are due to a Necessary Basic Configuration Change pursuant to Section 13.

6.11.2 Performance of Mitigation Measures

6.11.2.1 Design-Build Contractor shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of IFA-Provided Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project. The Contract Price includes compensation for Design-Build Contractor's performance of all such environmental requirements and conditions for all Governmental Approvals, including such mitigation measures and for performance of all mitigation measures arising from New Approvals which Section 6.11.4 provides are Design-Build Contractor's responsibility.

6.11.2.2 Design-Build Contractor shall monitor the progress of performance of environmental mitigation measures and provide periodic reports to IFA as required by the Environmental Compliance and Mitigation Plan, and Section 5.0 of the Technical Provisions. Design-Build Contractor acknowledges and agrees that the plan may be updated from time to time to account for any revisions in mitigation requirements. Whenever a New Approval is obtained which changes the existing environmental mitigation requirements or adds new environmental mitigation requirements, the Environmental Compliance and Mitigation Plan will be revised to include such amendments or new requirements, and Design-Build Contractor shall comply with the revised plan from and after the date it receives the revised plan. No Change Order shall be allowed in connection with any update or revision to the Environmental Compliance and Mitigation Plan except that (a) Change Orders shall be issued for additional Work resulting from those New Approvals which are IFA's responsibility as specified in Section 6.11.4.1, and (b) if Design-Build Contractor believes that any revision represents an IFA-Directed Change pursuant to Section 6.11.3.2, it shall have the right to seek a Change Order on that basis in accordance with the requirements of, and subject to the limitations in, Section 13.

6.11.3 IFA-Provided Approvals

6.11.3.1 Design-Build Contractor is responsible for complying with all the requirements and conditions of IFA-Provided Approvals.

6.11.3.2 All mitigation requirements and/or conditions contained in the final IFA-Provided Approvals shall automatically be deemed included in the scope of Work. Subject to the provisions of Sections 6.11.1 and 13.5, any change in the activities to be performed by Design-Build Contractor as a result of an alteration in mitigation requirements from the original scope of Work that (a) have a material adverse impact on

Design-Build Contractor's obligations hereunder, and (b) were not caused by modifications to the Reference Plans that were initiated by Design-Build Contractor or result from the design solutions furnished by or construction means, methods, and techniques employed by Design-Build Contractor, shall be treated as a IFA-Directed Change; provided, however, that Design-Build Contractor complies with the notification and other requirements set forth in this Section 6.11.3 and Section 13. Any Change Order issued for such IFA-Directed Change shall be in accordance with Sections 13.6.4 (for increases in price), 13.6.5 (for credits) or 13.6.6 (for both added and deleted Work).

6.11.4 New Approvals

6.11.4.1 Approvals To Be Obtained at IFA's Expense

IFA shall be responsible for obtaining any New Approvals necessitated by an IFA-Directed Change, Force Majeure Event or Necessary Basic Configuration Change. Design-Build Contractor, at its sole cost, shall provide support services to IFA with respect to obtaining any such New Approval. Any Change Order covering a New Approval necessitated by an IFA-Directed Change, Force Majeure Event or Necessary Basic Configuration Change shall include compensation to Design-Build Contractor for any material changes in the Work (including performance of material additional mitigation measures, but excluding performance of such support services) resulting from such New Approvals, as well as any time extension necessitated by such New Approvals, subject to the conditions and limitations contained in Section 13.

6.11.4.2 New Approvals To Be Obtained at Design-Build Contractor's Expense

If a New Approval becomes necessary for any reason other than those specified in Section 6.11.4.1, Design-Build Contractor shall be fully responsible for the cost and delay of obtaining the New Approval and any other Governmental Approvals, including Environmental Approvals, that may be necessary, and for all requirements and delays resulting therefrom, as well as for any litigation arising in connection therewith. If Design-Build Contractor wishes to adopt any design or construction approach that would require a revision, modification or amendment to an IFA-Provided Approval, Design-Build Contractor shall consult with IFA. Design-Build Contractor shall not implement any such approach unless concurrence of IFA has first been obtained and arrangements have been made to reimburse IFA for the costs of the proposed change. If any New Approval is associated with a VECP, the costs of obtaining and complying with the terms of the New Approval shall be considered in determining the Contract Price adjustment under Section 22.6.

6.11.5 Environmental Compliance by Design-Build Contractor for Off-Site Activities

If Design-Build Contractor chooses to add or select any ground or resource disturbing features such as material (gravel, borrow, disposal or re-use) sites, equipment staging sites, office sites, water lines, holding ponds, Hazardous Materials and/or non-Hazardous Materials staging areas, etc., for which a new Governmental Approval is required, Design-Build Contractor shall obtain and provide to IFA such

Governmental Approvals before commencing any construction activity within the feature(s). Design-Build Contractor is responsible for all costs of pursuing, obtaining, and complying with all such Governmental Approvals and any others which may be necessary, and is not entitled to any time extension for delays encountered in obtaining these approvals, except as specified in Section 6.11.4.1.

SECTION 7. SUBCONTRACTORS AND LABOR

7.1 MWVBE Program

7.1.1 General

7.1.1.1 This Project has participation goals for participation of Minority Business Enterprises, Women's Business Enterprises and Veteran Business Enterprises. The PPA and Design Build Contractor are subject to the provisions of IC 8-15.5-6-3, 25 IAC 5 with respect to Minority and Women's Business Enterprises participation and requires administration of the MWVBE Performance Plan consistent with 25 IAC 5 and 25 IAC 9. The purpose of these provisions is to ensure that MBE's, WBE's and VBE's shall have an equal opportunity to participate in the performance of design, supply and construction contracts for the Project. Design Build Contractor shall comply with all applicable requirements set forth herein, and the provisions in Design Build Contractor's IFA-approved MWVBE Performance Plan. Collectively these shall constitute the MWVBE Performance Requirements.

7.1.1.2 Design Build Contractor shall include provisions to effectuate the MWVBE Performance Requirements in every applicable Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all applicable Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each applicable Contractor.

7.1.2 MWVBE Participation Goals

The Goals for MBE, WBE and VBE participation in the Project required under this PPA, including professional services, supplies and construction are 7% Minority Business Enterprises, 5% Women's Business Enterprises and 3% Veteran's Business Enterprises. For purposes of clarity, assessment as to whether Design Build Contractor has achieved the MWVBE Goal will be measured against the aggregate design, supplies and construction costs, and not separately as to each of the design, construction and supplies costs. Design Build Contractor shall use good faith efforts to meet or exceed the MWVBE Goal.

7.1.3 MWVBE Performance Plan

7.1.3.1 Design Build Contractor has submitted to IFA as part of its Proposal the Preliminary MWVBE Performance Plan. The proposed final MWVBE Performance Plan is subject to further review and comment by IFA prior to final approval and is a condition to commencement of design, per Section 4.4.

7.1.3.2 In preparing the final MWVBE Performance Plan, Design Build Contractor shall include, to the extent known at the time of preparation:

(a) The names of currently-certified MWVBE firms to which Design Build Contractor has made commitments, the percentage of each such entity's MWVBE participation and a description of the types of each such MWVBE firm listed to perform;

(b) The dates and manner in which each of the listed MWVBE firms were contacted for their respective interest in MWVBE sub-contracting opportunities for the Project;

(c) A description of each such currently-certified and listed MWVBE firm's respective interest in sub-contracting for the Project;

(d) An explanation of how Design Build Contractor plans to recruit, solicit and evaluate potential MWVBE's to utilize on the Project;

(e) A description of demonstrated success with the MWVBE program on other projects;

(f) A breakdown of anticipated MWVBE commitments (i.e. anticipated percentages to go to design, construction, and supplies);

(g) Estimated time frames for achieving MWVBE participation (i.e. in what years of the Project will MWVBE participation be realized);

(h) Strategies for monitoring MWVBE utilization and contract compliance, including proper MWVBE credit, performance and commercially useful function, and proper payment to MWVBE's;

(i) The name of Design Build Contractor's MWVBE Compliance Manager and description of the MWVBE Compliance Manager's reporting structure and responsibilities; and

(j) Commitment to communicate with IFA on MWVBE participation and compliance efforts throughout the life of the Project.

7.1.3.3 The final MWVBE Performance Plan shall respond to the comments of IFA and comply with the MWVBE Performance Requirements and all applicable Laws and Governmental Approvals.

7.1.3.4 Design Build Contractor shall exercise good faith efforts to achieve the MWVBE Goal for the Project through implementation of Design Build Contractor's approved MWVBE Performance Plan.

7.2 Subcontracts

7.2.1 Limitations on Subcontracting

The contract, contracts, or portions thereof; or the right, title, or interest therein shall not be sublet, sold, transferred, assigned, or otherwise disposed of without written consent. In case such consent is given, the Design-Build Contractor will be allowed to sublet a portion thereof, but shall perform with its own organization, work amounting to not less than 30% of the original or revised contract amount, whichever is less. All items designated in the contract as specialty items may be performed by subcontract. The cost of such specialty items so performed by subcontracts may be deducted from the total cost before computing the amount of work required to be performed by the Design-

Build Contractor with its own organization. No subcontracts or transfer of contracts will release the Design-Build Contractor of liability under the contract and bonds. Approved subcontractors will not be allowed to further subcontract their work.

7.2.2 Subcontracting Requirements

7.2.2.1 Subcontracting shall be in accordance with the requirements of 105 IAC 11-2-10, Subcontractors.

7.2.2.2 Design consultants and subconsultants shall be qualified by INDOT to perform the type of design work they are engaged in for the Project.

7.2.3 Notice to IFA

Within ten (10) days after issuance of the Notice to Proceed, Design-Build Contractor shall complete and provide to IFA a schedule updating the list included in the Proposal and identifying all intended Subcontractors and Suppliers. Design-Build Contractor shall provide an updated schedule each month thereafter so that IFA will have, at all times, a current and accurate list of Subcontractors along with the Work that they will perform and Suppliers along with the material that they will supply. Design-Build Contractor shall allow IFA access to all Subcontracts and records regarding the Subcontracts and shall deliver to IFA, within ten days after execution, certified copies of each Subcontract within ten days of execution thereof.

7.2.4 Wages and Certified Payrolls

7.2.4.1 The Design-Build Contractor or Subcontractor may enter into leases or rental agreements for equipment with operators or trucks with drivers. When certified payrolls are required, they shall be submitted for all such equipment operators and truck drivers who perform work. This payroll shall verify that these employees have been paid not less than the predetermined wage rate set out elsewhere in the contract for the classification of work performed.

7.2.4.2 The Design-Build Contract or shall submit payment records through the Department's Subcontractor Payment Tracking System (http://itap.indot.in.gov) of all payments made to subcontractors and DBE firms approved by the Department. Reports shall be submitted no later than 10 days after the end of each month in which a subcontractor is paid for work on the contract. Reports shall include any release of retainage payments made to subcontractors.

7.2.5 Responsibility for Work and Subcontractors

7.2.5.1 Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Build Contractor shall be fully responsible for all of the Work. The retention of Subcontractors by Design-Build Contractor will not relieve Design-Build Contractor of its responsibility hereunder or for the quality of the Work or materials provided by it. Design-Build Contractor shall supervise and be fully responsible to IFA for the acts, omissions, negligence, fraud, recklessness, intentional misconduct, or violation of an applicable Governmental Rule, breach of contract or breach of

Governmental Approval by any DB-Related Entity or by any member or employee of Design-Build Contractor or any DB-Related Entity, as though Design-Build Contractor directly employed all such individuals. No Subcontract entered into by Design-Build Contractor will impose any obligation or liability upon IFA to any such Subcontractor or any of its employees. Nothing in this PPA will create any contractual relationship between IFA and any Subcontractor of Design-Build Contractor. IFA shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind it. Each Subcontract shall include the following provision:

7.2.5.2 Nothing contained in the Agreement, including the requirements of Sections 7.2.5 and 7.2.6, shall be deemed to create any privity of contract between the IFA, and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of IFA to the Subcontractor except those specified under Indiana law. In the event of any claim or dispute arising under the Subcontract and/or Design-Build Contractor's PPA with IFA, the Subcontractor shall look only to Design-Build Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against IFA arising out of the Subcontract or otherwise arising in connection with the Subcontractor's Work.

7.2.6 Subcontract Work

Design-Build Contractor shall coordinate the Work performed by Subcontractors. If IFA makes a good faith objection to the use or continued use of a Subcontractor, the Subcontractor shall be replaced at the request of IFA and shall not again be employed on the Project. No Subcontractor may start any Work until after IFA receives a copy of its Subcontract, a copy of such Subcontractor's valid Indiana Certificate of Qualification, Indiana state business license, and any insurance documents required pursuant to Section 9.

7.2.6.1 Form of Subcontract

Design-Build Contractor shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the PPA Documents to be included therein as well as such additional terms and conditions as are appropriate to ensure compliance by the Subcontractor with all applicable requirements of the PPA Documents. Each Subcontract shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to or better than the requirements of the PPA Documents and Good Industry Practice for work of similar scope and scale and shall set forth effective procedures for claims and change orders;

(b) Require the Subcontractor to carry out its scope of Work in accordance with the PPA Documents, the Governmental Approvals and Governmental Rules, including the applicable requirements of the MWVBE Performance Plan, and to be joined in any dispute resolution proceeding pursuant to Section 19 if such joinder is determined by IFA to be reasonably necessary to resolve the Dispute;

(c) Set forth effective procedures for claims and change orders which are consistent with the Change Order process set forth in the PPA Documents;

(d) Set forth warranties, guaranties and liability provisions of the contracting party in accordance with Good Industry Practice for work of similar scope and scale;

(e) Expressly state that all remaining warranties and guarantees, express or implied, shall inure to the benefit of IFA and its successors and assigns upon expiration of the term or earlier termination of this Agreement;

(f) Include the following: (i) requirement to maintain usual and customary books and records for the type and scope of operations of business in which the Subcontractor is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) provision permitting audits to be conducted by Design-Build Contractor and IFA; (iii) requirement to provide progress reports to Design-Build Contractor appropriate for the type of work it is performing sufficient to enable Design-Build Contractor to provide the reports it is required to furnish IFA under this PPA; (iv) requirement for the Subcontractor to maintain all appropriate licenses and qualifications; (v) provision prohibiting assignment of the Subcontract by the Subcontractor without Design-Build Contractor's prior written consent; and (vi) provisions implementing the requirements of Section 21.2;

(g) For Major Subcontracts: (i) be terminable by the Subcontractor only for cause unless IFA terminates this PPA pursuant to Section 15, in which case Design-Build Contractor may terminate the Subcontractor for convenience in accordance with clause (t) of this Section 7.2.6.1; (ii) include an indemnity from the Subcontractor in favor of Design-Build Contractor and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, fraud, recklessness, willful misconduct, or breach of Governmental Approvals, violation of Governmental Rules or breach of contract by the Subcontractor or any of its officers, employees, agents or representatives; provided, however that such Subcontractor indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Subcontractor for the active negligence of IFA, or to relieve IFA of liability for such active negligence; and (iii) include a covenant, expressly stated to survive termination of the Major Subcontract, to promptly execute and deliver to IFA a new contract between the Subcontractor and IFA on the same terms and conditions as the Major Subcontract, in the event: (A) the Major Subcontract is rejected by Design-Build Contractor in bankruptcy or otherwise wrongfully terminated by Design-Build Contractor or (B) IFA delivers written request for such new contract following termination or expiration of this PPA;

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

(i) Contain certification by the Subcontractor that the Subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted Work;

(j) Include the right of Design-Build Contractor to terminate the Subcontract in whole or in part upon any Termination for Convenience of this PPA without liability of Design-Build Contractor or IFA for the Subcontractor's lost profits or business opportunity, in accordance with Section 15.9.2;

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

(l) Include a covenant to maintain all licenses required by applicable Law;

(m) Expressly provide that the Key Contractor shall have no right to suspend or demobilize unless and until it delivers to IFA Notice of the other contracting party's breach or default;

(n) Require the personal services of and not be assignable by the Key Contractor without Design-Build Contractor's and IFA's prior written consent, provided that this provision shall not prohibit the subcontracting of portions of the Work;

(o) Expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

(p) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Section 19.2 if such participation is requested by either IFA or Design-Build Contractor;

(q) Expressly include requirements that: the Subcontractor will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged, and retain such books and records for the period set forth in Section 21.5 or other applicable period set forth in the PPA Documents, (ii) permit audit thereof by IFA and (iii) provide progress reports to Design-Build Contractor appropriate for the type of work it is performing sufficient to enable Design-Build Contractor to provide the reports it is required to furnish IFA under this Agreement;

(r) Expressly recognize that IFA is a third party beneficiary of the Subcontract and shall have the independent right to enforce all of the terms of the Subcontract for its own benefit;

(s) Provide that all guarantees and warranties, express or implied, shall inure to the benefit of IFA, and its successors and assigns;

(t) Without cost to Design-Build Contractor or IFA, expressly permit assignment to IFA or its successors, assignees or designees of all Design-Builder Contractor's rights under the Subcontract, contingent only upon delivery of written request from IFA following termination or expiration of this Agreement, allowing IFA or its successor, assign or designee to assume the benefit of Design-Build Contractor's

rights with liability only for those remaining obligations of Design-Build Contractor accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility;

(u) Expressly state that assumption of the Subcontract by IFA or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Subcontract by Design-Build Contractor or the other contracting party or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption, without prejudice, however, to any rights of the Subcontractor under the Subcontract or applicable Law to suspend work or terminate the Subcontract by reason of any such breach or failure to pay amounts due;

(v) Expressly include (i) a covenant to recognize and attorn to IFA upon receipt of Notice from IFA that it has exercised step-in rights under this Agreement, without necessity for consent or approval from Design-Build Contractor or to determine whether IFA validly exercised its step-in rights, and (ii) Design-Build Contractor's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such Notice;

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

(x) Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of IFA shall be null and void.

7.2.6.2 IFA shall have the right, but not the obligation, to review the form of subcontract used by Design-Build Contractor for the Project and to require modifications thereto to conform to the requirements set forth herein.

7.2.7 Subcontracts with Affiliates

7.2.7.1 Design-Build Contractor shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

(a) Design-Build Contractor shall execute a written Subcontract with the Affiliate;

(b) The Subcontract shall comply with all applicable provisions of this Section 7, be consistent with Good Industry Practice, and be in form and substance substantially similar to Subcontracts then being used by Design-Build Contractor or Affiliates for similar Work or services with unaffiliated Subcontractors;

(c) The Subcontract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;

(d) The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to Design-Build Contractor than those that

Design-Build Contractor could reasonably obtain in an arms' length, competitively procured transaction with an unaffiliated Subcontractor. Design-Build Contractor shall bear the burden of proving that the same are no less favorable to Design-Build Contractor; and

(e) No Affiliate shall be engaged to perform any Work or services which any PPA Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice or other PPA Document requirements.

7.2.7.2 Before entering into a written Subcontract with an Affiliate or any supplement or amendment thereto, Design-Build Contractor shall submit a true and complete copy of the proposed Subcontract to IFA for review and comment. IFA shall have twenty (20) days after receipt to deliver its comments to Design-Build Contractor.

7.2.7.3 Design-Build Contractor shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope.

7.2.8 Other Requirements

No Subcontractor shall perform Work if that Subcontractor is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from public works projects by any federal agency or by any department, agency or political subdivision of the State.

7.3 Key Personnel; Character of Employees

7.3.1 Design-Build Contractor, in its Proposal, identified certain personnel to fill specified categories of "Key Personnel" for the Project. Exhibit 3 hereto identifies certain job categories of "Key Personnel" for the Project and the personnel identified by Design-Build Contractor in its Proposal (or such other personnel as were approved by IFA prior to the Effective Date). IFA may, acting in good faith, at any time elect to add job categories to the "Key Personnel" list. Design-Build Contractor shall not change, or permit any change in, Key Personnel without the prior written consent of IFA.

7.3.2 Design-Build Contractor shall designate an Authorized Representative who shall have onsite field and office authority to represent and act for Design-Build Contractor. An Authorized Representative shall be present at the jobsite at all times while Work is actually in progress. IFA requires the ability to contact the following Key Personnel 24 hours per day, seven days per week: (a) Project Manager; (b) Construction Manager and (c) Maintenance of Traffic Manager. Design-Build Contractor shall provide phone, e-mail addresses and mobile telephone numbers for such Key Personnel, and shall provide the phone and mobile telephone number for an alternate contact, with appropriate authority, for each such Key Personnel in the event that Key Personnel is not available.

7.3.3 IFA shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Subcontractors) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual or during the prosecution of the Work. Design-Build Contractor shall notify IFA in writing of any proposed changes in any Key Personnel. Design-Build Contractor shall not change any Key Personnel without the prior written consent of IFA. Individuals proposed to fill Key Personnel positions must meet the minimum qualifications specified in Section 1.3 of the Technical Provisions for that position and shall be subject to any requirements, restrictions or limitations therein.

7.3.4 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If IFA determines, in its good faith discretion, that any individual employed by Design-Build Contractor or by any Subcontractor is not performing the Work in a proper, safe and skillful manner, then at the written request of IFA, Design-Build Contractor or such Subcontractor shall promptly remove such individual and such individual shall not be re-employed on the Project without the prior written approval of IFA, in its good faith discretion. If Design-Build Contractor or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Work, then IFA may, in its good faith discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to Design-Build Contractor. Such suspension shall in no way relieve Design-Build Contractor of any obligation contained in the PPA Documents or entitle Design-Build Contractor to a time extension or other Change Order. Once compliance is achieved, as determined by IFA, IFA will notify Design-Build Contractor and Design-Build Contractor shall be entitled to and shall promptly resume the Work.

7.3.5 Design-Build Contractor acknowledges and agrees that the award of this PPA by IFA to Design-Build Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Design-Build Contractor's commitment that such individuals would be available to undertake and perform the Work. Design-Build Contractor represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless otherwise agreed to by IFA in writing, individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In the event that any Key Persons will not be 100% dedicated to the Project, Design-Build Contractor shall so advise IFA and shall obtain IFA's approval of the amount of time to be spent by each such individual on the Project, which amount shall in all events be sufficient for satisfactory and full performance of the tasks to be performed by such Key Person. Upon IFA's request, Design-Build Contractor shall document the percentage time commitment for each Key Person to IFA's satisfaction. In addition to the foregoing, IFA reserves the right to require a 100% time commitment per position from any Key Personnel if IFA, in its good faith discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

7.3.6 Nondiscrimination

This covenant is enacted, in part, pursuant to the Indiana Age Discrimination in Employment Act, and the Americans with Disabilities Act.

7.3.6.1 Pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Design-Build Contractor shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Design-Build Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on Protected Characteristics in the provision of services.

7.3.6.2 Design-Build Contractor, with regard to the Work performed by it during this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Contractors, including procurement of materials and leases of equipment. Developer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendicies B and C of the Regulations.

SECTION 8. PERFORMANCE AND PAYMENT BONDS

8.1 Provisions of Bonds

Design-Build Contractor shall provide IFA with performance bonds, payment bonds, and security for warranty Work as provided herein, securing Design-Build Contractor's obligations under the PPA Documents, and shall maintain such bonds in full force and effect as described below (or other assurance satisfactory to IFA in its sole discretion). Each bond required hereunder shall be provided by a Surety authorized to do business in the State with an A.M. Best Co. "Best's Rating" of A or better and Class VIII or better, or as otherwise approved by IFA, in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Design-Build Contractor shall, within seven (7) days after such event, deliver to IFA a replacement bond in the required form issued by a Surety meeting the foregoing requirements, or other assurance satisfactory to IFA, in its sole discretion.

8.1.1 On or before the issuance by IFA of the NTP, Design-Build Contractor shall deliver to IFA a performance bond in an amount equal to the Contract Price, in the form attached hereto as Exhibit 4-A (the "Performance Bond"). IFA will release the Performance Bond upon Final Acceptance provided that all of the following conditions have been met: (a) Design-Build Contractor is not in default under the PPA Documents and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under the PPA Documents and (b) IFA has received the Warranty Bond in accordance with Section 8.1.3. If the Contract Price is increased in connection with a Change Order, IFA may, in its good faith discretion, require a corresponding proportionate increase in the amount of the Performance Bond or a new performance bond covering the Change Order Work.

8.1.2 On or before the issuance by IFA of the NTP, Design-Build Contractor shall deliver to IFA a payment bond in an amount equal to the Contract Price, in the form attached hereto as Exhibit 4-B (the "Payment Bond"). Design-Build Contractor shall maintain the Payment Bond in full force and effect until (a) Design-Build Contractor has delivered to IFA (i) evidence satisfactory to IFA that all Persons eligible to file a claim against the Payment Bond have been fully paid and (ii) unconditional releases of Liens and notices from all Subcontractors who filed preliminary notice of a claim against the Payment Bond, or (b) expiration of the statutory period for Subcontractors to file a claim against the Payment Bond. If the Contract Price is increased in connection with a Change Order, IFA may, in its good faith discretion, require a corresponding proportionate increase in the amount of the Payment Bond or a new payment bond covering the Change Order Work.

8.1.3 Upon achieving Partial Acceptance, subject to the requirements herein, Design-Build Contractor may obtain a release of the Performance Bond and Payment Bond by providing a warranty bond, or such other security as is approved by IFA in its sole discretion, which shall guarantee performance of Work required to be performed during the period following Partial Acceptance, including Warranty Work, which shall also constitute a payment bond guaranteeing payment to Persons performing such

Work ("Warranty Bond"). The Warranty Bond shall be in an amount equal to 10% of the Contract Price and shall be in form satisfactory to IFA, in its sole discretion. IFA will release the Warranty Bond upon the expiration of the Warranty period; provided, however, that all of the following conditions have been met: (a) Design-Build Contractor is not in default under the PPA Documents and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under the PPA Documents, (b) receipt by IFA of (i) evidence satisfactory to IFA that all Persons eligible to file a claim against the Warranty Bond have been fully paid and (ii) unconditional releases of Liens and notices from all Subcontractors who filed preliminary notice of a claim against the Warranty Bond, and (c) the statutory period for Subcontractors to file a claim against the Warranty Bond has expired and no claims have been filed.

8.2 No Relief of Liability

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

8.3 Guaranty

[ ] and [ ] are the Guarantors of Design-Build Contractor's obligations under the PPA Documents. Such Guaranty, in the form attached as Exhibit 8, assures performance of Design-Build Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of this PPA.***[to be deleted if no guaranty]***

SECTION 9. INSURANCE

Design-Build Contractor shall purchase, at its own expense, and continuously maintain in full force and effect the insurance coverages specified in this Section 9. Coverage shall be maintained from and after PPA execution through the expiration of the Warranty period, or such longer or shorter time as may be specifically provided in this Section 9.

9.1 Design-Build Contractor Provided Insurance

Design-Build Contractor shall obtain and maintain a construction insurance program with project-specific limits for commercial general liability and professional liability. Provision of the required insurance shall not be interpreted to relieve Design-Build Contractor of any obligations hereunder. Design-Build Contractor acknowledges and agrees that any actual or alleged failure on the part of IFA to inform Design-Build Contractor of non-compliance with any requirement herein imposes no additional obligations on IFA nor does it waive any rights hereunder. All of the policies, except for the professional liability policies, shall explicitly waive subrogation rights or shall allow the insured to waive its rights of recovery against Indemnified Parties.

All insurance required hereunder shall be procured from insurance companies with an A.M. Best and Company rating level of A-: Class VII or better, or as otherwise approved by IFA and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

9.1.1 Primary Commercial General Liability Insurance

Prior to issuance of NTP, Design-Build Contractor may use its own corporate program of insurance to meet the requirements for general liability insurance specified below, provided, however, that policy limits meet the requirements of the PPA Documents. Primary general liability insurance limits for the period prior to issuance of NTP shall be no less than $1,000,000 per occurrence, $2,000,000 general aggregate limit and $2,000,000 completed operations aggregate. Each of the Indemnified Parties shall be an additional insured under such a policy.

