



DESIGN-BUILD AGREEMENT

I-35E PHASE 2 PROJECT

between

TEXAS DEPARTMENT OF TRANSPORTATION

and

[DB CONTRACTOR]

Dated as of: _____, 20__

DALLAS COUNTY

**DESIGN-BUILD AGREEMENT
I-35E PHASE 2 PROJECT**

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DESIGN-BUILD AGREEMENT

I-35E PHASE 2 PROJECT

This Design-Build Agreement (this “**DBA**”), dated as of [●] (the “**Effective Date**”), is entered into by and between:

TxDOT Texas Department of Transportation, a public agency of the State of Texas

And

DB Contractor: [●], a:

[Insert appropriate bracketed text, and delete all bracketed text that is not applicable][corporation organized and existing under the laws of the State of [●]]

[limited liability company (“LLC”) organized and existing under the laws of the State of [●]]

[partnership, consisting of [insert partner names and any organizational form]]

[joint venture, consisting of [●] and [●]]

[an individual or sole proprietorship owned by [●]]

the location of whose principal office is:

[Address]

[Address].

RECITALS

A. Pursuant to Transportation Code, Chapter 223, Subchapter F (the “**Code**”), TxDOT is authorized to enter into design-build contracts to facilitate private sector participation in the development of the State’s transportation system.

B. TxDOT wishes to enter into an agreement with DB Contractor to design and construct an approximately 6.3 mile section of interstate highway (“IH”) 35E from I-635 to the Denton County line (the “**Project**”). In addition, TxDOT wishes to enter into an agreement with DB Contractor to, at TxDOT’s sole discretion, maintain the Project for specified optional terms.

C. Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the “**Rules**”), TxDOT issued a Request for Qualifications (as amended, the “**RFQ**”) on May 20, 2020.

D. TxDOT received four qualification statements on June 25, 2020 and subsequently shortlisted three proposers.

E. On October 20, 2020 TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the “**RFP**”) to design and construct and maintain the Project.

F. [Include appropriate option.][On or before [March 29, 2021] (the “**Proposal Due Date**”), TxDOT received [●] responses to the RFP, including the response of DB Contractor (the “**Proposal**”).] [On or before [March 29, 2021] (the “**Proposal Due Date**”), TxDOT received one response to the RFP, and that response of DB Contractor

(the “**Proposal**”) was independently evaluated to confirm and validate that (1) the project procurement delivered value for the public investment; and (2) no anticompetitive practices were involved in the procurement.]

G. An RFP evaluation committee comprised of TxDOT personnel determined that DB Contractor was the proposer that best met the selection criteria set forth in the RFP and that the Proposal provided the best value to the State of Texas.

H. On [●] the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this DBA.

I. Concurrently with the execution of this DBA, TxDOT and DB Contractor are entering into a Capital Maintenance Contract (“**CMC**”) for DB Contractor to provide Maintenance Services for the Project.

J. This DBA and the other Contract Documents collectively constitute a design-build contract, as contemplated under the Code and the Rules, and are entered into in accordance with the provisions of the RFP.

K. The Executive Director of TxDOT has been authorized to enter into this DBA pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order, dated [●].

L. The Parties intend for this DBA to be a lump sum design-build agreement obligating DB Contractor to perform all work necessary to achieve completion of the Work by the Completion Deadlines specified herein for the Price, subject only to certain specified limited exceptions. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of cost overruns, this DBA includes restrictions affecting DB Contractor’s ability to make claims for increases to the Price or extensions of the Completion Deadlines. DB Contractor has agreed in this DBA to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Price.

M. If DB Contractor fails to complete the Project in accordance with the Completion Deadlines set forth in the Contract Documents, then TxDOT and the members of the public represented by TxDOT will suffer substantial losses and damages. The Contract Documents provide that DB Contractor shall pay TxDOT Liquidated Damages and Qualifying Delay Late Fees if such completion is delayed.

N. The Reference Information Documents include a basic preliminary design for the Project (the “**Schematic Design**”). DB Contractor may use the Schematic Design as the basis for the design to be furnished by DB Contractor, subject to the terms, conditions and limitations of the Contract Documents. DB Contractor will assume full responsibility and liability with respect to the design of the Project.

NOW, THEREFORE, in consideration of the sums to be paid to DB Contractor by TxDOT, the Work to be performed by DB Contractor, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

SECTION 1. CONTRACT

1.1 Abbreviations

The following abbreviations, when used in the Contract Documents, shall have the meanings set forth below.

DBA	Design-Build Agreement
CMA	Capital Maintenance Agreement

CMC	the Capital Maintenance Agreement and the CMA General Conditions, including all exhibits attached thereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC.
ETCS	Electronic Toll Collection System

Abbreviations used in the Contract Documents but not otherwise defined in this DBA shall have the meaning set forth in Section 1.1 of the General Conditions. If any abbreviation set forth above is also included in Section 1.1 of the General Conditions, to the extent such definitions conflict, the abbreviation in Section 1.1 of the General Conditions is hereby amended by the abbreviation set forth above.

1.2 Definitions

The following terms, when used in the Contract Documents, shall have the meanings set forth below.

Aesthetics and Landscaping Plan	means the plan DB Contractor prepares in conformance with the Project's final aesthetic concept as more particularly described in Section 23.1.2 of the Design-Build Specifications.
Basic Configuration	has the meaning set forth in <u>Exhibit 1</u> to this DBA.
Capital Maintenance Agreement	means that certain Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project.
Capital Maintenance Contract Documents or CMC Documents	has the meaning set forth in Section 1.2 of the Capital Maintenance Agreement.
Certificate of Toll Zone Work Section Milestone Completion	means a certificate issued by TxDOT indicating that DB Contractor has satisfied all of the conditions set forth in <u>Section 2.1.2.2</u> for Toll Zone Work Section Milestone Completion on a Toll Zone Work Section.
Certificate of Toll Zone Work Section Opening Readiness	means the certificate issued by TxDOT indicating that DB Contractor and the Systems Integrator have satisfied all of the conditions set forth in <u>Section 2.1.2.3</u> , and it is acceptable for tolling operations to commence on and traffic to be shifted to the applicable Toll Zone Work Section.
City of Carrollton Reimbursable Utility Adjustments	means all Utility Adjustments required by the improvement of IH 35E (including any Utility Adjustments performed along IH 35E or along stub outs on roadways intersecting IH 35E) for City of Carrollton Utilities. The Utility Adjustment Work associated with City of Carrollton Reimbursable Utility Adjustments shall be included in the Work and the Price, pursuant and subject to Section 4.5 of the General Conditions, as amended pursuant to <u>Exhibit 24</u> to this DBA.
City of Carrollton Utilities	means all Utilities owned by the City of Carrollton.
City of Carrollton Utility Agreement	means the utility adjustment agreement between TxDOT and the City of Carrollton with respect to the performance of Utility Adjustment Work for City of Carrollton Utilities.

