

**TERM SHEET**  
**for**  
**Design-Build Agreement**  
**I-10 Bayway Design-Build Project**

This document (this “**Design-Build Agreement Term Sheet**”) provides background information and summarizes the anticipated key contract terms of the Design-Build Agreement (the “**DBA**”) for the design and construction of the I-10 Bayway project (the “**Project**”), which may be entered into by the Alabama Toll Road, Bridge and Tunnel Authority (the “**Authority**”) and the successful Proposer (the “**Design-Builder**”), to be selected by the Alabama Department of Transportation (“**ALDOT**”) (pursuant to the responsibility granted to ALDOT to administer and manage the planning, construction and operation of such Project on behalf of the Authority under State law) based on responses to the Request for Qualifications and Proposals issued by ALDOT on September 2, 2022, as amended by Addendum #1, issued February 16, 2023 (the “**RFQ/RFP**”). As this Design-Build Agreement Term Sheet is intended only as an overview of indicative contract terms, it is expected that the DBA will include a number of additional details, provisos, exceptions, and qualifications associated with the anticipated provisions described below, along with additional contractual terms consistent with other ALDOT contracts and design-build contracts used by other transportation agencies. Further, ALDOT reserves the right, in its discretion and at any time during the procurement, to amend, supplement, remove from, or otherwise modify the terms set forth herein. Capitalized terms that are used but not defined in this Design-Build Agreement Term Sheet have the meaning provided in the RFQ/RFP (see ITP Exhibit A).

<b>CONTRACT OVERVIEW</b>		
1.	<b>Effective Date and Term</b>	<p>ALDOT currently anticipates the Authority executing a DBA with the selected Design-Builder in August, 2023.</p> <p>The term of the DBA will commence on the date the DBA is approved by the Authority (the “<b>Effective Date</b>”) and terminate upon the first to occur of (a) the date the Project achieves Final Acceptance; and (b) the effective date of the termination of the DBA pursuant to <u>Section 68 (Termination by the Authority)</u> of this Design-Build Agreement Term Sheet (the “<b>Term</b>”).</p>
2.	<b>Contract Documents / Order of Precedence</b>	<p>In the event of any conflict among the documents listed below (the “<b>Contract Documents</b>”), the order of precedence shall be as follows:</p> <ul style="list-style-type: none"> <li>(a) Supplemental Agreements and amendments to the Design-Build Agreement, including an Amendment/NTP and executed Work Package Authorization, and any released for construction documents (“<b>RFC Documents</b>”) issued in connection with the foregoing;</li> <li>(b) The Design-Build Agreement, as executed by the Authority and the Design-Builder, including all exhibits;</li> <li>(c) The Technical Provisions, other than the Technical Standards; and</li> <li>(d) The Technical Standards;</li> </ul> <p><i>provided, however</i>, that to the extent that the RFC Documents include deviations from the requirements of the Technical Provisions, and the</p>

		<p>Design-Builder did not direct specific attention, in writing, to such deviations when drafts of such documents were submitted for review and Approved by the Authority, and the Authority has not otherwise expressly authorized such deviations from the Technical Provisions, then the Technical Provisions shall control over the RFC Documents, subject to the following paragraph.</p> <p>Despite the order of precedence set forth above, in the event of any conflict or inconsistency involving any requirement within a Contract Document, the Design-Builder shall comply with the higher or more stringent standard or manner or method of performing the Work, as reasonably determined by the Authority.</p>
3.	<b>Scope of Work</b>	<p>See <u>ITP Exhibit B</u>.</p> <p>After execution of the DBA, the Design-Builder may perform the Preconstruction Work.</p> <p>The Design-Builder shall only perform the Construction Work in the scope then authorized by the Amendment/NTP or Work Package Authorization (each as amended by any Supplemental Agreement in effect at such time) in accordance with the Contract Documents.</p>
4.	<b>Standard of Care</b>	<p>The Design-Builder shall:</p> <ul style="list-style-type: none"> <li>(a) design the Project in accordance with all Applicable Law and the Professional Standard of Care; and</li> <li>(b) construct the Project as designed, in a good and workmanlike manner, free from defects and in accordance with Good Industry Practice.</li> </ul>
5.	<b>Performance as Directed</b>	<p>At all times during the Term, including during any dispute, the Design-Builder shall perform as directed by the Authority to the extent consistent with the Contract Documents, in a diligent manner, and without delay, shall abide by the Authority’s decision or order, and shall comply with all applicable provisions of the Contract Documents (subject to the Dispute Resolution Process in <u>Section 71 (Dispute Resolution Process)</u> of this Design-Build Agreement Term Sheet).</p>
6.	<b>Compensation Caps</b>	<p>At all times during the Term, the Authority will not be obligated to compensate the Design-Builder in excess of the then-current Compensation Cap.</p> <ul style="list-style-type: none"> <li>(a) Compensation for Preconstruction Phase services will be subject to a not-to-exceed amount (“<b>NTE Amount</b>”). The NTE Amount will be set forth and effective upon the Effective Date. Justifiable compensation in excess of the NTE Amount will require a Supplemental Agreement. (See <u>Section 15 (NTE Amount)</u> of this Design-Build Agreement Term Sheet for terms related to the NTE Amount).</li> <li>(b) Except as otherwise decided by the Authority, in its discretion, compensation for Construction Work will be subject to a guaranteed maximum price for the Project (“<b>Project GMP</b>”). Any</li> </ul>

		<p>justifiable increases in the agreed Project GMP or a Component GMP will require a Supplemental Agreement and will be limited to certain specified Relief Events. (See <u>Sections 8 (Work Packages), 21 (Contract Sum Paid), and 22 (GMP Components)</u> of this Design-Build Agreement Term Sheet for terms related to a GMP.)</p>
7.	<b>Amendment/NTP</b>	<p>(a) As will be described further in the DBA, throughout the Preconstruction Phase, the Authority, its independent cost estimation consultant (“<b>ICE</b>”), and the Design-Builder will work together to develop iterative versions of a budget for the Project (based on the Authority’s initial estimate for the Project) and estimates of probable construction cost.</p> <p>(b) Based on such iterative process, once designs are sufficiently advanced (which the Authority anticipates to be between 60-75% level of completion of design, depending on the component, and subject to negotiation with the selected Proposer), the Design-Builder shall prepare and submit a proposed Amendment/NTP for Construction Work not already completed via a Work Package Authorization (the “<b>Project GMP Proposal</b>”). (See standards for, and definition of, “Authority Approval” in <u>Section 33 (Standards for Submittal Review)</u> of this Design-Build Agreement Term Sheet, and items to be included in the GMP and Amendment/NTP in <u>Section 9 (GMP Development)</u> below.)</p> <p>(c) The Authority will review the Project GMP Proposal, discuss it with the Design-Builder (at the Authority’s election), and provide any suggestions to the Project GMP Proposal, including direction to the Design-Builder to continue to participate in value engineering exercises so that the Design-Builder can reduce the proposed Project GMP. (See <u>Section 12 (Authority’s Rights in Negotiation)</u> of this Design-Build Agreement Term Sheet.)</p>
8.	<b>Work Packages</b>	<p>At the Authority’s election (see <u>ITP Exhibit B, Section 3.2</u> for expected parameters), the Authority and the Design-Builder may, prior to execution of the Amendment/NTP, agree upon one or more early works packages and/or packages for procurement of materials (each such package, a “<b>Work Package</b>”). A “<b>Work Package Authorization</b>” will provide the Design-Builder with authorization to proceed with Construction Work prior to execution of the Amendment/NTP to the extent set forth in the Work Package Authorization, and compensation for such Work will be subject to a guaranteed maximum price (a “<b>Component GMP</b>”). The Design-Builder shall prepare and submit a proposed Component GMP for the Work Package (a “<b>Component GMP Proposal</b>”). (See standards for, and definition of, “Authority Approval” in <u>Section 33 (Standards for Submittal Review)</u> of this Design-Build Agreement Term Sheet, and items to be included in the GMP and Amendment/NTP in <u>Section 9 (GMP Development)</u> below.)</p> <p>The Authority will review the Component GMP Proposal, discuss it with the Design-Builder (at the Authority’s election), and provide any suggestions to the Component GMP Proposal, including direction to the Design-Builder to continue to participate in value engineering</p>

		<p>exercises so that the Design-Builder can reduce the proposed Component GMP. (See <u>Section 12 (Authority's Rights in Negotiation)</u> of this Design-Build Agreement Term Sheet.)</p> <p>The Authority and the Design-Builder may agree to enter into a separate contract for early design works that are to be advanced during negotiations of the DBA. The terms of any such contract will be incorporated into the DBA.</p>
9.	<b>GMP Development</b>	<p>If the Authority and the Design-Builder agree upon a Component GMP or the Project GMP and other items comprising a Component GMP Proposal or Project GMP Proposal, as applicable, then they shall execute the Work Package Authorization or an Amendment/NTP, which shall set forth (a) in the case of a Work Package Authorization, each of the items listed below to the extent they are relevant to the scope of Construction Work authorized by the Work Package Authorization, and (b) in the case of the Amendment/NTP, each of the items below:</p> <ul style="list-style-type: none"> <li>• The Component GMP or the Project GMP, as applicable, and its component elements (see <u>Sections 21-22</u> of this Design-Build Agreement Term Sheet);</li> <li>• The Schedule of Values for the Component GMP or the Project GMP, as applicable (see <u>Section 25 (Schedule of Values)</u> of this Design-Build Agreement Term Sheet);</li> <li>• The Project schedule and all completion deadlines and any applicable delay liquidated damages;</li> <li>• A list of the Design Documents, completed to a level consistent with <u>Section 7(b) (Amendment/NTP)</u> of this Design-Build Agreement Term Sheet, including all addenda thereto, used in preparation of the Component GMP Proposal or Project GMP Proposal, as applicable, including a list of the clarifications and assumptions made to supplement the information contained in the Design Documents;</li> <li>• The final version of all studies, plans, and reports generated as part of the Preconstruction Phase, including, but not limited to, any Site investigation reports, Hazardous Materials Reports, the Project Management Plan, the Quality Management Plan, and the DBE Performance Plan (the "<b>DPP</b>");</li> <li>• Any mutually agreed updates to the Technical Provisions;</li> <li>• The parties' respective ROW acquisition responsibilities during the Construction Phase and schedule therefor;</li> <li>• The parties' respective obligations for obtaining any outstanding Governmental Approvals required for the Construction Work;</li> <li>• The Design-Builder's obligations to perform work under any Utility Agreements;</li> <li>• A Risk Register (see <u>Section 60 (Risk Register)</u> of this Design-Build Agreement Term Sheet); and</li> </ul>