During the period beginning with the issuance of NTP and ending upon Final Acceptance or for such longer period as otherwise specifically provided for in this Section 9, Design-Build Contractor shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury and advertising injury specifically and exclusively for the Project, Project ROW, and Site, or shall obtain a separate project-specific aggregate limit under Design-Build Contractor's corporate program of insurance. Coverage shall be written on an occurrence form that shall provide coverage at least as broad as the coverage provided by Insurance Services Office (ISO) form CG 00 01 04 13. The policy or policies shall be endorsed to remove exclusions pertaining to railroads. There shall be no exclusions for:

(a) Hazards commonly referred to as "XCU," including explosion, collapse and underground property damage;

(b) Fellow employee injury for supervisory employees and above;

(c) Incidental medical malpractice;

(d) Work performed within 50 feet of a railroad;

(e) Professional services except the latest ISO form CG 22 79 or CG 22 80, or both; and

(f) Non-owned auto liabilities.

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

The commercial general liability insurance coverage shall have limits of not less than $1,000,000 per occurrence, $2,000,000 general aggregate and $2,000,000 products/completed operations aggregate. Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute either through continuous maintenance of completed operations coverage in Design-Build Contractor's corporate insurance program or by purchase of extended completed operations for a project-specific policy. If project-specific coverage through statutory exposure is not commercially available, completed operations coverage shall extend for at least ten (10) years from Final Acceptance. If a project-specific policy is provided, Design-Build Contractor shall be the named insured and each of the Indemnified Parties shall also be an insured as to any loss or liability arising out of or in any way related to the Project, Project ROW, or Site. If Design-Build Contractor's corporate program is used with a project-specific aggregate limit, each of the Indemnified Parties shall be an insured under that policy. Coverage for the completed operations hazard shall be furnished to all insured Indemnified Parties under either project-specific or corporate program general liability insurance.

9.1.2 Workers' Compensation/Employer's Liability Insurance

During all phases of the Project and at all times when work is being performed by their employees, Design-Build Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers' compensation statutory benefits and employer's liability in conformance with the laws of the State. Employer's liability limits shall be no less than $1,000,000 each accident, each employee, and policy limit. Design-Build Contractor shall maintain such insurance through the expiration of the Plant Establishment Period. Design-Build Contractor and/or Subcontractor, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation policies shall provide the following

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) A provision extending coverage to all states operations on an "if any" basis.

The workers compensation policy shall also include U.S. Longshore and Harbor Workers', Jones Act, and Federal Employer's Liabilities Act coverage where applicable.

9.1.3 Automobile Liability Insurance

Design-Build Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain a business auto liability policy or policies. Each policy shall cover accidental death, bodily injury, and property damage liability arising from the ownership, maintenance, or use of all owned, non-owned, and hired vehicles connected with performance of the Work, including loading and unloading. Design-Build Contractor auto liability policies shall cover "any auto" ("symbol 1"). Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as additional insureds, the Indemnified Parties. For any contractor of any tier, including Design-Build Contractor, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles, pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

Design-Build Contractor's automobile liability policy shall have a combined single limit per policy period of not less than $1,000,000 per accident or shall be scheduled under the excess or umbrella liability policies. Excess or umbrella policies shall cover "any auto" ("symbol 1"). Subcontractors' policies shall have a combined single limit of no less than $1,000,000 per accident. Such limit may be achieved through any combination of primary and following form excess insurance.

No automobile liability policy issued to Design-Build Contractor and covering vehicles used in connection with the Project shall contain a self-insured retention exceeding $250,000 per accident unless approved by IFA. No automobile liability policy issued to a Subcontractor shall contain a self-insured retention exceeding $50,000 per accident unless approved by IFA. Deductibles, as opposed to self-insured retentions, are not included in this restriction.

Design-Build Contractor and Subcontractors of all tiers shall maintain such insurance through Final Acceptance; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty and any Plant Establishment Work until the expiration of the Warranty period and Plant Establishment Period, respectively. Coverage shall be at least as broad as coverage provided by Insurance Services Office form number CA 00 01. The required limits can be satisfied by a combination of a primary policy and an excess policy or policies.

9.1.4 Design-Build Contractor's Pollution Liability Insurance

Not used.

9.1.5 Umbrella or Excess Liability Insurance

Prior to issuance of NTP, Design-Build Contractor may use its own corporate program of insurance to meet the requirements for umbrella or excess liability insurance as specified below, except as to limits, which must meet the requirements of the PPA Documents. Total liability insurance limits, including limits provided by umbrella or excess liability insurance in place prior to issuance of NTP, shall be no less than $10,000,000. Each of the Indemnified Parties shall be an additional insured under such a policy.

During the period beginning with issuance of NTP and ending upon Final Acceptance or for such longer period as otherwise specifically provided for in this Section 9, Design-Build Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than $25,000,000 exclusive to the Project, that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability in excess of the amounts set forth in Sections 9.1.1 and 9.1.2. Design-Build Contractor may use its corporate insurance program or a combination of corporate insurance and stand-alone policies to meet this requirement provided that the limits available for this Project are not subject to erosion by losses on other projects not related to this Project.

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

(a) drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;

(b) pay on behalf of wording as opposed to reimbursement;

(c) concurrency of effective dates with primary policies;

(d) the policies shall "follow form" to the underlying primary policies; and

(e) there shall be no exclusions as described in Section 9.1.1, subparagraphs (a) through (f), that have not been reviewed and approved by the Indemnified Parties or their authorized representatives.

IFA and the Indemnified Parties shall be insureds on the excess policy.

9.1.6 Professional Liability Insurance

During all phases of the Project, Design-Build Contractor shall obtain and maintain contractor's professional liability insurance with limits not less than $5,000,000 per claim and in the aggregate. If Design-Build Contractor joint ventures with or subcontracts with design professionals or other professional service providers, the

design and other professional service providers shall obtain and maintain professional liability insurance specific to their profession with limits not less than $5,000,000 per claim and in the aggregate. In the alternative, Design-Build Contractor or the lead design entity may cover design Subcontractors for work performed on behalf of Design-Build Contractor or the lead design entity. No self-insured retention for Design-Build Contractor or lead design entity shall exceed $500,000 without prior written approval from IFA, in its good faith discretion. Self-insured retentions for design subconsultants (other than the lead design entity) shall not exceed $50,000 without prior written approval from IFA, in its good faith discretion. Coverage shall apply specifically to all professional activities performed under the PPA Documents. The policy(ies) shall have a retroactive date consistent with the inception of design and/or project/construction management activities, and no later than the date on which the RFP was issued. Design-Build Contractor agrees to maintain this required coverage for a period of no less than five (5) years after Substantial Completion or to purchase an extended reporting period for no less than five (5) years after Substantial Completion. If Design-Build Contractor subcontracts with a separate lead design entity that is not a member or partner of the Design-Build Contractor entity, Design-Build Contractor shall require the lead design entity to agree to maintain this coverage for a period of no less than five (5) years after Substantial Completion or to purchase an extended reporting period for no less than five (5) years after Substantial Completion.

9.1.7 Builder's Risk

Not used.

9.1.8 Railroad Protective Liability

Not used.

9.1.9 Aircraft Liability

Design-Build Contractor shall provide, or cause to be provided, aircraft liability insurance, with a limit of not less than $5,000,000 per occurrence or higher limits as may be required by IFA, in all cases where any aircraft is used on the Project that is owned, leased or chartered by any DB-Related Entity, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path, and altitude, including landing of any aircraft on the Site or on any property owned by IFA shall be subject to review and written acceptance by IFA prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft.

9.2 General Insurance Requirements

9.2.1 Premiums, Deductibles and Self-Insured Retentions

Design-Build Contractor shall be responsible for payment of premiums for all insurance required under this Section 9. Indemnified Parties have no obligation to pay any premium. Design-Build Contractor further agrees that for each claim, suit or action

made against insurance provided hereunder, with respect to all matters for which Design-Build Contractor is responsible hereunder, Design-Build Contractor shall be solely responsible for all deductibles, self-insured retentions and loss amounts in excess of the coverage provided. Any self-insured retentions maintained by Design-Build Contractor over $250,000 must be declared and approved by IFA; provided, however, that the amount of (a) self-insured retentions for professional liability insurance shall be governed by Section 9.1.6, and (b) self-insured retentions for automobile liability insurance shall be governed by Section 9.1.3. In the event IFA determines, in its good faith discretion, that conditions exist that could result in substantial financial cost or peril to Design-Build Contractor, IFA may, in its good faith discretion, require Design-Build Contractor to post collateral guaranteeing payment of losses and related investigations, claims administration and defense expenses or require Design-Build Contractor to reduce the amount of self-insured retentions under the policies.

9.2.2 Verification of Coverage

9.2.2.1 Design-Build Contractor Policies

Concurrently with Design-Build Contractor's execution hereof or on such later date on which coverage is required to be provided hereunder, Design-Build Contractor shall deliver to IFA a copy of each policy required to be provided by Design-Build Contractor under this Section 9, including any corporate policies used to satisfy the terms of this Section 9. If such policy is not available at the time of PPA execution, Design-Build Contractor may submit a detailed binder for each required coverage, and/or a copy of the insurer's quote for each required coverage. The evidence provided must be adequate to allow IFA to determine if all insurance requirements have been met. Actual policies shall be delivered to IFA no later than ninety (90) days after PPA execution. This requirement does not apply to professional liability policies, worker's compensation policies, and auto liability policies, for each of which a certificate of insurance is acceptable. IFA shall have no duty to pay or perform under the PPA until such evidence of insurance, in compliance with all requirements of this Section 9, has been provided.

9.2.2.2 Renewal Policies

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

9.2.3 Endorsements and Waivers

All insurance policies required to be provided by Design-Build Contractor hereunder shall contain or be endorsed to comply with the following provisions:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants.

Any insurance or self-insurance beyond that specified in this PPA that is maintained by an Indemnified Party, their directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it.

(b) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(c) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to IFA. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(d) All endorsements adding insureds to required commercial general liability policies shall provide additional insureds with coverage for "completed operations," or a separate endorsement providing such coverage must be added to the policy.

(e) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and pollution liability) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time except as specified for the pollution liability policies.

9.2.4 Waivers of Subrogation

IFA and Design-Build Contractor waive all rights against each other, against each of their agents and employees and their respective members, directors, officers, employees, agents and consultants for any claims to the extent covered by insurance obtained pursuant to this Section 9, except such rights as they may have to the proceeds of such insurance. Design-Build Contractor shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include by endorsement or otherwise, a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

9.2.5 Changes in Insurance Requirements

IFA shall notify Design-Build Contractor in writing of any changes in the requirements applicable to insurance required to be provided by Design-Build Contractor. Except as set forth in Section 9.2.8, any additional cost from such change shall be paid by IFA and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

9.2.6 No Recourse

There shall be no recourse against IFA for payment of premiums or other amounts with respect to the insurance required to be provided by Design-Build Contractor hereunder, except for deductibles payable by IFA as specified herein.

9.2.7 Non Limitation of Insurance Requirements

The insurance coverage provided and limits required hereunder are minimum requirements and are not intended to limit Design-Build Contractor's indemnification obligations under Section 18, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this Section 9 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. With the exception of any insurance required by a railroad, liability coverage will not be limited to the specific location designated as the Site except that if Design-Build Contractor arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Project Site will be permitted subject to IFA's approval and use of the broadest available site-specific endorsements. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

9.2.8 Commercial Unavailability of Required Coverages

If, through no fault of Design-Build Contractor, any of the coverages required in this Section 9 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, IFA will consider in good faith alternative insurance packages and programs proposed by Design-Build Contractor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. Design-Build Contractor must demonstrate to IFA's satisfaction that it has used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise IFA of the specific results of those efforts. Design-Build Contractor shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. IFA shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents (or based on other evidence of insurance premiums as of the Proposal Date if the EPD does not provide adequate information).

9.3 Notice and Prosecution of Claims

9.3.1 IFA shall have the right, but not the obligation, to submit IFA's claims and tenders of defense and indemnity under applicable insurance policies. Unless otherwise directed by IFA in writing with respect to IFA's insurance claims, Design-Build Contractor shall be responsible for reporting and processing all potential claims by IFA or Design-Build Contractor against the insurance policies. Design-Build Contractor agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by Design-Build Contractor or IFA and to promptly and diligently pursue such insurance claims in accordance with the claims procedures

specified in such policies, whether for defense or indemnity or both. Design-Build Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Governmental Rules in order to collect thereon, including pursuing necessary litigation and enforcement of judgments.

9.3.2 Design-Build Contractor shall immediately notify IFA, and thereafter keep IFA fully informed, of any incident, potential claim, claim or other matter of which Design-Build Contractor becomes aware that involves or could conceivably involve an Indemnified Party as a defendant. Design-Build Contractor shall cooperate with IFA and shall require its liability insurers to agree in writing to work with IFA to assure compliance with all requirements of Governmental Rules regarding timely response to claims.

9.3.3 IFA agrees to promptly notify Design-Build Contractor of IFA's incidents, potential claims against IFA, and matters of which IFA is actually aware which may give rise to an IFA insurance claim or to a right of defense and indemnification under Section 18.1. Delivery of any such notice will constitute a tender of IFA's defense of the claim to Design-Build Contractor and the insurer under any applicable insurance policies, subject to IFA's rights to control its own defense to the extent provided in Section 18.2 or by applicable Governmental Rules. IFA shall cooperate with Design-Build Contractor as necessary for Design-Build Contractor to fulfill its duties hereunder, including providing Design-Build Contractor a copy of all written materials IFA receives asserting a claim against IFA that is subject to defense by an insurer under an insurance policy or by Design-Build Contractor under Section 18.2.

9.3.4 In the event that an insurer providing any of the insurance policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the State Department of Insurance, Design-Build Contractor shall exercise best efforts to promptly, and at its sole cost and expense, secure alternative coverage in compliance with the insurance requirements contained in this Section 9 so as to avoid any lapse in insurance coverage.

9.4 Commencement of Work

Design-Build Contractor shall not commence Work under this PPA until it has obtained the insurance required under this Section 9, has furnished original evidence of insurance for the required coverage as required under Section 9.2.2 and such insurance has been approved by IFA, nor shall Design-Build Contractor allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by Design-Build Contractor.

9.5 Design-Build Contractor's Failure to Comply

If Design-Build Contractor or any Subcontractor fails to provide and maintain insurance as required herein, then IFA shall have the right but not the obligation, to purchase such insurance or to suspend Design-Build Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by IFA (plus an administrative charge equal to ten percent (10%) of the cost) shall, at IFA's sole option, be deducted

from amounts payable to Design-Build Contractor or reimbursed by Design-Build Contractor upon demand, plus interest thereon from the date of payment by IFA to the reimbursement date, at the lesser of (a) ten percent (10%) per annum or (b) the maximum rate allowable under applicable Governmental Rules. Nothing herein shall preclude IFA from exercising its rights and remedies under Section 16 as a result of the failure of Design-Build Contractor or any Subcontractor to satisfy the obligations of this Section 9.

If on account of Design-Build Contractor's failure to comply with the provisions of this Section 9, IFA is adjudged to be responsible for all or any portion of a judgment, loss or settlement (through admission or stipulation by Design-Build Contractor or court decision) that would have been covered by insurance but for non-compliance with this Section 9, then any loss or damage it shall sustain by reason thereof shall be borne by Design-Build Contractor, and Design-Build Contractor shall immediately pay the same to IFA, upon receipt of written demand therefor and evidence of such loss or damage.

9.6 Subcontractor Insurance Requirements

Design-Build Contractor shall cause each Subcontractor to provide insurance that complies with the requirements for Design-Build Contractor-provided insurance set forth in this Section 9 in circumstances where Subcontractor acts or omissions are not covered by Design-Build Contractor-provided insurance, including automobile liability. Except as otherwise specified in this Section 9, Design-Build Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Design-Build Contractor shall cause each such Subcontractor to include IFA and the Indemnified Parties as additional insureds under such Subcontractor's general liability and excess liability insurance policies. If requested by IFA, Design-Build Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. IFA shall have the right to contact the Subcontractors directly in order to verify the above coverage.

9.7 Coverage to be Provided by Design-Build Contractor During Warranty Period

During the period following the Partial Acceptance Date and prior to expiration of the Warranty period hereunder, Design-Build Contractor may use its own corporate program of insurance to meet insurance requirements, which shall be the same as required during the period after issuance of the NTP, as specified in Sections 9.1.1 through 9.1.7.

9.8 Disclaimer

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

IFA makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried pursuant to this Section 9 are adequate to protect Design-Build Contractor against its undertakings under the PPA Documents or its liability to any third party or preclude IFA from taking any actions as are available to it under the PPA or otherwise at law.

SECTION 10. SITE SECURITY; MAINTENANCE AND REPAIR; TITLE

10.1 Site Security

Design-Build Contractor shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by Design-Build Contractor, IFA or any other Person.

10.2 Obligation to Maintain and Repair

10.2.1 Maintenance and Repair Liability; Use of Insurance Proceeds

10.2.1.1 Design-Build Contractor shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies, and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, that is injured or damaged prior to the date that Design-Build Contractor's maintenance responsibility ends as set forth in Section 10.2.2, regardless of who has title thereto under the PPA Documents and regardless of the cause of the damage or injury, at no additional cost to IFA. Design-Build Contractor, at its cost, shall also have the sole responsibility during such periods for rebuilding, repairing, and restoring all other property within the Project ROW whether owned by Design-Build Contractor, IFA or any other Person.

10.2.1.2 At all times prior to receipt of the IDEM Notice of Termination, Design-Build Contractor shall maintain in a growing condition all plantings, seedlings, and soddings furnished under the PPA Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during said establishment period, in accordance with Section 5.1 of the Technical Provisions and the requirements of Governmental Approvals, including the Rule 5 Permit.

10.2.1.3 If insurance proceeds with respect to any loss or damage are paid to IFA under any insurance policies required to be provided hereunder, then IFA shall arrange for such proceeds to be paid to Design-Build Contractor as repair or replacement work is performed by Design-Build Contractor to the extent that IFA has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Design-Build Contractor shall not be a condition precedent to Design-Build Contractor performing such repair or replacement work or indicate that such repair or replacement work has been approved and accepted by IFA, and Design-Build Contractor shall remain obligated to pay deductibles and self-insured retentions as specified in Section 9.

10.2.1.4 Design-Build Contractor shall protect from damage existing property, structures, Utilities, curbs, walks, drives, trees, shrubs, lawns, and landscape work of third parties on or adjacent to the Site or affected by its activities and shall provide such guards, protection, and covering as is necessary. Design-Build Contractor

shall immediately notify affected third parties of any damage to their property caused by any DB-Related Entity. Damaged or destroyed items of the Work and Site shall be repaired or replaced to the condition required by the PPA Documents for the initial construction of the Project. Damaged or destroyed items that are the property of other affected parties shall be repaired or replaced to their prior condition; provided, however that they shall be repaired or replaced to any better or different condition to the extent required by applicable Governmental Rules or by any preexisting third party agreement between the property owner and either IFA or Design-Build Contractor. Design-Build Contractor shall either perform such repair or replacement itself, or the affected third party may elect to make its own repairs at Design-Build Contractor's expense. Should Design-Build Contractor not repair or replace such damaged or destroyed items (or not reimburse a property owner electing to do its own repair or replacement), IFA shall have the right to take corrective measures and to deduct the amount of such costs and expenses (including an administrative charge equal to ten percent (10%) of the costs) from any sums owed by IFA to Design-Build Contractor pursuant to this PPA and/or obtain reimbursement from Design-Build Contractor for such costs (plus an administrative charge equal to ten percent (10%) of the costs).

10.2.2 Relief from Maintenance Liability

Effective as of the date on which Partial Acceptance occurs, Design-Build Contractor shall be relieved of maintenance liability for those elements of the Project which are then placed in full operations and service, which decision shall be solely within the discretion of IFA. All remaining elements of the Project, except for landscaping, shall be considered accepted for maintenance purposes, and relief from maintenance responsibility for Design-Build Contractor shall occur, as of the Partial Acceptance Date. Notwithstanding the foregoing, all elements of the Work which will be owned by Persons other than IFA or Utility Owners will be considered accepted for maintenance purposes only as of the date of acceptance of maintenance responsibilities by such Persons.

10.3 Title

Design-Build Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for IFA for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools, and supplies which shall have been delivered to the Site shall pass to IFA, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by IFA to Design-Build Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Design-Build Contractor shall retain sole care, custody, and control of such materials, equipment, tools, and supplies and shall exercise due care with respect thereto until Partial Acceptance or until Design-Build Contractor is removed from the Project.

SECTION 11. WARRANTIES

11.1 Warranties

11.1.1 Warranty

The general warranty contained in this Section 11 is in addition to any express warranties provided for elsewhere in the PPA Documents. Design-Build Contractor warrants that (a) all design Work furnished pursuant to the PPA Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State; (b) the Project shall be free of defects, including design Errors, except to the extent that such defects are inherent in prescriptive specifications included in the PPA Documents; (c) materials and equipment furnished by or on behalf of any DB-Related Entity under the PPA Documents shall be of good quality and when installed, shall be new; (d) equipment furnished by or on behalf of any DB-Related Entity shall be of modern design and in good working condition; (e) the Work shall meet all of the requirements of the PPA Documents; and (f) the Project shall be fit for use for the intended function. All Warranties under the PPA Documents shall also run to the benefit of INDOT.

11.1.2 Warranty Period

The Warranty period for each element of the Project (excluding those elements of the Project that will be owned by Persons other than IFA) shall commence upon Partial Acceptance. Subject to extension under Section 11.2, the Warranties regarding all elements of the Project that will be owned by IFA shall remain in effect until two (2) years after the Partial Acceptance Date. The Warranty period for elements of the Project that will be owned by Persons other than IFA or INDOT (such as Utility Owners) shall commence upon acceptance thereof by the appropriate Person that will own such element and shall remain in effect for two (2) years from the commencement thereof, or, in the case of Utility Adjustments, for such longer term as is required by the applicable Utility Agreement(s). If IFA determines that any of the Work has not met the standards set forth in this Section 11.1 at any time within the Warranty period, then Design-Build Contractor shall correct such Work as specified below, even if the performance of such corrective Work extends beyond the stated Warranty period. IFA and Design-Build Contractor shall conduct a walkthrough of the Site prior to expiration of the Warranty period and shall produce a punch list of those items requiring Warranty Work.

11.1.3 Remedy

Within seven (7) days of receipt by Design-Build Contractor of notice from IFA specifying a failure of any of the Work to satisfy Design-Build Contractor's Warranties, or of any Subcontractor representation, warranty, guarantee or obligation which Design-Build Contractor is responsible to enforce, Design-Build Contractor and IFA shall mutually agree when and how Design-Build Contractor shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative action, Design-Build Contractor shall implement such action as it deems necessary and shall

notify IFA in writing of the urgency of a decision. Design-Build Contractor and IFA shall promptly meet in order to agree on a remedy. If Design-Build Contractor does not effectuate such remedy within the agreed time, or should Design-Build Contractor and IFA fail to reach such an agreement within such seven- (7-) day period (or immediately in the case of emergency conditions) or should IFA disapprove of the actions being taken, IFA, after notice to Design-Build Contractor, shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof and further warranty obligations with respect to such work performed by IFA shall be borne by Design-Build Contractor. Reimbursement therefor (plus an administrative charge equal to ten percent (10%) of the costs) shall be payable to IFA within ten (10) days after Design-Build Contractor's receipt of an invoice therefor. Alternatively, IFA may deduct the amount of such costs and expenses (including the administrative charge equal to ten percent (10%) of the costs) from any sums owed by IFA to Design-Build Contractor pursuant to this PPA.

11.1.4 Permits and Costs

Design-Build Contractor shall be responsible for obtaining any required encroachment permits from Local Agencies and required encroachment permits, access rights, rights of entries, and consents from any other Persons in connection with Warranty Work. Design-Build Contractor shall bear all costs of Warranty Work, and additional testing and inspections, and shall reimburse IFA or pay IFA's expenses made necessary thereby within ten (10) days after Design-Build Contractor's receipt of invoices therefor. Alternatively, IFA may deduct the amount of such costs and expenses from any sums owed by IFA to Design-Build Contractor pursuant to this PPA.

11.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of the PPA. The Warranties as to each re-done, repaired, corrected, or replaced element of the Work shall extend beyond the original Warranty period if necessary to provide at least a two (2) year Warranty period regarding all elements of the Project (but not to exceed three (3) years from the Final Acceptance Date), following acceptance by IFA of the re-done, repaired, corrected or replaced Work.

11.3 Subcontractor Warranties

11.3.1 Warranty Requirements

11.3.1.1 Without in any way derogating the Warranties and Design-Build Contractor's own representations and warranties and other obligations with respect to all of the Work, Design-Build Contractor shall obtain from all Subcontractors for periods at least coterminous with the Warranties and cause to be extended to IFA and INDOT, appropriate representations, warranties, guarantees, and obligations with respect to design, materials, workmanship, equipment, tools, and supplies furnished by such Subcontractors to effectuate the provisions of this Section 11.

11.3.1.2 Design-Build Contractor shall cause Subcontractor warranties to be extended to IFA and INDOT and any other parties for whom Work is being

performed or equipment, tools, supplies or software is being supplied by such Subcontractor; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to IFA using commercially reasonable efforts. IFA agrees to forebear from exercising remedies under any such warranty so long as Design-Build Contractor is diligently pursuing remedies thereunder.

11.3.1.3 All representations, warranties, guarantees, and obligations of Subcontractors (a) shall be written so as to survive all IFA and INDOT inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Design-Build Contractor, INDOT and/or IFA and their respective successors and assigns. Design-Build Contractor hereby assigns to IFA and INDOT all of Design-Build Contractor's rights and interest in all extended warranties for periods exceeding the applicable warranty period which are received by Design-Build Contractor from any of its Subcontractors. To the extent that any Subcontractor warranty would be voided by reason of Design-Build Contractor's negligence or failure to comply with the PPA Documents in incorporating material or equipment into the Work, Design-Build Contractor shall be responsible for correcting such defect.

11.3.2 Enforcement

Upon receipt from IFA or INDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Design-Build Contractor shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Design-Build Contractor's other obligations hereunder. IFA's and INDOT's rights under this Section 11.3.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of Design-Build Contractor's relevant warranty (including extensions thereof under Section 11.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Design-Build Contractor if such cost is covered by such a warranty, guarantee or obligation, and Design-Build Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

11.4 No Limitation of Liability

The foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the PPA Documents or applicable law or in equity, and shall not limit Design-Build Contractor's liability or responsibility imposed by the PPA Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

11.5 Damages for Breach of Warranty

In addition to IFA's other rights and remedies hereunder, at law or in equity, Design-Build Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty, Subcontractor warranty, or any defect in the Work, including the cost of performance of such obligations by others.

11.6 Warranty Disputes

Any Dispute relating to this Section 11 shall be subject to dispute resolution in accordance with Section 19.

SECTION 12. PAYMENT FOR SERVICES

12.1 Contract Price

12.1.1 PPA Amount

Subject to Section 13, as full compensation for the Work and all other obligations to be performed by Design-Build Contractor under the PPA Documents, IFA shall pay to Design-Build Contractor a lump sum Contract Price. The term "Contract Price" as used herein shall be subject to adjustment from time to time only to account for Change Orders. The Contract Price shall be increased or decreased only in accordance with Section 13 or by a PPA amendment. The Contract Price shall be paid in accordance with Section 12.2. The initial Contract Price shall be the lump sum amount of $_____***[to be inserted from Proposal,*** which includes the Patching Allowances.

12.1.2 Items Included in Contract Price

Design-Build Contractor acknowledges and agrees that, subject only to Design-Build Contractor's rights under Section 13, the Contract Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services, including Professional Services as provided for in Section 12.1.1, relating to Design-Build Contractor's performance of its obligations under the PPA Documents (including all Work, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 2.2.4); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of Utility Owners pursuant to Section 13 of the Technical Provisions; (e) payment of any taxes, duties, permit, and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; (f) all cooperation and coordination with Utility Owners, and all other Persons and parties; (g) compensation for all risks and contingencies assigned to Design-Build Contractor under the PPA Documents; and (h) the Patching Allowances.