City of Dallas Reimbursable Utility Adjustments	means all Utility Adjustments required by the improvement of IH 35E (including any Utility Adjustments performed along IH 35E or along stub outs on roadways intersecting IH 35E) for City of Dallas Utilities. The Utility Adjustment Work associated with City of Dallas Reimbursable Utility Adjustments shall be included in the Work and the Price, pursuant and subject to Section 4.5 of the General Conditions, as amended pursuant to <u>Exhibit 24</u> to this DBA.
City of Dallas Utilities	means all Utilities owned by the City of Dallas.
City of Dallas Utility Agreement	means the utility adjustment agreement between TxDOT and the City of Dallas with respect to the performance of Utility Adjustment Work for City of Dallas Utilities.
City of Farmers Branch Reimbursable Utility Adjustments	means all Utility Adjustments required by the improvement of IH 35E (including any Utility Adjustments performed along IH 35E or along stub outs on roadways intersecting IH 35E) for City of Farmers Branch Utilities. The Utility Adjustment Work associated with City of Farmers Branch Reimbursable Utility Adjustments shall be included in the Work and the Price, pursuant and subject to Section 4.5 of the General Conditions, as amended pursuant to <u>Exhibit 24</u> to this DBA.
City of Farmers Branch Utilities	means all Utilities owned by the City of Farmers Branch.
City of Farmers Branch Utility Agreement	means the utility adjustment agreement between TxDOT and the City of Farmers Branch with respect to the performance of Utility Adjustment Work for City of Farmers Branch Utilities.
City of Irving Reimbursable Utility Adjustments	means all Utility Adjustments required by the improvement of IH 35E (including any Utility Adjustments performed along IH 35E or along stub outs on roadways intersecting IH 35E) for City Irving Utilities. The Utility Adjustment Work associated with City of Irving Reimbursable Utility Adjustments shall be included in the Work and the Price, pursuant and subject to Section 4.5 of the General Conditions, as amended pursuant to <u>Exhibit 24</u> to this DBA.
City of Irving Utilities	means all Utilities owned by the City of Irving.
City of Irving Utility Agreement	means the utility adjustment agreement between TxDOT and the City of Irving with respect to the performance of Utility Adjustment Work for City of Irving Utilities.
City Reimbursable Utility Adjustments	means the City of Carrollton Reimbursable Utility Adjustments, the City of Dallas Reimbursable Utility Adjustments, the City of Farmers Branch Reimbursable Utility Adjustments and the City of Irving Reimbursable Utility Adjustments.
City Utilities	means the City of Carrollton Utilities, the City of Dallas Utilities, the City of Farmers Branch Utilities and the City of Irving Reimbursable Utility Adjustments.
City Utility Agreements	means the City of Carrollton Utility Agreement, the City of Dallas Utility Agreement, the City of Farmers Branch Utility Agreement and the City of Irving Utility Agreement.
City Utility Owners	means the City of Carrollton, the City of Dallas, the City of Farmers Branch and the City of Irving.
Code	has the meaning set forth in <u>Recital A</u> to this DBA.
Contract Documents	has the meaning set forth in <u>Section 1.3</u> of this DBA.

DB Contractor or Design-Build Contractor	means _____, a _____, together with its successors and assigns.
Delay Deductible Aggregate Cap	has the meaning set forth in <u>Section 6.11</u> of this DBA.
Design-Build Agreement	has the meaning set forth in the preamble hereof.
Design-Build Specifications	means the Design-Build Specifications, items 10-30 included in the RFP.
Differing Site Conditions	means (a) man-made subsurface or man-made latent conditions of an unusual nature, (b) subsurface or surface natural physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract Documents, (c) an Abandoned Utility that is a water or wastewater Utility 18 inches in diameter or greater; or (d) an Abandoned Utility that is a Utility duct bank with 4 or more conduits. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography unless the variance causes a change greater than 20 percent for the combined total of excavation and embankment quantities for the following parcels: None; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities, including Abandoned Utilities (other than as described in clause (c) or (d) above); (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; (vi) any conditions which constitute or are caused by a Relief Event; and (vii) any subsurface or surface conditions that are ascertainable from the information included in the RIDs.
Differing Site Conditions Deductible	has the meaning set forth in <u>Section 6.1</u> of this DBA.
Differing Site Conditions Deductible Cap	has the meaning set forth in <u>Section 6.1</u> of this DBA.
Dispute Resolution Procedures	means the formal process for resolving Disputes described in <u>Section 11.1</u> and <u>Exhibit 20</u> to this DBA. None of the Disputes Review Panel Process and Informal Resolution Procedures are included in the Dispute Resolution Procedures.
DRP Rules	means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding procedures applicable to the resolution of all claims and disputes of every kind or character arising under agreements such as and including the Contract Documents.
Effective Date	has the meaning set forth in the preamble to this DBA.
Electronic Toll Collection System (ETCS)	means the toll collection system to be provided by Systems Integrator, in connection with which DB Contractor provides support and coordination.

Electronic Toll Collection System (ETCS) Element

means an individual component, system, or subsystem of ETCS to be provided by Systems Integrator, and shall include all equipment and cabinetry to be installed by Systems Integrator including the following: overhead equipment in Toll Zone, lane side equipment mounted in Toll Zone, roadside equipment cabinet at Toll Zone, backup power and fuel source at Toll Zone, overhead equipment at ETCS speed / volume detection zone, lane side equipment mounted in ETCS speed / volume detection zone, roadside equipment cabinet at ETCS speed / volume detection zone, overhead equipment at Toll Rate DMS, lane side equipment mounted at Toll Rate DMS, roadside equipment cabinet at Toll Rate DMS.