		<ul style="list-style-type: none"> <li>Any other documentation and information required by the Authority.</li> </ul> <p>Additional information regarding the contents of a Work Package Authorization or an Amendment/NTP may be provided by Addendum during the Procurement Process.</p>
10.	<b>Open-Book Negotiations</b>	<p>The development of the Amendment/NTP and Work Package Authorizations will be on an open-book basis, and the Authority and its consultants (including its ICE) will have the right to access and copy all records, accounts, and other data used by the Design-Builder in connection with the preparation of any draft or final Project GMP Proposal, Amendment/NTP, Component GMP Proposal, or Work Package Authorization. Each GMP included in any Work Package Authorization or the Amendment/NTP must be developed in a cooperative manner in accordance with guidelines and principles described in the DBA.</p>
11.	<b>No Authority Obligation</b>	<p>By entering into the DBA, the Authority is <u>not</u> obligating itself:</p> <ul style="list-style-type: none"> <li>(a) To authorize any Construction Work on any component of the Project;</li> <li>(b) Once any Work Package Authorization or the Amendment/NTP has been executed under the DBA, to continue to authorize Construction Work on any additional Work Package on any other component of the Project;</li> <li>(c) If limited Construction Work is authorized pursuant to Work Package Authorization, to continue to authorize Construction Work for the remainder of the Project or component of the Project; or</li> <li>(d) To enter into a DBA for, or to authorize work on, the Mobile River Bridge Project, even if a Work Package Authorization or the Amendment/NTP has been executed for this Project.</li> </ul>

12.	<b>Authority's Rights in Negotiation</b>	<p>If the Authority, in its sole discretion, determines that the parties are unable or unwilling to agree upon the Project GMP or any other material term of the Amendment/NTP, then the Authority may, at its election, take one or more of the following actions:</p> <ul style="list-style-type: none"> <li>(a) Terminate the DBA;</li> <li>(b) Direct the Design-Builder to proceed under one or more previously executed Work Package Authorizations, in which case the Design-Builder shall remain obligated to complete such Work Package(s) in accordance with the Contract Documents and shall be entitled to receive compensation for completion of authorized Work Package(s);</li> <li>(c) Direct the Design-Builder to continue to participate in value engineering exercises so that the Design-Builder can submit another reduced-cost Project GMP Proposal (with respect to which the Authority shall have the same rights as described herein); or</li> <li>(d) Solicit bids for the balance of the Work from other contractors, in which case the Authority shall retain its rights in the Design Documents prepared by the Design-Builder and may or may not direct the Design-Builder to continue to perform design services under the then-current compensation arrangement,</li> </ul> <p>Any termination by the Authority as described in this <u>Section 12</u> shall not affect the Authority's rights in the Design Documents (see <u>Section 72 (Ownership of Documents, Records and Data)</u> of this Design-Build Agreement Term Sheet).</p>
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**PRECONSTRUCTION PHASE TERMS**

13.	<b>Responsibility for all Design</b>	<p>The Design-Builder has full responsibility for all design of the Project. The Design-Builder is responsible for correcting any errors, omissions, or other defects in the design of the Project, regardless of the source of such errors, omissions, or defects, without any increase in any Compensation Cap or extension of any milestones or completion deadlines.</p>
14.	<b>Professional Licensing Laws</b>	<p>The Authority does not intend to contract for, pay for, or receive any design services that are in violation of any applicable professional licensing laws. The intent of the DBA is that the Design-Builder be fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated in the DBA will perform the design services required by the Contract Documents.</p>
15.	<b>NTE Amount</b>	<p>The NTE Amount shall represent the Design-Builder's reasonable, good faith estimate of the cost of the Preconstruction Work needed to complete the Design Documents to a level consistent with <u>Section 7(b)</u> of this Design-Build Term Sheet, which shall be based on:</p>

		<p>(a) Fully Loaded Hourly Rates for each personnel performing such Preconstruction Work, which shall be agreed to by the parties and incorporated in an exhibit to the DBA;</p> <p>(b) A list of reimbursable out-of-pocket expenses likely to be incurred in performing such Preconstruction Work (such as for authorized overnight travel, work-related vehicle mileage, document production, and other miscellaneous direct costs), which shall be agreed to by the parties and attached as an exhibit to the DBA; and</p> <p>(c) A list of reimbursable out-of-pocket expenses incurred in establishing and maintaining a Project office at a location determined by the Design-Builder at which the Authority personnel and consultants will be co-located.</p> <p>The costs in (a) through (c) shall be in compliance with Applicable Law, including FHWA’s policies and Federal Acquisition Regulation (“FAR”) cost principles (including FAR-compliant audited indirect cost rates for engineering and design-related services).</p> <p>The NTE Amount shall be agreed to by the parties prior to executing the DBA. As part of such negotiation, the Design-Builder shall also provide the Authority with its then-current estimate of the costs of the Construction Work for the Project.</p>
16.	<b>Preconstruction Phase Compensation</b>	<p>The Design-Builder’s compensation for Preconstruction Work performed during the Preconstruction Phase shall be an amount equal to:</p> <p>(a) The Fully Loaded Hourly Rates for the personnel performing the Preconstruction Work (at the rates provided in the DBA exhibit referred to at <u>clause (a) of Section 15 (NTE Amount)</u> of this Design-Build Agreement Term Sheet), multiplied by the number of hours worked by such personnel on the Preconstruction Work; <i>plus</i></p> <p>(b) Payment for documented out-of-pocket reimbursable expenses reasonably incurred in performing Preconstruction Work (to the extent such types of expenses are included in the DBA exhibit referred to at <u>clause (b) of Section 15 (NTE Amount)</u> of this Design-Build Agreement Term Sheet); <i>plus</i></p> <p>(c) Payment for documented out-of-pocket reimbursable expenses reasonably incurred in establishing and maintaining a Project office at which the Authority personnel and consultants will be co-located (to the extent such types of expenses are included in the DBA exhibit referred to at <u>clause (c) of Section 15 (NTE Amount)</u> of this Design-Build Agreement Term Sheet);</p> <p><i>provided</i> that in no event shall the Preconstruction Phase compensation exceed the Preconstruction Phase NTE Amount agreed by the parties prior to DBA execution.</p> <p>The hourly rates for Preconstruction Work established as of the Effective Date (described in <u>clause (a) of Section 15 (NTE Amount)</u> of this Design-Build Agreement Term Sheet above) may be adjusted only with the approval of the Authority on an annual basis to the extent appropriate</p>

		to reflect annual base salary increases for the roles enumerated, not to exceed 5% per year. The Design-Builder shall not change the categorization of an individual performing Preconstruction Work on the relevant exhibit due to a promotion of such individual without first obtaining the written approval of the Authority.
17.	<b>Preconstruction Phase Payments</b>	<p>(a) The Design-Builder shall invoice the Authority for payment of Preconstruction Phase compensation earned not more often than monthly.</p> <p>(b) Each invoice shall be supported by such information substantiating the Design-Builder's right to payment as the Authority shall reasonably require, including information regarding the cost of labor and the progress of Preconstruction Work, such as certified payroll reports.</p> <p>(c) Provided that an invoice consistent with the DBA requirements is timely received by the Authority, and the Authority approves such invoice (which approval shall not be unreasonably withheld), the Authority shall pay any undisputed amount due to the Design-Builder not later than 30 days after the Authority's approval of such invoice.</p>
18.	<b>Preconstruction Phase Retainage</b>	The Authority may withhold from Preconstruction Phase payments an amount equal to up to five percent (5%) of Preconstruction Work completed in accordance with State and federal law.

**CONSTRUCTION PHASE TERMS**

19.	<b>Conditions to Commencement of Construction</b>	<p>The Design-Builder shall not commence any construction activities (or recommence construction activities following any suspension) for any portion of the Project until all the following conditions have been fully satisfied with respect to the Construction Work proposed to be constructed:</p> <ul style="list-style-type: none"> <li>• The Design-Builder has issued RFC Documents for such portion of the Project and (i) the Review and Comment process for such documents has been completed, or (ii) the Authority has conditionally allowed the Design-Builder to continue with the Work related to the documents notwithstanding that the Approval or Review and Comment process (as applicable) has not been completed, <i>provided</i> that the Design-Builder address any comments provided by the Authority within the timeframe set by the Authority;</li> <li>• All Governmental Approvals necessary for such Construction Work have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed;</li> <li>• All insurance policies and bonds required to be delivered to the Authority hereunder have been submitted to the Authority as applicable and remain in full force and effect;</li> <li>• All necessary rights of access for such portion of the Project have been obtained;</li> </ul>
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		<ul style="list-style-type: none"> <li>• Any additional conditions for construction set forth in the Contract Documents have been satisfied; and</li> <li>• The Authority and the Design-Builder have executed the Amendment/NTP or a Work Package Authorization.</li> </ul>
20.	<b>Construction Phase Compensation</b>	<p>(a) The Design-Builder shall only be entitled to compensation for Construction Work to the extent such Construction Work has been authorized pursuant to an executed Work Package Authorization, the Amendment/NTP, or a subsequently issued Supplemental Agreement.</p> <p>(b) Compensation for such authorized Construction Work shall be as described in the applicable Work Package Authorization, the Amendment/NTP, or Supplemental Agreement; <i>provided</i> that in no event shall such compensation exceed the GMP established pursuant to the Amendment/NTP, or, if the Amendment/NTP has not yet been executed, the applicable Work Package Authorization; <i>provided further</i> that the foregoing limitation shall be subject to any changes to the applicable GMP established pursuant to a Supplemental Agreement in accordance with the requirements of the DBA.</p> <p>(c) Prior to execution of the Amendment/NTP, the Design-Builder shall not incur any costs for Construction Work except as the Authority may specifically authorize in an executed Work Package Authorization.</p>
21.	<b>Contract Sum Paid</b>	<p>As full compensation for the proper performance and completion of the Construction Work and any remaining Preconstruction Work for the Project or a Work Package, as applicable, in accordance with the Contract Documents, the Authority shall pay to the Design-Builder the Contract Sum up to the GMP as established in the Amendment/NTP or a Work Package Authorization. Any costs and expenses incurred by the Design-Builder in excess of the GMP (subject to justifiable adjustment by Supplemental Agreement) in performing and completing the applicable scope of Construction Work shall be borne by the Design-Builder alone.</p> <p>The "<b>Contract Sum</b>" consists of:</p> <ul style="list-style-type: none"> <li>(a) An amount, inclusive of overhead and profit, payable for the remaining design and other Preconstruction Work (if any) for the Project or a Work Package, <i>plus</i></li> <li>(b) The cost of the Work for the Construction Work of the Project or a Work Package, <i>plus</i></li> <li>(c) The "<b>Design-Builder's Fee</b>," defined as an agreed percentage on the cost of Work, for the Design-Builder's overhead and profit, payable for the Construction Work of the Project or a Work Package.</li> </ul> <p>The Contract Sum shall be guaranteed by the Design-Builder not to exceed the GMP established in the Amendment/NTP or Work Package Authorization, as applicable.</p>