12.1.3 Patching Allowances

12.1.3.1 Design-Build Contractor shall be paid for Full Depth PCCP Patching and Partial Depth HMA Patching as set forth herein (collectively, the "Patching Allowances").

12.1.3.2 Patching shall be paid for on a unit price basis out of the Patching Allowances. Design-Build Contractor may invoice and receive payment of $_____ per _____ for Full Depth PCCP Patching and $_____ per ____ for Partial Depth HMA Patching. Invoicing for completed patching shall be included in the monthly invoice described in Section 12.2.

12.1.3.3 Design-Build Contractor shall keep detailed records of the quantities Full Depth PCCP Patching and Partial Depth HMA Patching and shall submit supporting documentation of such quantities with its invoices. Design-Build Contractor shall notify IFA in writing when the base quantity of 4600 square yards of Full Depth PCCP Patching has been placed and when the base quantity of 1000 tons of Partial Depth HMA Patching has been placed. Design-Build Contractor shall not any perform any Full Depth PCCP Patching or Partial Depth HMA Patching in excess of the base quantities without written direction from IFA, in its sole discretion.

12.1.3.4 Any Full Depth PCCP Patching in excess of 4600 square yards shall be paid in accordance with Section 13, except that the unit price of $110 per square yard will apply. Such unit price shall be full compensation for any additional units of patching.

12.1.3.5 Any Partial Depth HMA Patching in excess of 1000 tons shall be paid in accordance with Section 13, except that the unit price of $260 per ton will apply. Such unit price shall be full compensation for any additional units of patching.

12.1.3.6 As part of Final Acceptance, a Change Order will be issued deducting any unused Patching Allowances value from the Contract Price.

12.2 Invoicing and Payment

The following process shall apply to invoicing and payment:

12.2.1 Schedule of Values

12.2.1.1 Within 14 days of the Effective Date, Design-Build Contractor shall prepare and submit a detailed Schedule of Values giving a complete breakdown of the lump sum portion of the Contract Price, setting forth the estimated value of the various categories of the Work.

12.2.1.2 The Schedule of Values shall be developed by Design-Build Contractor by dividing the lump sum amounts making up the Contract Price into components that represent the work and, where possible, can be defined by key quantities installed. IFA may provide a template defining the minimum items into which the Contract Price shall be divided in the Schedule of Values. The template may include the requirement that the Design-Build Contractor define key quantities associated with certain Schedule of Value line items. The Schedule of Values shall take into consideration schedule monitoring and cost reporting requirements, and shall be cost coded to identify costs uniquely by physical location, element of work,) or any other coding requirements deemed necessary by IFA.

12.2.1.3 Design-Build Contractor shall ensure that the dollar amounts of each scheduled value in the Schedule of Values in fact represent fair market cost allocations for the work items listed. Each item in the Schedule of Values shall include its proportionate share of Design-Build Contractor overhead and profit. If requested by IFA, Design-Build Contractor shall provide a detail cost breakdown for any work item in the Schedule of Values.

12.2.1.4 Design-Build Contractor shall not increase the cost of early activities, i.e., “front loading.” If IFA determines that “front loading” has occurred, it may direct Design-Build Contractor to conduct a complete reallocation of moneys until such “front loading” is corrected. Repeated attempts at “front loading” may result in refusal to process payment until such time as the Schedule of Values is acceptable to IFA.

12.2.1.5 The Schedule of Values is for the purpose of enabling the parties to determine the amount of progress payments owing. IFA will base payments on an estimate of the percentage of Work completed. No progress payment shall be made for any Work that is not included in an IFA-approved Schedule of Values.

12.2.1.6 Following IFA’s approval of the Schedule of Values, IFA will make progress payments based on the Schedule of Values and the Work performed through the payment period. The invoice showing progress made against the Schedule of Values shall be provided in both paper and electronic format (Excel or similar acceptable to IFA). Invoicing for progress payments may be made no more frequently than once per month.

12.2.1.7 IFA shall at any time have the right to conduct a detailed examination of the Schedule of Values. Design-Build Contractor shall cooperate with and, to the best of its ability, assist IFA Representative in such review, including providing all such information as may be reasonably required in connection therewith. IFA may determine that, in relation to any work Item, the relationship between progress payments and progress and control of the work envisaged at the date of IFA approval of the Schedule of Values has not been or will not be maintained. In such event, IFA may require Design-Build Contractor to prepare a revised Schedule of Values that will, in IFA’s opinion, restore, so far as reasonably practicable, said relationship and degree of control. The revised Schedule of Values will be due 30 Days after delivery of notice from IFA. If Design-Build Contractor fails to provide an acceptable revised schedule within said 30-Day period, IFA may revise the Schedule of Values in any manner that it sees fit, based on the rate of progress of the work which IFA anticipates and with the objective of restoring, so far as is reasonably practicable, said relationship and degree of control.

12.2.1.8 The Schedule of Values shall be updated in connection with each Change Order that modifies the Contract Price, and submitted to IFA for approval. Each Change Order shall be reflected on the Schedule of Values as a separate line item.

12.2.2 Draft Invoice and Progress Meeting

On or about the 25th day of each month following the issuance of the NTP and continuing through Final Acceptance, Design-Build Contractor shall deliver a draft invoice and draft Invoice Certificate for that month to IFA. Design-Build Contractor’s draft invoice package shall include all materials, reports, schedules, certifications, and other submittals identified in Section 1.5 of the Technical Provisions. At each Progress Meeting, Design-Build Contractor’s and IFA’s Authorized Representatives shall ascertain the progress of the Work. Each Progress Meeting shall be attended by Design-Build Contractor and IFA and/or its consultants. Design-Build Contractor’s and

IFA's Authorized Representatives shall review the draft invoice and draft Invoice Certificate reflecting the value of Work completed as of the date of the Progress Meeting (based on quantities and unit prices for unit-priced Work (including any amounts paid out of the Patching Allowances)), based on time and materials for Time and Materials Work and, for all other Work, based on the percentage completion of Project Schedule activities and the values distributed to such activities in the Schedule of Values). Design-Build Contractor's and IFA's Authorized Representatives shall sign the draft invoice, indicating the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Work then completed, calculated in accordance with the Project Schedule and Schedule of Values, plus the value of unit-priced and Time and Materials Work (including any amounts paid out of the Patching Allowances)), less progress payments previously made. The amounts set forth in the draft invoice shall be used by Design-Build Contractor in preparation of its monthly payment request described in Section 12.2.3. Invoices which cover Utility Work shall include documentation as required by Section 13 of the Technical Provisions, and shall separately identify the total amount due for (a) Utility Betterments and (b) any other Work for which the Utility Owner has Cost Liability.

12.2.3 Delivery of Invoice

Within seven (7) days after each Progress Meeting, Design-Build Contractor shall submit to IFA five (5) copies of an invoice in the forms attached hereto as Exhibit 5, or such other form as may be approved in IFA's sole discretion, for the Work performed under the PPA Documents during the immediately preceding month. The form of invoice shall be modified as appropriate to account for unit-priced and Time and Materials Work. Each invoice shall be based upon the approved draft invoice and may not include any amounts not approved by IFA in the Progress Meeting reviewing the draft invoice. No invoice shall be considered complete unless it (a) describes the status of completion as it relates to the Project Schedule; (b) sets forth the related payments which are then due in accordance with the Project Schedule, as of the date of the most recent Progress Meeting; (c) includes all materials, reports, certifications, and other submittals identified in Section 1.5 of the Technical Provisions; (d) includes Design-Build Contractor's monthly Project Status Schedule as accepted by IFA in accordance with Section 1.4 of the Technical Provisions; (e) includes any other documents or submittals that the PPA Documents require to be included with invoice packages; and (f) satisfies the requirements set forth in Section 12.2.4. Within ten (10) Business Days after IFA's receipt of the invoice, IFA will review the invoice and all attachments thereto for consistency with the draft invoice prepared at the most recent Progress Meeting and conformity with all requirements of the PPA Documents, and shall notify Design-Build Contractor of the amount approved for payment and specify the reason for disapproval of any remaining invoiced amounts. Design-Build Contractor may include such disapproved amounts in the next month's invoice after correction of the deficiencies noted by IFA (all such disapproved amounts shall be deemed in dispute unless otherwise agreed).

12.2.4 Form of Invoice

12.2.4.1 Each invoice submitted by Design-Build Contractor shall include the invoice and Invoice Certificate in the form included in Exhibit 5 hereto or or

such other form as may be approved in IFA's sole discretion, with no additions or deletions other than those approved by IFA. Each invoice and Invoice Certificate shall be executed by Design-Build Contractor's Authorized Representative.

12.2.4.2 Each invoice shall have a cover sheet that shall indicate each of the following items: (a) Project number and title; (b) invoice number (numbered consecutively, starting with "1"); (c) period covered by the invoice (specific beginning and ending calendar days); (d) total amount authorized; (e) total invoiced through last period; (f) current invoice amount; (g) total invoiced to-date; (h) percent invoiced; (i) remaining Patching Allowances; (j) remaining budget; (j) net amount due Design-Build Contractor; (k) total amount earned to date for the Project as a whole; and (l) authorized signature, title of signer and date of signature.

12.2.4.3 In addition, no invoice shall be considered complete unless it: (a) describes in detail the status of completion as it relates to the Project Schedule; (b) sets forth separately and in detail the related payments which are then due in accordance with the Project Schedule, as of the end of the prior month; (c) in the case of amounts to be paid on a unit-price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (d) in the case of amounts invoiced for Time and Materials Work, includes all supporting documentation described in Section 13.7; (e) sets forth in detail the amounts paid to Subcontractors (including Suppliers and Subcontractors at lower tiers) from the payments made by IFA to Design-Build Contractor with respect to the prior month's invoice; (f) includes affidavits of payment and unconditional waivers of Liens and claims executed by Design-Build Contractor and each Subcontractor with respect to all amounts paid in the prior month's invoice; and (g) includes all materials, reports, certifications, and other submittals identified in Section 12.2.3.

12.2.5 Payment by IFA

Within thirty-five (35) days after receipt by IFA of each complete invoice (including all required materials and reports) and the related Invoice Certificate, IFA shall pay Design-Build Contractor the amount of the invoice approved for payment less any amounts which IFA is otherwise entitled to withhold or deduct. In no event shall IFA have any obligation to pay Design-Build Contractor any amount (a) which would result in payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit-priced Work); (b) which was not approved during the Progress Meeting reviewing the draft invoice for such month; or (c) which would result in aggregate payments hereunder in excess of the overall completion percentage for the Project multiplied by the Contract Price (for non-unit-priced Work) for the month to which the invoice applies, plus amounts allowed by Change Orders.

12.3 Deductions, Exclusions and Limitations on Payment

12.3.1 Deductions

IFA may deduct from each progress payment and the Final Payment the following:

(a) Any Losses of IFA or Third Party Claims for which Design-Build Contractor is responsible hereunder or any Liquidated Damages which have accrued as of the date of the application for payment or which are anticipated to accrue based on the dates shown in the current Project Schedule for (i) Substantial Completion and (ii) Final Acceptance;

(b) Any liquidated damages or charges for which Design-Build Contractor is liable pursuant to Section 17 which have accrued as of the date of the application for payment;

(c) Any amounts IFA is required to retain under applicable law;

(d) Any sums expended by or owing to IFA as a result of Design-Build Contractor's failure to maintain the As-Built Drawings;

(e) Any sums expended by IFA in performing any of Design-Build Contractor's obligations under the PPA Documents which Design-Build Contractor has failed to perform or which IFA may elect to undertake itself plus an administrative charge equal to ten percent (10%) of such costs; and

(f) Any other sums which IFA is entitled to recover or withhold from Design-Build Contractor under the terms of the PPA Documents.

The failure by IFA to deduct any of these sums from a progress payment shall not constitute a waiver of IFA's rights (i) to such sums or (ii) with respect to any breach or default related thereto. All amounts owing by Design-Build Contractor to IFA under the PPA shall earn interest from the date on which such amount is owing at the lesser of (A) ten percent (10%) per annum or (B) the maximum rate allowable under applicable Governmental Rules.

12.3.2 Unincorporated Materials

IFA will not pay for materials not yet incorporated in the Work unless all of the following conditions are met:

12.3.2.1 Material shall be delivered to the Site, or delivered to Design-Build Contractor and promptly stored by Design-Build Contractor in bonded storage at a location approved by IFA. Design-Build Contractor shall submit certified bills for such materials with the invoice, as a condition to payment for such materials. IFA shall allow and pay only such portion of the amount represented by these bills as in its opinion is consistent with the reasonable cost of such materials.

12.3.2.2 All such materials that meet the requirements of the PPA Documents and are accepted by IFA shall be and become the property of IFA. Design-Build Contractor at its own cost shall promptly execute, acknowledge, and deliver to IFA proper bills of sale or other instruments in writing in a form acceptable to IFA conveying and assuring to IFA title to such material included in any invoice, free and clear of all Liens. Design-Build Contractor at its own cost shall conspicuously mark such material as the property of IFA, shall not permit such materials to become commingled with non-

IFA-owned property and shall take such other steps, if any, as IFA may require or regard as necessary to vest title to such material in IFA free and clear of Liens. Nothing contained herein shall modify or diminish the responsibilities, liabilities and obligations of Design-Build Contractor in the event of damage or loss of such materials.

12.3.2.3 Material included in an invoice but which is subsequently lost, damaged or unsatisfactory shall be deducted from succeeding invoices.

12.3.2.4 Payment for material furnished and delivered as indicated in this Section 12.3.2 will not exceed the amount paid by Design-Build Contractor as evidenced by a bill of sale supported by the paid invoice.

12.3.3 Mobilization Payments; Bond and Insurance Premiums; As-Built Drawings

12.3.3.1 Design-Build Contractor shall be entitled to payment for mobilization in installments, in an amount equal to the bid item price for mobilization set forth in the Proposal, not to exceed 10% of the initial Contract Price. The first payment for mobilization shall be in an amount not to exceed 50% of the bid item price for mobilization, payable as part of the first invoice following NTP. The second payment for mobilization shall be in an amount not to exceed 25% of the bid item price for mobilization, payable when at least 5% of the Contract Price (less mobilization) is earned. The third payment for mobilization shall be in the remaining amount of the bid item price for mobilization, payable when at least 10% of the Contract Price (less mobilization) is earned.

12.3.3.2 The portion of the Contract Price allocable to bond and insurance premiums, as set forth in the Proposal, shall be payable to reimburse Design-Build Contractor for bond and insurance premiums actually paid, without markup, not to exceed the line item for such premiums in the Proposal, with such pass-through amounts invoiced as part of the first invoice following issuance of NTP1. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following Substantial Completion.

12.3.3.3 The amount payable for As-Built Drawings acceptable to IFA shall equal one percent (1.0%) of the Contract Price. Design-Build Contractor shall not be entitled to payment for the last one percent (1.0%) of the Contract Price until acceptable As-Built Drawings have been delivered to IFA.

12.3.4 Equipment

IFA shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 12.3.3, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 13.7.3.

12.4 Final Payment

Final Payment for all Work will be made as follows:

12.4.1 On or about the date of delivery of its Affidavit of Final Acceptance, Design-Build Contractor shall prepare and submit a proposed Application for Final Payment to IFA showing the proposed total amount due Design-Build Contractor. The Application for Final Payment shall include a deduction for any remaining amount of the Patching Allowances and shall include a Change Order evidencing such deduction. The Application for Final Payment shall list all outstanding or pending DCR Notices and all existing or threatened claims, and Liens by Subcontractors, Utility Owners, railroads or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Acceptance, stating the amount at issue associated with each such notice. The Application for Final Payment shall be accompanied by: (a) complete and legally effective releases or waivers of Liens satisfactory to IFA, from all Persons legally eligible to file Liens in connection with the Work; (b) consent of any Guarantors and Surety(ies) to final payment; (c) an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to IFA; and (d) such other documentation as IFA may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. DCR Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section 13.

12.4.2 As a condition to its obligation to make payment to Design-Build Contractor based on the Application for Final Payment, IFA shall have received an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to IFA. The payment amount will be reduced by any amounts deductible under Section 12.3.1, and by any amounts that IFA is entitled to withhold under Section 12.4.3.

12.4.3 If the Application for Final Payment lists any existing or threatened claims, Liens of Subcontractors, Suppliers, laborers, Utility Owners, railroads or other third parties against Design-Build Contractor, IFA or the Project, or if any is thereafter filed, IFA may withhold from payment such amount as IFA deems advisable to cover any amounts owing or which may become owing to IFA by Design-Build Contractor, including costs to complete or remediate uncompleted Work or Nonconforming Work, and 125% of the amount of any existing or threatened claims, Liens and stop payment notices of Subcontractors, Suppliers, laborers, Utility Owners, and other third parties against Design-Build Contractor, IFA or the Project.

12.4.4 The executed release from Design-Build Contractor shall be from any and all claims arising from the Work, shall include an express and unconditional waiver and release sufficient to waive any rights and benefits Design-Build Contractor may have under applicable law and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any DCR Notices listed as outstanding in the Application for Final Payment. The release shall be accompanied by an affidavit from Design-Build Contractor certifying that:

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

(b) it has resolved any claims made by Subcontractors, Utility Owners, railroads and others against Design-Build Contractor or the Project;

(c) it has no reason to believe that any Person has a valid claim against Design-Build Contractor or the Project which has not been communicated in writing by Design-Build Contractor to IFA as of the date of the certificate; and

(d) all guarantees and warranties are in full force and effect.

The release and the affidavit shall survive Final Payment.

12.4.5 All prior partial estimates and payments shall be subject to correction in the final estimate of payments.

12.4.6 IFA will review Design-Build Contractor's proposed Application for Final Payment, and any changes or corrections, including deductions described in Section 12.3.1, will be forwarded to Design-Build Contractor for correction within twenty (20) Business Days. Any changes or corrections made pursuant to this Section 12.4.6 will be reflected in an updated monthly payment schedule showing the net amount owed to Design-Build Contractor by month.

12.4.7 IFA shall fulfill its payment obligations under this PPA by paying the amounts identified in Section 12.4.6, in accordance with the schedule described in Section 12.4.6.

12.5 Payment to Subcontractors

12.5.1 Design-Build Contractor shall pay each Subcontractor for satisfactory performance of the Subcontract no later than ten (10) days after Design-Build Contractor's receipt of payment from IFA, and each Subcontractor shall in turn make payment to its Subcontractors within ten (10) days of receipt of payment. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of IFA. Any violation of the prompt payment requirements in this Section 12.5.1 shall be a material breach of the PPA. These requirements shall not be construed to limit or impair any contractual, administrative, judicial or equitable remedies otherwise available to the Subcontractor in the event of a dispute involving late payment or nonpayment by Design-Build Contractor. Each Subcontract shall include the prompt payment requirements set forth in this Section 12.5.1.

12.5.2 IFA shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by applicable Governmental Rules.

12.6 Disputes

Failure by IFA to pay any amount in dispute shall not alleviate, diminish or modify in any respect Design-Build Contractor's obligation to perform under the PPA Documents, including Design-Build Contractor's obligation to achieve the Completion Deadlines and perform all Work in accordance with the PPA Documents, and Design-Build Contractor shall not cease or slow down its performance under the PPA Documents on account of any such amount in dispute. Any Dispute regarding such payment shall be resolved pursuant to Section 19. Design-Build Contractor shall proceed as directed by IFA pending resolution of the Dispute. Upon resolution of any such Dispute, each Party shall promptly pay to the other any amount owing.

12.7 Appropriation of Funds

The continuation of this PPA beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Indiana State Legislature or federal sources. IFA may terminate this PPA, and the Design-Build Contractor waives any and all claim(s) for Losses, effective immediately upon receipt of written notice, or any date specified therein, if for any reason IFA's funding from State and/or federal sources is not appropriated or is withdrawn, limited or impaired.

SECTION 13. CHANGES IN THE WORK

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

13.1 Circumstances Under Which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Definition of Change Order

The term "Change Order" shall mean a written amendment to the terms and conditions of the PPA Documents issued in accordance with this Section 13. IFA may issue unilateral Change Orders as specified in Section 13.2.2. Change Orders may be requested by Design-Build Contractor only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by IFA. Change Orders may be issued for the following purposes (or combination thereof):

(a) to modify the scope of the Work;

(b) to revise a Completion Deadline;

(c) to revise the Contract Price;

(d) to approve a Necessary Basic Configuration Change, subject to Section 3.3.10; and

(e) to revise other terms and conditions of the PPA Documents.

Upon IFA's approval of the matters and terms and conditions set forth in the Change Order form (whether it is initiated by IFA or requested by Design-Build Contractor) and after receipt of any required approvals from FHWA, IFA shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of IFA, direct Design-Build Contractor to proceed with the Work with the amount of any adjustment of any Completion Deadline or Contract Price to be determined in the future.

13.1.1.2 **Issuance of Directive Letter**

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

13.1.1.3 **Directive Letter as Condition Precedent to Claim that IFA-Directed Change Has Occurred**

13.1.1.3.1 Receipt of a Directive Letter from IFA shall be a condition precedent to Design-Build Contractor's right to claim that an IFA-Directed Change has occurred, in addition to provision of notice and subsequent Design-Build Contractor Change Request pursuant to Section 13.3.2; provided that no Directive Letter shall be required for any IFA-Directed Changes directly attributable to delays caused by bad faith actions, active and intentional interference, gross negligence or comparable tortious conduct by IFA. Except when a Directive Letter is not required pursuant to this Section 13.1.1.3, Design-Build Contractor shall be deemed to have waived any right to payment for work performed prior to receipt of a Directive Letter from IFA stating that it is issued pursuant to Section 13.1.1.2, or a Change Order for such Work signed by IFA, notwithstanding that Design-Build Contractor believes such work is outside of its original scope.

13.1.1.3.2 The fact that a Directive Letter was issued by IFA shall not be considered evidence that, in fact, an IFA-Directed Change occurred. The determination whether an IFA-Directed Change in fact occurred shall be based on an analysis of the original requirements of the PPA Documents and a determination whether the Directive Letter, in fact, constituted a change in those requirements. The requirements of Section 13.1.1.3.1 shall not imply that a Directive Letter would be required in order for Design-Build Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.1.2 Right of IFA to Issue Change Orders

IFA may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Work within the general scope of the PPA Documents pursuant to a Change Order. For the purpose of this Section 13.1.2, any direction to perform work shall be considered within the general scope of the PPA Documents if it is related to the Project; any direction to delete or modify Work shall be considered within the general scope unless as a result the PPA Documents would no longer be considered a design-build contract for the Project of the nature described in the RFP. Design-Build Contractor shall have no obligation to perform any work outside

the general scope of the PPA Documents, except on terms mutually acceptable to IFA and Design-Build Contractor.

13.2 IFA-Initiated Change Orders

This Section 13.2 concerns (a) Change Orders issued by IFA following a Change Notice and (b) Change Orders unilaterally issued by IFA.

13.2.1 Change Notice

13.2.1.1 If IFA desires to issue an IFA-Directed Change or to evaluate whether to initiate such a change, then IFA may, at its sole discretion, issue a Change Notice. A Directive Letter may also constitute a Change Notice.

13.2.1.2 Within seven (7) days after Design-Build Contractor's receipt of a Change Notice, or such longer period as may be mutually agreed to by IFA and Design-Build Contractor, IFA and Design-Build Contractor shall consult to define the proposed scope of the change. Within five (5) days after the initial consultation, or such longer period as may be mutually agreed to by IFA and Design-Build Contractor, IFA and Design-Build Contractor shall consult concerning the estimated cost and time impacts, if any. Design-Build Contractor shall provide data regarding such matters as requested by IFA.

13.2.1.3 Within five (5) Business Days after the second consultation and provision of any data described in Section 13.2.1.2, IFA shall notify Design-Build Contractor whether IFA (a) wishes to issue a Change Order, (b) wishes to request Design-Build Contractor to provide a Cost and Schedule Proposal as discussed at the meeting, (c) wishes to request Design-Build Contractor to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. IFA may at any time, in its good faith discretion, require Design-Build Contractor to provide two (2) alternative Cost and Schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

13.2.1.4 If so requested, Design-Build Contractor shall, within ten (10) Business Days after receipt of the notification described in Section 13.2.1.3, or such longer period as may be mutually agreed to by IFA and Design-Build Contractor, prepare and submit to IFA for review and approval by IFA a Cost and Schedule Proposal (in the format provided by IFA) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by IFA. Design-Build Contractor shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by IFA, except that actual and reasonable costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by IFA, may be included in the Change Order as reimbursable items. If the Change Order is approved, such actual and reasonable design and engineering costs will be included

within the Change Order; otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 If Design-Build Contractor and IFA agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Deadline, IFA may, in its sole discretion, order Design-Build Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at IFA's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.1.2.

13.2.1.6 If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Design-Build Contractor to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, Design-Build Contractor shall provide an incomplete proposal which includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to IFA stating why such requirements cannot be met, (b) provide such information regarding projected impact on a Critical Path and Completion Deadlines as is requested by IFA, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Contract Price increase associated therewith, to the extent such amount is then ascertainable. Design-Build Contractor shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Design-Build Contractor Change Requests under Section 13.3.2.3.2.

13.2.2 Unilateral Change Orders

IFA may issue a Change Order at any time, regardless of whether it has issued a Change Notice. At IFA's option, Design-Build Contractor shall be entitled to compensation for additional Work which is required to be performed as the result of any unilateral Change Order in accordance with either (a) Section 13.6.7 for additional Work for which Design-Build Contractor has provided unit prices, or (b) Section 13.7, and shall have the right to submit the issue of entitlement to an extension of the Completion Deadlines to dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a Contract Price deduction deemed appropriate by IFA, and Design-Build Contractor shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Section 19.

13.2.3 IFA-Directed Changes Under $10,000

Design-Build Contractor shall not be entitled to an increase in the Contract Price for any IFA-Directed Changes involving less than $10,000 in additional direct costs incurred by Design-Build Contractor.

13.2.4 Changes in Law

IFA shall be entitled to a decrease in the Contract Price for any Change in Law that reduces the cost of the Work, if and to the extent that the Change in Law (i) allows a material modification in the design of the Project resulting in a net cost savings, (ii) reduces the mitigation requirements for the Project associated with archaeological, paleontological, biological or cultural resources, or (iii) decreases the sales tax rate or changes the taxing authority's definition of the taxable costs. The decrease in Contract Price shall be calculated in accordance with Section 13.6.5.

13.3 Design-Build Contractor-Initiated Change Orders

13.3.1 Eligible Changes

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

(a) Force Majeure Events;

(b) IFA-Caused Delays;

(c) Delays relating to Utilities, to the extent permitted by Sections 6.8 and 13.9.2;

(d) Delays relating to Differing Site Conditions, discovery of Hazardous Materials, and/or Changes in Law, to the extent permitted by Section 13.9;

(e) Delays relating to Necessary Basic Configuration Changes, to the extent permitted by Section 13.8;

(f) Material, unreasonable interference with Design-Build Contractor's performance of the Work by other IFA or INDOT contractors, provided (i) the project on which the other IFA contractor is working is not identified in Section 1.6 of the Technical Provisions and (ii) the delay is not caused by Design-Build Contractor's failure to cooperate and coordinate as required under Section 23 or other act, omissions, negligence, fault, recklessness, willful misconduct, failure to perform or breach by any DB-Related Entity of any of the obligations under the PPA Documents.

13.3.1.2 Design-Build Contractor may request a Change Order to increase the Contract Price only for increased costs of performance of the Work as follows:

(a) Subject to Section 13.2.3, additional costs directly attributable to additional Work resulting from IFA-Directed Changes and IFA-Caused Delays for which IFA has not submitted a Change Order or a Change Notice;

(b) Additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 13.8;

(c) Additional costs relating to Differing Site Conditions, Hazardous Materials, Changes in Law and maintenance and repair of the Project, to the extent provided in Section 13.9;

(d) Certain additional costs relating to Utilities, as described in Section 13.9.2, to the extent provided therein;

(e) Additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.5.2;

(f) Certain additional costs relating to Force Majeure Events, to the extent provided in Section 13.9.3;

(g) Additional unit price costs for Full Depth PCCP Patching and Partial Depth HMA Patching, to the extent provided in Section 12.1.3; or

(h) Additional costs, including delay and disruption damages, directly attributable to material, unreasonable interference with Design-Build Contractor's performance of the Work by other IFA or INDOT contractors, provided (i) the project on which the other IFA contractor is working is not identified in Section 1.6 of the Technical Provisions and (ii) the delay is not caused by Design-Build Contractor's failure to cooperate and coordinate as required under Section 23 or other act, omissions, negligence, fault, recklessness, willful misconduct, failure to perform or breach by any DB-Related Entity of any of the obligations under the PPA Documents.