Eminent Domain Delay

has the meaning set forth in Section 6.5 of this DBA.

Final Acceptance Deadline

has the meaning set forth in Section 2.4.1 of this DBA.

Full Roadway Closure

has the meaning set forth in Section C.1 of Exhibit 15 to this DBA.

General Conditions

has the meaning set forth in Section 1.3.2 of this DBA.

Ineligible Matters

- (i) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;
- (ii) Any claim or dispute that does not arise under the Contract Documents;
- (iii) Any claim that is not actionable against TxDOT by DB Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 4.9 of the General Conditions and Exhibit 20 hereof;
- (iv) Any claim for indemnity under Section 7.12 of the General Conditions;
- (v) Any claim for injunctive relief;
- (vi) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;
- (vii) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;
- (viii) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in Section 4.9 of the General Conditions and Exhibit 20 hereof);
- (ix) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in Section 4.9 of the General Conditions and Exhibit 20 hereof do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in Section 4.9 of the General Conditions and Exhibit 20 hereof apply;
- (x) Any claim for, or dispute based on, remedies expressly created by statute; and
- (xi) Any Dispute that is actionable only against a Surety.

Instructions to Proposers

means the Instructions to Proposers issued by TxDOT on October 20, 2020, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

Key Personnel	means the positions identified in <u>Exhibit 18</u> to this DBA.
Lane Closure	means closure of any traffic lane, or the reduction in width of any traffic lane to less than the widths specified in Section 26.2.1.2 of the Design-Build Specifications, in any portion of the Project or a connecting highway, as applicable, and for any duration, including main lanes, ramps, direct connectors, frontage roads, access roads and cross roads.
Liquidated Damages	means the liquidated damages, including Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, specified in DBA <u>Sections 7.2, 7.3 and 7.4</u> , and General Conditions Sections 8.3.1, 8.7.1.1 and 8.7.2.1.
Maintenance NTP1	has the meaning set forth in Section 1.2 of the CMA.
Maintenance Security	has the meaning set forth in Section 1.2 of the CMA.
Maintenance Services	has the meaning set forth in Section 1.2.2 of the CMA General Conditions.
Managed Lanes	means the tolled managed lanes of IH 35E within the Project limits where operational strategies are proactively implemented and managed in response to changing conditions.
NEPA Approvals	means the TxDOT-Provided Approvals within the "Environmental" folder located in the RIDs.
NTP1 Maximum Payment Amount	means the amount set forth in <u>Section 4.2.2</u> of this DBA.
NTP1 Payment Bond Amount	means the amount set forth in <u>Section 5.1.2</u> of this DBA.
NTP1 Performance Bond Amount	means the amount set forth in <u>Section 5.1.1</u> of this DBA.
NTP2 Payment Bond Amount	means the amount set forth in <u>Section 5.1.4</u> of this DBA.
NTP2 Performance Bond Amount	means the amount set forth in <u>Section 5.1.3</u> of this DBA.
Oncor	means Oncor Electric Delivery Company, LLC.
Oncor Agreements	means the agreements between TxDOT and Oncor that set forth the terms and conditions for the Oncor Transmission Line Relocations, as more particularly described in <u>Section 2.1.3.2</u> of this DBA and as the same may be amended or supplemented from time to time.
Oncor Transmission Line Relocations	means the relocation of the electric transmission lines owned by Oncor as described in the Oncor plans set forth in the RIDs.
Point of Termination	means the point where an electrical circuit or communications link terminates into a specific piece of equipment, further described as the final point of termination for power or communications required to operate a device.
Preliminary Exhibit A	means an approved Exhibit A for Work, involving railroad property, that is either included in the Reference Information Documents folders titled "Railroad Documents" or is approved by the applicable railroad after the Effective Date.
Pre-Proposal Utility Commitment	<i>[include if there are any Pre-Proposal Utility Commitments]</i> [means each commitment made by a Utility Owner that is included in <u>Exhibit 23</u> to this DBA.]

Price	means the price set forth in <u>Section 4.1</u> of this DBA, as it may be modified from time to time in accordance with the express provisions of the DBC.
Project	has the meaning set forth in <u>Recital B</u> to this DBA.
Project Overhead Percentage	means 8.5% (eight and one half percent).
Proposal	has the meaning set forth in <u>Recital F</u> to this DBA.
Proposal Due Date	has the meaning set forth in <u>Recital F</u> to this DBA.
Railroad Agreement Delay	has the meaning set forth in <u>Section 6.10.2.1</u> of this DBA.
Railroad Agreements	has the meaning set forth in <u>Section 6.10.3</u> of this DBA.
Railroad Documents	means the documents listed in <u>Section 6.10.1</u> of this DBA that are included in a folder labeled "Railroad Documents" in the RIDs.
Reference Information Documents (RID)	means the documents posted to the RID folders for the Project, located at https://portal.txspd.com/l35EP2/main/rfp/default.aspx prior to the Effective Date. An index of the RIDs posted to the RID folder for the Project will be delivered by TxDOT and acknowledged by DB Contractor prior to the Effective Date. Except as otherwise expressly provided in <u>Exhibit 3</u> to this DBA, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.
Remaining Project ROW	means (a) the portion of the Schematic ROW for which DB Contractor shall be responsible for acquisition activities as described in <u>Exhibit 25</u> of this DBA, and (b) the Additional Properties; but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.
Request for Proposals (RFP)	has the meaning set forth in <u>Recital E</u> to this DBA.
Retained Security Amount	has the meaning set forth in Section 5 of <u>Exhibit 4</u> to this DBA.
RFP Documents	means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, the CMC Documents, the Reference Information Documents and any addenda issued in connection therewith.
Request for Qualifications (RFQ)	has the meaning set forth in <u>Recital C</u> to this DBA.
Rules	has the meaning set forth in <u>Recital C</u> to this DBA.
Schematic Design	has the meaning set forth in <u>Recital N</u> to this DBA.
Subcontractor Dispute	has the meaning set forth in <u>Exhibit 20</u> to this DBA.
Substantial Completion Deadline	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.
Switch Period	means the period shown as "Switch" on Table 26-2 in Section 26.2.1.7 of the Design-Build Specifications.
Systems Integrator (SI)	means the contractor, under separate contract to TxDOT, which shall design, construct, furnish, install, integrate, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and other ETCS equipment necessary for the toll systems to be fully operational.