22.	<b>GMP Components</b>	<p>A GMP shall be computed as the sum of the following, along with any other components agreed by the Authority and the Design-Builder:</p> <ul style="list-style-type: none"> <li>(a) With respect to remaining design and other Preconstruction Work (if any) for the Project or a Work Package, a stipulated amount payable for such Preconstruction Work that is inclusive of overhead and profit and reflective of the Design-Builder’s reasonable, good faith estimate of the cost of such services based on the approved hourly rates and any reimbursable expenses expected to be incurred;</li> <li>(b) In the case of a Work Package, the Design-Builder’s reasonable, good faith estimate of the cost of the Work for the Construction Work authorized therein; <i>or</i>  In the case of the Amendment/NTP, the Component GMP(s) for the Work Package(s) for which a Work Package Authorization was previously executed, <i>plus</i> the Design-Builder’s reasonable, good faith estimate of the cost of the balance of the Construction Work;</li> <li>(c) The Design-Builder’s Fee on the cost of the Construction Work;</li> <li>(d) Any contingency approved by the Authority (<i>see Section 23 (Contingency)</i> below); and</li> <li>(e) Any alternates Approved by the Authority.</li> </ul> <p>Each of the foregoing will be developed and documented as described in the DBA.</p>
23.	<b>Contingency</b>	<ul style="list-style-type: none"> <li>(a) Any contingency agreed by the parties to be included in a GMP shall be limited in use to cover certain unanticipated costs properly incurred in the performance of the Work during the Construction Phase, but which do not provide the basis for a Supplemental Agreement, and which are not attributable to the Design-Builder’s negligence, fault, gross negligence, or willful misconduct.</li> <li>(b) The Design-Builder’s use of any such contingency shall be subject to the Authority’s prior approval, which shall not be unreasonably withheld, provided the Design-Builder has given the Authority sufficient information substantiating the Design-Builder’s need to use such contingency. The Design-Builder shall provide a monthly accounting to the Authority of all expenses associated with the approved use of the contingency. The Design-Builder’s Fee shall be charged only on contingency sums actually expended by the Design-Builder.</li> </ul>
24.	<b>Savings</b>	<p>If at Final Acceptance the Contract Sum is less than a GMP, the difference shall be savings, which shall accrue 100% to the Authority for the Authority’s use in its discretion unless otherwise negotiated by the parties.</p>
25.	<b>Schedule of Values</b>	<p>Each Component GMP Proposal and the Project GMP Proposal shall include a “<b>Schedule of Values</b>” allocating the GMP among the various portions of the Construction Work authorized therein. In negotiating a Component GMP Proposal or Project GMP Proposal, the Authority will</p>

		agree with the Design-Builder on the breakdowns required in the Schedule of Values (e.g., cost categories, unit pricing, quantity estimates). The Schedule of Values set forth in the Amendment/NTP (or if the Amendment/NTP has not yet been agreed, the Schedule of Values in the Work Package Authorization) shall not be modified without the Authority's written approval.
26.	<b>Construction Phase Payments</b>	Based upon certified invoices approved by the Authority, and supporting information reasonably requested by the Authority (including appropriate documentation of payment from the Design-Builder to its Subcontractors), the Authority shall make monthly progress payments to the Design-Builder on account of a GMP for Construction Work properly completed (or portion thereof) in the prior month, evaluated against the Schedule of Values, which progress payments may be offset by any liquidated damages or other deductions that the Authority is entitled to set off against amounts due to the Design-Builder under the terms of the DBA.
27.	<b>Retainage</b>	The Authority may withhold from Construction Phase payments an amount equal to up to five percent (5%) of Construction Work completed in accordance with State and federal law.
28.	<b>Substantial Completion</b>	<p>The Authority will issue a written "<b>Letter of Substantial Completion</b>" at such time as Substantial Completion is achieved, based on satisfaction of conditions to be specified in the DBA. Such conditions are anticipated to include, without limitation:</p> <ul style="list-style-type: none"> <li>• Whether safety features and any required signs and signals are installed and functional;</li> <li>• Whether the need for temporary traffic controls or for lane closures at any time has ceased;</li> <li>• Whether all lanes of traffic set forth in the RFC Documents are in their final configuration and available for public use and any tolling infrastructure included within the scope of Work contained in the Amendment/NTP has been completed in accordance with the Contract Documents;</li> <li>• Whether the Design-Builder has otherwise completed the Work in accordance with the Contract Documents;</li> <li>• Whether the Design-Builder has completed demolition of the existing bayway; and</li> <li>• Whether the parties have agreed upon a Punch List of items to be completed for Final Acceptance.</li> </ul>
29.	<b>Final Completion</b>	<p>Promptly after Substantial Completion, the Design-Builder will be required to do the following (among other things, as will be set forth in the DBA):</p> <ul style="list-style-type: none"> <li>• Perform all remaining Work, including completion of all Punch List items;</li> </ul>

		<ul style="list-style-type: none"> <li>• Demobilize from the Site;</li> <li>• Deliver written certification to that, to the best of the Design-Builder’s knowledge and belief, all Work is complete and there exists no defect in such Work and no uncured Design-Builder default; and</li> <li>• Deliver all other documentation required of the Design-Builder for Final Acceptance.</li> </ul>
30.	<b>Final Acceptance</b>	<p>The Authority will issue a written “<b>Letter of Final Acceptance</b>” at such time as Final Acceptance is achieved based on satisfaction of conditions specified in the DBA. Such conditions are anticipated to include, without limitation:</p> <ul style="list-style-type: none"> <li>• Issuance of a Letter of Substantial Completion;</li> <li>• All remaining Work, including all Punch List items, have been completed to the reasonable satisfaction of the Authority, as determined by final inspection;</li> <li>• Public notice of Project completion has been advertised and proof of publication delivered to the Authority;</li> <li>• The Authority has received the as-built drawings;</li> <li>• All manufacturers’ warranties, guarantees, instruction sheets, parts lists, and other product data have been submitted to the Authority;</li> <li>• The Design-Builder has delivered to the Authority a signed affidavit attesting that all known debts for labor and materials used and Subcontract obligations have been paid, or will be paid within 14 days after receipt of final payment from the Authority;</li> <li>• The Design-Builder has delivered to the Authority a certification representing all Work is complete and there exists no uncured Design-Builder default, and no such defaults exist in the Authority’s determination;</li> <li>• If a non-resident contractor, the Design-Builder has delivered to the Authority a certified “statement of good standing” from the State Department of Revenue and any appropriate county and/or city authority, certifying that it has paid all taxes due and payable; and</li> <li>• All of the Design-Builder’s other obligations under the Contract Documents have been satisfied in full, bonded over (as in the case of a vegetation bond described in <u>Section 56 (Payment &amp; Performance Bonds)</u>), or waived.</li> </ul> <p>The Authority expects to issue a Letter of Final Acceptance within 180 days following the Design-Builder’s achievement of Final Completion and delivery of all documentation required of the Design-Builder for Final Acceptance.</p>
31.	<b>Completion Deadlines</b>	(a) Each Work Package Authorization will establish a deadline for completion of milestones related to such Work Package.

		<p>(b) The Amendment/NTP will establish a completion deadline for Substantial Completion of the Project (as such deadline may be adjusted pursuant to the Contract Documents, the “<b>Substantial Completion Deadline</b>”). “<b>Substantial Completion</b>” will be achieved when the Design-Builder has achieved Substantial Completion in accordance with the principles outlined in <u>Section 28 (Substantial Completion)</u> of this Design-Build Agreement Term Sheet).</p> <p>(c) The Amendment/NTP will establish a completion deadline for Final Completion of the Project (as such deadline may be adjusted pursuant to the Contract Documents, the “<b>Final Completion Deadline</b>”) “<b>Final Completion</b>” will be achieved when the Design-Builder has achieved Final Completion in accordance with the principles outlined in <u>Section 29 (Final Completion)</u> of this Design-Build Agreement Term Sheet.</p> <p>(d) “<b>Final Acceptance</b>” will be achieved when the Letter of Final Acceptance has been issued, and any other Work required for the Project is fully complete in accordance with the principles outlined in <u>Section 30 (Final Acceptance)</u> of this Design-Build Agreement Term Sheet. Final payment will be made upon Final Acceptance.</p> <p>The Design-Builder shall achieve each milestone by the relevant completion deadline. Completion deadlines may not be changed without the approval of the Authority, documented by a Supplemental Agreement.</p>
32.	<b>Delay Liquidated Damages</b>	<p>Under the Amendment/NTP, the Design-Builder and the Authority will agree that a stipulated amount will be payable by the Design-Builder in the event of its failure to achieve Substantial Completion by the Substantial Completion Deadline. If the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Deadline, the Design-Builder will be required to pay to the Authority delay liquidated damages in the agreed amounts (“<b>Delay Liquidated Damages</b>”). The Authority intends to provide a schedule for such Delay Liquidated Damages at a later date.</p> <p>The Authority’s right to seek Delay Liquidated Damages will be the Authority’s sole and exclusive remedy for the Design-Builder’s failure to achieve Substantial Completion by the Substantial Completion Deadline. However, payment of Delay Liquidated Damages will not excuse the Design-Builder from liability from any other breach of Contract Document requirements, including any failure of the Work to conform to applicable requirements.</p>
<b>GENERAL TERMS</b>		
33.	<b>Standards for Submittal Review</b>	<p>(a) In all cases where approvals, acceptances or consents are required to be provided by the Authority or the Design-Builder hereunder, such approvals, acceptances or consents shall not be withheld unreasonably, except in cases where a different standard is specified. In cases where sole discretion of the Authority is specified, the decision is in the sole discretion of the Authority and shall not be the subject of a dispute</p>