13.3.1.3 Design-Build Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and furthermore is subject to Design-Build Contractor's compliance with all notification and other requirements identified herein. Design-Build Contractor shall initiate the Change Order process by delivery of a DCR Notice as described in Section 13.3.2, followed by submittal of a Design-Build Contractor Change Request and supporting documentation to IFA.

13.3.2 Procedures

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Design-Build Contractor's entitlement to request and receive a Change Order, except those involving a Change Notice. Design-Build Contractor understands that it shall be forever barred from recovering against IFA under this Section 13 or otherwise if it fails to give notice of any act, or failure to act, by IFA or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper DCR Notice, or fails to comply with the remaining requirements of this Section 13.3 or any other provisions of the PPA Documents relating to Change Orders.

13.3.2.1 **Design-Build Contractor Change Request Notice**

Design-Build Contractor shall deliver to IFA a written notice ("DCR Notice") stating that an event or situation has occurred within the scope of Section 13.3.1 which Design-Build Contractor believes justifies a change in the Contract

Price and/or a Completion Deadline and shall state which subsection(s) thereof is applicable. The first notice shall be labeled "DCR No. 1" and subsequent notices shall be numbered sequentially. Any notice regarding a situation involving a Necessary Basic Configuration Change shall specifically state that it involves such a change. .

13.3.2.1.1 Each DCR Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any DCR Notice is delivered later than ten (10) days after Design-Build Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Design-Build Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the DCR Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path which accrued prior to the date of delivery of the DCR Notice. Furthermore, if a DCR Notice concerns any condition or material described in Section 5.3.1, Design-Build Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that IFA is not afforded the opportunity to inspect such material or condition before it is disturbed. Design-Build Contractor's failure to provide an DCR Notice within thirty (30) days after Design-Build Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Design-Build Contractor from any relief.

13.3.2.1.2 The DCR Notice shall: (a) state in detail the facts underlying the anticipated Design-Build Contractor Change Request, the reasons why Design-Build Contractor believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each IFA representative knowledgeable of the facts underlying the anticipated Design-Build Contractor Change Request, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Design-Build Contractor Change Request, (d) state in detail the basis for necessary accelerated schedule performance, if applicable, (e) state in detail the basis that the work is not required by the PPA Documents, if applicable, (f) identify particular elements of PPA Document performance for which additional compensation may be sought under this Section 13.3.2, (g) identify any potential Critical Path and Completion Deadline impacts, and (h) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

13.3.2.1.3 If the Design-Build Contractor Change Request relates to a decision which the PPA Documents leave to the discretion of a Person or as to which the PPA Documents provide that such Person's decision is final, the DCR Notice shall set out in detail all facts supporting Design-Build Contractor's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

13.3.2.1.4 The written notification described in Section 5.3.1.1 may also serve as a DCR Notice provided it meets all of the requirements for DCR Notices.

13.3.2.1.5 Any adjustments made to the PPA shall not include increased costs or time extensions for delay resulting from Design-Build Contractor's failure to timely provide requested additional information under this Section 13.3.2.1.

13.3.2.2 **Delivery of Design-Build Contractor Change Request**

Design-Build Contractor shall deliver all Design-Build Contractor Change Requests, in the form set forth in Exhibit 9 or such other form as IFA may approve in its sole discretion, under this Section 13.3 to IFA within twenty (20) days after delivery of the DCR Notice, or such longer period of time as may be allowed in writing by IFA. IFA may require design and construction costs to be covered by separate Design-Build Contractor Change Requests. If Design-Build Contractor requests a time extension, then IFA, in its good faith discretion, may require Design-Build Contractor to provide two (2) alternative Design-Build Contractor Change Requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Design-Build Contractor believes that the costs associated with such a recovery are prohibitive, then Design-Build Contractor shall recommend a date to be shown in the alternative Design-Build Contractor Change Request. If Design-Build Contractor fails to deliver a complete Design-Build Contractor Change Request meeting all of the requirements of Section 13.3.2.3 within the appropriate time period, Design-Build Contractor shall be required to provide a new DCR Notice before it may submit a Design-Build Contractor Change Request.

13.3.2.3 **Incomplete Design-Build Contractor Change Requests**

13.3.2.3.1 Each Design-Build Contractor Change Request provided under Section 13.3.2.2 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Design-Build Contractor shall provide an incomplete Design-Build Contractor Change Request which provides all information capable of being ascertained. Said incomplete Design-Build Contractor Change Request shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to IFA stating why such requirements cannot be met, (b) provide such information regarding projected impact on a Critical Path and Completion Deadlines as is requested by IFA, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Contract Price increase associated therewith, to the extent such amount is then ascertainable.

13.3.2.3.2 Design-Build Contractor shall furnish, when requested by IFA or its designee, such further information and details as may be required to determine the facts or contentions involved. Design-Build Contractor agrees that it shall give IFA and its designees access to any and all of Design-Build Contractor's books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that IFA and its designees can investigate the basis for such proposed Change Order. Design-Build Contractor shall provide IFA with a monthly update to all outstanding Design-Build Contractor Change Requests describing

the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to IFA, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. IFA may reject the Design-Build Contractor Change Request at any point in the process. Once a complete Design-Build Contractor Change Request is provided, IFA's failure to respond thereto within twenty-one (21) days of delivery of the request shall be deemed a rejection of such Design-Build Contractor Change Request.

13.3.2.4 **Compliance With Section 5.3.1 Requirements**

Design-Build Contractor shall comply with all applicable requirements contained in Sections 5.3.1, 13.9.1, and 13.9.4, unless precluded from doing so by emergency circumstances.

13.3.2.5 **Review of Subcontractor Claims**

Prior to submission by Design-Build Contractor of any Design-Build Contractor Change Request which is based in whole or in part on a request by a Subcontractor to Design-Build Contractor for a price increase or time extension under its Subcontract, Design-Build Contractor shall have reviewed and analyzed all claims by the Subcontractor which constitute the basis for the Design-Build Contractor Change Request and determined in good faith that each such claim has sufficient merit to warrant Design-Build Contractor requesting an increase in the Contract Price and change in Completion Deadlines in the amounts specified in the Design-Build Contractor Change Request. Each Design-Build Contractor Change Request involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work, shall include a summary of Design-Build Contractor's analysis of all Subcontractor claims components and shall include a certification signed by Design-Build Contractor's Project Manager stating that Design-Build Contractor has (a) investigated the basis for the Subcontractor's claims and believes that there is sufficient merit as to entitlement and the amount of money and/or time requested, (b) reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 21.2, and (c) no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Design-Build Contractor Change Request involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

13.3.3 Performance of Disputed Work

If IFA refuses to issue a Change Order based on Design-Build Contractor's request, Design-Build Contractor shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 19. Design-Build Contractor shall maintain and deliver to IFA, upon request, contemporaneous records, meeting the requirements of Section 13.10, for all work performed which Design-Build Contractor believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Cost and Schedule Proposal and Design-Build Contractor Change Request shall be prepared in substantially the form appearing in Exhibit 9 or such other form approved by IFA in its sole discretion, and shall meet all applicable requirements of this Section 13. Each Design-Build Contractor Change Request shall specify whether it is the result of an IFA-Directed Change.

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

Design-Build Contractor shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Cost and Schedule Proposal and Design-Build Contractor Change Request.

13.4.2.1 **Scope of Work**

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

13.4.2.2 **Cost Estimate**

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

13.4.2.3 **Delay Analysis**

If Design-Build Contractor claims that such event, situation or change affects a Critical Path, it shall provide a time impact analysis in accordance with Technical Provisions Section 1.3.2.f, indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to IFA, which compares the proposed new schedule to the current approved Project Schedule.

13.4.2.4 **Other Supporting Documentation**

Design-Build Contractor shall provide such other supporting documentation as may be required by IFA.

13.4.3 Justification

All Design-Build Contractor Change Requests shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 13 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 13.10) which establish the necessity and amount of such proposed change.

13.4.4 Design-Build Contractor Representation

Each Design-Build Contractor Change Request shall contain a certification under penalty of perjury according to the laws of the State, in a form acceptable to IFA, executed by Design-Build Contractor and stating that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect, and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate, and current. Each Change Order involving Work by a Subcontractor for which pricing data is required to be provided under Section 21.2 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 21.2.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude: (a) costs caused by the acts, omissions, negligence, fraud, recklessness, intentional misconduct or violation of Governmental Rules, breach of contract or breach of Governmental Approval by any DB-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be mitigated or avoided by Design-Build Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (while including in the equation any additional costs reasonably incurred in connection with such reallocation or redeployment); and (c) costs for remediation of any Nonconforming Work.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 **Acceleration Costs; Delay and Disruption Damages**

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by IFA as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.2. Delay and

disruption damages shall be compensable hereunder only in the case of (a) delays which qualify as IFA-Caused Delays entitling Design-Build Contractor to an extension of a Completion Deadline, (b) Necessary Basic Configuration Changes, to the extent allowed under Section 13.8, (c) Changes in Law, to the extent allowed under Section 13.9.5 and (d) Utility Delays, to the extent allowed under Section 6.8.2.3. Without limiting the generality of the foregoing, the costs of rearranging, resequencing or reallocating Design-Build Contractor's work plan to accommodate IFA-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 **Other Limitations**

Design-Build Contractor is not entitled to delay and disruption damages during the period from December 1 through March 31 unless the Design-Build Contractor's current accepted progress schedule indicates Work on the controlling operation or critical path during that period. Delay and disruption damages shall be limited to (i) direct costs solely and directly attributable to the delays described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7, and (ii) any additional field office and jobsite overhead costs incurred by Design-Build Contractor solely and directly attributable to such delays. In addition, before Design-Build Contractor may obtain any increase in the Contract Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, Design-Build Contractor shall have demonstrated to IFA's satisfaction that:

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

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

(c) the delay or damage was not due to any (i) breach of contract, (ii) breach of Governmental Approval, (iii) violation of Governmental Rule, or (iv) fault or negligence, fraud, recklessness, willful misconduct or act or failure to act of any DB-Related Entity, and could not reasonably have been avoided by Design-Build Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment); and

(d) the delay for which compensation is sought is not concurrent with any delay for which any DB-Related Entity is responsible hereunder; and

(e) Design-Build Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to IFA.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path; (b) was due to the (i) breach of contract, (ii) breach of Governmental Approval, (iii) violation of Governmental Rule, or (iv) fault, negligence, fraud, recklessness, willful misconduct or act or failure to act of any DB-Related Entity; (c) is concurrent with any other unrelated delay to a Critical Path that is Design-Build Contractor's responsibility hereunder; or (d) could reasonably have been avoided by Design-Build Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work. Design-Build Contractor shall be required to demonstrate to IFA's satisfaction that the change in the Work or other event or situation which is the subject of the Design-Build Contractor Change Request seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity (i.e., consumed all available Float and extended (*x*) the time required to achieve Substantial Completion or Final Acceptance beyond the applicable Completion Deadline or (*y*) the time required to achieve an Interim Milestone Completion beyond the applicable Interim Milestone Completion Duration).

13.5.4 Work Performed Without Direction

To the extent that Design-Build Contractor undertakes any efforts outside of the scope of Work, unless Design-Build Contractor has received a Directive Letter or Change Order signed by IFA to undertake such efforts, Design-Build Contractor shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, IFA may require Design-Build Contractor to remove or otherwise undo any such work, at Design-Build Contractor's sole cost and without any time extension.

13.6 Change Order Pricing

The price of a Change Order under this Section 13.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the original allocations of the Contract Price to comparable activities, whenever possible. If reference to price allocations is inappropriate (as determined by IFA) and if requested by IFA, negotiation for lump sum or unit price Change Orders shall be on an Open Book Basis and may be based on the pricing contained in Escrowed Proposal Documents as well as competitive Subcontractors' bid prices.

13.6.1 Detailed Cost Proposal

Design-Build Contractor may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 13.7: (a) showing all impacts on the PPA from Work additions, deletions, and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made.

13.6.2 Identification of Conditions

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

13.6.3 Contents

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

13.6.4 Added Work

When the Change Order adds Work to Design-Build Contractor's scope, the increase in the Contract Price shall be negotiated based on (a) estimated costs of labor, material and equipment, (b) unit prices in accordance with Section 13.6.7, or (c) actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 13.5.2 and 13.7.3. Risk associated with the Work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Work.

13.6.5 Deleted Work

When the Change Order deletes Work from Design-Build Contractor's scope (including deletion of any Work contained in the PPA Documents that is found to be unnecessary), the amount of the reduction in the Contract Price shall be based upon a current estimate including a bill of material, a breakdown of labor, material, and equipment costs and overhead and profit associated with the deleted work. The current estimated amount of risk associated with such Work shall be a factor in determining the markup for the deduction. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.6 Change Order Both Adding and Deleting Work

When the Change Order includes both added and deleted Work, Design-Build Contractor shall prepare a statement of the cost of labor, material, and equipment for both added and deleted work. If the cost of labor, material, and equipment for the work added and deleted results in a:

(a) Net increase in cost, the change shall be treated as work added and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Contract Price.

(b) Net decrease in cost, the change shall be treated as work deleted and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the amount deducted from the Contract Price.

(c) Net change of zero, there will be no change in the Contract Price.

13.6.7 Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 109.01 of the Standard Specifications. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, IFA will issue a modified Change Order setting forth the final adjustment to the Contract Price. Design-Build Contractor shall keep detailed records of the quantities for unit-priced Work, and shall submit supporting documentation of such quantities with its invoices. Change Orders relating to additional units of patching in excess of the Patching Allowances shall use the unit prices set forth in Section 12.1.3.

13.7 Time and Materials Change Orders

13.7.1 Issuance

IFA may, at its sole discretion, issue a Time and Materials Change Order whenever IFA determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Design-Build Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, IFA shall issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.7.2 Pricing and Payment

13.7.2.1 Time and Materials Change Orders shall be issued in accordance with Section 109.05(b) of the Standard Specifications. Design-Build Contractor shall comply with all recordkeeping and other obligations set forth in Section 109.05(b) of the Standard Specifications.

13.7.2.2 Payments for Time and Materials Work shall be invoiced with the regular monthly invoice, based on the extra work reports furnished by Design-Build Contractor for each period. Costs evidenced by daily extra work reports furnished less than five (5) Business Days prior to preparation of the invoice shall be included in the subsequent month's invoice.

13.7.3 Overhead Items

The following items are considered overhead costs and are included in the Change Order markups set forth in Section 109.05 of the Standard Specifications:

(a) Salary and expenses of executive officers, supervising officers or supervising employees;

(b) Design-Build Contractor's superintendent (general foreman);

(c) Clerical or stenographic employees;

(d) Charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc., consumables, and other miscellaneous supplies and services;

(e) Any and all field and home office overhead and operating expenses whatsoever;

(f) Subsistence and travel expenses for personnel (craft personnel excluded); and

(g) All bond and insurance premiums.

With respect to non-construction related labor costs, overhead is covered by the labor surcharge, and includes accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

13.7.4 Change Order Data

Design-Build Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (a) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with design work as well as Design-Build Contractor's costs for Utility Adjustment Work, and (b) all data necessary to show the actual impact (if any) on the Critical Path, the Project Schedule, and Completion Deadlines with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to IFA and any Authorized Representative of IFA reviewing any Claim or Dispute regarding compensation or time extension for such Work. Design-Build Contractor hereby waives the right to obtain compensation or time extensions for any Work for which cost or schedule data is required to be maintained and provided hereunder, if Design-Build Contractor fails to maintain and timely provide to IFA cost or schedule data meeting the requirements of the PPA Documents.

13.7.4.1 Design-Build Contractor shall maintain its records in such a manner as to provide a clear distinction between: (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and (b) the costs of other operations. Design-Build Contractor shall furnish daily, on forms approved by IFA, reports of all costs described in the foregoing clause (a). The reports shall itemize all costs for labor, materials, and equipment rental and give a total of costs through the date of the report. For workers, the reports shall include hours worked,

rates of pay, names, and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and actual working hours of operation. All such records and reports shall be made immediately available to IFA upon its request. The cost of furnishing such reports are deemed to be included in Design-Build Contractor's overhead and fee percentages.

13.7.4.2 All reports shall be signed by Design-Build Contractor and certified as true, accurate, and complete. IFA will compare its records with Design-Build Contractor's reports, make the necessary adjustments and compile the costs of Work completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

13.8 Necessary Basic Configuration Changes

IFA acknowledges and agrees that Design-Build Contractor's Proposal was based on certain assumptions regarding the feasibility of developing the Project without any material deviation from the Basic Configuration contained in the Reference Plans.

13.8.1 Notwithstanding the fact that the PPA generally obligates Design-Build Contractor to undertake all Work necessary to complete the Project without an increase in the Contract Price, this Section 13.8 provides for an increase in the Contract Price to be made in conjunction with Necessary Basic Configuration Changes. Design-Build Contractor shall not be entitled to an increase in the Contract Price for any Necessary Basic Configuration Changes involving less than $10,000 in additional direct costs incurred by Design-Build Contractor. Furthermore, if Design-Build Contractor commenced any Construction Work affected by the Necessary Basic Configuration Change prior to delivery of an appropriate DCR Notice, the Change Order shall allow IFA a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

13.8.2 Design-Build Contractor shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path or Completion Deadline resulting from changes in requirements and obligations of Design-Build Contractor relating to the Project due to Errors in the Reference Plans other than those which require a Necessary Basic Configuration Change.

13.9 Change Orders for Differing Site Conditions, Utilities, Force Majeure Events, Hazardous Materials, Changes in Law;

13.9.1 Differing Site Conditions

13.9.1.1 Upon Design-Build Contractor's fulfillment of all applicable requirements of Section 5.3.1 and Section 13, and subject to the limitations contained therein, IFA shall be responsible for, and agrees to issue Change Orders, (a) to compensate Design-Build Contractor for additional costs (excluding delay and disruption damages) directly attributable to changes in the scope of the Work arising from Differing Site Conditions, and (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such conditions.

13.9.1.2 Design-Build Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design-Build Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Build Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any Work stoppage in affected areas during the investigation period described in Section 5.3.1.

13.9.1.3 Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Build Contractor shall inquire if insurance proceeds may be available to cover costs in connection with such item. If Design-Build Contractor finds that reasonable grounds for filing an insurance claim exist, then Design-Build Contractor shall so notify IFA. IFA shall not be in default for failure to pay any amounts which Design-Build Contractor or IFA finds may be covered by insurance, unless and until the claim is denied by the insurance company, at which time Design-Build Contractor may invoice IFA for the amount of such claim, to the extent permitted by this PPA. Design-Build Contractor shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending the insurance company's determination regarding the claim. Upon denial of any such claim by the insurance company and receipt of a Change Order request, IFA will consider and process the Design-Build Contractor Change Request as set forth in this Section 13. IFA shall have the right to contest the denial of any insurance claim, and Design-Build Contractor shall cooperate with IFA in that regard. Notwithstanding anything to the contrary contained in Section 13.3.2, Design-Build Contractor shall not be obligated to include amounts which may be covered by insurance in any Change Order request until twenty (20) days after the insurance company has denied the claim. However, the notice requirements of Section 13.3.2 shall remain effective with respect to the event in question.

13.9.2 Utilities

Design-Build Contractor shall be entitled to a Change Order with respect to certain additional costs and/or delays relating to Utility Adjustments, as specified in Section 6 and subject to the restrictions and limitations set forth in Section 6 and in this Section 13. In all other respects, Design-Build Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in Design-Build Contractor’s obligations relating to the Work resulting from the existence of any Utilities on the Site.

13.9.3 Force Majeure Events

Subject to the limitations contained in, and upon Design-Build Contractor’s fulfillment of all applicable requirements of this Section 13, IFA shall be responsible for, and agrees to issue Change Orders (a) to compensate Design-Build Contractor for

additional costs (excluding (i) delay and disruption damages and insurance deductibles or self-insured retentions paid or incurred in accordance with Section 9 and (ii) any costs covered by insurance proceeds received by (or on behalf of) Design-Build Contractor) directly attributable to a Force Majeure Event, and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event.

13.9.4 Hazardous Materials Management

If Design-Build Contractor is entitled to a Change Order pursuant to Section 6.10 with respect to performance of Hazardous Materials Management, such Change Order shall be subject to the applicable limitations and requirements set forth in Sections 5.3, 6.10, this Section 13.9.4 and elsewhere in this Section 13. The amount of the Change Order for Hazardous Materials Management shall either be a negotiated amount acceptable to the Parties, or an amount determined in accordance with Section 13.7 and this Section 13.9.4 for the work in question. Design-Build Contractor shall not be entitled to a Change Order for additional compensation or extension of time with respect to the Hazardous Materials Management responsibilities set forth in Section 6.10.1.4.

13.9.4.1 **Determination of Reimbursable Amount**

13.9.4.1.1 Design-Build Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if IFA is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity pursuant to Section 5.3 to inspect sites containing Hazardous Materials before any action is taken which would inhibit the ability of IFA to ascertain, based on a Site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, Design-Build Contractor may take such limited actions as are required by Governmental Rules without advance notice to IFA, but shall provide such notice immediately thereafter (which in no event shall be more than two (2) hours after the incident by phone and twenty-four (24) hours after the incident by written notice).

13.9.4.1.2 In cases involving reimbursement for Hazardous Materials Management under this Section 13.9.4, allowable costs shall be limited to the incremental direct costs but excluding delay and disruption damages and markup for overhead and profit incurred after completion of the testing process to determine whether Hazardous Materials are present, associated with the Hazardous Materials at issue (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing Hazardous Materials are included in the Contract Price and Design-Build Contractor shall not be entitled to additional compensation therefor. Design-Build Contractor shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that Design-Build Contractor demonstrates to IFA's satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) Design-Build Contractor’s plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Design-Build Contractor shall

provide IFA with such information, analyses, and certificates as may be requested by IFA in order to enable a determination regarding eligibility for payment.

13.9.4.2 **Time Extensions**

If Design-Build Contractor encounters Hazardous Materials for which Design-Build Contractor is entitled to compensation under Section 6.10 and this Section 13.9.4 which, due to no act, omission, negligence, fraud, recklessness, willful misconduct, or violation of Governmental Rules, breach of Governmental Approvals or breach of contract by any DB-Related Entity, results in delays to a Critical Path, then IFA shall bear the risk of such delay (excluding those conditions for which Design-Build Contractor has agreed to be responsible as described in Section 18.1.1(g)), and subject to the limitations set forth in this Section 13.9.4.

13.9.4.3 **Limitations on Change Orders**

Notwithstanding any contrary provision of the PPA Documents, Design-Build Contractor shall have no right to receive (a) any compensation for delay and disruption damages or markup for overhead and profit related to Hazardous Materials Management, (b) any compensation for any Hazardous Materials Management resulting from a situation described in Section 18.1.1(g), or (c) any compensation or time extension in connection with any work stoppage in affected areas during the investigation period described in Section 5.3.1. Design-Build Contractor shall also not be entitled to receive any compensation or time extension for (1) immaterial quantities of Unknown Hazardous Materials, (2) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (3) any costs that could have been avoided, (4) Hazardous Materials on any Additional Properties, temporary real property interests or other property of Design-Build Contractor, (5) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site, or (6) any Hazardous Materials that do not fall within the definition for Unknown Hazardous Materials. Such limitations shall apply to all Change Orders related to Hazardous Materials Management.

13.9.4.4 **Insurance Proceeds**

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 9, Design-Build Contractor shall be entitled to reimbursement of its costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Design-Build Contractor's responsibility. To the extent that such proceeds are available, Design-Build Contractor shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

13.9.5 Change in Law; New Approvals

13.9.5.1 Upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, IFA shall be responsible for, and agrees to issue Change Orders (a) to

compensate Design-Build Contractor for additional costs directly attributable to a Change in Law, to the extent that the Change in Law (i) requires a material modification in the design of the Project, (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources, or (iii) increases the sales tax rate or changes the taxing authority's definition of the taxable costs; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any Change in Law described in clause (a)(i) or (ii) above.

13.9.5.2 Upon Design-Build Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, IFA shall be responsible for, and agrees to issue Change Orders: (a) to compensate Design-Build Contractor for additional costs directly attributable to a New Approval required as the result of a Force Majeure Event, to the extent that the New Approval (i) requires a material modification in the design of the Project or (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any New Approval described in clause (a)(i) or (ii) above.

13.10 Change Order Records

Design-Build Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and the costs of other operations. Design-Build Contractor shall contemporaneously collect, record in writing, segregate, and preserve (a) separate daily occurrence logs, (b) all other data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Adjustments, and (c) all data necessary to show the actual impact (if any) of the change on each Critical Path and Completion Deadline with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to the Disputes Review Team (if a Change Order or requested Change Order is under dispute), IFA and its Authorized Representatives as directed by IFA, on forms approved by IFA. The cost of furnishing such reports is included in Design-Build Contractor's predetermined overhead and profit markups and shall not be the subject of any additional claims for compensation.

13.10.1 Daily Work Reports and Data Collection

Design-Build Contractor shall furnish IFA completed daily work reports for each day's Work which is to be paid for on a time and material basis. The daily time and material Work reports shall be detailed as follows:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested;

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;

(c) Quantities of materials, prices, and extensions;

(d) Transportation of materials and

(e) The total costs to date for the Time and Materials Change Order Work.

13.10.2 Supplier's Invoices

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

13.10.3 Execution of Reports

All Time and Materials Change Order reports shall be signed by Design-Build Contractor's Project Manager.

13.10.4 Adjustment

IFA will compare its records with the completed daily time and material Work reports furnished by Design-Build Contractor and make any necessary adjustments. When these daily time and material Work reports are agreed upon and signed by both Parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. Design-Build Contractor's cost records pertaining to Work paid for on a time and material basis shall be open, during all regular business hours, to inspection or audit by representatives of IFA during the life of the PPA and for a period of not less than five (5) years after the Final Acceptance Date, and Design-Build Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Design-Build Contractor, Design-Build Contractor shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of IFA on the same terms and conditions as the cost records of Design-Build Contractor. Payment for such costs may be deleted if the records of such third parties are not made available to IFA's representatives. If an audit is to be commenced more than 120 days after the Final Acceptance Date, Design-Build Contractor will be given reasonable notice of the time when such audit is to begin.

13.11 Matters Not Eligible for Change Orders and Waiver

Design-Build Contractor acknowledges and agrees that no compensation or increase in the Contract Price or extension of a Completion Deadline is available except in the specific circumstances expressly provided for in the PPA, that such compensation or increase in the Contract Price and time extension shall be available only as provided in

this Section 13, and that Design-Build Contractor shall bear full responsibility for the consequences of all other conditions, events and circumstances. Matters which are Design-Build Contractor's exclusive responsibility include the following:

(a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Reference Plans or other Reference Information Documents), subject only to the right to a Change Order to the extent permitted by Section 13.8 or 13.9;

(b) any design changes requested by IFA as part of the process of approving the Design Documents that are necessary for consistency and compliance with the requirements of the PPA Documents, the Governmental Approvals, and/or applicable Governmental Rules and other matters set forth in Section 3.3.8;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);

(d) action or inaction of any DB-Related Entity;

(e) action or inaction of adjoining property owners or other agents, representatives, and contractors of railroads, including failure to organize and integrate their work with Design-Build Contractor's Work;

(f) impacts on Design-Build Contractor's Work caused by the action or inaction of contractors of IFA except as otherwise expressly provided in Sections 13.3.1.1(f) and 13.3.1.2(h);

(g) groundwater levels or subsurface moisture content;

(h) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the PPA Documents to be furnished by or on behalf of any DB-Related Entity, except to the extent resulting directly from a Force Majeure Event;

(i) any costs covered by insurance proceeds received by (or on behalf of) Design-Build Contractor;

(j) assessment, remediation, and correction of Nonconforming Work and review and acceptance thereof by IFA (including rejected Submittals and other submittals);

(k) negligence, fraud, recklessness, willful misconduct, fault or failure by any DB-Related Entity to comply with the requirements of the PPA Documents, Governmental Approval or Governmental Rules (including any failure to provide the notifications to property owners, Utility Owners, Railroads and others required by the PPA Documents);

(l) delays not on a Critical Path;

(m) obtaining all Governmental Approvals except as specified in Section 2.2.4 and compliance with the terms and conditions of all Governmental Approvals;

(n) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Design-Build Contractor, or any failure to obtain such Governmental Approval;

(o) any increased costs or delays related to any Utility Adjustments or failure to timely obtain any approval, work or other action from a Utility Owner, except as specified in Sections 6.2 through 6.9 and in Section 13.9.2;

(p) any situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the PPA Documents or arise out of the nature of the Work;

(q) except for payment for additional units of patching beyond the Patching Allowances as set forth in Section 12.1.3, patching in areas, sizes, depths or amounts in addition to or other than as identified in the Reference Information Documents; and

(r) all other events beyond the control of IFA for which IFA has not expressly agreed to assume liability hereunder.