Systems Integrator Coordination Work	means the DB Contractor coordination responsibilities listed in Item 29 of the Design-Build Specifications, Attachment 29-1 (Toll Facility Responsibility Matrix), Item 30 of the Design-Build Specifications and Attachment 30-1 (Managed Lane Facility Responsibility Matrix), which shall apply through Final Acceptance.
Systems Integrator Delay	means a material delay to the Critical Path due solely to the failure of Systems Integrator to complete its work within the timeframe set forth in Section 2.1.2.1(b) and Table 2.1 following the provision by DB Contractor to TxDOT and Systems Integrator of all notices related to anticipated Toll Zone Work Section Milestone Completions as set forth in <u>Section 2.1</u> .
Time Period	means Time Period A, Time Period B, Time Period C, Time Period D or Switch Period, as applicable
Time Period A	means the period shown as “A” on Table 26-1 and “SB-A” and “NB-A” on Table 26-2 in Section 26.2.1.7 of the Design-Build Specifications.
Time Period B	means the period shown as “B” on Table 26-1 and “SB-B” and “NB-B” on Table 26-2 in Section 26.2.1.7 of the Design-Build Specifications.
Time Period C	means the period shown as “C” on Table 26-1 and “SB-C” and “NB-C” on Table 26-2 in Section 26.2.1.7 of the Design-Build Specifications.
Time Period D	means the period shown as “D” on <u>Exhibit 15</u> , and as set forth in Table 26-1 and Table 26-2 in Section 26.2.1.7 of the Design-Build Specifications.
Toll Rate DMS	means a large sign with three single line DMS modules used primarily to display dynamic toll rates.
Toll Zone	means the zone within which a toll transaction takes place for each direction of traffic at a single geographic location, in connection with which DB Contractor shall provide required infrastructure for the ETCS and coordination services with Systems Integrator and TxDOT.
Toll Zone Work	means all work which is required in accordance with <u>Section 2.1.2.2</u> of this DBA and identified as the responsibility of DB Contractor in Item 29 of the Design-Build Specifications, Attachment 29-1 (Toll Facility Responsibility Matrix), Attachment 29-2 (Typical Toll Zone Layout), Attachment 29-3 (Toll Zone Pavement Details), Attachment 29-4 (Toll Gantry Requirements), Attachment 29-5 (Equipment Pad Details), Attachment 29-6 (Typical Temporary Toll Zone Layout), Item 30 of the Design-Build Specifications, Attachment 30-1 (Managed Lane Facility Responsibility Matrix), and Attachment 30-2 (Typical Details ETCS Speed/Volume Detection And Toll Rate DMS Sites).
Toll Zone Work Section	means a section of the Managed Lanes (existing, permanent or temporary) which shall consist of a combination of Toll Zone(s) (as applicable) and their associated Toll Rate DMS and ETCS speed/volume detection sites in accordance with DB Contractor’s Traffic Control Plan. All elements that are part of a Toll Zone Work Section shall be noted by phase and stage of DB Contractor’s Traffic Control Plan.
Toll Zone Work Section Milestone Completion	means, with respect to a Toll Zone Work Section, the occurrence of all of the events and satisfaction of all of the conditions set forth in <u>Section 2.1.2.2</u> of this DBA, as and when confirmed by TxDOT’s issuance of a Certificate of Toll Zone Work Section Milestone Completion.

Toll Zone Work Section Opening Readiness	means, with respect to a Toll Zone Work Section, the occurrence of all of the events and satisfaction of all of the conditions set forth in <u>Section 2.1.2.3</u> of this DBA, as and when confirmed by TxDOT’s issuance of a Certificate of Toll Zone Work Section Opening Readiness.
TxDOT-Directed Changes	means (a) any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work, which TxDOT has directed DB Contractor to perform as described in and subject to the limitations in Section 4.6.1.2 of the General Conditions), (b) suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 8.4.1 of the General Conditions, (c) any changes in the Work due to Errors in the Signed and Sealed Engineering Data, unless such Errors were known to the DB Contractor prior to the Effective Date, and (d) any material differences between the actual location of a Utility and the location of the Utility shown on a level A SUE report identified in <u>Exhibit 3</u> of the DBA as described in Section 4.6.9.2.3 of the General Conditions, unless such Error was known to DB Contractor prior to the Effective Date. Notwithstanding the foregoing, TxDOT shall not be liable for any changes in the scope of Work that result in less than \$10,000 in increased costs and such changes shall not be considered TxDOT-Directed Changes.
TxDOT-Provided Approvals	means the approvals set forth in the table in <u>Section 3.1</u> of this DBA.
Unidentified Utilities Deductible	has the meaning set forth in <u>Section 6.4</u> of this DBA.
Unidentified Utilities Deductible Cap	has the meaning set forth in <u>Section 6.4</u> of this DBA.
Utility Adjustment	means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously Abandoned Utilities as well as of newly Abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance or use of the Project, including the City Reimbursable Utility Adjustments and Oncor Transmission Line Relocations; <u>provided, however</u> , that the term “ Utility Adjustment ” shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

Capitalized terms used in the Contract Documents but not otherwise defined in this DBA shall have the meaning set forth in Section 1.2 of the General Conditions. If any definition set forth above is also included in Section 1.2 of the General Conditions, to the extent such definitions conflict, the definition in Section 1.2 of the General Conditions is hereby amended by the definition set forth above.

1.3 Contract Documents and Order of Precedence

The term “**Contract Documents**” shall mean the documents listed in this Section 1.3. The Contract Documents form this “**contract**” for the performance of the Work.

1.3.1 Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement.