		<p>subject to the Dispute Resolution Process in <u>Section 71 (Dispute Resolution Process)</u> of this Design-Build Agreement Term Sheet.</p> <p>(b) When the Design-Builder is required to submit an item to the Authority “for Approval,” the Design-Builder is required to obtain the Authority’s written approval of such item as described herein (an “<b>Approval</b>”) and may not proceed to incorporate that item into the Work or the Project without the Authority’s written Approval. Any time that the Authority refuses to grant an Approval, it shall provide a written explanation, objection or comment to the Design-Builder. The Design-Builder shall address the explanation and objections or incorporate the comments in revisions, or shall explain to the Authority in detail, to the satisfaction of the Authority, why it believes it cannot or should not incorporate such comments.</p> <p>(c) When the Design-Builder is required to submit an item to the Authority “for <b>Review and Comment</b>,” the Authority shall have an opportunity to review and comment on such Submittal. If the Authority does not provide any comments within any required timeframe set forth in the Contract Documents, then the Design-Builder may assume that the Authority does not have any comments and the Design-Builder may proceed. The Review and Comment process does not represent a design hold point and the Design-Builder may proceed at its own risk, regardless of how the Authority responds to a design Submittal submitted for Review and Comment.</p>
34.	<b>Control of Work</b>	The Design-Builder 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 Contract Documents, subject, however, to all requirements contained in the Contract Documents.
35.	<b>Governmental Approvals / Permits</b>	The Design-Builder shall be responsible to obtain all Governmental Approvals (and any necessary modifications to the same) except for those that the Contract Documents expressly make the responsibility of the Authority, and shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work.
36.	<b>Right-of-Way (ROW)</b>	<p>The Authority will identify certain ROW to be used for permanent improvements included in the Project (the “<b>ROW Drawings</b>”), which will be available to a team as part of the Reference Documents after submitting the Bayway Reference Documents Request form found at the Design Build Projects section on the website (<a href="http://www.dot.state.al.us/business/DesignBuild.html">www.dot.state.al.us/business/DesignBuild.html</a>). The Authority will provide access to the ROW identified on the ROW Drawings at execution of the Amendment/NTP.</p> <p>Should the Design-Builder identify the need for additional permanent ROW based on approved designs during the Preconstruction Phase and such need is not solely based on its own time saving or other own benefit, such property will be acquired in the state’s name and the</p>

		<p>Authority will pay the acquisition costs; however, the Design-Builder will provide for any necessary ROW acquisition services needed in connection with such acquisition per federal requirements.</p> <p>Additionally, the Design-Builder will be responsible, at its own cost, for acquiring any temporary easements (other than those easements identified for use on the Project in the ROW Drawings) that are necessary to complete the Work or required to construct the Project consistent with the requirements of the Contract Documents.</p>
37.	<b>Safety</b>	<p>The Design-Builder 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 within the Work Limits or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of the Authority, ALDOT, and their consultants, visitors to the Work Limits, and members of the public who may be affected by the Work. The Design-Builder shall at all times comply with the safety management plan that is part of the Project Management Plan. The Design-Builder shall immediately notify the Authority if the Design-Builder believes that any Contract Document requirement creates a safety risk.</p>
38.	<b>Building and Site Security</b>	<p>The Design-Builder shall provide appropriate security for the Work Limits and any other portions of the Site in use by the Design-Builder during its performance of the Construction Work, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property in the Work Limits, whether owned by the Design-Builder, the Authority, ALDOT, or any other person. The Design-Builder's obligation to provide security for the Site shall, at any given time, only extend to those parts of the Site to which the Design-Builder has been provided access by the Authority.</p>
39.	<b>Maintenance of Work</b>	<p>The Design-Builder shall:</p> <p>(a) Maintain, rebuild, repair, restore, or replace all temporary and permanent Work within the Work Limits, including structures, materials, equipment, supplies, and maintenance equipment that are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the Authority has title thereto under the Contract Documents, that is injured or damaged prior to the date of Final Completion.</p> <p>(b) Have full responsibility for rebuilding, repairing, and restoring all property damaged within the Construction Limits, whether owned by the Design-Builder, the Authority, or any other person. Where a roadway is open to traffic, damage caused by the traveling public to any acceptably installed permanent items of Work shall be repaired by the Design-Builder prior to (and as a condition of) Final Completion.</p> <p>The Design-Builder shall bear the expense of all such work, except for damage to the Work due to certain Relief Events specified in the DBA</p>

		that are beyond the control of and without the fault or negligence of the Design-Builder, such as force majeure events or acts of governmental authorities, which shall be compensable pursuant to a Supplemental Agreement.
40.	<b>Environmental Compliance</b>	The Design-Builder shall comply with all Environmental Laws and Governmental Approvals, including all 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.
41.	<b>Oversight and Acceptance</b>	<p>(a) All materials and each part or detail of the Work shall be subject to inspection by the Authority and ALDOT. The Authority shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Design-Builder as is required to make a complete and detailed inspection.</p> <p>(b) The Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals by the Engineer, the Authority, ALDOT, or any other persons, or by any failure of any person to take such action.</p> <p>(c) Oversight, spot checks, audits, reviews, tests, inspections, acceptances, Approvals, and approvals by any third party do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto.</p> <p>(d) The Authority may reject or require the Design-Builder to remedy any Nonconforming Work and/or identify additional Work that must be done to bring the Project into compliance with Contract Document requirements at any time during the Correction Period, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals were conducted.</p>
42.	<b>Warranties</b>	<p>The Design-Builder warrants that:</p> <p>(a) All design Work furnished pursuant to the Contract Documents shall comply with all Applicable Laws and conform to the Professional Standard of Care;</p> <p>(b) The Construction Work shall be free of defects and shall be performed in a good and workmanlike manner in accordance with Good Industry Practice;</p> <p>(c) Materials and equipment furnished under the Contract Documents shall be of good quality and, except as otherwise specified or expressly permitted by the Contract Documents, shall be new; and</p> <p>(d) The Work shall meet all of the requirements of the Contract Documents.</p>

		The above warranties shall apply to all Work redone, repaired, corrected or replaced pursuant to the terms of the DBA.
43.	<b>Nonconforming Work</b>	<p>The Authority may, but is not obligated to, accept Nonconforming Work without requiring it to be fully corrected, in which case the Authority is entitled to reimbursement of a portion of a GMP in accordance with the Contract Documents.</p> <p>Nonconforming Work rejected by the Authority must be removed and replaced so as to conform to the requirements of the Contract Documents, at the Design-Builder’s cost and without any adjustment to a GMP or any completion deadline or any other relief, and the Design-Builder must promptly take all action necessary to prevent similar Nonconforming Work from occurring in the future.</p>
44.	<b>Correction Period</b>	The period for correction of defective or Nonconforming Work (the “ <b>Correction Period</b> ”) shall commence upon Substantial Completion and shall extend until one year after Final Completion; provided, however, if the Authority determines that Final Completion was not in fact achieved in accordance with the requirements set forth in <u>Section 29 (Final Completion)</u> , the Correction Period shall extend one year after the Design-Builder remedies the Nonconforming Work or other prerequisite to Final Completion. If the Authority determines at any time within the Correction Period that any of the Work has not met the standards set forth in <u>Section 42 (Warranties)</u> of this Design-Build Agreement Term Sheet, then the Design-Builder shall correct such Work in accordance with the requirements of the DBA, even if the performance of such corrective Work extends beyond the applicable Correction Period, and the Correction Period with respect to the corrective Work shall extend for an additional one-year period following acceptance of such corrective Work.
45.	<b>Subcontracts for Preconstruction Work</b>	Engagement and selection of Subcontractors performing Preconstruction Work shall be coordinated with and approved by the Authority. Compensation for the Preconstruction Phase shall be based on the Fully Loaded Hourly Rates specified in the DBA. Notwithstanding the foregoing, for any Preconstruction Work to be Subcontracted pursuant to a Supplemental Agreement (because it was not included in the NTE Amount agreed at DBA execution), the Authority may require the Design-Builder to solicit qualifications and proposals from multiple firms for the professional services or other Work required.
46.	<b>Subcontracts for Construction Work</b>	<p>Selection of Subcontractors performing Construction Work shall be coordinated with and approved by the Authority.</p> <p>(a) Subject to the Authority conducting a reasonableness evaluation of the prices proposed by the Design-Builder, (i) the Design-Builder will self-perform at least 30% of the Construction Work, (ii) the Lead Contractor will perform at least 30% of the Construction Work, and (iii) the Lead Designer will perform at least 30% of the design Work.</p>