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

DESIGN-BUILD CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH DESIGN-BUILD CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY DESIGN-BUILD CONTRACTOR CHANGE REQUEST, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE PPA DOCUMENTS EXPRESSLY SPECIFY THAT DESIGN-BUILD CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

13.12 Disputes

13.12.1 If IFA and Design-Build Contractor agree that a request to increase the Contract Price and/or extend any Completion Deadline by Design-Build Contractor has merit, but are unable to agree as to the amount of such Contract Price increase and/or time extension, IFA agrees to mark up the Design-Build Contractor Change Request or

Cost and Schedule Proposal, as applicable, provided by Design-Build Contractor to reduce the amount of the Contract Price increase or time extension as deemed appropriate by IFA. In such event, IFA will execute and deliver the marked-up Change Order to Design-Build Contractor within a reasonable period after receipt of a request by Design-Build Contractor to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order.

13.12.2 Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all claims by Design-Build Contractor of any nature arising from or relating to the Work covered by the Change Order and Design-Build Contractor shall be deemed to have expressly released, waived, and disclaimed any further compensation and time extension related thereto. Design-Build Contractor's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Design-Build Contractor with respect to the disputed matter (crediting IFA for any corresponding reduction in Design-Build Contractor's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.12.3 The failure of IFA and Design-Build Contractor to agree to any Change Order under this Section 13 (including agreement as to merit, the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Contract Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19.

13.13 Changes Not Requiring Change Order

Subject to Section 13.8, Deviations from design standards specified in the PPA Documents which have a neutral net cost effect and do not affect a Critical Path or Completion Deadline shall not require a Change Order provided such Deviations are approved by IFA pursuant to Section 2.1.2.4. Any other change in the requirements of the PPA Documents shall require either a Directive Letter or a Change Order.

13.14 No Release or Waiver

13.14.1 No extension of time granted hereunder shall release Design-Build Contractor's Surety or any Guarantor from its obligations. Work shall continue and be carried on in accordance with all the provisions of the PPA Documents and the PPA Documents shall be and shall remain in full force and effect during the continuance unless formally suspended or terminated by IFA in accordance with the terms hereof. Permitting Design-Build Contractor to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Design-Build Contractor after such date, shall not constitute a waiver on the part of IFA of any rights or remedies under the PPA Documents, at law or in equity.

13.14.2 Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of

the Work or materials specified by the PPA after a Completion Deadline, shall be deemed to be a waiver by IFA of any of its rights and remedies under the PPA Documents, at law or in equity, including its right to terminate the PPA for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

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

SECTION 14. SUSPENSION

14.1 Suspensions for Convenience

IFA may, at any time and for any reason, by written notice, order Design-Build Contractor to suspend all or any part of the Work required under the PPA Documents for the period of time that IFA deems appropriate for the convenience of IFA. Design-Build Contractor shall promptly comply with any such written suspension order. Design-Build Contractor shall promptly recommence the Work upon receipt of written notice from IFA directing Design-Build Contractor to resume Work. Any such suspension for convenience shall be considered an IFA-Directed Change and such suspensions shall be considered an IFA-Caused Delay, if a Critical Path is delayed; provided, however, that IFA shall have the right to direct suspensions for convenience not exceeding 48 hours each, up to a total of 144 hours, of Work otherwise scheduled by Design-Build Contractor pursuant to the most recent summary of planned Construction Work activities provided in accordance with Section 1.4 of the Technical Provisions, which shall not be considered an IFA-Directed Change, IFA-Caused Delay or entitle Design-Build Contractor to any compensation, time extension or other relief. Adjustments of the Contract Price and the Completion Deadlines shall be available for any IFA-Directed Change, subject to Design-Build Contractor's compliance with the terms and conditions set forth in Section 13.

14.2 Suspensions for Cause

IFA has the authority to suspend the Work by written order, wholly or in part, for Design-Build Contractor's failure to:

(a) Correct conditions unsafe for the Project personnel or the general public; or

(b) Comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the PPA Documents; or

(c) Carry out orders of IFA or Directive Letters;

(d) Comply with requirements for developing and implementing the Quality Management System;

(e) Certain failures to remove and replace personnel as set forth in Section 7.3.4;

(f) Provide proof of required insurance coverage as set forth in Section 9;

(g) Reopen lanes closed to public traffic as part of a Construction Closure by the time specified in the approved closure request as set forth in Section 11.0 of the Technical Provisions; or

(h) Comply with environmental requirements.

Design-Build Contractor shall promptly comply with any such written suspension order. Design-Build Contractor shall promptly recommence the Work upon receipt of written notice from IFA directing Design-Build Contractor to resume the Work. IFA shall have no liability to Design-Build Contractor in connection with any such suspension, and Design-Build Contractor shall have no right to any adjustment in the Contract Price or Completion Deadline(s) in connection with any suspension of Work founded on any of the grounds set forth in this Section 14.2. If IFA orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, it shall be treated as a suspension for IFA's convenience under Section 14.1.

14.3 Responsibilities of Design-Build Contractor During Suspension Periods

During periods that Work is suspended, Design-Build Contractor shall continue to be responsible for the Work and shall prevent damage, loss or injury to the Project, provide for drainage and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. During any suspension period, Design-Build Contractor shall maintain in a growing condition all newly established plantings, seedlings, and soddings furnished under the PPA Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during the suspension period. Additionally, Design-Build Contractor shall continue other Work that has been or can be performed on-Site or off-Site during the period that Work is suspended.

SECTION 15. TERMINATION FOR CONVENIENCE

15.1 Termination

15.1.1 IFA may, at any time, terminate the PPA and the performance of the Work by Design-Build Contractor in whole or in part, if IFA determines, in its sole discretion, that a termination is in IFA's best interest. IFA shall terminate by delivering to Design-Build Contractor a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of the PPA shall not relieve any Surety or Guarantor of its obligation for any claims arising out of the Work performed.

15.1.2 Within three (3) days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Build Contractor shall meet and confer with IFA for the purpose of developing an interim transition plan for the orderly transition of the terminated Work, demobilization, and transfer of the Project to IFA. The Parties shall use diligent efforts to complete preparation of the interim transition plan within fifteen (15) days after the date Design-Build Contractor receives such notice of termination. The Parties shall use diligent efforts to complete a final transition plan within thirty (30) days after such date. The transition plan shall be in form and substance acceptable to IFA in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in Section 15.2, all of which provisions and procedures Design-Build Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

15.1.3 Design-Build Contractor acknowledges and agrees that IFA has no obligation to issue a Notice to Proceed hereunder, and further agrees that unless and until NTP2 is issued, IFA shall have no liability to Design-Build Contractor for a Termination for Convenience hereunder.

15.2 Design-Build Contractor's Responsibilities After Receipt of Notice of Termination

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by IFA, Design-Build Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 15:

15.2.1 Stop Work as specified in the notice.

15.2.2 Notify all affected Subcontractors that the PPA is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by IFA.

15.2.3 Place no further Subcontracts (including orders for materials, services, equipment or facilities), except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.

15.2.4 Unless instructed otherwise by IFA, terminate all Subcontracts to the extent they relate to the Work terminated.

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

15.2.6 Subject to the prior written approval of IFA, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts.

15.2.7 No later than thirty (30) days from the effective date of termination, unless extended in writing by IFA upon written request of Design-Build Contractor within this thirty (30) day period, provide IFA with an inventory list of all materials and equipment previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to IFA, and such other information as IFA may request; and transfer title and deliver to IFA through bills of sale or other documents of title, as directed by IFA, (a) the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated, and (b) the Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to IFA if the Work had been completed.

15.2.8 Complete performance in accordance with the PPA Documents of all Work not terminated.

15.2.9 Take all action that may be necessary, or that IFA may direct, for the safety, protection, and preservation of (a) the public, including public and private vehicular movement, (b) the Work; and (c) equipment, machinery, materials and property related to the Project that is in the possession of Design-Build Contractor and in which IFA has or may acquire an interest.

15.2.10 As authorized by IFA in writing, use its best efforts to sell at reasonable prices any property of the types referred to in Section 15.2.7; provided, however, that Design-Build Contractor (a) is not required to extend credit to any purchaser, and (b) may acquire the property under the conditions prescribed and at prices approved by IFA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by IFA under the PPA Documents or paid in any other manner directed by IFA.

15.2.11 If requested by IFA, withdraw from the portions of the Site designated by IFA and remove such materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, Design-Build Contractor and any Subcontractor in the performance of the Work as IFA may direct.

15.2.12 Take other actions as directed by IFA.

15.3 Acceptance

15.3.1 Design-Build Contractor shall continue to be responsible for damage and loss to materials after issuance of the Notice of Termination for Convenience, except as follows:

(a) Design-Build Contractor's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when IFA's Authorized Representative certifies that those materials have been stored in the manner and at the locations directed by IFA.

(b) Design-Build Contractor's responsibility for damage to materials purchased by IFA subsequent to the issuance of the notice that the PPA is to be terminated shall terminate when title and delivery of those materials has been taken by IFA.

15.3.2 When IFA' determines that Design-Build Contractor has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, IFA's Project Manager will recommend that IFA formally accept such Work, and immediately upon and after the acceptance by IFA, Design-Build Contractor will not be required to perform any further work thereon (except for such work that otherwise would have been required with respect to the terminated Work after Final Acceptance) and shall be relieved of maintenance responsibility for such terminated Work after the formal acceptance of such Work by IFA.

15.4 Settlement Proposal

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Build Contractor shall submit a final termination settlement proposal to IFA in the form and with the certification prescribed by IFA. Design-Build Contractor shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination unless Design-Build Contractor has requested a time extension in writing within such ninety (90) day period and IFA has agreed in writing to allow such an extension. Design-Build Contractor's termination settlement proposal shall then be reviewed by IFA and acted upon, returned with comments, or rejected. If Design-Build Contractor fails to submit the proposal within the time allowed, IFA may determine, on the basis of information available, the amount, if any, due Design-Build Contractor because of the termination and shall pay Design-Build Contractor the amount so determined. If IFA returns the termination settlement proposal with comments, Design-Build Contractor shall address such comments and resubmit the termination settlement proposal within 30 days after receiving IFA's comments.

15.5 Amount of Negotiated Termination Settlement

Design-Build Contractor and IFA may agree, as provided in Section 15.4, upon the whole or any part of the amount or amounts to be paid to Design-Build Contractor by reason of the total or partial termination of Work for convenience pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and accepted by IFA. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and the Contract Price of Work not terminated. Upon determination of the settlement amount, the PPA will be amended accordingly, and Design-Build Contractor will, subject to Section 15.7, be paid the agreed amount as described in this Section 15.5. Nothing in Section 15.6, prescribing the amount to be paid to Design-Build Contractor in the event that Design-Build Contractor and IFA fail to agree upon the whole amount to be paid to Design-Build Contractor by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Design-Build Contractor pursuant to this Section 15.5. IFA's execution and delivery of any settlement agreement shall not affect any of its rights under the PPA Documents with respect to completed Work, relieve Design-Build Contractor from its obligations with respect thereto, including Warranties, or affect Design-Build Contractor's obligations under the Performance Bond, Payment Bond, Warranty Bond and/or Guaranty as to such completed or non-terminated Work.

15.6 No Agreement as to Amount of Termination Settlement

If Design-Build Contractor and IFA fail to agree upon the whole amount to be paid Design-Build Contractor by reason of the termination of Work for convenience pursuant to this Section 15, the amount payable (exclusive of interest charges and any amounts deducted pursuant to Section 15.7) shall be determined by IFA in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 15.4 and 15.5:

15.6.1 Subject to Section 15.7, IFA will pay Design-Build Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) Design-Build Contractor's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by Section 13.7.3, for all Work performed, including mobilization, demobilization, and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to IFA's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Design-Build Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. Deductions will also be made, when the PPA is terminated as the result of a Force Majeure Event, for the cost of materials damaged by the "occurrence." When, in the opinion of IFA, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work or Nonconforming Work, the

reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the PPA Documents and the excessive actual cost shall be disallowed.

(b) As profit on clause (a) above, a sum determined by IFA to be fair and reasonable; provided, however, that if it appears that Design-Build Contractor would have sustained a loss on the entire PPA had it been completed, no profit shall be included or allowed under this Section 15.6.1 and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.

(c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2.6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience under the PPA, which amounts shall be included in the cost on account of which payment is made under clause (a) above.

(d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2.9 and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the PPA Documents, including the reasonable cost to Design-Build Contractor of handling material returned to the vendor, delivered to IFA or otherwise disposed of as directed by IFA, and including a reasonable allowance for Design-Build Contractor's administrative costs in determining the amount payable due to termination of the PPA.

15.6.2 Design-Build Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.6.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the PPA. The total amount to be paid to Design-Build Contractor, exclusive of costs described in Sections 15.6.1(c) and (d), may not exceed the total Contract Price less the amount of payments previously made and the Contract Price of Work not terminated. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to IFA by Design-Build Contractor, such refund shall be paid directly to IFA or otherwise credited to IFA. Except for normal spoilage, and except to the extent that IFA will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Design-Build Contractor under Section 15.6.1, the fair value, as determined by IFA, of equipment, machinery, materials, and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to IFA, or sold pursuant to Section 15.2.10. Information contained in the Escrowed Proposal Documents may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, the PPA shall be amended to reflect the agreed termination payment, Design-Build Contractor shall be paid the agreed amount, and the Contract Price shall be reduced to reflect the reduced scope of Work.

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

15.7 Conditions to Payment; Reduction in Amount of Claim

15.7.1 As a condition to its obligation to make payment to Design-Build Contractor of amounts due under this Section 15, IFA shall have received the following:

(a) A list of all outstanding or pending DCR Notices and all existing or threatened claims, and Liens by Subcontractors, Utility Owners, or other third parties relating to the Project;

(b) Complete and legally effective releases or waivers of Liens satisfactory to IFA, from all Persons legally eligible to file Liens and stop payment notices in connection with the Work;

(c) Consent of any Guarantors and Surety(ies);

(d) Executed release(s) meeting the requirements of Sections 12.4.4 and 15.11.2 and otherwise satisfactory in form and content to IFA;

(e) An affidavit from Design-Build Contractor meeting the requirements of Section 12.4.4; and

(f) Such other documentation as IFA may reasonably require.

15.7.2 The amount otherwise due Design-Build Contractor under this Section 15 shall be reduced by (a) any Losses of IFA or Third Party Claims for which Design-Build Contractor is responsible hereunder; (b) the amount of any claim which IFA may have against any DB-Related Entity in connection with the PPA Documents; (c) any unpaid liquidated or stipulated damages or other payments for which Design-Build Contractor is liable pursuant to Section 17; (d) the agreed price for, or the proceeds of sale, of property, materials, supplies or other things acquired by Design-Build Contractor or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to IFA; (e) all unliquidated advances or other payments made to or on behalf of Design-Build Contractor applicable to the terminated portion of the Work or PPA; (f) amounts that IFA deems advisable, in its good faith discretion, to retain to cover any existing or threatened claims, and Liens relating to the Project, including claims by Utility Owners; (g) the cost of repairing any Nonconforming Work plus an administrative charge equal to 10% of such costs; (h) any amounts IFA is required to retain under applicable federal law; and (i) any amounts due or payable by Design-Build Contractor to IFA or which IFA is otherwise entitled to recover from Design-Build Contractor under the terms of the PPA Documents.

15.8 Payment

IFA may from time to time, under such terms and conditions as it may prescribe and in its good faith discretion, make partial payments on account against costs incurred by Design-Build Contractor in connection with the terminated portion of the PPA, whenever in the opinion of IFA the aggregate of such payments shall be within the amount to which Design-Build Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Design-Build Contractor to IFA upon demand together with interest at the rate of the lesser of (a) ten percent (10%) per annum or (b) the maximum rate allowable under applicable Governmental Rules.

15.9 Subcontracts

15.9.1 Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 15.

15.9.2 Each Subcontract shall provide that, in the event of a Termination for Convenience by IFA, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

15.10 No Consequential Damages

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

15.11 No Waiver; Release

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

15.11.2 IFA's payment to Design-Build Contractor of the amounts required under this Section 15 shall constitute full and final satisfaction of, and upon payment IFA shall be forever released and discharged from, any and all Claims, causes of action, suits, demands, and Losses, known or unknown, suspected or unsuspected, that Design-Build Contractor may have against IFA arising out of or relating to the terminated Work. Concurrently with such payment, Design-Build Contractor shall execute and deliver to IFA all such releases and discharges as IFA may reasonably require to confirm the foregoing (which release shall include an express and unconditional waiver and release sufficient, in IFA's good faith discretion, to waive any rights and benefits Design-Build

Contractor may have), but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

15.12 Dispute Resolution

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

15.13 Allowability of Costs

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

SECTION 16. DEFAULT

16.1 Default of Design-Build Contractor

16.1.1 Design-Build Contractor shall be in default under the PPA upon the occurrence of any one or more of the following events or conditions (each a "Design-Build Contractor Default"):

(a) Design-Build Contractor fails (i) promptly to begin the Work under the PPA Documents following issuance of the Notice to Proceed, or (ii) to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of notice from IFA to do so or (if applicable) after cessation of the event preventing performance; or

(b) Design-Build Contractor fails to perform the Work in accordance with the PPA Documents, including conforming to applicable standards set forth therein in design and construction of the Project, or refuses to remove, replace, and correct rejected materials or Nonconforming Work or unacceptable Work; or

(c) Design-Build Contractor suspends, ceases, stops or abandons the Work (exclusive of Work stoppage (i) due to termination by IFA, (ii) due to and during the continuance of a Force Majeure Event or suspension by IFA, or (iii) in accordance with Section 16.3); or

(d) Design-Build Contractor fails to continuously and diligently prosecute the Work (exclusive of Work stoppage (i) due to termination by IFA, (ii) due to and during the continuance of a Force Majeure Event or suspension by IFA, or (iii) in accordance with Section 16.3); or

(e) Design-Build Contractor fails to obtain, provide, and maintain in full force and effect any insurance, bonds, guarantees, or other performance security as and when required hereunder for the benefit of relevant parties, or fails to comply with any requirement of this PPA pertaining to the amount, terms or coverage of the same; or

(f) Design-Build Contractor makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of the PPA Documents or any right or interest herein, except as expressly permitted under Section 24.4; or

(g) Design-Build Contractor shall have failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have failed to comply with any Governmental Rule or failed reasonably to comply with the instructions of IFA consistent with the PPA Documents; or

(h) Design-Build Contractor shall have failed to make payment when due to IFA of any amounts owing to IFA under the PPA Documents, including liquidated or stipulated damages assessed pursuant to Section 17; or

(i) Design-Build Contractor fails to timely observe or perform or cause to be observed or performed any other agreement or covenant to be performed by Design-Build Contractor contained in the PPA Documents; or

(j) Any Guarantor revokes or attempts to revoke its obligations under its Guaranty or otherwise takes the position that such instrument is no longer in full force and effect; or

(k) Any representation or warranty made by Design-Build Contractor or any Guarantor in the PPA Documents (including the Responsible Proposer Questionnaire included in the Proposal and the questionnaire included in the Statement of Qualifications) or any certificate, schedule, instrument or other document delivered by Design-Build Contractor pursuant to the PPA Documents shall have been false or materially misleading when made; or

(l) Design-Build Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any Surety or Guarantor; or

(m) An involuntary case is commenced against Design-Build Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Design-Build Contractor or Design-Build Contractor's debts under any bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Design-Build Contractor or any substantial part of Design-Build Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Design-Build Contractor in good faith or shall remain undismissed and unstayed for a period of sixty (60) days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any Surety or Guarantor.

16.1.2 Except with respect to the Design-Build Contractor Defaults described in Sections 16.1.1(c), (e), (f), (h), and (j) through (m), Design-Build Contractor and Surety shall be entitled to fifteen (15) days written notice and opportunity to cure any Design-Build Contractor Default before an Event of Default is declared; provided, however, that no such notice and opportunity to cure is required for any Design-Build Contractor Default which by its nature cannot be cured. Failure to provide notice to Surety or any Guarantor shall not preclude IFA from exercising its remedies against Design-Build Contractor. If a Design-Build Contractor Default (other than the Design-Build Contractor Defaults described in Sections 16.1.1(c), (e), (f), (h) and (j) through (m), is capable of cure but, by its nature, cannot be cured within fifteen (15) days, as determined by IFA, such additional period of time shall be allowed as may be reasonably necessary to cure the Design-Build Contractor Default so long as Design-Build Contractor commences

such cure within such fifteen- (15-) day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed sixty (60) days in total. In the event of a Design-Build Contractor Default under Section 16.1.1(e) or (h), Design-Build Contractor shall be entitled to seven (7) days' written notice and opportunity to cure. Design-Build Contractor hereby acknowledges and agrees that the Design-Build Contractor Defaults described in Sections 16.1.1(c), (f) and (j) through (m) are not curable and no notice or cure period shall apply; provided, however, that in the event of a Design-Build Contractor Default under Section 16.1.1(l) or (m) that arises solely due to the specified acts or events as they pertain to Guarantor, Design-Build Contractor shall have an opportunity to cure such Design-Build Contractor Default by providing IFA with alternative security, which security must be in a form satisfactory to IFA, in its sole discretion. Notwithstanding the foregoing, IFA may, without notice and without awaiting lapse of the period to cure any Design-Build Contractor Default, in the event of existence of a condition on or affecting the Project which IFA believes poses an immediate and imminent danger to revenues or public health or safety, rectify the dangerous condition at Design-Build Contractor's cost, and so long as IFA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such Design-Build Contractor Default, such action shall not expose IFA to any liability to Design-Build Contractor and shall not entitle Design-Build Contractor to any other remedy, it being acknowledged that IFA has a paramount public interest in providing and maintaining safe public use of and access to the Project. IFA's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2 Remedies

16.2.1 If any Design-Build Contractor Default described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, IFA may declare that an "Event of Default" has occurred. The declaration of an Event of Default shall be in writing and given to Design-Build Contractor. In addition to all other rights and remedies provided by law or in equity and such rights and remedies as are otherwise available under the PPA Documents, the Performance Bond, the Warranty Bond and/or the Guaranty, if an Event of Default shall occur, then IFA shall have the following rights without further notice and without waiving or releasing Design-Build Contractor from any obligations, and Design-Build Contractor shall have the following obligations (as applicable):

(a) Subject to Section 17.7, IFA shall be entitled to recover any and all damages available at law or in equity on account of the occurrence of a Design-Build Contractor Default. Such damages shall include all damages that accrue after the occurrence of the Design-Build Contractor Default regardless of when any applicable notice is given or whether the Design-Build Contractor Default is subsequently cured.

(b) IFA may terminate the PPA or a portion thereof, including Design-Build Contractor's rights of entry upon the Site and possession, control, and operation of the Project, in which case, the provisions of Sections 15.2 and 15.3 shall apply;

(c) If and as directed by IFA, Design-Build Contractor shall discontinue the Work, withdraw from the Site, and shall remove materials, equipment, tools, and

instruments used by, and any debris or waste materials generated by, any DB-Related Entity in the performance of the Work;

(d) If and as directed by IFA, Design-Build Contractor shall deliver to IFA possession of any or all Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Project that IFA deems necessary for completion of the Work;

(e) If and as directed by IFA, Design-Build Contractor shall confirm the assignment to IFA of the Subcontracts requested by IFA, and Design-Build Contractor shall terminate, at its sole cost, all other Subcontracts;

(f) IFA may deduct from any amounts payable by IFA to Design-Build Contractor such amounts payable by Design-Build Contractor to IFA, including the aggregate of reimbursements owing; Liquidated Damages owing pursuant to Section 17.1; any other liquidated or stipulated damages assessed pursuant to Section 17; 125% of the amounts IFA deems advisable to cover any existing or threatened claims, and Liens of Subcontractors, laborers or other Persons; amounts of any Losses or Third Party Claims that have accrued; the cost to complete or remediate uncompleted Work or Nonconforming Work plus an administrative charge equal to ten percent (10%) of such costs; and other damages or amounts that IFA has determined are or may be payable to IFA under the PPA Documents;

(g) IFA shall have the right, but not the obligation, to pay such amounts and/or perform such act as may then be required from Design-Build Contractor under the PPA Documents or Subcontracts;

(h) IFA may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may direct the Surety to complete the Work and the Project or may enter into an agreement for the completion of the Work and the Project according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the Project, including completion of the Work by IFA; and/or

(i) If IFA exercises any right to perform any obligations of Design-Build Contractor, in the exercise of such right IFA may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as IFA deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors and obtain materials and equipment as may be required for the purpose of completing such work; (iii) execute all applications, certificates, and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may, in its sole discretion, consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 If an Event of Default shall have occurred, Design-Build Contractor, any Guarantor and Surety shall be jointly and severally liable to IFA for all Losses incurred

by IFA or any party acting on IFA's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). Upon occurrence of an Event of Default and so long as it continues, IFA shall be entitled to withhold all or any portion of further payments to Design-Build Contractor until the Final Acceptance Date or the date on which IFA otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time IFA will determine whether Design-Build Contractor is entitled to further payments. Promptly following the Final Acceptance Date or the date on which IFA otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and IFA shall notify Design-Build Contractor, Surety, and each Guarantor in writing of the amount, if any, that Design-Build Contractor, each Guarantor and the Surety shall pay IFA or IFA shall pay Design-Build Contractor or its Surety with respect thereto. IFA will deduct, from any moneys due or which will become due Design-Build Contractor or its Surety, all costs and charges incurred by IFA, including attorneys', accountants' and expert witness fees and costs; together with (a) the cost of completing the Work under the PPA Documents together with an administrative charge of ten percent (10%) of such costs; (b) any reimbursements owing to IFA; (c) Liquidated Damages, any liquidated or stipulated damages or other payments for which Design-Build Contractor is liable to IFA pursuant to Section 17; (d) 125% of the amounts IFA deems advisable to cover any existing or threatened claims, and Liens of Subcontractors, laborers or other Persons; (e) the amounts of any Losses or Third Party Claims that have accrued; and (f) other damages or amounts that IFA has determined are or may be payable to IFA under the PPA Documents. If such expense exceeds the sum which would have been payable under the PPA, then Design-Build Contractor, each Guarantor and its Surety(ies) shall be liable and shall pay to IFA the amount of such excess. If any Guarantor or the Surety fails to pay such amount immediately upon IFA's demand, then IFA shall be entitled to collect interest from the Surety and/or such Guarantor(s) on the amounts Design-Build Contractor is required to pay in excess of the remaining balance of the Contract Price. The interest rate which the Surety and/or such Guarantor(s) shall pay shall be the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate allowable under applicable Governmental Rules. The interest rate shall accrue on all amounts IFA has had to pay in excess of the remaining balance of the Contract Price from the date of IFA payment.