1.3.2 In the event of a conflict among the Contract Documents, the following order of precedence shall govern the interpretation of such documents:

1. Amendments and Change Orders to the Design-Build Contract, including all exhibits and attachments thereto;
2. This DBA, including all exhibits hereto, except Exhibit 2 (DB Contractor's Proposal Commitments and ATCs);
3. TxDOT's Design-Build Agreement General Conditions, Items 1-9 dated as of [●] (the "**General Conditions**");
4. Change Orders to the Design-Build Specifications;
5. Exhibit 2 (DB Contractor's Proposal Commitments and ATCs) to this DBA;
6. The Design-Build Specifications; and
7. Released for Construction Documents to be developed in accordance with the Contract Documents, provided that (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist between the Released for Construction Documents and the other Contract Documents with respect to requirements of the Released for Construction Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (c) any Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other Contract Documents to the extent that the conflicts are specifically identified to TxDOT by DB Contractor and such Deviations are approved by TxDOT in writing.

1.3.3 Notwithstanding the order of precedence among Contract Documents set forth in Section 1.3.2, in the event and to the extent that Exhibit 2 (or parts thereof) expressly states that it supersedes specific provisions of the Contract Documents (including approved deviations expressly listed in Exhibit 2), such provisions shall control over the provisions specified as superseded. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains statements, offers, terms, concepts or designs that TxDOT considers to be more advantageous than the requirements of the other Contract Documents, DB Contractor's obligations hereunder shall include compliance with all such statements, offers, terms, concepts or designs, that shall have the priority of DBA amendments, Design-Build Specifications amendments and General Conditions amendments, as applicable.

1.3.4 Additional details and requirements contained in a lower priority Contract Document will control except to the extent they irreconcilably conflict with the requirements of the higher level Contract Document.

1.3.5 Notwithstanding the order of precedence among Contract Documents set forth in Section 1.3.2, if a Contract Document contains differing provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion,

requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT, in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.3.6 In the event of any conflict, ambiguity or inconsistency between the Project Management Plan and any of the Contract Documents, the latter shall take precedence and control.

1.3.7 DB Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Effective Date, to review the terms and conditions of the Contract Documents (including those Reference Information Documents that are referenced in the Contract Documents, and pursuant to Section 1.4.1, are considered Contract Documents) and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. DB Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person that prepared them, and, instead, other rules of interpretation and construction shall be used.

1.4 Reference Information Documents

1.4.1 Portions of the Reference Information Documents are explicitly referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The Reference Information Documents shall be deemed incorporated in the Contract Documents solely to the extent that they are so referenced, with the same order of priority as the Contract Document in which the reference occurs; provided, however, that DB Contractor shall only be entitled to rely on portions of the Reference Information Documents for increases to the Price and extensions of Completion Deadlines to the extent identified in Exhibit 3.

1.4.2 TxDOT has provided and disclosed the Reference Information Documents to DB Contractor. Except as provided in Section 1.4.1, (a) the Reference Information Documents are not mandatory or binding on DB Contractor and (b) DB Contractor is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the Contract Documents, Governmental Approvals or Law.

1.4.3 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any DB Contractor-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents, except any schedule or monetary relief available under the Contract Documents as set forth in Section 4.6 of the General Conditions.

1.4.4 Except as provided in Section 1.4.1, TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. DB Contractor shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

SECTION 2. SCOPE OF WORK

2.1 Project Scope; Special Terms and Conditions

2.1.1 Project Scope

DB Contractor shall perform the services and execute the Work as described in the Contract Documents. The Work includes all design, engineering, procurement, construction and other services and items that are necessary or appropriate to design, construct, execute and complete the Project in conformance with the Basic Configuration as set forth in the Schematic Design and otherwise in accordance with the requirements of the Contract Documents.

2.1.2 Special Terms and Conditions

2.1.2.1. Toll Zone Work Scheduling and General Requirements

- (a) DB Contractor shall complete all Work necessary (excluding work to be performed by Systems Integrator) to maintain two reversible Managed Lanes open to traffic and operational as required to maintain a closed toll collection system and as described in Exhibit 15 hereto and Items 29 and 30 of the Design-Build Specifications in order to permit TxDOT to continually maintain revenue operations of the Managed Lanes during construction. Additionally, phasing plans for infrastructure for each ETCS element associated with each Toll Zone Work Section shall be submitted by DB Contractor as part of its TCP in accordance with Item 26 of the Design-Build Specifications, for review and approval by TxDOT in its good faith discretion, which descriptions shall include all related components and elements needed to be completed in each construction phase to make the applicable Toll Zone Work Section operational upon completion. Once the phasing plans for infrastructure for each ETCS element associated with each Toll Zone Work Section have been approved by TxDOT, such Toll Zone Work Sections shall become binding upon DB Contractor for purposes of the requirements set forth in this Section 2.1.2.

- (b) Table 2.0 below sets forth the timing for required notices to TxDOT and the Systems Integrator with respect to Toll Zone Work Section Milestone Completions. Table 2.1 sets forth the timing for the number of days that the Systems Integrator requires to complete its scope of work after notice of the applicable Toll Zone Work Section Milestone Completion. With respect to each Toll Zone Work Section, DB Contractor shall provide written notice to TxDOT and the Systems Integrator in advance of the scheduled date upon which a Toll Zone Work Section Milestone Completion is expected to occur according to Task 1 of Table 2.0. With respect to the scheduled duration of work to be performed by the Systems Integrator set forth in lines (1) through (5) of Table 2.1, the days shall begin upon the first Business Day after the Systems Integrator has been notified by the DB Contractor of the issuance of a Certificate of Toll Zone Work Section Milestone Completion for a particular Toll Zone Work Section.