		<p>(b) Prior to the award of any such Subcontracts, the Design-Builder shall meet with the Authority to review the Subcontractor selection process (keeping clause (a) above in mind), and the parties shall agree on protocols for determining when the Design-Builder will self-perform Construction Work as opposed to retaining a Subcontractor for such package. The Design-Builder shall also provide the Authority with a list of potential Subcontractors ("bidders") proposed to conduct Construction Work or provide materials or equipment in connection therewith. The Authority shall review such list with the Design-Builder prior to solicitation and may remove or exclude any bidder from consideration.</p> <p>(c) Prior to awarding any Subcontract for the Construction Work to a Subcontractor except with the prior approval of the Authority, the Design-Builder shall seek to obtain at least three competitive bids from bidders on the approved list for all Construction Work, including for any materials or equipment supplied in connection with the Work. The preceding sentence shall not apply to awarding a Subcontract for Construction Work to a Principal Participant or Major Participant, provided the Authority has determined that the price proposed during the Preconstruction Phase for any such entity's construction services is reasonable after conducting a reasonableness evaluation.</p> <p>(d) After analyzing all bids received, the Design-Builder shall deliver the bids to the Authority. The Authority will then review with the Design-Builder all bids. The Design-Builder shall, with the approval of the Authority, award each Subcontract to the responsible bidder who provides the best value for the particular scope of the Construction Work, having regard for price, the capacity, reputation for quality, prior performance, qualifications of the bidders, and involvement of DBEs.</p> <p>(e) If the selection process does not meet the requirements of the Contract Documents or is otherwise unsatisfactory to the Authority, the Authority may direct that no award be made and that a new selection process be undertaken.</p> <p>(f) Subject to the Authority's approval, satisfaction of the requirements above, and compliance with Subcontract requirements to be set out in the DBA, the Design-Builder may negotiate the most favorable price and terms of each Subcontract.</p>
47.	<b>FHWA 1273</b>	Form FHWA 1273 will be included in the federal requirement provisions of the DBA and will be required to be included in all Subcontracts.
48.	<b>Assignment of Subcontract Rights</b>	<p>Each Subcontract shall provide that, pursuant to subcontract terms in form and substance satisfactory to the Authority, all guarantees and warranties, express and implied, shall inure to the benefit of the Authority as well as the Design-Builder.</p> <p>Any acceptance of assignment of a Subcontract from the Authority, its successor(s), or assign(s) shall not operate to make the assignee(s) responsible or liable for any breach of the Subcontract by the Design-</p>

		Builder or for any amounts due and owing under the Subcontract included in an invoice paid by the Authority.
49.	<b>Payments to Subcontractors</b>	The Design-Builder shall make payment to all Subcontractors for the portion of the Work satisfactorily performed by such Subcontractor within 14 days of the Design-Builder's receipt of a progress payment from the Authority.
50.	<b>Design and Engineering Personnel</b>	All design and engineering Work furnished by the Design-Builder shall be performed by or under the supervision of persons or entities licensed to practice architecture, engineering, or surveying (as applicable) in the State, and by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents in accordance with all Applicable Law.
51.	<b>Labor</b>	<p>(a) The Design-Builder shall at all times employ sufficient labor and equipment for prosecuting the several classes of Work to full completion in the manner and time required by the Contract Documents. All workmen shall have sufficient skill and experience to perform properly the work assigned to them. Workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.</p> <p>(b) Any person employed by the Design-Builder or by any Subcontractor who, in the opinion of the Authority, does not perform their work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Authority, be removed forthwith by the Design-Builder or Subcontractor employing such person, and shall not again be employed in any portion of the work without the approval of the Authority.</p>
52.	<b>Key Personnel</b>	<p>The DBA will specify certain Key Personnel, Additional Key Personnel and Additional Personnel positions for the Project, including those required to be identified by the Proposers pursuant to <u>ITP Exhibit D, Sections 4.1 and 4.3</u>. The Authority may, with the Design-Builder's consent, add Key Personnel positions at no cost to the Authority.</p> <p>(a) The Design-Builder will represent, warrant, and covenant in the DBA (or the Amendment/NTP, with respect to added Key Personnel) that individuals identified therein for such Key Personnel, Additional Key Personnel or Additional Personnel positions are available for and will fulfill the roles identified for them in connection with the Work. Key Personnel, Additional Key Personnel and Additional Personnel are required to commit the amount of time to their applicable roles as agreed to in the Contract Documents.</p> <p>(b) The Authority shall have the right to review the qualifications of each individual to be assigned to a Key Personnel, Additional Key</p>

		<p>Personnel and Additional Personnel position (including personnel employed by Subcontractors) and to approve or disapprove use of such person in such Key Personnel, Additional Key Personnel or Additional Personnel position prior to the commencement of any Work by such individual or during the prosecution of the Work.</p> <p>(c) The Design-Builder shall notify the Authority in writing of any proposed changes in any Key Personnel, Additional Key Personnel or the Civil Rights Compliance Manager and shall demonstrate to the Authority's satisfaction that the replacement Key Personnel, Additional Key Personnel or Civil Rights Compliance Manager is acceptable to the Authority, taking into account the requirements provided in <u>ITP Exhibit D, Section 4.1</u>. The Design-Builder shall not change any Key Personnel, Additional Key Personnel or the Civil Rights Compliance Manager without the prior written approval of the Authority. Removal or replacement of Key Personnel or Additional Key Personnel without the Authority approval will be subject to a "<b>Personnel Change Assessment Fee</b>" in the amount of \$250,000 for each such removal or replacement, unless such removal or replacement is due to death, disability or incapacity. Additionally, a further liquidated damage will be payable from the Design-Builder to the Authority for each week during which a Key Personnel or Additional Key Personnel position is vacant and the Design-Builder is not waiting on the Authority to respond on a proposed replacement candidate. The Authority intends to provide the rate for such vacancy liquidated damages at a later date.</p>
53.	<b>DBE</b>	<p>ALDOT will establish a goal for DBE participation in the Work of the Project as a whole (the "<b>DBE Project Goal</b>") in accordance with the DBE Project Goal methodology approved by the FHWA. The Authority currently expects the DBE Project Goal to be 3.89% of the total contract price (the sum of the NTE Amount, the Project GMP, and any other amounts payable for Work under the DBA), which goal may be met through DBE participation in design and construction Work combined. The DBE Project Goal is comprised of a 2.74% race-conscious portion and a 1.15% race-neutral portion. The Design-Builder shall exercise and periodically report on its good faith efforts through race-neutral measures to achieve the DBE Project Goal in accordance with requirements to be set forth in the DBA and the Design-Builder's approved DPP (which will be revised and submitted for monthly approval by ALDOT). The Design-Builder will be required to provide DBE commitments in the form required by the Authority as Preconstruction Work progresses and DBE Subcontractors are identified and will be obligated to periodically report on actual DBE participation in the Work. The Design-Builder's good faith efforts and progress toward achieving the overall DBE Project Goal will be evaluated as Preconstruction Work and Construction Work is authorized and performed.</p>
54.	<b>On-the Job Training</b>	<p>ALDOT shall provide on-the-job training requirements and the anticipated on-the-job training hours goal to the selected Proposer.</p>

55.	<b>Coordination with the Mobile River Bridge Project and with other Contractors</b>	<p>The Design-Builder acknowledges that the Authority will be entering into a design-build agreement for the Mobile River Bridge Project with the (i) selected design-builder for the Mobile River Bridge Project and (ii) selected tolling. The Design-Builder shall coordinate and cooperate with the (a) design-builder of the Mobile River Bridge Project (and its subcontractors and subconsultants) and (b) the selected tolling designer and/or operator, each as provided in the Technical Provisions and other Contract Documents. Coordination and cooperation responsibilities between the Design-Builder and (x) the design-builder of the Mobile River Bridge Project and (y) the selected tolling designer and/or operator will be further documented in the Contract Documents.</p> <p>In addition to the work that will be undertaken in connection with the Mobile River Bridge Project, the Authority and ALDOT reserve the right to perform and to contract with others to perform other or additional work on or near the Site. The Design-Builder shall coordinate and cooperate with the Authority, ALDOT, such other contractors, including the design-builder for the Mobile River Bridge Project, and any other third-parties working on or adjacent to the Site to the extent reasonably necessary for the performance by the Authority, ALDOT and such other contractors of their work, and shall coordinate with the Authority, ALDOT and such other contractors in good faith to facilitate completion of the Project in a timely and efficient manner. The Design-Builder shall conduct the Work so as not to interfere with or hinder the progress or completion of work being performed by other contractors.</p>
56.	<b>Payment &amp; Performance Bonds</b>	<p>(a) At execution of the DBA, the Design-Builder shall furnish and maintain a performance bond and a payment bond, each in an amount at least equal to 100% of the agreed NTE Amount for the Preconstruction Phase.</p> <p>(b) Prior to beginning any Construction Work, the Design-Builder shall furnish and maintain one or more performance bonds and one or more payment bonds. The performance bond and the payment bond shall each be in an amount (or, in the case of multiple bonds, shall each be provided in an aggregate amount) at least equal to 100% of the Project GMP as set forth in the Amendment/NTP or, if the Amendment/NTP has not yet been issued, then the Component GMP(s) established pursuant to the applicable Work Package Authorization(s).</p> <p>(c) Each such bond must be issued by a surety company reasonably acceptable to the Authority. Each such company must be listed in the current United States Secretary of the Treasury, Fiscal Service, Circular 570, <i>Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies</i> and rated in the top two categories by two nationally recognized rating agencies or having at least an A minus (A-) or better and Financial Size Category of Class VIII or better rating by A.M. Best and Company. Evidence of the surety company's rating must be delivered to the Authority with the bonds.</p>