16.2.3 Design-Build Contractor acknowledges that if a Design-Build Contractor Default under Section 16.1.1(l) or (m) occurs, such event could impair or frustrate Design-Build Contractor's performance of the Work. Accordingly, Design-Build Contractor agrees that upon the occurrence of any such Design-Build Contractor Default, IFA shall be entitled to request of Design-Build Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall entitle IFA to terminate the PPA and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, IFA shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which (plus an administrative charge of ten percent (10%) of such cost) will be credited against and deducted from IFA's payment obligations hereunder.

The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the PPA Documents, the Performance Bond, and the Guaranty.

16.2.4 In lieu of the provisions of this Section 16.2 for terminating the PPA and completing the Work, IFA may pay Design-Build Contractor for the Work already done according to the provisions of the PPA Documents (including IFA's right to deduct certain amounts therefrom) and may treat the Work remaining undone as if they had never been included or contemplated by this PPA. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Design-Build Contractor.

16.2.5 In the event that the PPA is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

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

16.2.7 In the event IFA suffers Losses as a result of Design-Build Contractor's acts, omissions, negligence, fraud, recklessness, breach or failure to perform an obligation under the PPA Documents, IFA shall be entitled to recovery of such Losses from Design-Build Contractor regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

16.2.8 Design-Build Contractor, each Guarantor, and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a Design-Build Contractor Default by Design-Build Contractor hereunder or by IFA's declaration of an Event of Default, or by actions taken by IFA under this Section 16.2.

16.2.9 IFA's remedies associated with any false statement contained in the Responsible Proposer Questionnaire included in the Proposal or the questionnaire included in the Statement of Qualifications shall include the right to rescind the PPA.

16.3 Failure by IFA to Make Undisputed Payment

16.3.1 Design-Build Contractor shall have the right to stop Work if IFA fails to make an undisputed payment due hereunder within 35 days after receipt of notice of nonpayment. Any such Work stoppage shall be considered a suspension for convenience under Section 14.1 and shall be subject to the following terms and conditions:

(a) Design-Build Contractor shall be responsible for safely securing and monitoring the Site and all materials and equipment;

(b) Design-Build Contractor shall continue to provide traffic management in accordance with the Transportation Management Plan and Temporary Traffic Control Plan;

(c) The right to suspend Work does not include the right to suspend or cancel Insurance Policies or any Payment Bond and Performance Security;

(d) The suspension of Work shall cease, and Design-Build Contractor shall resume performance of the Work, within ten (10) days after the default is cured; and

(e) Promptly after IFA receives the Design-Build Contractor Notice described in this Section 16.3.1, IFA and Design-Build Contractor shall coordinate to effect a smooth, uninterrupted transition of the maintenance from Design-Build Contractor and its Subcontractors to IFA or its designated contractor. IFA shall use diligent efforts to complete such transition and assume performance of the maintenance not later than 30 days after receipt of such written notice.

16.3.2 Design-Build Contractor shall not have the right to terminate the Contract for default as the result of any failure by IFA to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon written notice from Design-Build Contractor to IFA, Design-Build Contractor shall have the right to declare a Termination for Convenience under Section 15 by delivering to IFA a written notice of termination specifying its effective date. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 15.

16.4 Event of Default Due Solely to Design-Build Contractor's Failure to Achieve Certain Completion Deadlines

16.4.1 If an Event of Default consists solely of Design-Build Contractor's failure to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, IFA's sole remedy for such Event of Default shall be the right to assess Liquidated Damages; provided, however that: (a) such Event of Default does not delay Substantial Completion or Final Acceptance beyond 180-days of the applicable Completion Deadline; and (b) Design-Build Contractor continues to diligently perform the Work despite such Event of Default. Nothing in this Section 16.4 shall prejudice any other rights or remedies that IFA may have due to any other Event of Default during such 180-day period.

16.4.2 If Substantial Completion or Project Acceptance has not occurred within 180-days of the applicable Completion Deadline, IFA shall have the right to: (a) terminate this PPA; (b) continue to assess Liquidated Damages subject only to the limitations set forth in Section 17.1; and/or (c) exercise any other right or remedy under the PPA Documents, at law or in equity.

SECTION 17. LIQUIDATED DAMAGES; PLANNED CONSTRUCTION CLOSURES; AND LIMITATION OF LIABILITY

[NOTE TO PROPOSERS: LIQUIDATED DAMAGES FOR PROHIBITED LANE CLOSURES AND LANE CHARGES ARE STILL UNDER REVIEW AND SUBJECT TO CHANGE]

Design-Build Contractor understands and agrees that if Design-Build Contractor fails to complete the Work in accordance with the PPA Documents, IFA will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, Design-Build Contractor and IFA have agreed to stipulate the amount payable by Design-Build Contractor in the event of its failure to meet a Completion Deadline, failure to timely open lanes after a Planned Construction Closure, making prohibited closures or failure to meet other requirements as described in this Section 17 and Exhibit 10. Design-Build Contractor may use Planned Construction Closures during the Work subject to the requirements of this Section 17, and Section 11 of the Technical Provisions.

17.1 Liquidated Damages for Late Completion

17.1.1 Design-Build Contractor shall be liable for and pay to IFA liquidated damages with respect to any failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this PPA. Such liability shall apply even though: (a) a cure period remains available to Design-Build Contractor or (b) cure occurs. The amounts of such liquidated damages are as follows ("Liquidated Damages"):

(a) $5,000 for each day after the Interchange Completion Deadline until Interchange Completion is achieved, not to exceed 365 days;

(b) $5,000 for each day after the Substantial Completion Deadline until Substantial Completion is achieved;

(c) $2,500 through the date of Partial Acceptance Deadline until Partial Acceptance is achieved, not to exceed 365 days; and

(d) $2,500 for each day after the Final Acceptance Deadline until Final Acceptance is achieved not to exceed 365 days.

17.1.2 Liquidated Damages shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this PPA, and shall continue to accrue until the date of Substantial Completion or Final Acceptance, as applicable, or until termination of this PPA.

17.1.3 In no event shall more than 365 total days of Liquidated Damages be assessed under each of Sections 17.1.1(a), (b), (c) and (d).

17.1.4 Design-Build Contractor acknowledges that Liquidated Damages are reasonable in order to compensate IFA for damages it will incur as a result of late Interchange Completion, late Substantial Completion or late Final Acceptance, as

applicable. Such damages include costs of financing, loss of use, enjoyment, and benefit of the Project and connecting IFA transportation facilities by the general public, injury to the credibility and reputation of IFA's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Completion Deadlines, which injury to credibility and reputation may directly result in loss of ridership on the Project, and additional costs of administering these PPA Documents (including engineering, legal, accounting, overhead and other administrative costs). Design-Build Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.2 Liquidated Damages for Prohibited Construction Closures

17.2.1 Lane Closures at times and locations not consistent with the requirements of the PPA Documents result in traffic obstructions, inconvenience to the public and delay of vital commerce, and increased risk to highway users. All of these consequences result in direct and indirect financial impacts to IFA, road users, businesses, communities, and taxpayers. These impacts are not readily calculable and therefore, the Parties agree that in addition to any other liquidated damages that may be payable by the Design-Build Contractor under this Section 17, Design-Build Contractor shall be liable for and pay to IFA liquidated damages in the amounts set forth in Table 10-1 of Exhibit 10 ("Prohibited Construction Closures Liquidated Damages") for any Prohibited Lane Closures. The timelines set forth in Table 10-1 of Exhibit 10 shall commence as of the event and no notice is required nor cure period allowed.

17.2.2 Design-Build Contractor acknowledges that such liquidated damages are reasonable in order to compensate IFA for damages it will incur by reason of the matters that result in liquidated damages for Prohibited Construction Closures. Such damages include loss of use, enjoyment, and benefit of the Project and connecting IFA and INDOT transportation facilities by the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting IFA and INDOT transportation facilities and additional costs administering this PPA (including engineering, legal, accounting, overhead and other administrative costs). Design-Build Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.2.3 In the event that Design-Build Contractor fails to timely make any payment of liquidated damages for Prohibited Construction Closures, then (a) IFA may prohibit Design-Build Contractor from pursuing or implementing any further Construction Closures until such past due payments are made; (b) IFA shall have the right to deduct any amount owed by Design-Build Contractor to IFA hereunder from any amounts owed by IFA to Design-Build Contractor; and (c) Design-Build Contractor shall not be entitled to any Change Order, compensation, or time extension arising out of any inability to pursue or implement such Construction Closures.

17.2.4 Permitting or requiring Design-Build Contractor to proceed with a Construction Closure and continue and finish the Work or any part thereof after Design-

Build Contractor has failed to make timely payment as provided herein shall not act as a waiver of IFA's right to receive damages hereunder or any rights or remedies otherwise available to IFA.

17.3 Other Liquidated Damages

17.3.1 Faulty Temporary Pavement

For each occurrence of non-conformance with pavement performance standards in Section 11.2 of the Technical Provisions that continues without full cure for more than 12 hours after notification from IFA or INDOT to Design-Build Contractor, liquidated damages shall be assessed against Design-Build Contractor according to Table 10-3 of Exhibit 10. For non-conformances or failures to cure after the 12 hour cure period that last more than 24 hours without full cure, Design-Build Contractor will be assessed additional liquidated damages for the initial 24 hour period plus liquidated damages for each additional period that occurs without full cure according to Table 10-3 of Exhibit 10.

17.3.2 Maintaining Lights, Electrical and Related Items (Other than Traffic Signals)

Design-Build Contractor shall repair light outages, pole knockdowns, or any other electrical or lighting problem within 72 hours after notification from IFA or INDOT. For any failure of Design-Build Contractor to fully repair such items so that they comply with the Technical Provisions, liquidated damages will be assessed against Design-Build Contractor as set forth in Table 10-3 of Exhibit 10 for the initial failure to cure and for each 24 hour period thereafter after the expiration of the 72 hour cure period (e.g., the first assessment will occur one second after the expiration of the 72 hour cure period without full cure; subsequent assessments will occur for each 24 hour period, or any increment thereof, after the expiration of the first 24 hours without full cure) until the repairs are made. The provisions of this Section 17.3.2 shall not apply to traffic signals, which are addressed in Section 17.3.3 below.

17.3.3 Traffic Signals

Design-Build Contractor shall repair traffic signals within four (4) hours after notification from IFA or INDOT. For any failure of Design-Build Contractor to fully repair traffic signals so that they comply with the Technical Provisions, liquidated damages will be assessed against Design-Build Contractor as set forth in Table 10-3 of Exhibit 10 for the initial failure to cure and for each one (1) hour period thereafter after the expiration of the four (4) hour cure period (e.g., the first assessment will occur at the expiration of the four (4) hour cure period without full cure; the second assessment will occur at one second after the four (4) hour period without full cure; subsequent assessments will occur for each one (1) hour period, or any increment thereof, after the expiration of the first hour without full cure) until the repairs are made.

17.3.4 Proceeding with Construction Before Hold Point is Approved

No construction related to a Hold Point shall take place before signed and stamped plans have been posted as Released for Construction on the Project Website and an e-mail notification has been sent to the appropriate IFA personnel. If Design-Build Contractor proceeds with construction prior to a Hold Point approval, liquidated damages will be assessed against the Design-Build Contractor in the amounts set forth in Table 10-3 of Exhibit 10 for each 24 hour period that passes until the earlier of (i) the IFA Hold Point approval has been given and the foregoing requirements have been fully satisfied; or (ii) Design-Build Contractor ceases all construction activities associated with that Hold Point that have been commenced without a Hold Point approval.

17.4 Acknowledgements Regarding Liquidated Damages

17.4.1 Design-Build Contractor acknowledges that such liquidated damages are reasonable in order to compensate IFA for damages it will incur by reason of the matters that result in liquidated damages above. Such damages include loss of use, enjoyment, and benefit of the Project and connecting IFA and INDOT transportation facilities by the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting IFA and INDOT transportation facilities and additional costs administering this PPA (including engineering, legal, accounting, overhead and other administrative costs). Design-Build Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.4.2 As of the Proposal Date, the amounts of Liquidated Damages represent good faith estimates and evaluations by the Parties as to the actual potential damages that IFA would incur as a result of the matters set forth above, and do not constitute a penalty.

17.4.3 The Parties have agreed to Liquidated Damages in order to fix and limit Design-Build Contractor's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Design-Build Contractor.

17.4.4 Such sums are reasonable in light of the anticipated or actual harm caused by the matters set forth above, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

17.4.5 Liquidated damages are not intended to, and do not, liquidate Design-Build Contractor's liability under the indemnification provisions of Section 18.1, even though Third Party Claims against Indemnified Parties may arise out of the same event, breach, or failure that gives rise to the Liquidated damages.

17.5 Lane Charge Construction Closures

Design-Build Contractor shall be charged the amounts set forth in Table 10-2 of Exhibit 10 for Lane Charge Construction Closures done in accordance with the PPA Documents unless Column D of Table 11-1 of Technical Provisions Section 11 indicates the Construction Closure is not subject to Lane Charges. In the event that Design-Build Contractor fails to timely make any payment of lane charges for Lane Charge

Construction Closures, then (a) IFA may prohibit Design-Build Contractor from pursuing or implementing any further Construction Closures until such past due payments are made; (b) IFA shall have the right to deduct any amount owed by Design-Build Contractor to IFA hereunder from any amounts owed by IFA to Design-Build Contractor; and (c) Design-Build Contractor shall not be entitled to any Change Order, compensation, or time extension arising out of any inability to pursue or implement such Construction Closures. A Lane Charge Construction Closure that is not completed and removed in accordance with the PPA Documents shall, as of the time such Lane Charge Construction Closure should have been completed and removed, become a Prohibited Construction Closure pursuant to Section 17.2.

17.6 Payment; Offset; Reduction; Waiver; Non-Exclusive Remedy

17.6.1 Design-Build Contractor shall pay any liquidated damages or charges owing under this Section 17 within ten (10) days after Design-Build Contractor's receipt of IFA's invoice or demand therefor.

17.6.2 IFA shall have the right to deduct and offset any unpaid liquidated damages or charges from any amounts owed by IFA to Design-Build Contractor. IFA also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Design-Build Contractor pursuant to the PPA Documents to satisfy liquidated damages or charges not paid when due.

17.6.3 Permitting or requiring Design-Build Contractor to continue and finish the Work or any part thereof after a Completion Deadline as applicable shall not act as a waiver of IFA's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to IFA.

17.6.4 Subject to Section 16.4, IFA's right to, and imposition of, liquidated damages are in addition, and without prejudice, to any other rights and remedies available to IFA under the PPA Documents, at law or in equity respecting the breach, failure to perform or Design-Build Contractor Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate.

17.7 Consequential Damages

17.7.1 Except as otherwise specified in the PPA Documents, including this Section 17, to the extent permitted by applicable Governmental Rules, neither Party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this PPA, tort (including negligence) or any other theory of liability, and each Party hereby releases the other Party from any such liability.

17.7.2 The foregoing limitations on Design-Build Contractor's liability for punitive, indirect, incidental or consequential damages shall not apply to or limit any right of recovery IFA may have respecting the following:

(a) Losses (including defense costs) to the extent (i) the Loss is covered by the proceeds of insurance required to be carried hereunder or for which Design-Build

Contractor was required to provide insurance coverage is not in force, or (ii) the loss is covered by the proceeds of insurance actually carried by or insuring Design-Build Contractor under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to the PPA Documents, or (iii) Design-Build Contractor is deemed to have self-insured the loss pursuant to the PPA Documents.

(b) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence on the part of any DB-Related Entity;

(c) Design-Build Contractor's indemnities set forth in Section 18.1 or elsewhere in the PPA Documents;

(d) Design-Build Contractor's obligation to pay (i) Liquidated Damages in accordance with Section 17.1 or any other provision of the PPA Documents, and (ii) liquidated damages or stipulated damages in accordance with Section 17 or other payments relating thereto; and

(e) Losses arising out of Releases of Hazardous Materials by any DB-Related Entity (i) which was brought onto the Site by a DB-Related Entity, or (ii) which was negligently removed or handled by a DB-Related Entity.

SECTION 18. INDEMNIFICATION

18.1 Indemnifications by Design-Build Contractor

18.1.1 Subject to Section 18.1.3, Design-Build Contractor shall release, defend, indemnify and hold harmless IFA, INDOT, the State, and each of their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, agents, consultants and employees (collectively referred to as the "Indemnified Parties") from and against any and all Third Party Claims and other Losses (including those incurred in connection with the enforcement of this indemnity) arising out of, relating to or resulting from the following (each an "Indemnified Claim"):

(a) The breach or alleged breach of any of the PPA Documents by any DB-Related Entity; and/or

(b) The failure or alleged failure by any DB-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Governmental Rules (including Governmental Rules regarding Hazardous Materials Management) or any other responsibility prescribed in Sections 6.10 and 6.11; and/or

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to IFA or another Indemnified Party pursuant to the PPA Documents; provided that this indemnity shall not apply to any infringement resulting from IFA's failure to comply with specific written instructions regarding use provided to IFA by Design-Build Contractor; and/or

(d) The actual or alleged culpable act, Error, omission, negligence, fraud, recklessness, willful misconduct, breach or misconduct of any DB-Related Entity in or associated with performance of the Work; and/or

(e) Any and all claims by any Governmental Entity or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any DB-Related Entity or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any DB-Related Entity; and/or

(f) Any and all stop notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to Subcontractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that IFA is not in default in payments owing (if any) to Design-Build Contractor with respect to such Work; and/or

(g) Any Release of Hazardous Materials or threatened Release of Hazardous Materials (i) which was brought onto the Site by any DB-Related Entity, or (ii)

attributable to the negligence, fraud, recklessness, willful misconduct, or breach of contract, breach of Governmental Approval or violation of Governmental Rule by any DB-Related Entity regardless of the source, origin, or method of deposit of such Hazardous Materials; and/or

(h) To the extent of the negligence of any DB-Related Entity or failure to comply with the Design-Build Contractor's obligations under Section 23; the claim or assertion by any other contractor (excluding contractors in privity of contract with IFA) that any DB-Related Entity (i) interfered with or hindered the progress or completion of work being performed by such other contractor, so as to cause inconvenience disruption, delay, or loss, except where the DB-Related Entity was not in any manner engaged in performance of the Work, or (ii) failure of any DB-Related Entity to cooperate reasonably with other contractors in accordance therewith; and/or

(i) Any dispute between Design-Build Contractor and a Utility Owner , or any DB-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement; and/or

(j) Any DB-Related Entity's breach of or failure to perform an obligation that IFA owes to a third Person, including Governmental Entities and Utility Owners, under law or under any agreement between IFA and a third Person, where (i) IFA has delegated performance of the obligation to Design-Build Contractor under the PPA Documents or (ii) the acts or omissions of any DB-Related Entity which render IFA unable to perform or abide by an obligation that IFA owes to a third Person, including Governmental Entities and Utility Owners, under any agreement between IFA and a third Person, where the agreement was expressly disclosed to Design-Build Contractor; and/or

(k) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any DB-Related Entity to comply with Good Industry Practices, requirements of the PPA Documents, Project Management Plan or Governmental Approvals, (ii) the intentional misconduct, recklessness or negligence of any DB-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any DB-Related Entity; and/or

(l) The failure of Design-Build Contractor to fully comply with any insurance requirements described in Section 9; and/or

(m) Any failure to protect and/or maintain valuable papers and records that the PPA Documents require Design-Build Contractor to maintain; and/or

(n) Any act, claim or amount arising or recovered under workers' compensations law; and/or

(o) Any errors, inconsistencies or other Defects in the design or construction of the Project and/or of Utility Adjustments included in the Work; and/or

(p) Any violation of any representation, warranty, or other covenant, obligation or agreement under the PPA Documents or any applicable Law to be complied with by Design-Build Contractor hereunder or thereunder; and/or

(q) (i) negligent acts, negligent omissions, willful misconduct, bad faith or fraud of Design-Build Contractor, any other Design-Build Contractor-Related Entity or any of their agents, employees, consultants or anyone else for whom any of the foregoing is responsible and (ii) in any way relating to or arising out of (xx) any bodily injury (including death) to any person or (yy) any loss or damage to the tangible property of third parties..

18.1.2 Subject to Section 18.1.3, Design-Build Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, and Losses, arising out of, relating to or resulting from Errors in the Design Documents furnished by Design-Build Contractor (including those pertaining to Utility Adjustments), regardless of whether such Errors were also included in the Basic Configuration, Reference Plans, or Reference Information Documents. Design-Build Contractor agrees that, because the concepts in the Basic Configuration, Reference Plans, and Reference Information Documents are subject to review and modification by Design-Build Contractor, (a) it is appropriate for Design-Build Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the Basic Configuration, Reference Plans of Reference Information Documents and (b) such documents shall not be deemed "design furnished" by IFA or any of the other Indemnified Parties.

18.1.3 Subject to the releases and disclaimers herein, Design-Build Contractor's indemnity obligation shall not extend to any third-party Loss to the extent directly caused by:

18.1.3.1 The sole negligent acts, sole negligent omissions, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party;

18.1.3.2 IFA's breach of any of its material obligations under the PPA Documents;

18.1.3.3 An Indemnified Party's violation of any Laws or Governmental Approvals; or

18.1.3.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions, but only where prior to occurrence of the third-party Loss Design-Build Contractor complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Design-Build Contractor actually knew of the deficiency, unsuccessfully sought IFA's waiver of or approval of a Deviation from such specification.

18.1.4 In claims by an employee of Design-Build Contractor, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be

liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Build Contractor or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.5 For purposes of this Section 18.1, "third party" means any Person other than an Indemnified Party and Design-Build Contractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

18.1.6 IFA, INDOT and the State shall have no obligation to indemnify Design-Build Contractor.

18.1.7 The requirement to provide an indemnity as specified in this Section 18.1 is intended to provide protection to IFA with respect to third-party claims associated with the event giving rise to the indemnification obligation, and is not intended to provide IFA with an alternative cause of action against Design-Build Contractor for damages incurred directly by IFA with respect to the event giving rise to the indemnification obligation.

18.2 Defense and Indemnification Procedures

18.2.1 If IFA receives Notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 18.1, and if IFA gives Notice thereof pursuant to Section 24.11, then IFA shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by Law or Design-Build Contractor accepts the tender of the claim in accordance with Section 18.2.3.

18.2.2 If the insurer under any applicable Insurance Policy accepts the tender of defense, IFA and Design-Build Contractor shall cooperate in the defense as required by the Insurance Policy and, for purposes of the PPA Documents and proceedings relating to such matter, the applicable Indemnified Party/ies shall be deemed to be (an) Insured Party/ies. If no insurer under potentially applicable Insurance Policies provides defense, then Section 18.2.3 shall apply.

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

18.2.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

18.2.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

18.2.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

If Design-Build Contractor has tendered the matter to an insurer, and the insurer has not rejected the tender, then, for purposes of the PPA Documents and proceedings relating to such matter, the applicable Indemnified Party/ies shall be deemed to be (an) Insured Party/ies.

18.2.4 If Design-Build Contractor accepts the tender of defense under Sections 18.2.3.1 or 18.2.3.2, Design-Build Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Design-Build Contractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

18.2.4.1 Design-Build Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

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

18.2.5 If Design-Build Contractor responds to the tender of defense as specified in Section 18.2.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

18.2.6 Notwithstanding Sections 18.2.3.1 and 18.2.3.2, the Indemnified Party may revocably assume its own defense at any time by delivering to Design-Build Contractor Notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives Notice of the claim or at any time thereafter, reasonably determines that:

18.2.6.1 A conflict exists between it and Design-Build Contractor which prevents or potentially prevents Design-Build Contractor from presenting a full and effective defense;

18.2.6.2 Design-Build Contractor is otherwise not providing an effective defense in connection with the claim; or

18.2.6.3 Design-Build Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

18.2.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Design-Build Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending such claim. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

18.2.7.1 In the case of a defense that otherwise would be conducted under Section 18.2.3.1, the Indemnified Party shall have the right to settle or compromise the claim with each of Design-Build Contractor's and Design-Build Contractor's relevant insurer(s)' prior written consent, which, in each case, shall not be unreasonably withheld or delayed;

18.2.7.2 In the case of a defense that otherwise would be conducted under Section 18.2.3.2, the Indemnified Party and Design-Build Contractor shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, and the Indemnified Party shall have the right to settle or compromise the claim with Design-Build Contractor's prior written consent without prejudice to the Indemnified Party's rights to be indemnified by Design-Build Contractor; and

18.2.7.3 In the case of a defense conducted under Section 18.2.3.3, the Indemnified Party shall, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, have the right to settle or compromise the claim without Design-Build Contractor's prior written consent and without prejudice to its rights to be indemnified by Design-Build Contractor.

18.2.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 18.2.6, shall be resolved according to the Dispute Resolution Procedures. Design-Build Contractor shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

18.3 No Effect on Other Rights

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

18.4 CERCLA Agreement

The indemnities set forth in Section 18.1.1(g) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the Indemnified Parties.

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 Partnering

19.1.1 The provisions of this Section 19.1 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this Agreement. Compliance with the provisions of this Section 19.1 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any Dispute under the relevant procedures specified in this Section SECTION 19. .

19.1.2 IFA and Design-Build Contractor have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

19.1.3 The objectives of the partnering process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the PPA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles.

19.1.4 In continuance of their existing partnering process, within ninety (90) days after the Effective Date IFA and Design-Build Contractor shall attend a team-building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Project. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Design-Build Contractor and key representatives of IFA who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 19.2.5, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of IFA and Design-Build Contractor contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

19.1.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

19.1.6 If Design-Build Contractor and IFA succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

19.2 Dispute Resolution Procedures

19.2.1 General Provisions

19.2.1.1 Disputes Governed by These Procedures

(a) Any Claim or Dispute arising out of, relating to, or in connection with this Agreement that is not resolved by partnering per Section 19.1, including the question as to whether such dispute is subject to nonbinding arbitration, shall be resolved pursuant to this Section 19.2.

(b) Resolutions of Claims and Disputes pursuant to this Section 19.2 shall be final, binding, conclusive and enforceable as set forth in this Section 19.2.

(c) FAILURE OF DESIGN-BUILD CONTRACTOR TO CONFORM TO THE DISPUTE RESOLUTION PROCEDURES IN ALL MATERIAL RESPECTS AS TO ANY DISPUTE OR CLAIM SUBJECT THERE TO SHALL CONSTITUTE A FAILURE TO PURSUE DILIGENTLY AND EXHAUST THE ADMINISTRATIVE PROCEDURES IN THE PPA DOCUMENTS AND SHALL OPERATE AS A BAR TO THE DISPUTE OR CLAIM. THIS SECTION 19.2.1.1(C) SHALL NOT BAR A CLAIM OR DISPUTE IF THE FAILURE TO MEET APPLICABLE DEADLINES IS DUE TO CONDUCT ON BEHALF OF IFA OR ITS REPRESENTATIVES.

(d) The Parties adopt these expedited methods for resolving disputes between or among IFA, Design-Build Contractor, and units of local government that contain any part of the Project, all of whom are proper parties to these dispute resolution procedures.

19.2.1.2 Burden of Proof

The Party bringing a Claim or Dispute shall bear the burden of proving the same.

19.2.2 Informal Resolution as Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the Informal Resolution Procedures described in Section 19.2.3. Time limitations set forth for those Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for Informal Resolution Procedures applicable to any other or subsequent Disputes.

19.2.3 Informal Resolution Procedures

19.2.3.1 Notice of Dispute to Designated Agent

(a) A Party desiring to pursue a Dispute against the other Party shall initiate the informal resolution procedures by serving a Notice on the other Party's designated agent. Unless otherwise indicated by Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The Notice shall contain a concise statement describing:

(i) The date of the act, inaction or omission giving rise to the Dispute;

(ii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

(iii) A reference to any pertinent provision(s) from the PPA Documents;

(iv) If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

(v) If applicable, an analysis of the Project Schedule and Project Schedule Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Project Schedule Deadlines);

(vi) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

(vii) The claiming Party's desired resolution of the Dispute; and

(viii) Any other information the claiming Party considers relevant.

(b) The Notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a written certification by the claiming Party that:

(i) The Notice of Dispute is served in good faith;

(ii) Except as to specific matters stated in the Notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete;

(iii) The Dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and

(iv) The Authorized Representative is duly authorized to execute and deliver the Notice and such certification on behalf of the claiming Party.