Table 2.0

Task	Description	Advance Notification
1	DB Contractor shall provide advance notification to TxDOT and SI for Toll Zone Work Section Milestone Completion	45 days
2	DB Contractor shall provide advance notification to TxDOT for each Toll Zone Work Section Opening Readiness	20 days

Table 2.1

Task	Description	Duration
1	SI duration for equipment removal (existing and temporary) at Toll Zone sites and associated Speed/Volume detection and Toll Rate DMS sites for each Toll Zone Work Section	14 days*
2	SI duration for installation, integration and testing of each temporary Toll Zone site and one associated Toll Rate DMS site for each Toll Zone Work Section	30 days*
3	SI duration for installation, integration and testing of each permanent Toll Zone site and one associated Toll Rate DMS site for each Toll Zone Work Section	30 days*
4	SI duration for installation of each additional associated Toll Rate DMS site (not included in Task 2 or Task 3 above) for each Toll Zone Work Section	5 days*
5	SI duration for installation of permanent Speed/Volume detection devices per site for each Toll Zone Work Section	5 days*
6	SI duration for full toll system integration and end-to-end testing inclusive of all devices within project limits	20 days

* Duration shall be per site (i.e. Toll Zone or Toll Rate DMS or Speed/Volume detection). If there are multiple Toll Zones, Speed/Volume detection or Toll Rate DMS sites within a Toll Zone Work Section, the total duration shall be increased appropriately by number of sites in accordance with Table 2.1.

- (c) In addition to the other activities required to be included in the Project Schedule pursuant to Section 8.5.2 of the General Conditions, DB Contractor shall incorporate the Toll Zone Work Section Milestone Completion dates for each Toll Zone Work Section and those items set forth in Table 2.1 into the Project Baseline Schedule. DB Contractor acknowledges and agrees that it is responsible for the Systems Integrator Coordination Work. DB Contractor shall meet with Systems Integrator to ensure Systems Integrator’s scheduled tasks, dependencies, and durations are accurately incorporated. DB Contractor shall share the Project Schedule with Systems Integrator so that Systems Integrator can incorporate the Project Schedule and track the Project progress.
- (d) In addition to meeting the other requirements set forth in the Contract Documents, the PBS2 narrative described in Section 8.5.3.2 of the General Conditions shall describe the plan and approach to tolling, including interfaces and coordination with Systems Integrator for Toll Zone Work.
- (e) The minimum work breakdown structure requirements for the Project Baseline Schedule set forth on Attachment 8-1 to the General Conditions shall include Toll Zone Work Section Milestone Completion as described in Section 2.1.2.2(b).
- (f) DB Contractor shall achieve Toll Zone Work Section Opening Readiness for all Toll Zone Work Sections and otherwise complete all Toll Zone Work on or before Substantial Completion. Section 5.11.2 of the General Conditions is hereby amended by adding the following as a new subsection (h) thereto: “Whether DB Contractor has completed all Toll Zone Work and satisfied all conditions to Toll Zone Work Section Opening Readiness for all Toll Zone Work Sections.”

2.1.2.2. Toll Zone Work Section Milestone Completion

- (a) DB Contractor shall complete the Toll Zone Work for each Toll Zone Work Section, including all milestones set forth in Section 2.1.2.2(b) and associated ETC and DMS in accordance with this Section 2.1.2.2 and Items 29 and 30 of the Design-Build Specifications. DB Contractor shall coordinate and provide full and continuous unobstructed access to Systems Integrator so that Systems Integrator is able to perform its work once a Certificate of Toll Zone Work Section Milestone Completion has been issued for any Toll Zone Work Section. Work to be completed by Systems Integrator after each Toll Zone Work Section Milestone Completion shall consist of installation, integration and testing of ETCS and ETCS elements and illustrated as the responsibility of Systems Integrator in Item 29 of the Design-Build Specifications, Attachment 29-1 (Toll Facility Responsibility Matrix), Attachment 29-2 (Typical Toll Zone Layout), Attachment 29-3 (Toll Zone Pavement Details), Attachment 29-4 (Toll Gantry Requirements), Attachment 29-5 (Equipment Pad Details), Attachment 29-6 (Typical Temporary Toll Zone Layout), Item 30 of the Design-Build Specifications, Attachment 30-1 (Managed Lane Facility Responsibility Matrix), and Attachment 30-2 (Typical Details ETCS Speed/Volume Detection And Toll Rate DMS Sites).
- (b) As set forth in line (1) of Table 2.0, DB Contractor shall provide TxDOT and Systems Integrator 45 days' advance notice of the date upon which DB Contractor anticipates achieving each Toll Zone Work Section Milestone Completion. During such 45-day period, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's orderly, timely inspection and review of the Toll Zone Work and the applicable Record Drawings and Construction Documents, and TxDOT's issuance of a Certificate of Toll Zone Work Section Milestone Completion. The Toll Zone Work Section Milestone Completion shall be deemed to have occurred upon DB Contractor's satisfactory completion of the milestones described in this Section 2.1.2.2(b) as evidenced by TxDOT's issuance of a Certificate of Toll Zone Work Section Milestone Completion. The milestones shall include:
- (i) Toll Zone progress milestones:
- Toll gantry foundation constructed
 - Toll gantry column constructed
 - Toll gantry trusses installed
 - Barrier installed
 - Maintenance driveways constructed
 - Pavement for Toll Zone locations constructed
 - Lane striping within the Toll Zone limits complete
 - Support infrastructure for toll operation constructed in accordance with System Integrator's specifications
 - Electrical conductor and tolling communication conduit installed
 - Electrical conductor and tolling communication ground boxes installed
 - Grounding systems installed at each gantry as soon as gantry construction is complete
 - Lightning protection installed at each gantry as soon as gantry construction is complete and lightning protection certification submitted to TxDOT
 - Pads and riprap for equipment cabinets, generators, and fuel tanks installed
 - Site construction complete including the completion of all activities illustrated as the responsibility of the DB Contractor in Item 29 of the Design-Build Specifications, Attachment 29-1 (Toll Facility Responsibility Matrix), Attachment 29-2 (Typical Toll Zone Layout), Attachment 29-3 (Toll Zone Pavement Details), Attachment 29-4 (Toll Gantry Requirements), Attachment 29-5 (Equipment Pad Details), Attachment 29-6 (Typical Temporary Toll Zone Layout)