		<p>(d) The Performance Bond shall be released at the end of the Correction Period.</p> <p>(e) The Payment Bond shall be released at the end of the Correction Period.</p> <p>(f) The Authority may require that the Design-Builder provide a vegetation bond covering sustained growth of established or planted vegetation following Final Acceptance.</p>
57.	<b>Insurance – General</b>	<p>The Design-Builder shall procure and keep in effect at least until Final Acceptance (except with respect to builder’s risk, which shall remain in effect until Substantial Completion), or cause to be procured and kept in effect with the Design-Builder as a named insured, as appropriate, the insurance policies outlined in the DBA, in accordance with the requirements of the DBA, which are anticipated to include, at a minimum, the following:</p> <p>(a) Coverages shall include commercial general liability, commercial auto liability, excess liability (umbrella), contractor’s pollution liability insurance, professional liability, builder’s risk, workers’ compensation/employer’s liability (including, if needed, USL&amp;H and Jones Act), marine protection &amp; indemnity, and railroad protective insurance, in each applicable case meeting, at a minimum, the requirements to be set forth in the DBA.</p> <p>(b) The Design-Builder’s insurance shall cover all of the Work under the DBA, whether the Work is performed by the Design-Builder or its Subcontractors.</p> <p>(c) The Design-Builder’s insurance shall cover the entire Project within the Work Limits and the Site as negotiated by the Authority and the Design-Builder, regardless of whether the Design-Builder is performing Work on a structure within the Work Limits or on the Site (with the exception of builder’s risk insurance, which may be limited to the Work Limits).</p> <p>(d) Design-Builder shall also ensure that all Subcontractors and subconsultants procure and maintain appropriate insurance coverage in accordance with the requirements of the DBA.</p> <p>(e) All insurance companies providing policies obtained to satisfy the insurance requirements herein must be authorized to conduct business in the State and have a current policyholder’s management and financial size category rating of not less than “A-, VIII” according to A.M. Best’s Insurance Reports Key Rating Guide.</p>
58.	<b>Additional Insureds</b>	<p>Each policy of commercial general liability, commercial auto liability, excess liability (umbrella), and contractor’s pollution liability insurance shall name the Indemnified Parties as additional insureds. Each of such policies shall also contain a separation of insureds condition. The insurance afforded to the additional insureds by the Design-Builder shall be primary and non-contributory insurance.</p> <p>ALDOT shall also be an insured on the builder’s risk insurance.</p>

59.	<p><b>Professional Liability Insurance</b></p>	<p>At all times during the Term when professional services are rendered for design and construction of the Project until the first to occur of (i) 7 years after the professional services have concluded for the Project, and (ii) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the Project, the Design-Builder, the Lead Designer and all others providing professional services shall procure and maintain professional liability insurance in accordance with the following requirements:</p> <p>(a) Design-Builder shall procure and maintain project-specific contractor’s professional liability insurance with a per claim and aggregate limit of not less than \$[15,000,000]. Such policy must include the Design-Builder as the named insured and may be in the form of a contractor’s protective professional indemnity (CPPI) policy provided such policy covers both the professional liability of the Design-Builder and provides excess protection above the project-specific professional liability insurance policy required in (b) below; and</p> <p>(b) Design-Builder shall require that the Lead Designer procure and maintain project-specific professional liability insurance with a per claim and aggregate limit of not less than \$[40,000,000]. The Lead Designer must be a named insured, although such policy may, at the Design-Builder’s option, also include coverage for all subconsultants and others performing professional services.</p> <p>The Indemnified Parties shall also be “indemnified parties” under each policy.</p> <p>ALDOT’s reimbursement of any premium costs associated with coverage that exceeds the minimum limits noted in (a) and (b) above is subject to negotiation with the selected Proposer with no guarantee that ALDOT will commit to reimbursing all or any portion of such additional premium costs should the selected Proposer team plan to procure and maintain coverage exceeding such limits.</p> <p>To the extent not directly covered as insureds by the project-specific policies described above, the Design-Builder will cause each other Subcontractor or subconsultant (other than the Lead Designer) providing professional services to procure and keep in force professional liability insurance as specified below, which coverage must be maintained for 3 years after completion of the relevant professional service. Note that such coverage need not be project-specific.</p> <table border="1" data-bbox="584 1596 1421 1869"> <thead> <tr> <th data-bbox="584 1596 1006 1638"><b>Initial Contract Value</b></th> <th data-bbox="1006 1596 1421 1638"><b>Minimum Limits of Liability</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="584 1638 1006 1764">Equal to or above \$[5,000,000]</td> <td data-bbox="1006 1638 1421 1764">\$[5,000,000] per claim and aggregate</td> </tr> <tr> <td data-bbox="584 1764 1006 1869">Greater than \$[2,000,000] but less than \$[5,000,000]</td> <td data-bbox="1006 1764 1421 1869">\$[2,000,000] per claim and aggregate</td> </tr> </tbody> </table>	<b>Initial Contract Value</b>	<b>Minimum Limits of Liability</b>	Equal to or above \$[5,000,000]	\$[5,000,000] per claim and aggregate	Greater than \$[2,000,000] but less than \$[5,000,000]	\$[2,000,000] per claim and aggregate
<b>Initial Contract Value</b>	<b>Minimum Limits of Liability</b>							
Equal to or above \$[5,000,000]	\$[5,000,000] per claim and aggregate							
Greater than \$[2,000,000] but less than \$[5,000,000]	\$[2,000,000] per claim and aggregate							

		<p>Equal to or less than \$[2,000,000] \$[1,000,000] per claim and aggregate</p> <p>ALDOT is open to discussing alternative professional liability coverage combinations that provide ALDOT with adequate and comparable protection to what is provided in this <u>Section 59</u>.</p>
60.	<b>Risk Register</b>	<p>During the Preconstruction Phase, the Design-Builder and the Authority (and its consultants) will collaborate to develop a <b>"Risk Register."</b> The Risk Register will identify the potential preconstruction and construction risk issues (each, a <b>"Risk Register Event"</b>), including force majeure events, define mitigation strategies to be used with regard to Risk Register Events, and identify probable cost and time impacts to the Project. The Authority shall maintain the Risk Register, which will be revisited on a quarterly basis, or more frequently, at the Authority's discretion, during the Preconstruction Phase as the design of the Project is developed and investigations and other diligence activities are conducted.</p> <p>Upon mutual agreement, all Risk Register Events shall be categorized as an Authority risk, a Design-Builder risk, or a provisional risk to be shared by the parties.</p> <p>If a Risk Register Event occurs, the Design-Builder must notify the Authority within [7] days after the occurrence, and the mitigation strategy identified in the Risk Register will be employed, unless the parties agree otherwise in writing based on the particular circumstances. If such a Risk Register Event is a Design-Builder risk, then the Design-Builder will bear the schedule impact and pay all costs associated with the Risk Register Event and the mitigation strategy. If such a risk item is an Authority risk or a provisional risk, then it will be considered a <b>"Relief Event"</b> for which the Design-Builder may be entitled to seek an adjustment to a GMP, time extension, and/or other relief pursuant to a Supplemental Agreement or, in the event of a dispute, the Dispute Resolution Process. The Risk Register will designate how the Design-Builder will be compensated and/or what other relief may be provided upon the occurrence of such a Relief Event, which may include baseline assumptions for costs and schedule included in a GMP. If an event occurs that is not identified on the Risk Register, then the Design-Builder will bear the schedule impact and pay all costs associated with such event and any appropriate mitigation strategy.</p> <p>Risk Register Event categories and terms that relate to a Work Package may be negotiated and adjusted until execution of the applicable Work Package Authorization. Risk Register Event categories and terms that relate to all Work to be encompassed by the Amendment/NTP may be negotiated and adjusted until execution of the Amendment/NTP. See <u>Section 71 (Dispute Resolution Process)</u> of this Design-Build Agreement Term Sheet with respect to disputed compensation or extensions of time.</p>

61.	<b>Supplemental Agreements and Changes</b>	<p>A Supplemental Agreement will be required for any time extension or increase in a GMP.</p> <p>By Supplemental Agreement, the Authority may also, without invalidating the DBA, authorize a change in the general scope of the Work, including authorizing extra work or elimination of scope items.</p> <p>In accordance with terms outlined in the DBA, the Authority may also unilaterally issue force account orders, including while a Supplemental Agreement is being negotiated, under which the Design-Builder will be required to perform extra work on a force account basis.</p>
62.	<b>Design-Builder’s Right to Stop Work</b>	<p>The Design-Builder shall have the right to stop Work if the Authority fails to make an undisputed payment due hereunder within 30 days after the Authority’s receipt of a written notice of nonpayment provided by the Design-Builder.</p>
63.	<b>Design-Builder’s Rights to Terminate</b>	<p>The Design-Builder may terminate the DBA if the Work has been suspended (whether by the Authority, or by the Design-Builder for non-payment) for more than 180 consecutive days.</p> <p>The Design-Builder will be required to notify the Authority of its decision to terminate by delivering a written termination notice specifying the termination effective date, which may be no sooner than 30 days after delivery of notice.</p>
64.	<b>Design-Builder Defaults</b>	<p>The DBA will specify Design-Builder defaults and any applicable cures and cure periods therefor. The following non-exhaustive list includes examples of Design-Builder defaults anticipated to be included in the DBA:</p> <ul style="list-style-type: none"> <li>• Failure to commence Work within the time specified in the Contract Documents;</li> <li>• Failure to perform the Work with sufficient resources to ensure prompt completion thereof;</li> <li>• Failure to perform the Work in accordance with the Contract Documents (including the failure to enact plans required under the Technical Provisions in accordance with the timeframes provided therein), refusal to remove and replace rejected materials or Nonconforming Work, or failure to remove and replace workers as directed by the Authority pursuant to the DBA;</li> <li>• Removal or replacement of Key Personnel without the prior approval of the Authority;</li> <li>• Discontinuation or suspension of the Work, except within the Design-Builder’s rights to do so as specified in the DBA;</li> <li>• Failure to resume performance of suspended Work within a reasonable time after notice to do so or (if applicable) after cessation of the event precipitating the suspension;</li> </ul>