(c) Any Notice by the Design-Build Contractor shall be delivered within ten (10) days of any decision, action, order or position of IFA (including any rejection or modification of a proposed Change Order by IFA) to which the Design-Build Contractor objects. Without limiting the foregoing restriction, in no event shall any Notice be filed later than ten days after Partial Acceptance (except to the extent that the decision, action, or position relates to warranties or other post-Partial Acceptance obligations of Design-Build Contractor). IFA may initiate the Dispute Resolution Procedures at any time by delivering a Notice to Design-Build Contractor.

(d) The Parties shall attempt in good faith to resolve such Dispute within fifteen (15) days of delivery of the Notice of Dispute to the responding Party. If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The Notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing.

19.2.3.2 Public Finance Director Meetings

If the Dispute is not resolved pursuant to Section 19.2.3.1(c), then commencing within ten (10) Business Days after the Notice of Dispute is served and concluding ten (10) Business Days thereafter, the Chief Executive Officer of Design-Build Contractor and the Public Finance Director or the Public Finance Director's designee, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's Notice of Dispute. If they succeed in resolving the Dispute, Design-Build Contractor and IFA shall memorialize the resolution in writing.

19.2.3.3 Failure to Resolve Dispute with Informal Resolution Procedures

(a) If a Dispute is not timely resolved under the Informal Resolution Procedures, then the Parties may mutually agree to initiate mediation.

(b) If a Dispute is not timely resolved under the Informal Resolution Procedures or by mediation, or the Parties do not mutually agree to initiate mediation or other alternative dispute resolution process, either Party may:

(i) As a condition precedent to the right to have any Dispute within the jurisdiction of the Arbitrator pursuant to Section 19.2.4.2(a) resolved by the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, refer the Dispute to the Arbitrator for a non-binding determination pursuant to Section 19.2.4.1; or

(ii) With respect to all other Disputes, as well as Disputes submitted to but not finally resolved through the Arbitrator, pursue any other relief that may be available in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana, pursuant to Section 19.2.4.2.

19.2.4 Formal Resolution Procedures

19.2.4.1 Non-binding Arbitration

(a) It is the intent of the Parties to resolve the Dispute between them whenever possible by mutual and voluntary settlement rather than through any binding dispute resolution process. In support of this, the Parties acknowledge that, except as otherwise provided herein, if the Dispute cannot be settled through the Informal Resolution Procedures set forth in Section 19.2.3, the Parties agree first to submit their Dispute to non-binding arbitration as a condition precedent to filing litigation under Section 19.2.4.2. The Parties recognize that non-binding arbitration is a process to assist them in resolving their disputes by making their own free and informed choices and that the neutral Arbitrator will have no authority to impose a binding award on any Party but only to issue an advisory decision. The non-binding award cannot be entered as a judgment in any court, except on mutual consent of the Parties, nor can it be used as evidence or cited as precedent with any preclusive effect, in any court or other proceeding, except for the limited purpose of enforcing a Party's rights pursuant to Section 19.2.4.2(b).

(b) A Party shall initiate the non-binding arbitration process by serving a written demand for arbitration on the other Party's designated agent. Unless otherwise indicated by Notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The arbitration demand shall contain a concise statement of the following:

(i) The date of the act, inaction or omission giving rise to the Dispute;

(ii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

(iii) A reference to any pertinent provision(s) from the PPA Documents; and

(iv) If applicable, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected).

(c) The receiving Party shall respond to the demand for arbitration within twenty-one (21) days of receipt thereof.

(d) The Parties shall attempt in good faith to select an arbitrator to which they mutually agree within ten (10) days of the Notice of non-binding arbitration. If the Parties are unable to agree on an arbitrator, the Parties agree to

select from the most current list of arbitrators as maintained by the Indiana Supreme Court Division of State Court Administration. If the Parties cannot agree, the arbitrator shall be selected through a striking process by which the initiating Party shall strike first. The Parties shall proceed with the striking process until only one arbitrator remains on the list. If the remaining arbitrator does not serve, then the arbitrator's whose name was stricken immediately before shall be selected. This procedure shall be repeated, if necessary, until an arbitrator who agrees to serve is selected. Unless mutually agreed otherwise, the Parties shall complete the process of selecting an arbitrator within twenty (20) days of the Notice initiating non-binding arbitration.

(e) The cost of the arbitration shall be equally divided between the Parties, regardless of outcome.

(f) Unless otherwise agreed, the arbitration hearing shall take place in Indianapolis, Indiana, at a location to be mutually agreed upon or determined by the Arbitrator. The hearing shall be scheduled for a date no later than ninety (90) days after the demand for arbitration is sent.

(g) The rules of discovery set forth in Indiana Rules of Civil Procedure shall apply. Notwithstanding the preceding sentence, each Party shall disclose to the other party witnesses and exhibits intended for use in the proceedings. The claiming Party shall make all of its disclosures no later than forty-five (45) days after the date of the filing of the demand for arbitration under Section 19.2.4.1(b). The responding Party shall make all of its disclosures no later than thirty (30) days after the date that is forty-five (45) days after the date of the filing of the demand for arbitration under Section 19.2.4.1(b). Unless agreed otherwise, each Party shall be entitled to take no more than two depositions.

(h) No later than thirty (30) days before the hearing, each Party shall provide the Arbitrator and the opposing Party with a listing of witnesses and documentary evidence to be considered. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

(i) Unless otherwise agreed, all documents the Parties desire to be considered in the arbitration process shall be filed with the Arbitrator and exchanged between the Parties no later than fifteen (15) days prior to the arbitration hearing. In addition, no later than five (5) days prior to hearing, each Party may file with the Arbitrator a pre-arbitration brief setting forth the factual and legal positions as to the issues being arbitrated.

(j) Unless agreed otherwise, the arbitration hearing shall be limited to three (3) days, and the Arbitrator shall issue its written determination within twenty (20) days of the close of the hearing and shall serve a copy of this determination on the Parties who participated in the arbitration.

(k) If the non-binding arbitration is not completed and the Parties do not reach a mutually agreeable settlement within one hundred twenty (120) days after initiation of the non-binding arbitration, either Party may continue to pursue the Dispute by filing a complaint in the Marion County, Indiana Circuit/Superior Court

located in Marion County, Indiana, or the Parties may mutually agree to extend the time for non-binding arbitration.

(l) If neither Party rejects the Arbitrator's non-binding determination within thirty (30) days of its being issued by the Arbitrator, such decision shall become final and binding as between the Parties, and shall be enforceable in any court of competent jurisdiction.

(m) If one Party rejects the Arbitrator's determination, then it shall send a Notice of its objection/rejection to the other Party within thirty (30) days of such decision and either Party may proceed with state court litigation as provided in Section 19.2.4.2.

(n) The non-binding arbitration proceedings shall be considered as settlement negotiations and shall be governed by Section 19.2.5.1.

(o) If the amount at issue in the Dispute is greater than $5,000,000, then at IFA's sole discretion the Dispute may proceed directly from the Informal Resolution Procedures in Section 19.2.3 to state court litigation per Section 19.2.4.2. IFA shall advise Design-Build Contractor of its decision to forgo the non-binding arbitration procedures by Notice submitted no later than the date by which the response to an arbitration demand is due. For clarification, if there is no arbitration hearing and decision under the paragraph, then the attorneys' fees provisions in Section 19.2.4.2(b) shall not apply.

19.2.4.2 State Court Litigation

(a) If a Party rejects the Arbitrator's determination in accordance with Section 19.2.4.1(m), or IFA determines to forego non-binding arbitration in accordance with Section 19.2.4.1(o), then either Party may thereafter file a lawsuit in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

(b) If the Party that rejected the Arbitrator's decision does not obtain a more favorable result at the trial court level in the state court litigation, that Party shall be responsible to pay for the litigation costs, including the attorneys' fees, incurred by the other Party in the state court litigation.

19.2.5 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process

19.2.5.1 All discussions, negotiations, Informal Resolution Procedures described in Section 19.2.3 and non-binding arbitration proceedings described in Section 19.2.4 between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, procedures or proceedings shall be considered confidential and not subject to disclosure by either Party.

19.2.5.2 During any arbitration, alternative dispute resolution or judicial proceeding regarding a Dispute, all information that has been deposited with the

Escrowed Proposal Documents shall be available as evidence but treated as confidential and subject to a protective order issued by the Arbitrator or court to protect the information from public disclosure.

19.2.5.3 The Parties may also request a protective order in any arbitration, alternative dispute resolution or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Arbitrator or court shall be governed by the standards in the Indiana Rules of Evidence and Indiana Rules of Trial Procedure and/or Indiana's Administrative Rules, as applicable.

19.2.5.4 Administrative Hearings; Venue and Jurisdiction

(a) IFA acknowledges that Design-Build Contractor Claims are not subject to the jurisdiction of any Indiana administrative agency, and IFA agrees that no defense based on failure to exhaust administrative remedies not otherwise set forth in this Agreement may be raised in any court proceeding arising out of or relating to the Project.

(b) The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a Party in court arising out of the PPA Documents shall be the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

19.2.6 Continuation of Disputed Work and Payments

19.2.6.1 At all times during Dispute Resolution Procedures, Design-Build Contractor and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by IFA in its sole discretion. Design-Build Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the disputed Work even if Design-Build Contractor's position in connection with the Dispute ultimately prevails.

19.2.6.2 During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the PPA Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.2.6.3 Throughout the course of any disputed Work, Design-Build Contractor shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work. Design-Build Contractor shall provide IFA access to all Project-related books and records on an Open Book Basis as IFA desires to evaluate the Dispute. The Arbitrator shall have similar access to all such records. These records shall be retained for a period of not less than one (1) year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the PPA Documents).

19.2.6.4 During the course of any Dispute Resolution Procedures, IFA shall continue to pay to Design-Build Contractor when due all undisputed amounts owing under this Agreement.

SECTION 20. ACCEPTANCE

20.1 Substantial Completion

20.1.1 Requirements

20.1.1.1 IFA will issue a written Certificate of Substantial Completion at such time as Substantial Completion occurs for the Project.

20.1.1.2 In determining whether Substantial Completion has occurred, IFA may consider and require satisfaction of the following criteria:

(a) Whether 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, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections, and crash attenuators;

(b) Whether required illumination is installed and functional;

(c) Whether required pavement markings, signs, and signals are installed and functional;

(d) Whether the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Transportation Management Plan solely in order to complete Punch List items);

(e) Whether all lanes of traffic (including freeway lanes, ramps, interchanges, collector distributor, overpasses, underpasses, other crossings and roads) set forth in the Design Documents are in their final configuration and available for public use; and

(f) Whether Design-Build Contractor has otherwise completed the Work, in accordance with the PPA Documents and Design Documents, including the construction of noise/sound walls, retaining walls, drainage facilities, bicycle and pedestrian facilities such that the Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, including bicycle and pedestrian access, subject only to Punch List items and other items of work that do not affect the ability to safely open the Project for such normal use and operation by the traveling public.

20.1.1.3 The Parties shall disregard the status of the vegetative ground cover landscaping and aesthetic features, except noise/sound walls, included in the Released for Construction Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criteria in Section 20.1.1.2(d).

20.1.2 Notification of Substantial Completion

20.1.2.1 Design-Build Contractor shall provide IFA with not less than 120 days' prior written notification of the date Design-Build Contractor determines it will achieve Substantial Completion. During such 120-day period, Design-Build Contractor and IFA shall meet and confer and exchange information on a regular cooperative basis with the goal being IFA's orderly, timely inspection and review of the Project and the Released for Construction Documents and Construction Documents, and IFA's issuance of a Certificate of Substantial Completion.

20.1.2.2 During such 120-day period, IFA shall conduct an inspection of the Project and its components, a review of the Released for Construction Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved.

20.1.2.3 Design-Build Contractor shall provide IFA a second written notification when Design-Build Contractor determines it has achieved Substantial Completion.

20.1.2.4 IFA will then conduct such inspections, surveys and/or testing described in the Standard Specifications, Recurring Special Provisions, Technical Provisions or as it deems advisable. If such inspections, surveys and/or tests disclose that any of Work does not meet the requirements of the PPA Documents, IFA will promptly advise Design-Build Contractor as to any Errors in the Work necessary to be corrected as a condition to Substantial Completion and as to any Errors which may be corrected as Punch List items. Upon correction of the Errors identified as a prerequisite to Substantial Completion, Design-Build Contractor shall provide written notification to IFA, and IFA will conduct additional inspections, surveys and/or testing as it deems desirable. This procedure shall be repeated until IFA finds that all prerequisites to Substantial Completion have been met.

20.1.2.5 Within five (5) days after expiration of the 120-day period and IFA's receipt of the second notification described in Section 20.1.2.3, IFA shall either: (a) issue the Certificate of Substantial Completion or (b) notify Design-Build Contractor in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If IFA and Design-Build Contractor cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

20.2 Punch List

20.2.1 The Project Management Plan shall establish procedures and schedules for preparing a Punch List and completing Punch List work. Punch List(s) shall include an itemized list of Construction Work which remains to be completed, the existence, correction and completion of which will have no adverse effect on the normal and safe operation and use of the Project. Such procedures and schedules shall conform to this Section 20.2. The Project Management Plan shall provide for development of Punch Lists for each of Interchange Completion, Substantial Completion and Partial Acceptance, Final Acceptance.

20.2.2 For Substantial Completion, the schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

20.2.3 Design-Build Contractor shall prepare and maintain the Punch List. Design-Build Contractor shall deliver to IFA not less than five (5) Business Days' prior written notice stating the date when Design-Build Contractor will commence Punch List field inspections and Punch List preparation. IFA may, but is not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Design-Build Contractor objects to the addition of an item by IFA, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Design-Build Contractor shall deliver to IFA a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

20.2.4 Design-Build Contractor shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the PPA Documents, within the time period to be set forth in the Project Management Plan and in any case by the Partial Acceptance Deadline.

20.3 Partial Acceptance

20.3.1 Conditions to Partial Acceptance

20.3.1.1 Promptly after Substantial Completion has occurred, Design-Build Contractor shall perform all Work, if any, which was deferred for purposes of Partial Acceptance, and shall satisfy all of its other obligations under the PPA Documents (other than the receipt of IDEM Notice of Termination obligation), including ensuring that the Project has been completed and all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested, and provision of all deliverables described in Section 20.3.2. When all of the foregoing have occurred, Design-Build Contractor shall provide an executed sworn Affidavit of Partial Acceptance to IFA including the following statement:

> To the best of Design-Build Contractor's knowledge and belief, except for Work necessary to obtain the IDEM Notice of Completion, all Work under the PPA has been completed in strict accordance with the PPA Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the PPA Documents, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the PPA Documents or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop payment notices relating to the Project, including claims by Utility Owners, there is no existing default of IFA's obligations under any Utility Agreement that are Design-Build

Contractor's responsibility pursuant to the PPA Documents, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or an event of default under any Utility Agreement; and upon receipt of final payment, Design-Build Contractor and Subcontractors acknowledge that IFA and any and all employees of IFA and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the PPA Documents.

20.3.1.2 If Design-Build Contractor is unable to provide the affidavit in the above form as it relates to outstanding claims, Liens or stop payment notices relating to the Project, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by IFA. The affidavit shall include a representation of Design-Build Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter. IFA may condition its acceptance of such affidavit in such form by requiring that Design-Build Contractor post security or take other actions which, in IFA's discretion, will adequately protect IFA and the Project against such outstanding matters.

20.3.2 Partial Acceptance

Partial Acceptance shall be deemed to have occurred when all of the following have occurred:

(a) All requirements for Substantial Completion shall have been fully satisfied;

(b) IFA shall have received all Design Documents, original working drawings, shop drawings and final As-Built Drawings of the Project, right-of-way record maps, surveys, test data and other deliverables required under the PPA Documents;

(c) Design-Build Contractor shall have submitted and received IFA approval of the all Submittals required by the PPA Documents, including but not limited to the Submittals identified in Section 2.8 and 2.9 of the Technical Provisions;

(d) All special tools, equipment, furnishings and supplies purchased and/or used by Design-Build Contractor as provided in the PPA Documents shall have been delivered to IFA and all replacement spare parts shall have been purchased and delivered to IFA free and clear of Liens;

(e) All of Design-Build Contractor's other obligations under the PPA Documents (other than obligations which by their nature are required to be performed after Partial Acceptance) shall have been satisfied in full or waived in writing by IFA.

20.3.3 Inspection and Issuance of Certificate of Partial Acceptance

Upon receipt of notification from Design-Build Contractor that all conditions to Partial Acceptance have been met, IFA will make final inspection and IFA will either issue a Certificate of Partial Acceptance or notify Design-Build Contractor regarding any Work remaining to be performed. If IFA fails to issue a Certificate of Partial Acceptance, Design-Build Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Build Contractor shall give IFA a revised Affidavit of Partial Acceptance with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until IFA has given Design-Build Contractor an executed Certificate of Partial Acceptance.

20.4 Final Acceptance

20.4.1 Conditions to Final Acceptance

Final Acceptance shall be deemed to have occurred when all of the following have occurred:

(a) All requirements for Partial Acceptance shall have been fully satisfied;

(b) All of Design-Build Contractor's other obligations under the PPA Documents (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived in writing by IFA

(c) Design-Builder has received and provided to IFA IDEM Notice of Termination.

20.4.2 Inspection and Issuance of Certificate of Final Acceptance

Upon receipt of notification from Design-Build Contractor that all conditions to Final Acceptance have been met, IFA will make final inspection and IFA will either issue a Certificate of Final Acceptance or notify Design-Build Contractor regarding any Work remaining to be performed. If IFA fails to issue a Certificate of Final Acceptance, Design-Build Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Build Contractor shall give IFA a revised Affidavit of Final Acceptance with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until IFA has given Design-Build Contractor an executed Certificate of Final Acceptance.

20.4.3 No Relief from Liability

Final Acceptance will not prevent IFA from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall it prevent IFA from recovering from Design-Build Contractor, any Guarantor, the Surety(ies), or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Design-Build Contractor to fulfill the obligations under the PPA Documents. A waiver on the part of IFA of any breach of any part of

Design-Build Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve Design-Build Contractor from any of its continuing or surviving obligations hereunder, including Warranty obligations.

SECTION 21. DOCUMENTS AND RECORDS

21.1 Escrowed Proposal Documents

Prior to execution of this PPA, Design-Build Contractor has delivered to IFA one copy of all documentary information used in preparation of the Proposal Price (the "Escrowed Proposal Documents" or “EPDs”). Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the PPA and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation, amendment or Change Order, as applicable, shall be added to the escrow or cabinet, as applicable, to be held with the other EPDs. The EPDs will be held in such cabinet, at either INDOT headquarters in Indianapolis, Indiana or the INDOT Greenfield District Office or otherwise maintained subject to Section 21.1.1 until all of the following have occurred: (a) 180 days have elapsed from Final Acceptance or termination of the Work, as applicable; (b) all Disputes regarding the PPA Documents have been settled; and (c) Final Payment on the PPA has been made by IFA and accepted by Design-Build Contractor.

21.1.1 Availability for Review

The EPDs shall be available during regular business hours for joint review by Design-Build Contractor and IFA, and its successors and assigns, in connection with negotiations of Change Orders and PPA amendments, the resolution of Disputes and Claims and as described in Section 21.1.6. IFA shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. IFA shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters; provided, however that IFA has executed and delivered to Design-Build Contractor a confidentiality statement specifying that, to the extent consistent with applicable law, all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than IFA’s attorneys and experts, the Disputes Review Team and any judicial referee, arbitrator or court considering a Dispute or Claim, and that all copies of such documents (other than those delivered to dispute resolvers) will be either destroyed or returned to the depository (or to Design-Build Contractor if the EPDs have been returned to it) upon final resolution of the negotiations or Disputes or Claims.

21.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of Design-Build Contractor and shall be considered to be in Design-Build Contractor’s possession, subject to IFA's right to review and use the EPDs as provided in this Section 21. IFA acknowledges that Design-Build Contractor may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgment is based upon IFA’s understanding that the information contained in the EPDs is not known outside Design-Build Contractor’s business, is known only to a limited extent and by a limited number of employees of Design-Build Contractor, is safeguarded while in Design-Build Contractor’s possession,

and may be valuable to Design-Build Contractor's construction strategies, assumptions and intended means, methods, and techniques of construction. IFA further acknowledges that Design-Build Contractor expended money in developing the information included in the EPDs and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. IFA acknowledges that the EPDs and the information contained therein are being made accessible to IFA only because it is an express prerequisite to award of the PPA.

21.1.3 Representation

Design-Build Contractor represents and warrants that the EPDs constitute all of the information used in the preparation of its Proposal Price and pricing related to PPA amendments and Change Orders and agrees that no other Proposal Price, PPA amendment or Change Order preparation information will be considered in resolving Disputes or Claims. Design-Build Contractor agrees that the EPDs are not part of the PPA Documents and that nothing in the EPDs shall change or modify the PPA Documents.

21.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how the components of the Proposal Price were determined and shall be in sufficient detail as is adequate to enable a complete understanding and interpretation of how Design-Build Contractor arrived at the Proposal Price. The EPDs provided in connection with quotations, PPA amendments, and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. In this regard, crews, equipment, materials, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into Design-Build Contractor's usual cost categories such as direct labor, repair labor, equipment ownership, rental and operation, expendable materials, permanent materials, and Subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Design-Build Contractor's usual format. Design-Build Contractor's allocation of plant and equipment, indirect costs, risk contingencies, markup, and other items to each direct cost item shall be clearly identified. The EPDs shall itemize the estimated costs of the Payment Bond, Performance Bond and the insurance premiums for each coverage required to be provided by Design-Build Contractor under Section 9. The EPDs shall include electronic media data files associated with all assumptions, detailed quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and Suppliers, quotes for insurance and bond premiums, memoranda, narratives, and all other information used by Design-Build Contractor to arrive at the Proposal Price or amendment or Change Order.

21.1.5 Form of EPDs

Except as otherwise provided in the RFP, Design-Build Contractor shall submit the EPDs in such format as is used by Design-Build Contractor in connection with its Proposal. It is not intended that Design-Build Contractor perform any significant extra work in the preparation of these documents. However, Design-Build Contractor represents and warrants that the EPDs provided with the Proposal were personally examined prior to delivery by an authorized officer of Design-Build Contractor and that

they meet the requirements of Section 21.1.4, that the EPDs provided in connection with quotations, PPA amendments, and Change Orders will be personally examined prior to delivery by an authorized officer of Design-Build Contractor, and that they will meet the requirements of Section 21.1.4.

21.1.6 Review by IFA

IFA may at any time conduct a review of the EPDs to determine whether they are complete. In the event IFA determines that any data is missing, Design-Build Contractor shall provide such data within three (3) Business Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information, and added to the EPDs. Design-Build Contractor shall have no right to add documents to the EPDs except upon IFA's request. At IFA's option, which may be exercised at any time, the EPDs associated with any Change Order or PPA amendment shall be reviewed, organized, and indexed, to be jointly undertaken with the Design-Build Contractor. IFA's review shall assess the completeness and accuracy of the EPDs, and IFA and the Design-Build Contractor shall jointly develop and countersign a detailed index and catalogue of the contents of the EPDs. If, following the review and organization, IFA determines that the EPDs are incomplete, IFA may require the Design-Build Contractor to supply data to make the EPDs complete.

21.2 Subcontractor Pricing Documents

Design-Build Contractor shall require the principal design Subcontractor (including any joint venture) and each Major Subcontractor to submit to Design-Build Contractor a copy of all documentary information used in determining its Subcontract price (or the price for Subcontract Work included in any Change Order or PPA amendment), immediately prior to executing the Subcontract and each Change Order and Subcontract amendment, to be held in the same manner as the EPDs and which shall be accessible by Design-Build Contractor and its successors and assigns (including IFA) and the Disputes Review Team, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Design-Build Contractor and IFA, stating that its EPDs constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Design-Build Contractor and IFA together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate, and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Design-Build Contractor and/or IFA in connection with any claim made by such Subcontractor.

21.3 Financial Reporting Requirements

21.3.1 Design-Build Contractor shall furnish, or cause to be furnished, IFA such information and statements as IFA may reasonably request from time to time for any purpose related to the Project, the Work or the PPA Documents, including, but not limited to the Design-Build Contractor's financial capacity to perform the Work. Design-

Build Contractor shall furnish, or cause to be furnished, such information and statements within 14 days of IFA's request.

21.3.2 Design-Build Contractor shall cooperate and provide, and shall cause each Guarantor and the Subcontractors to cooperate and provide, such information as determined necessary or desirable by IFA in connection with any Project financing. Without limiting the generality of the foregoing, Design-Build Contractor shall provide such information deemed necessary or desirable by IFA for inclusion in IFA's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events as well as summary financial information detailing Design-Build Contractor's financial capacity to perform the Work. Design-Build Contractor shall provide customary representations and warranties to IFA and the capital markets as to the correctness, completeness, and accuracy of any information furnished.

21.3.3 All reports and information delivered by Design-Build Contractor under Section 21.3.2 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

21.4 Maintenance of, Access to and Audit of Records

Except for EPDs (which shall be maintained as set forth in Section 21.1), Design-Build Contractor shall maintain at its Project administration office within two miles of the Project in Hamilton or Madison County, Indiana, a complete set of all books, records, and documents prepared or employed by Design-Build Contractor in its management, scheduling, cost accounting, and otherwise with respect to the Project, Project ROW, Utility Adjustments or Work, including copies of all original documents delivered to IFA. Design-Build Contractor shall keep and maintain such books, records, and documents in accordance with applicable provisions of the PPA Documents and of the Project Management Plan, and in accordance with Good Industry Practice. Design-Build Contractor shall grant to IFA and its Authorized Representatives and legal counsel and FHWA such audit rights and allow such Persons such access to and the right to copy such books, records, and documents (including all tax returns and supporting documentation filed with any Governmental Entity) as such Persons may request from time to time in connection with the issuance of Change Orders and PPA amendments, the resolution of disputes and claims and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the PPA Documents and Governmental Rules. The right of inspection includes the right to make copies and extracts and take notes.

21.4.1 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Design-Build Contractor has been overcredited under a previous progress report or progress payment, that overcredit will, at IFA's sole option, be credited against current progress reports or payments or reimbursed to IFA by Design-Build Contractor upon demand therefor.

21.4.2 For cost and pricing data submitted in connection with pricing Change Orders or PPA amendments, unless such pricing is based on adequate price competition (as determined by IFA), established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Governmental Rule, such Persons and their representatives have the right to examine all books, records, documents, and other data of Design-Build Contractor related to the negotiation of or performance of Work under such Change Orders and PPA amendments for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

21.4.3 IFA shall have such rights to review and audit Design-Build Contractor, its Subcontractors, and their respective books and records as and when IFA deems necessary for purposes of verifying compliance with the PPA Documents, the Governmental Approvals, and applicable Governmental Rules. Without limiting the foregoing, IFA shall have the right to audit Design-Build Contractor's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. IFA may conduct any such audit of books and records upon forty-eight (48) hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity.

21.4.4 All Claims or Disputes filed against IFA shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of IFA or by an auditor under contract with IFA. No notice is required before commencing any audit before sixty (60) days after the Final Acceptance Date. Thereafter, IFA shall provide twenty (20) days' notice to Design-Build Contractor, any Subcontractors or their respective agents before commencing an audit. Design-Build Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to IFA, for the audit during normal business hours. Design-Build Contractor, Subcontractors or their agents shall cooperate with the auditors. Failure of Design-Build Contractor, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the books and records of Design-Build Contractor, Subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

21.4.5 At a minimum, IFA and the auditors shall have available to them the following documents, including email, network servers, data storage devices, backup tapes/media and correspondence containing or relating to such documents:

(a) Daily time sheets and supervisor's daily reports;

(b) Union agreements;

(c) Insurance, welfare, and benefits records;

(d) Payroll registers;

(e) Earnings records;

(f) Payroll tax forms;

(g) Material invoices and requisitions;

(h) Material cost distribution work sheet;

(i) Equipment records (list of company equipment, rates, etc.);

(j) Subcontractors' (including Suppliers') invoices;

(k) Subcontractors' and agents' payment certificates;

(l) Canceled checks;

(m) Job cost report;

(n) Job payroll ledger;

(o) General ledger;

(p) Cash disbursements journal;

(q) Project Schedules;

(r) All documents that relate to each and every Claim and Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and

(s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits, and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

21.4.6 Full compliance by Design-Build Contractor with the provisions of this Section 21.4 is a contractual condition precedent to Design-Build Contractor's right to seek relief under Section 19.