- Electrical Service installed, commercial power to each Toll Zone and ETCS Element complete and operational
 - Tolling communication cable installed and tested to support tolling network
- (ii) ETCS speed / volume detection equipment milestones:
- Overhead sign support structure and mounting hardware for ETCS speed / volume detection devices installed
 - Pads and riprap for equipment cabinets, generators, and fuel tanks installed
 - Electrical conductor and tolling communication cable conduit installed
 - Electrical conductor and tolling communication cable ground boxes installed
 - Site construction complete at each ETCS speed / volume detection location
 - Electrical service to site installed, commercial power to site complete and operational
 - Tolling communication cable installed, spliced, and tested to support ETCS speed / volume detection network
 - Site construction complete including the completion of all activities illustrated as the responsibility of the DB Contractor in Item 30 of the Design-Build Specifications, Attachment 30-1 (Managed Lane Facility Responsibility Matrix), and Attachment 30-2 (Typical Details ETCS Speed/Volume Detection and Toll Rate DMS Sites)
- (iii) Toll Rate DMS milestones:
- Toll rate sign (foundation, sign support structure and static portion of sign) installed
 - Pads and riprap for equipment cabinets, generators, and fuel tanks installed
 - Electrical conductor and tolling communication cable conduit installed
 - Electrical conductor and tolling communication ground boxes installed
 - Roadside site construction complete, including the completion of all activities illustrated as the responsibility of the DB Contractor in Item 30 of the Design-Build Specifications, Attachment 30-1 (Managed Lane Facility Responsibility Matrix), Attachment 30-2 (Typical Details ETCS Speed/Volume Detection and Toll Rate DMS Sites)
 - Electrical Service installed, commercial power to site complete and operational
 - Tolling communication cable installed, spliced, and tested to support tolling speed / volume detection network.
- (c) With respect to each Toll Zone Work Section, during the 45-day period under Section 2.1.2.2(b), TxDOT shall conduct (i) an inspection of the Toll Zone Work, including all milestones described in Section 2.1.2.2(b), (ii) a review of the applicable Record Drawings and Construction Documents, (iii) such other investigation as may be necessary to evaluate whether the Toll Zone Work Section Milestone Completion is achieved, and (iv) meet with DB Contractor to exchange information about the status of any outstanding Toll Zone Work related to such Toll Zone Work Section.
- (d) With respect to each Toll Zone Work Section, DB Contractor shall provide TxDOT a second written notification when DB Contractor determines it has achieved Toll Zone Work Section Milestone Completion. Within five days after expiration of the 45-day period and TxDOT's receipt of the second notification, TxDOT shall either (i) issue the Certificate of Toll Zone Work Section Milestone Completion or (ii) notify DB Contractor in writing setting forth, as applicable, why the Toll Zone Work Section has not reached Toll Zone Work Section Milestone Completion. If TxDOT and DB Contractor cannot agree as to the date of the Toll Zone Work Section Milestone Completion, such Dispute shall be resolved according to the procedures for resolving Disputes set forth in this Design-Build Contract. Upon TxDOT's issuance of a Certificate of Toll Zone Work Section Milestone Completion, DB Contractor shall promptly notify the Systems Integrator thereof, and the time period for the Systems

Integrator's completion of its scope of work for the purposes of determining whether a Systems Integrator Delay has occurred shall commence upon the next Business Day.

2.1.2.3. Toll Zone Work Section Opening Readiness

- (a) With respect to each Toll Zone Work Section, upon the completion by the Systems Integrator of its scope of work, TxDOT shall promptly notify DB Contractor thereof.
- (b) With respect to each Toll Zone Work Section, DB Contractor shall provide written notice to TxDOT 20 days prior to completion of the conditions to Toll Zone Work Section Opening Readiness set forth in this Section 2.1.2.3. During this 20-day period, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's orderly and timely inspection and review of the entire Toll Zone Work Section to confirm all equipment and facilities are operational prior to shifting traffic onto the applicable Toll Zone Work Section. Toll Zone Work Section Opening Readiness shall occur upon satisfactory completion of the following requirements by DB Contractor and Systems Integrator as evidenced by TxDOT's issuance of a Certificate of Toll Zone Work Section Opening Readiness:
 - Systems Integration completed, tested, and accepted at all Toll Zones and associated ETCS speed/volume detection zones, and/or Toll Rate DMS within the Toll Zone Work Section to be opened to traffic
 - All gates and safety appurtenance installed, tested, and operational in accordance with Item 25 by DB Contractor
- (c) With respect to each Toll Zone Work Section, DB Contractor shall provide TxDOT a second written notification when DB Contractor determines it has achieved Toll Zone Work Section Opening Readiness. Within five days after expiration of the 20-day period and TxDOT's receipt of the second notification, TxDOT shall either (i) issue the Certificate of Toll Zone Work Section Opening Readiness or (ii) notify DB Contractor in writing setting forth, as applicable, why the Toll Zone Work Section has not reached Toll Zone Work Section Opening Readiness.

2.1.3 Special Utility Provisions

2.1.3.1. DB Contractor acknowledges that the Price includes the following cost responsibility for Utility Adjustments in accordance with Texas Transportation Code § 203.092 as determined by the project type. Specifically, on highways on the National System of Interstate and Defense Highways where the relocation is eligible for federal participation, DB Contractor is responsible for 100% of eligible cost of Adjustments for both Owner-Managed and DB Contractor Managed Utility Agreements. Utility Adjustments on this Project are eligible for federal participation. Notwithstanding anything to the contrary herein, if any of the City Utility Owners elects not to use DB Contractor to perform the applicable Utility Adjustments, DB Contractor shall not be responsible for paying directly to such City Utility Owner the costs of such Utility Adjustment, and TxDOT and DB Contractor will enter into a reductive Change Order removing such Utility Adjustments from the Work and decreasing the Price as set forth in Exhibit 24 to this DBA.

2.1.3.2. Oncor Transmission Line Relocations

(a) The provisions set forth in this Section 2.1.3.2 shall apply to the Oncor Transmission Line Relocation Utility Adjustment Work, and to the extent of any conflict between these provisions and the rest of the Contract Documents, this Section 2.1.3.2 shall control. Except to the extent of any conflict as described in the immediately preceding sentence, all other provisions of the Contract Documents shall apply to the Oncor Transmission Line Relocations.

(b) TxDOT has entered into the Oncor Agreements and, subject to Section 2.1.3.2(j) of this DBA, DB Contractor shall not be responsible for preparing or entering into any Utility Agreements with respect to the Oncor Transmission Line Relocations. DB Contractor hereby assumes all TxDOT's responsibilities under the Oncor Agreements and shall comply with and timely perform all obligations imposed on TxDOT by the Oncor Agreements; provided, however, that TxDOT shall remain responsible for paying the costs of (i) any reimbursements to Oncor that are payable under the Oncor Agreements for the Oncor Transmission Line Relocations and (ii) all Utility Adjustment Work required to be performed by TxDOT or its agent under the Oncor Agreements.