		<ul style="list-style-type: none"> <li>• Failure to engage in good faith negotiations related to the development of the Amendment/NTP or any Work Package Authorization;</li> <li>• Failure to obtain or maintain any required insurance, bonds, guarantees, or other performance security as and when required under the DBA;</li> <li>• Voluntary or involuntary assignment or transfer of all or any portion of the DBA, except as expressly permitted by the DBA;</li> <li>• Voluntary or involuntary bankruptcy or insolvency, or failure to pay debts when due;</li> <li>• Failure to make payment when due for labor or equipment, or failure to make payment to the Authority when due of any amounts owing to the Authority;</li> <li>• Material misrepresentation by the Design-Builder;</li> <li>• Breach of any other material agreement, representation, or warranty contained in the Contract Documents, including DBE requirements; and</li> <li>• Any other failure to carry out the Work and the Design-Builder's obligations in accordance with the Contract Documents.</li> </ul>
65.	<p><b>Authority's Remedies for Design-Builder Default</b></p>	<p>Subject to any limitations set forth under the DBA, the Authority will have the right to exercise any one or more of the following remedies in the event of an uncured Design-Builder default:</p> <ul style="list-style-type: none"> <li>• Right to terminate the DBA, or any scope of Work thereunder (e.g., termination of a particular Work Package Authorization);</li> <li>• Right to recover damages (subject to the terms applicable to any liquidated damages);</li> <li>• Right to deduct liquidated damages and other amounts (including interest) payable to the Authority from amounts owing to the Design-Builder;</li> <li>• Right to take immediate action in the event of emergency or danger;</li> <li>• Right to apply any applicable retainage held;</li> <li>• Right to make demand upon, draw on, enforce and collect any bonds, letters of credit, guaranty, or other performance security available to the Authority for the default; and</li> <li>• Other remedies as provided by Applicable Law.</li> </ul>
66.	<p><b>Withholding</b></p>	<p>In addition to the Authority's right to hold retainage, the DBA will specify reasons for which the Authority may withhold all or a portion of a progress payment or other payment owed by the Authority to the Design-Builder. Such reasons are anticipated to include:</p> <ul style="list-style-type: none"> <li>• A bona fide, good faith dispute concerning the amount owed under an invoice, which arise from missing supporting documentation or errors discovered in any previous invoice;</li> </ul>

		<ul style="list-style-type: none"> <li>• Except to the extent arising from the Authority’s failure to make payments to the Design-Builder when properly due, failure of the Design-Builder to make payments properly to its Subcontractors for labor, materials or equipment for Work performed or labor or materials furnished, which may include failure of the Design-Builder to provide satisfactory affidavits, releases and lien waivers, unpaid claims or liens filed by any Subcontractor, laborer, or materialman, or reasonable evidence indicating significant likelihood of the filing of such a claim or lien;</li> <li>• Damage to the Authority, a separate the Authority contractor, or the State, or a claim filed, or reasonable evidence of the probable filing of a claim by a third party, to the extent caused by or arising out of an act or omission by the Design-Builder or its agents, which may include unpaid claims assessments for damage to the Project or Site or State property, unpaid fines, or fees or charges for permits, or taxes that are the responsibility of the Design-Builder;</li> <li>• Defective or Nonconforming Work not remedied;</li> <li>• Unsatisfactory job progress or disputed Work, which may include a Design-Builder default as described above;</li> <li>• Reasonable evidence that the Work cannot be completed for the unpaid balance of a GMP;</li> <li>• Reasonable evidence that the Work will not be completed within the time allocated in the Project Schedule, or by the applicable completion deadline, and that the unpaid balance of the Project GMP is insufficient to cover applicable liquidated damages;</li> <li>• A written request from the Design-Builder’s surety to withhold payment;</li> <li>• Any part of the payment owed to the Design-Builder is attributable to Work not performed in accordance with the Contract Documents;</li> <li>• Any amount owing and unpaid from the Design-Builder to any Utility Owner under a Utility Agreement; or</li> <li>• Withholding payment is necessary to protect the State’s interests.</li> </ul> <p>The Authority will be required to specify the reasons for any withholding and to pay for any undisputed amounts not subject to withholding in accordance with the terms of the DBA.</p>
67.	<b>Suspension of the Work</b>	<p>(a) The Authority may, by written order, order the Design-Builder to suspend all or any or part of the Work. Such suspension may be made (i) for convenience, or (ii) for cause, including for the Design-Builder’s failure to correct unsafe conditions or comply with Governmental Approvals, Applicable Law, the Authority directives, or other requirements of the DBA.</p> <p>(b) The Design-Builder shall promptly comply with any written suspension order. During periods that Work is suspended, the Design-Builder shall continue to be responsible for the Work, including for site</p>

		<p>security, damage, construction-period maintenance, drainage, and maintenance of traffic, which may require erection of temporary structures and signs. If the suspension is for the Authority's convenience, the additional work performed by the Design-Builder during the suspension period shall be considered a the Authority-directed change; provided, however, that if only the Construction Work is suspended, the Design-Builder shall continue Preconstruction Work and such Preconstruction Work performed during the suspension shall not be considered an Authority-directed change. During a suspension, the Design-Builder shall continue maintain all Design-Builder-provided insurance and bonds.</p> <p>(c) The Design-Builder shall promptly recommence the Work upon receipt of written direction from the Authority directing the Design-Builder to resume Work.</p>
68.	<b>Termination by Authority</b>	<p>The Authority may terminate the DBA, or any individual Work Package or scope of Work authorized thereunder, and the performance of the Work by the Design-Builder in whole or, from time to time, in part, if the Authority determines, in its sole discretion that a termination is in the best public, State or national interest to do so. Such a termination may be for the Design-Builder's default or the Authority's convenience.</p>
69.	<b>Termination Compensation</b>	<p>(a) In the event of a termination of the DBA, the Design-Builder will be entitled to payment for Work properly completed prior to the termination date, in accordance with the compensation terms applicable to such Work established pursuant to the DBA, a Work Package Authorization, or the Amendment/NTP (subject to adjustment by Supplemental Agreement).</p> <p>(b) In the event of an the Authority termination for convenience, the Design-Builder may also submit a claim for reasonably incurred, documented costs to cancel Subcontracts and demobilize, subject to the terms of the DBA.</p> <p>(c) In the event of an the Authority termination for cause following authorization of any Construction Work, the amount paid to the Design-Builder on termination will not exceed the difference between the unpaid portion of any outstanding GMP and the cost to complete the then-authorized Construction Work, and the Design-Builder may be required to pay the excess completion costs to the Authority.</p> <p>(d) Compensation on termination as described herein will be the Design-Builder's sole and exclusive remedy for termination by the Authority. Under no circumstances will the Design-Builder be entitled to anticipatory or unearned profits (including any unpaid amount of the Design-Builder's Fee) or consequential or other damages as the result of a termination.</p>
70.	<b>Indemnification</b>	<p>The Design-Builder shall release, defend, indemnify and hold harmless the State, the Authority, ALDOT, and their respective successors, assigns, officeholders, officers, members, directors, agents, representatives, consultants, and employees (collectively referred to as the</p>

		<p><b>"Indemnified Parties")</b> from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs, and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities) and including attorneys', accountants' and expert witness fees and costs (collectively referred to as "<b>Losses</b>"), arising out of, relating to, or resulting from:</p> <ul style="list-style-type: none"> <li>• Injury or damage received or sustained by any person or property due to the operations of the Design-Builder, including, but not limited to, property damage claims made by the traveling public for damage sustained due to the operations of the Design-Builder;</li> <li>• The actual or alleged negligent act or omission or willful misconduct of any Design-Builder-Related Entity;</li> <li>• The breach or alleged breach of the DBA by any Design-Builder-Related Entity;</li> <li>• Errors in the Design Documents (<i>provided, however,</i> that the Design-Builder shall have no obligation for defense of such Losses, except for payment of defense costs upon a final judgment of fault or negligence by the Design-Builder or a design Subcontractor);</li> <li>• The failure or alleged failure by any Design-Builder-Related Entity to comply with any applicable Environmental Laws or other Applicable Law or Governmental Approvals in performing the Work;</li> <li>• 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 (including after Final Acceptance of the Work) of methods, processes, designs, information, or other items furnished or communicated to the Authority or another Indemnified Party pursuant to the DBA (<i>provided, however,</i> that this indemnity shall not apply to any infringement resulting from the Authority's failure to comply with specific written instructions regarding use provided to the Authority by the Design-Builder);</li> <li>• Any and all claims by any governmental or taxing authority claiming taxes based on purchases or sales, or the use of any property or income of any Design-Builder-Related Entity with respect to any payment for the Work made to or earned by them;</li> <li>• Any liens filed in connection with the Work (whether or not enforceable under Applicable Law), including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or lien, <i>provided</i> that the Authority is not in default in payments owing to the Design-Builder with respect to such Work;</li> <li>• Any spill or release or threatened spill or release or exacerbation of Hazardous Materials: (a) attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related</li> </ul>
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		<p>Entity; or (b) that was brought onto the Work Limits or Site by any Design-Builder-Related Entity;</p> <ul style="list-style-type: none"> <li>• Use, transportation, or storage of explosives in the performance of the Work;</li> <li>• Property damage arising from the in-State use of roads and streets in the performance of the Work;</li> <li>• The claim or assertion by any contractor of inconvenience, disruption, delay, or loss caused by interference by any Design-Builder-Related Entity with or hindering the progress or completion of work being performed by other contractors, or failure of any Design-Builder-Related Entity to cooperate reasonably with other contractors in accordance therewith; and</li> <li>• Claims or amounts arising or recovered under the Workmen’s Compensation Act or other Applicable Law;</li> </ul> <p><i>provided, however, that the Design-Builder’s indemnity obligations hereunder shall not extend to any Loss to the extent that such Loss was caused by the fault or willful misconduct of such Indemnified Party.</i></p>
71.	<b>Dispute Resolution Process</b>	Disputes regarding compensation or other relief will be handled consistent with the process outlined in the Authority’s Standard Specifications, particularly Section 110.03-110.04
72.	<b>Ownership of Documents, Records and Data</b>	<p>(a) The copies and other tangible embodiments of the Design Documents and all records, reports and data submitted to the Authority in connection with the Project are and shall remain the exclusive property of the Authority, subject only to the Authority’s satisfaction of its payment obligations under the DBA for Preconstruction Work or Construction Work, as applicable, properly performed or furnished by the Design-Builder.</p> <p>(b) To the extent that the Authority has not otherwise approved Design Documents, records or data being stamped or marked as “proprietary”, the Design-Builder assigns, transfers, releases and conveys to the Authority all worldwide right, title and interest of the Design-Builder in and to any Intellectual Property Rights associated with such Design Documents, records and data, and will cause its Subcontractors to do the same.</p> <p>(c) As to those Design Documents, records and data deemed subject to any form of Intellectual Property Rights, the Design-Builder grants, and will cause to be granted and delivered to the Authority from Subcontractors, a paid-up, non-exclusive, world-wide, irrevocable, transferable license, for the term of the Intellectual Property Rights, for the Authority to use, reproduce and have reproduced, and for the Authority to allow others to use, reproduce and have reproduced, such Design Documents, records and data, and any derivative thereof (i) for completion of the Project by others upon termination of the DBA and (ii) for the construction, operation, maintenance, and repair of, and for additions, improvements, changes, or alterations to, the Project.</p>