21.4.7 Design-Build Contractor represents and warrants the completeness and accuracy of all information it or its agents provide in connection with the audits identified herein, and shall cause all Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provide in connection with this Section 21.4.

21.4.8 Design-Build Contractor's internal quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, shall be consistent with the requirements set forth in Sections 1.3 and 2 of the Technical Provisions.

21.5 Retention of Records

Design-Build Contractor shall maintain all records and documents relating to the Work and the Project (including copies of all original documents delivered to IFA) in Marion County, Indiana, until five (5) years after the Final Acceptance Date or the termination of this PPA, whichever is applicable. Design-Build Contractor shall notify IFA where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or Disputes brought under the dispute resolution provisions hereof shall be retained and made available until such Disputes and Claims have been finally resolved. Records to be retained include all books, electronic information, and files and other evidence bearing on Design-Build Contractor's costs under the PPA Documents. Design-Build Contractor shall make these records and documents available for audit and inspection to IFA, at Design-Build Contractor's offices in Marion County, Indiana, at all reasonable times, without charge, and shall allow IFA to make copies of such documents (at no expense to Design-Build Contractor). If approved by IFA, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

21.6 Public Records Law

21.6.1 Design-Build Contractor acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in IFA's possession, including materials submitted by Design-Build Contractor to IFA, are subject to the provisions of the Public Records Act. If Design-Build Contractor believes information or materials submitted to IFA constitute trade secrets or otherwise exempt from disclosure under the Public Records Act pursuant to IC 5-14-3-4, Design-Build Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific trade secret or other basis for exemption shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that exempts the material from disclosure under the Public Records Act. Nothing contained in this Section 21.6.2shall modify or amend requirements and obligations imposed on IFA by the Public Records Act or other applicable Law, and the provisions of the Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Design-Build Contractor is advised to contact legal counsel concerning such Law and its application to Design-Build Contractor.

21.6.2 If IFA receives a request for public disclosure of materials marked "CONFIDENTIAL," IFA will use reasonable efforts to notify Design-Build Contractor of the request and give Design-Build Contractor an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Act or other applicable Law within the time period specified in the Notice issued by IFA and allowed under the Public Records Act. Under no circumstances, however, will IFA be responsible or liable to Design-Build Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of IFA or its officers, employees, contractors or consultants.

21.6.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Design-Build Contractor to IFA, IFA's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Design-Build Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that IFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Design-Build Contractor shall pay and reimburse IFA within thirty (30) days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, IFA incurs in connection with any litigation, proceeding or request for disclosure.

21.7 Ownership of Documents

Subject to Section 21.8, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence, reports, analyses, studies, and other documents and materials created or collected under the terms of the PPA Documents shall be considered "works made for hire" for which IFA owns the copyright. Design Documents shall become IFA's property upon preparation; Construction Documents shall become IFA's property upon delivery to IFA; and other documents prepared or obtained by Design-Build Contractor in connection with the performance of its obligations under the PPA Documents, including studies, manuals, As-Built Drawings, technical, and other reports and the like, shall become the property of IFA upon Design-Build Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to IFA upon preparation or receipt thereof by Design-Build Contractor. Design-Build Contractor shall maintain all other documents described in this Section 21.7 in accordance with the requirements of Section 21.4 and shall deliver copies to IFA as required by the PPA Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to IFA as a condition to Final Acceptance.

21.8 Intellectual Property

21.8.1 All Proprietary Intellectual Property shall remain exclusively the property of Design-Build Contractor or its Affiliates or Subcontractors that supply the same, notwithstanding any delivery of copies thereof to IFA.

21.8.2 IFA shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the Proprietary Intellectual Property of Design-Build Contractor, solely in connection with the Project and any interstate or state highway owned and operated by IFA or a State or regional Governmental Entity; provided that IFA shall have the right to exercise such license only at the following times:

(a) From and after the expiration or earlier termination of this PPA for any reason whatsoever;

(b) During any time that a receiver is appointed for Design-Build Contractor, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Design-Build Contractor is the debtor, in which case IFA may exercise such license only in connection with the Project; and

(c) During any time that Design-Build Contractor has been replaced.

21.8.3 Subject to the license and rights granted to IFA pursuant to Section 21.8.2, IFA shall not at any time sell any Proprietary Intellectual Property of Design-Build Contractor or use, reproduce, modify, adapt, and disclose, or allow any party to use, reproduce, modify, adapt, and disclose, any such Proprietary Intellectual Property for any other purpose.

21.8.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of IFA generally or with respect to the Project.

21.8.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate an interstate or state highway or other road and to the lessees, operators, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of IFA or any such State or regional Governmental Entity in connection with the Project or an interstate or another state highway or other road. All such sublicenses shall be subject to Section 21.8.6.

21.8.6 Subject to Section 21.6, IFA shall:

(a) Not disclose any Proprietary Intellectual Property of Design-Build Contractor to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of IFA relating thereto;

(b) Enter into a commercially reasonable confidentiality agreement if requested by Design-Build Contractor with respect to the licensed Proprietary Intellectual Property; and

(c) Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Design-Build Contractor and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

21.8.7 Notwithstanding any contrary provision of this PPA, in no event shall IFA or any of its directors, officers, employees, consultants or agents be liable to Design-Build Contractor, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 21.8.6 if such breach is not the result of gross negligence or intentional misconduct. Design-Build Contractor hereby irrevocably waives all claims to any such damages.

21.8.8 Design-Build Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

21.8.9 With respect to any Proprietary Intellectual Property, owned by a Person other than Design-Build Contractor, including any Affiliate, and other than IFA or a Governmental Entity acting as a Subcontractor, Design-Build Contractor shall obtain from such owner, concurrently with the execution of any contract, Subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Design-Build Contractor and IFA, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt, and disclose such Proprietary Intellectual Property solely in connection with the Project and any state highway owned and operated by IFA or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 21.8.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to IFA using commercially reasonable efforts. The limitations on sale, transfer, sublicensing, and disclosure by IFA set forth in Sections 21.8.3 through 21.8.6 shall also apply to IFA's licenses in such Proprietary Intellectual Property.

SECTION 22. VALUE ENGINEERING

22.1 General

This Section 22 sets forth the requirements applicable to preparation, review, and approval of value engineering recommendations ("Value Engineering Change Proposals" or "VECPs") for the purpose of enabling Design-Build Contractor and IFA to take advantage of potential cost savings or provide potential improvements to the Work through changes in the requirements relating to the Work. Design-Build Contractor is encouraged to submit VECPs whenever it identifies potential savings or improvements for the Project. IFA may also request Design-Build Contractor to develop and submit a specific VECP ("IFA-Initiated VECP"). Design-Build Contractor shall have the right to refuse to consider such IFA-Initiated VECP; provided, however that nothing herein is intended to alter IFA's right to issue IFA-Directed Changes in accordance with Section 13.

22.2 Value Engineering Recommendation

A VECP is a proposal developed and documented by Design-Build Contractor which:

(a) Would modify or require a change in any of the commitments, requirements of or constraints set forth in the PPA Documents in order to be implemented; and

(b) Reduces the Project cost without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all Governmental Approvals) including service life, economy of operation, ease of maintenance, desirability, and safety, and provided that it is not based solely upon a change in quantities, performance or reliability or a relaxation of the requirements contained in the PPA Documents.

22.3 Information to be Provided

At a minimum, the following information shall be submitted by Design-Build Contractor with each VECP:

(a) A statement that the submission is a VECP, and a narrative description of the proposed change;

(b) Description of the existing requirements of the PPA Documents which are involved in the proposed change;

(c) Description of the proposed change;

(d) Discussion of differences between existing requirements in the PPA Documents and the proposed change, together with advantages and disadvantages of each changed item;

(e) Itemization of the requirements of the PPA Documents which must be changed if the VECP is approved (e.g., document sections, drawing numbers, and specifications);

(f) A complete cost analysis including: (i) Design-Build Contractor's cost estimate for performing the subject Work in accordance with the PPA Documents compared to Design-Build Contractor's cost estimate for performing the subject Work in accordance with the proposed changes, (ii) an estimate of additional costs that will be incurred by IFA, including estimated impact on future maintenance costs; and (iii) costs of development and implementation of the VECP by Design-Build Contractor. The cost of any additional Governmental Approvals, rights of way or easements and other costs or impacts to the Project, shall be included in the cost analysis;

(g) Justification for changes in function or characteristics of each item, and the effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the PPA Documents, including environmental compliance and requirements contained in Governmental Approvals;

(h) If available, a description of any previous use or tests of the VECP and the conditions and results; and

(i) Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Project Schedule.

Any additional information requested by IFA shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

22.4 Review by IFA

Design-Build Contractor shall submit VECPs directly to IFA. Each VECP shall be prepared in a form acceptable to IFA, and shall meet all applicable requirements of this Section 22. IFA will determine whether a VECP qualifies for consideration and evaluation. VECPs that require excessive time or costs for review, evaluation or investigations, or that are not consistent with IFA's design policies and basic design criteria may be rejected without evaluation. Design-Build Contractor shall have no Claim for any additional costs or delays resulting from the rejection of a VECP initiated by Design-Build Contractor, including VECP development costs, loss of anticipated profits or increased material or labor costs. IFA will consider only proven features that have been employed under similar conditions or projects acceptable to IFA. IFA shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section 22. Design-Build Contractor may withdraw all or part of any VECP at any time prior to approval by IFA. Subject to Section 22.6, in all other situations each Party shall bear its own costs in connection with preparation and review of VECPs.

22.5 Approval of VECPs

IFA may approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Designs for approved VECPs shall be prepared by Design-Build Contractor for incorporation into the Design Documents. Until a Change Order is issued based on a VECP, Design-Build Contractor shall remain obligated to perform in accordance with the Released for Construction Documents and other PPA Documents. IFA shall have sole discretion as to rejection or approval of any VECP.

The following provisions shall apply to any Dispute between IFA and Design-Build Contractor regarding Design-Build Contractor's performance of Work that IFA believes should have properly been submitted as a VECP. Design-Build Contractor agrees that, within thirty (30) days following a request from IFA for a VECP with regard to any such Work, Design-Build Contractor shall deliver a VECP to IFA meeting all of the requirements of this Section 22, but may specify that the VECP is delivered under protest. In such case, either Party shall have the right to submit the question of Design-Build Contractor's entitlement to proceed without an approved VECP to dispute resolution pursuant to Section 19. If a determination is ultimately made that Design-Build Contractor is not entitled to proceed without an approved VECP, IFA shall be entitled to a credit against the Contract Price as provided in Section 22.6. If a determination is ultimately made that Design-Build Contractor is entitled to proceed without an approved VECP, the VECP shall be deemed withdrawn and have no effect. If Design-Build Contractor fails to deliver a complete VECP within the foregoing deadline, IFA shall have the right to submit the issue to dispute resolution at any time. In such event, if the dispute resolution proceeding ultimately results in a determination that Design-Build Contractor was not entitled to perform such Work without a prior approved VECP, IFA shall be entitled to receive a credit against the Contract Price equal to 100% of Design-Build Contractor's cost savings, plus profit, rather than 50% of estimated net savings as provided in Section 22.6.

Unless Design-Build Contractor has received specific written permission from IFA to proceed with VECP work pending approval of a VECP, Design-Build Contractor shall not have the right to proceed with such work until the VECP is approved. Furthermore, if Design-Build Contractor proceeds with any work that might have been the basis for a VECP price increase based on savings in IFA's right of way costs, without first submitting a VECP, Design-Build Contractor shall be deemed to have performed such work as a volunteer and shall not have the right to later submit a VECP hereunder.

22.6 Contract Price Adjustment

If IFA accepts a VECP submitted by Design-Build Contractor pursuant to this Section 22, the Contract Price shall be adjusted in accordance with the following:

22.6.1 The term "estimated net savings" as used herein shall mean (a) the difference between the cost of performing the Work according to the PPA Documents and the actual cost to perform it according to the proposed change, less (b) the reasonable costs of studying and preparing the VECP as proven by Design-Build Contractor and approved by IFA in accordance with the Change Order procedures set forth herein, less (c) any additional costs incurred or to be incurred by IFA resulting from the VECP, including the cost of IFA's review of the VECP and implementation and maintenance costs associated therewith. Design-Build Contractor's profit shall not be considered part of the cost.

22.6.2 Except as specified in Section 22.6.4, Design-Build Contractor is not entitled to share in either collateral or future contract savings. The term "collateral savings" means additional revenues that may arise as a result of the VECP and those measurable net reductions in IFA's costs resulting from the VECP, including operations and maintenance costs and cost of IFA-furnished property. The term "future PPA

savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VECP submitted by Design-Build Contractor.

22.6.3 Subject to Sections 22.6.4 and 22.6.5, the Contract Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by IFA resulting from the VECP plus (b) 50% of estimated net savings; provided, however, that Design-Build Contractor's profit shall not be reduced by application of the VECP.

22.6.4 In a case where Design-Build Contractor proposes that an adjustment be made to the planned acquisition of real property in order to result in an overall cost savings to the Project (such as a proposal that additional real property be purchased outside of the Planned ROW Limits in order to save on construction costs, or a proposal which would enable a reduction in the real property required to be obtained by IFA hereunder by incurring additional construction costs), the VECP shall compare (a) the incremental reduction in costs (such as for not designing and building a wall), and (b) the costs involved in adjusting the real property limits or Environmental Approvals (which shall be based on Design-Build Contractor's additional costs, such as for providing real property acquisition support services (including profit) plus IFA's additional costs, including costs of personnel as well as out-of-pocket costs such as the price of the additional real property), or (as appropriate) shall compare (y) the incremental reduction in costs (if any) for not acquiring the unnecessary real property, and (z) the additional construction costs to be incurred. The estimated net savings shall be shared 50-50 between IFA and Design-Build Contractor. Reimbursements for Utility Adjustment expenses owed to Utility Owners shall be addressed in calculating estimated net savings to be shared between IFA and Design-Build Contractor. Design-Build Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by IFA. If Design-Build Contractor wishes to propose such a VECP, Design-Build Contractor shall provide a separate notification to IFA describing the proposed impact concurrently with delivery of the VECP to IFA

22.6.5 Design-Build Contractor's share of any VECP cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VECP had the VECP not been implemented.

22.6.6 A VECP shall not be required for any Deviations from Project Standards allowed by IFA, except for changes based on concepts submitted by other proposers, or changes that also entail a modification of commitments contained in the Proposal or requirements of or constraints set forth in the PPA Documents.

22.7 Use of VECPs by IFA

All approved or disapproved VECPs will become the property of IFA, and shall contain no restrictions imposed by Design-Build Contractor on their use or disclosure, except as permitted in Section 22.8 below. Notwithstanding any restrictions pursuant to Section 22.8, IFA retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the VECP on any other or subsequent projects without any obligation to Design-Build Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

22.8 Public Records Law Exclusion

If Design-Build Contractor proposes any VECP that incorporates intellectual property or other proprietary information developed prior to award of the PPA, or developed by Design-Build Contractor after award of the PPA (provided that Design-Build Contractor establishes to IFA's satisfaction that it was developed apart from, and in isolation from, the PPA), Design-Build Contractor may identify such data and information included in the VECP as "Trade Secret" or "Confidential," in which event the provisions of Section 21.6 shall be applicable.

SECTION 23. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS

23.1 Cooperation with Other Contractors

IFA reserves the right to contract for and perform other or additional work on or near the Site. Design-Build Contractor shall fully cooperate and coordinate with such other contractors to the extent reasonably necessary for the performance by such other contractors of their work, and shall cause all DB-Related Entities to so cooperate. Design-Build Contractor and any DB-Related Entities shall fully cooperate and be solely responsible for coordinating with such other contractors and projects, and shall schedule and sequence the Work as reasonably necessary to accommodate the work of such other contractors and projects. If other separate contracts are awarded, or separate projects are performed by IFA or Utility Owners which affect the Work, Design-Build Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by such other contractors, entities or agencies.

23.2 Interference by Other Contractors

23.2.1 If Design-Build Contractor asserts that any Governmental Entity (other than IFA), any Utility Owner, railroads or any of their respective contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then Design-Build Contractor's sole remedy shall be to seek recourse against such other contractors. Design-Build Contractor shall have the right to ask the Disputes Review Team to resolve such dispute; provided, however, that the other entity or contractor and its sureties have agreed to submit the dispute to the Disputes Review Team, and provided that such proceeding shall be conducted at no cost to IFA.

23.2.2 In no event shall Design-Build Contractor have any Claim or other right to compensation, time extension or other relief against IFA for the actions or omissions of any contractor retained, or work performed, by IFA any other Governmental Entities or any Utility Owner except as expressly provided otherwise in the PPA.

23.3 Coordination with Utility Owners and Adjacent Property Owners

Design-Build Contractor shall coordinate with Utility Owners and owners of property adjoining the Project, and with their respective contractors, as more particularly described in the PPA Documents.

SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

The PPA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement.

24.2 Waiver

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

24.2.2 The exercise by a Party of any right or remedy provided under the PPA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the PPA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the PPA Documents. The consent by one Party to any act by the other Party requiring such consent shall not create a course of conduct or be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.2.3 Except as provided otherwise in the PPA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to create a course of conduct or waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the PPA Documents.

24.2.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the PPA Documents at any time shall not in any way create a course of conduct or limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the PPA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

24.2.5 Neither IFA's review, approval or acceptance of, nor payment for, the services required under this Agreement or the other PPA Documents shall be construed to operate as a waiver of any rights under this Agreement or any of the other PPA Documents or for any cause of action arising out of the performance of this Agreement or the other PPA Documents, and Design-Build Contractor shall be and remain liable to IFA in accordance with applicable Law for all damages to IFA as set forth in the PPA Documents.

24.3 Independent Contractor

Design-Build Contractor is an independent contractor, and nothing contained in the PPA Documents shall be construed as constituting any relationship with IFA other than that of Project Design-Build Contractor and independent contractor. In no event shall the relationship between IFA and Design-Build Contractor be construed as creating any relationship whatsoever between IFA and Design-Build Contractor's employees. Neither Design-Build Contractor nor any of the employees of any DB-Related Entity is or shall be deemed to be an employee of IFA. Except as otherwise specified in the PPA Documents, Design-Build Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that Design-Build Contractor or any Subcontractor hires to perform or assist in performing the Work.

24.4 Successors and Assigns

The PPA Documents shall be binding upon and inure to the benefit of IFA and Design-Build Contractor and each of their permitted successors, assigns and legal representatives.

The PPA Documents shall be binding upon and inure to the benefit of IFA and Design-Build Contractor and their permitted successors, assigns, and legal representatives.

24.4.1 IFA may assign all or part of its right, title, and interest in and to any PPA Documents and performance security, including rights with respect to the Payment Bonds and Performance Bonds, the Warranty Bond, and the Guaranty, to any other Person.

24.4.2 Design-Build Contractor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Design-Build Contractor's interest in and to the PPA Documents or any portion thereof without IFA's prior written approval, except to any entity in which the organizations signing this Agreement for Design-Build Contractor, or the shareholder(s), general partner(s) or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold the same percent of equity interest in Design-Build Contractor that exists as of the Proposal Date. Design-Build Contractor shall not sublease or grant any other special occupancy or use of the Project to any other Person, without IFA's prior written approval. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null and void ab initio and IFA, at its option, may declare any such attempted action to be a material Design-Build Contractor Default.

24.4.3 Design-Build Contractor shall not voluntarily or involuntarily cause, permit or suffer any Change of Control prior to Final Acceptance without IFA's prior written approval. If there occurs any voluntary or involuntary Change of Control without IFA's prior written approval, IFA, at its option, may declare it to be a material Design-Build Contractor Default.

24.4.4 Where IFA's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control prior to Final Acceptance, IFA may withhold or condition its approval in its sole discretion. Any such decision of IFA to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures. If for any reason IFA does not act within thirty (30) days after receiving all required information, or any extension thereof by mutual agreement of the Parties, the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control shall not be permitted.

24.4.5 Assignments and transfers of Design-Build Contractor's interest permitted under this Section 24.4 or otherwise approved in writing by IFA shall be effective only upon IFA's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee (and any Guarantor and any Surety), in form and substance acceptable to IFA, in which the transferee, without condition or reservation, assumes all of Design-Build Contractor's obligations, duties, and liabilities under this PPA and the other PPA Documents then in effect and agrees to perform and observe all provisions thereof applicable to Design-Build Contractor. Each transferee shall take Design-Build Contractor's interest subject to, and shall be bound by, the Project Management Plan, the Major Subcontracts, the Utility Agreements, all IFA-Provided Approvals, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by IFA in writing, in its sole discretion.

24.4.6 No assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant by Design-Build Contractor or any permitted successor and assign thereto shall release Design-Build Contractor, any Guarantor, any Surety or the assignor from any liabilities or obligations under the PPA Documents and each of such entities shall remain liable and obligated therefor.

24.4.7 Design-Build Contractor shall not change the legal form of its organization without the prior written approval of IFA, which consent may be granted or withheld in IFA's sole discretion.

24.5 Designation of Representatives; Cooperation with Representatives

24.5.1 IFA and Design-Build Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the PPA Documents ("Authorized Representatives"). Exhibit 6 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 24.11. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the Parties but who do not have authority to bind IFA or Design-Build Contractor.

24.5.2 Design-Build Contractor shall cooperate with IFA and all representatives of IFA designated as described above.

24.6 Compliance with Other Governmental Rules

24.6.1 Design-Build Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IFA or the State, as set forth in IC 4-2-6 et seq., IC 4-2-7 et seq., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If Design-Build Contractor is not familiar with these ethical requirements, Design-Build Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If Design-Build Contractor or its agents violate any applicable ethical standards, Design-Build Contractor may be subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Laws.

24.6.2 Design-Build Contractor and its agents shall abide by all requirements of IC 8-15.5-13-7 in respect of the prohibition on political contributions by Design-Build Contractor. Neither Design-Build Contractor nor any individual who has an interest in Design-Build Contractor, may make any contribution to any candidate, or committee, during and up to and including three (3) years following the Term.

24.6.3 Developer shall comply with all applicable federal, state and local Governmental Rules, and all provisions required thereby to be included herein are hereby incorporated by reference.

24.7 Survival

Design-Build Contractor's representations and warranties, the dispute resolution provisions contained in Section 19, the indemnifications and releases contained in Section 18 and elsewhere in the PPA Documents, the express rights and obligations of the Parties following termination of this PPA under Sections 15 and 16, the provisions regarding invoicing and payment under Section 12, the obligations regarding Application for Final Payment under Section 12.4, and all other provisions which by their express terms or their inherent character should survive termination of the PPA and/or Final Acceptance, shall survive the termination of the PPA and the Final Acceptance Date.

24.8 Limitation on Third Party Beneficiaries

24.8.1 It is not intended by any of the provisions of the PPA Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.8.1, the duties, obligations and responsibilities of the Parties to the PPA Documents with respect to third parties shall remain as imposed by Law. The PPA Documents shall not be construed to create a contractual relationship of any kind between IFA and a Subcontractor or any Person other than Design-Build Contractor.

24.8.2 The statute of limitations for any cause of action under this Section 24.8 shall not begin to run until the Substantial Completion Date, or such other date as may be provided by law, whichever is later.

24.9 Personal Liability of IFA Employees

IFA's Authorized Representatives are acting solely as agents and representatives of IFA when carrying out the provisions of or exercising the power or authority granted to them under the PPA. They shall not be liable either personally or as employees of IFA for actions in their ordinary course of employment.

No agent, consultant, officer or authorized employee of IFA nor any member of IFA's Board of Directors, shall be personally responsible for any liability arising under the PPA.

24.10 Governing Law; Venue; Forum

The PPA Documents shall be governed by and construed in accordance with the laws of the State. Any suit must be brought in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana. Design-Build Contractor hereby specifically consents to this jurisdiction.

24.11 Notices and Communications

24.11.1 Notices under the PPA Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All Notices to Design-Build Contractor shall be sent to Design-Build Contractor's Authorized Representative or as otherwise directed by Design-Build Contractor's Authorized Representative. The address for such communications shall be:

[Design-Build Contractor]
[Insert contact information]
Attention:
Phone:
Facsimile:
E-mail address:

All Notices to IFA shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by IFA's Authorized Representative:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director
Telephone: 317-233-4332

Facsimile: 317-232-6786
E-mail: ifa@ifa.in.gov

In addition, copies of all Notices to Proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: General Counsel
Telephone: 317-233-4332
Facsimile: 317-232-6786
E-mail: ifa@ifa.in.gov

24.11.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Design-Build Contractor's Project Manager and technical representatives designated by IFA. Design-Build Contractor's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 24.5.1, each Party's Authorized Representative shall be authorized to act on behalf of such Party in matters concerning the Work.

24.12 Taxes

Design-Build Contractor shall pay, prior to delinquency, all applicable Taxes, including, pursuant to IC 8-15.5-8-3, all sales and use Taxes, in each case for which Design-Build Contractor is responsible in carrying out the Work and its other obligations hereunder. Design-Build Contractor accepts sole responsibility, and agrees that it shall have no right to a Relief Event or to any other Claim, due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes. IFA is exempt from state, federal, and local Taxes; IFA will not be responsible for any Taxes levied on Design-Build Contractor or any other Design-Build Contractor-Related Entities as a result of this Agreement.

24.13 Ownership of Project

Throughout the term of this Agreement IFA shall own, in fee simple title or other property interest or right, the Project and Project Right of Way and all improvements constructed thereon.

24.14 Further Assurances

Design-Build Contractor shall promptly execute and deliver to IFA all such instruments and other documents and assurances as are reasonably requested by IFA to further evidence the obligations of Design-Build Contractor hereunder, including assurances regarding the validity of (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

24.15 Integration of PPA Documents

IFA and Design-Build Contractor agree and expressly intend that, subject to Section 24.16, this Agreement and other PPA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.16 Severability

If any clause, provision, section or part of the PPA Documents is ruled invalid under Section 19 or otherwise by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the PPA Documents, which shall be construed and enforced as if the PPA Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.17 Usury Savings

The PPA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Indiana Law (the “maximum legal rate”), if any. If, by the terms of the PPA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the PPA Documents shall, to the extent permitted by applicable Indiana Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

24.18 Headings

The captions of the sections of the PPA Documents are for convenience only and shall not be deemed part of the PPA Documents or considered in construing the PPA Documents.

24.19 Entire Agreement

The PPA Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter. No modification of the terms and conditions of this PPA shall be binding on the Parties hereto unless such provision is contained in a written amendment expressing a clear intent to so modify this PPA and is executed by the Parties.

24.20 Authority to Bind Design-Build Contractor

The signatory for Design-Build Contractor represents that he/she has been duly authorized to execute this Agreement on behalf of Design-Build Contractor and has obtained all necessary or applicable approvals to make this Agreement fully binding upon Design-Build Contractor when his/her signature is affixed, and accepted by the Authority.

24.21 Counterparts

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

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first written above.

Design-Build Contractor	**IFA**
[insert Design-Build Contractor name]	**INDIANA FINANCE AUTHORITY**
By: _____	By: _____
Name:	Name: XXXXXX
Title:	Title: Public Finance Director of the State of Indiana

ADDENDUM

[Joint Venture Members] agree that they shall be jointly and severally liable for the obligations of Design-Build Contractor under the PPA Documents. [Joint Venture Members] agree that IFA and its successors and assignees shall be entitled to enforce any claim or judgment against Design-Build Contractor arising out of the PPA Documents directly against Design-Build Contractor, [Joint Venture Members] in any order.

Date: _____, 20XX

[To be Signed by Each Joint Venture Member]

By: _____

Name:_____

Title: _____