		<p>(d) The above rights will be vested and title and licenses transferred to the Authority immediately upon creation.</p> <p>(e) The terms of this <u>Section 72</u> shall survive the expiration or earlier termination of the DBA, including for an inability of the parties to agree on an Amendment/NTP as described in <u>Section 12 (Authority's Rights in Negotiation)</u> of this Design-Build Agreement Term Sheet.</p>
73.	<b>Records</b>	<p>The Project shall use the same format as the Mobile River Bridge Project of electronic document and submittal management system for management of submittals and other communications. The Design-Builder shall implement, operate and maintain the system with respect to the Project until the later of (a) the conclusion of the Correction Period and (b) delivery of all Project documents to the Authority. The Design-Builder must submit all submittals to the Authority through such system.</p> <p>In addition, the Design-Builder must maintain all project records and documents on its own electronic data management system in accordance with Applicable Law and may be required to provide information to the Authority as a result of a request pursuant to the Public Records Law.</p> <p>The Design-Builder will utilize ALDOT's civil rights compliance system for reporting on the Civil Rights Requirements.</p>
74.	<b>Assignment</b>	<p>(a) The Design-Builder may not assign its interests in the DBA, or delegate any of its duties under the DBA, without the Authority's prior written approval (which may be withheld in the Authority's sole discretion).</p> <p>(b) The Authority may assign all or any part of its interests in the DBA, including rights with respect to the surety bonds and any other performance security required under the DBA, to any other person with the prior written approval of the Design-Builder.</p>
75.	<b>Sales and Use Taxes</b>	<p>The Project may be subject to sales and use tax. Unless the Project, through no fault of its own or a Design-Builder-Related Entity, does not qualify for a sales and use tax exemption, the Design-Builder shall not be entitled to include sales and use tax estimates or liabilities in calculating a GMP or seek relief or recovery from the Authority under this DBA in relation to any sales and use tax liability incurred by the Design-Builder or any of its Subcontractors if the Design-Builder fails to receive an exemption from the Alabama Department of Revenue for any sales and use tax associated with the Project.</p>
<b>DEFINITIONS</b>		
76.	<b>Amendment/NTP</b>	An amendment establishing the Project GMP.
77.	<b>Applicable Law</b>	All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Authority

		having jurisdiction over the Work, the Project, the Work Limits, or the Site, the practices involved in the Work or the Project, or any Utility Work being performed by a Utility Owner. The term "Applicable Law" does not include Governmental Approvals or tax laws.
78.	<b>Compensation Cap</b>	The NTE Amount or GMP, or any other binding compensation cap agreed to by the Authority and the Design-Builder in the Amendment/NTP or a Work Package Authorization.
79.	<b>Construction Limits</b>	The portion of the Site that is available to the Design-Builder for the performance of the Construction Work then authorized pursuant to the Amendment/NTP or a Work Package Authorization. If the Amendment/NTP has been issued, the "Construction Limits" include all permanent ROW as shown in the ROW Drawings, except to the extent that the Authority is obligated under the DBA but has not yet provided the Design-Builder with access to the ROW parcel (or portion thereof). (See <u>Section 36 (Right-of-Way (ROW))</u> regarding access to ROW.)
80.	<b>Completion Deadline</b>	The Substantial Completion Deadline and Final Completion Deadline, and any other milestone deadlines agreed to by the Authority and the Design-Builder in the Amendment/NTP or Work Package Authorization.
81.	<b>Construction Phase</b>	The Project phase during which Construction Work will be completed.
82.	<b>Construction Work</b>	All Work other than the Preconstruction Work.
83.	<b>Demolition</b>	The work necessary to be undertaken by the Design-Builder to demolish the bayway portion of I-10 that is in existence as of the Effective Date.
84.	<b>Design-Builder-Related Entities</b>	Design-Builder, Principal Participants, Major Participants, Subcontractors, their employees, agents and officers and all other persons and entities for whom Design-Builder may be legally or contractually responsible.
85.	<b>Design Documents</b>	All drawings (including plans, elevations, sections, details, and diagrams), specifications, designs, "architectural work" (as such term is defined in the Architectural Works Copyright Protection Act of 1990), reports, calculations and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract Documents, including shop drawings, the RFC Documents and the Final Design prepared by or on behalf of the Design-Builder.
86.	<b>Engineer</b>	A professional engineer registered with the Alabama State Board of Licensure for Professional Engineers and Land Surveyors who is responsible for engineering and administrative supervision of the Project on behalf of the Design-Builder, who is either an employee of the Design-Builder or a Design-Builder-Related Entity.
87.	<b>Environmental Laws</b>	All Applicable Laws relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Materials into the environment, including into the air, surface water or groundwater,

		or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or otherwise relating to the protection of public health, public welfare, or the natural environmental (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the statutes listed in the definition of Hazardous Materials; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and the Eagle Protection Act, 16 U.S.C. § 668, each as amended.
88.	<b>Fully Loaded Hourly Rates</b>	The hourly rate of personnel, inclusive of additional costs directly related to such personnel’s work (such as payroll taxes, benefits and supplies), overhead and profit.
89.	<b>GMP</b>	Either a Component GMP or the Project GMP, as applicable.
90.	<b>Good Industry Practice</b>	The exercise of the degree of skill, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced design-build contractor seeking in good faith to comply with its contractual obligations engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project and which complies with Applicable Law. Good Industry Practice includes, without limitation, taking reasonable steps to assure sufficient personnel are employed and available to perform the work and such personnel are adequately skilled, experienced and trained to complete the Work.
91.	<b>Governmental Approval</b>	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Authority in order to design and construct the Project.
92.	<b>Hazardous Materials</b>	Any of the following: 1. Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time

		<p>hereafter in effect;</p> <ol style="list-style-type: none"> <li>2. Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;</li> <li>3. Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles; and</li> <li>4. Asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).</li> </ol>
93.	<b>Hazardous Materials Report</b>	The hazardous materials site assessment produced by the Design-Builder as part of the Preconstruction Work, and shall include any information regarding Hazardous Materials that the Authority provided to the Design-Builder with respect to the Project.
94.	<b>Intellectual Property Rights</b>	All patents, copyrights, trademarks, service marks, trade secrets and all similar and related intellectual property rights protected under any Applicable Law.
95.	<b>Nonconforming Work</b>	Work performed that does not meet the requirements of the Contract Documents.
96.	<b>NTE Amount</b>	The not-to-exceed amount applicable to the compensation payable for Preconstruction Work, as agreed prior to DBA execution.
97.	<b>Preconstruction Phase</b>	The Project phase beginning upon execution of the DBA and continuing until the Amendment/NTP is executed or the Authority exercises its right to terminate this Design-Build Agreement during which Preconstruction Work will be performed.
98.	<b>Preconstruction Work</b>	All work necessary in connection with the preparation and finalization of the Amendment/NTP. For clarity, the Preconstruction Work shall not include any Construction Work authorized by an executed Work Package Authorization.
99.	<b>Professional Standard of Care</b>	The standard of care in accordance with Alabama Code § 41-9A-3(d)(1) requiring the design professional to perform the services with the professional skill and care ordinarily provided by a competent design professional practicing under the same or similar circumstances and professional licenses as expeditiously as is prudent considering the ordinary professional skill and care of a competent design professional.
100.	<b>Project Management Plan</b>	The project management plan developed by the Design-Builder as part of the Preconstruction Work and Approved by the Authority.
101.	<b>Public Records Law</b>	Alabama Code §36-12-40 et seq., as amended

102.	<b>Punch List</b>	The list of Work items which remain to be completed after achievement of Substantial Completion, generally limited to minor incidental items of Work necessary to correct imperfections that have no adverse effect on safety or operability and will not require lane closures to complete.
103.	<b>Quality Management Plan</b>	The quality management plan developed by the Design-Builder as part of the Preconstruction Work and Approved by the Authority.
104.	<b>Reference Documents</b>	The documents identified in Volume III of the RFQ/RFP.
105.	<b>ROW</b>	The land use rights already owned or to be acquired by the Authority to make up the Site.
106.	<b>Site</b>	The parcels of ROW upon which the Project is to be constructed or to be used in connection with the Construction Work (including utility adjustments), which shall include the permanent ROW for the Project identified in the ROW Drawings and any other permanent or temporary rights or interests that the Authority or the Design-Builder may acquire for performance of the Construction Work.
107.	<b>Subcontract</b>	Any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between the Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
108.	<b>Subcontractor</b>	Any person or entity with whom the Design-Builder has entered into any Subcontract, and any other person or entity with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
109.	<b>Supplemental Agreement</b>	A written amendment to the terms and conditions of the Contract Documents issued in accordance with the DBA.
110.	<b>Technical Provisions</b>	The Technical Provisions, dated as of the Effective Date, as amended by a Work Package Authorization, Amendment/NTP or Supplemental Agreement.
111.	<b>Technical Standards</b>	The standards for performance of work included by reference in the Technical Provisions (which may by reference incorporate the Authority Standard Specifications or Special Provisions).
112.	<b>Utility or utility</b>	A privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other products that directly or indirectly serve the public. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any service line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service line. The term "Utility" shall specifically exclude privately owned irrigation facilities,

		existing storm water facilities, traffic signals and street lights, without regard to whether or not such items are included in the definition of "Utility" in the Utility Agreements.
113.	<b>Utility Agreement</b>	An agreement made between the Authority and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project.
114.	<b>Utility Owner</b>	The owner or operator of any Utility.
115.	<b>Work</b>	All duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including the administrative, design, engineering, quality control, quality assurance, relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, civil rights compliance, materials, equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by the Authority or other persons or entities. In certain cases the term is also used to mean the products of the Work. For clarity, the Work includes the Preconstruction Work and the Construction Work.
116.	<b>Work Limits</b>	The Construction Limits, together with all office or other space required to be provided and maintained by the Design-Builder in connection with the Work, such as co-located office space for Preconstruction Work and Project field offices.