(c) DB Contractor shall be responsible for causing, in accordance with the Project Schedule and each Oncor Agreement, all Utility Adjustment Work for the Oncor Transmission Line Relocations necessary to accommodate the design and construction of the Project. All Utility Adjustment Work related to the Oncor Transmission Line Relocations shall comply with (i) the Adjustment Standards in effect as of the Proposal Due Date, together with any subsequent amendments and additions to those standards that are necessary to conform to applicable Law, or are adopted by Oncor and affect the applicable Utility Adjustment pursuant to the applicable Oncor Agreement, (ii) all applicable Laws, (iii) the applicable Oncor Agreement, and (iv) all other requirements specified in Item 14 of the Design-Build Specifications.

(d) TxDOT shall make reasonable efforts to enforce the Oncor Agreements against Oncor and to cause Oncor to perform its obligations under the Oncor Agreements.

(e) If a conflict occurs between the terms of any Oncor Agreement and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between DB Contractor and TxDOT.

(f) DB Contractor shall not enter into any agreement with Oncor with respect to the Oncor Transmission Line Relocations that purport to bind TxDOT in any way, unless TxDOT has executed such agreement as a party thereto.

(g) If DB Contractor performs or furnishes Utility Adjustment Work that was initially anticipated to be performed or furnished by Oncor under an Oncor Agreement, DB Contractor shall, to the extent that TxDOT is able to recover such cost from Oncor, be entitled to reimbursement from TxDOT for the actual cost to DB Contractor to perform such Utility Adjustment Work, provided that such cost is documented in a manner satisfactory to TxDOT.

(h) DB Contractor shall not be entitled to any time extension on account of the terms of the Oncor Agreements (including those related to any Betterment) and DB Contractor shall bear 100% of the risk of Critical Path delays caused by Oncor's failure to timely comply with the requirements of the Oncor Agreements. Further, "Utility Owner Delay" shall not include any delay attributable to Oncor's failure to cooperate with DB Contractor with respect to the Oncor Transmission Line Relocations.

(i) DB Contractor shall not be entitled to any increase in the Price or time extensions as a result of any increase in the extent, change in the character, or difference of the cost of the Utility Adjustment Work necessary for the Oncor Transmission Line Relocations from that anticipated in the Oncor Agreements.

(j) Notwithstanding anything to the contrary in this Section 2.1.3.2, if for any reason, one of the transmission lines that is the subject of an Oncor Agreement must be relocated in a manner that is different from that set forth in the applicable Oncor Agreement, DB Contractor shall be solely responsible for such Utility Adjustment Work, including all costs and schedule impacts related thereto, and DB Contractor shall be obligated to enter into a Utility Agreement with Oncor for such work, and shall comply with all other requirements applicable to Utility Adjustments as set forth in the Contract Documents.

2.1.3.3. Utility Adjustment Work

The General Conditions are hereby amended by the provisions set forth in Exhibit 24 to this DBA.

2.1.4 Obligations After Final Acceptance

DB Contractor's obligations prior to Final Acceptance shall be in accordance with the Contract Documents, including the maintenance requirements set forth in Item 27 of the Design-Build Specifications. DB Contractor's obligations after Final Acceptance shall be subject to the following requirements:

DB Contractor shall be responsible for the General Warranty obligations set forth in Section 3.8 of the General Conditions.

The Contract Documents are hereby amended by the provisions set forth in Exhibit 4 to this DBA. In addition to the General Warranty obligations set forth in this Section 2.1.4, DB Contractor shall be obligated to perform the Maintenance Services and all other obligations as set forth in the CMC Documents set forth in Exhibit 4 to this DBA and the QAP for DB Projects.

2.1.5 Project Schedule Requirements Amendments

The General Conditions are hereby amended as follows: (a) the seventh bullet under Section 8.5.2(b) of the General Conditions, is amended and restated to read as follows: "Include a monthly contract administration activity for schedule monitoring", and (b) Section 9.4.1(f) of the General Conditions is amended and restated to read as follows: "An amount equal to the monthly contract administration activity for schedule monitoring described in Section 8.5.2(b) for DB Contractor's failure to either address comments on a Project Schedule Submittal to TxDOT's satisfaction or submit a required Project Schedule in accordance with the Contract Documents; and".

2.2 DB Contractor's Proposal Commitments

DB Contractor's Proposal Commitments are as set forth in Exhibit 2, Appendix 1.

2.3 DB Contractor's ATCs

DB Contractor's approved ATCs for the Project are as set forth in Exhibit 2, Appendix 2.

2.4 Completion Deadlines

2.4.1 Deadlines for Project Completion

The Completion Deadlines for the Project are as set forth below, as such may be adjusted by Change Order pursuant to the General Conditions.

MILESTONE	COMPLETION DEADLINE
Substantial Completion Deadline	NTP1 plus [●] Days
Final Acceptance Deadline	Date of Substantial Completion plus 120 Days

2.4.2 Time is of the Essence

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

2.4.3 No Time Extension

Except as specifically provided in Section 4.6 of the General Conditions, TxDOT shall have no obligation to extend a Completion Deadline, and DB Contractor shall not be relieved of its obligation to comply with the Project Schedule and meet the Completion Deadlines for any reason.

2.5 Job Training Plan

DB Contractor's approved Job Training Plan for the Project is set forth in Exhibit 5 to this DBA. The OJT program trainee goal for this project is 22 for trainees described in Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions.

2.6 DBE Goals

The Parties acknowledge that the Project is (or may be) funded with federal funds and the approved DBE participation goals for the Project are established as 12.5% of the Price less the cost of (a) Professional Services performed by Utility Owners and (b) Construction Work performed by Utility Owners.

2.7 DBE Performance Plan

The Parties acknowledge that the Project is (or may be) funded with federal funds and DB Contractor's approved DBE Performance Plan for the Project is set forth in Exhibit 6 to this DBA.

2.8 Prevailing Wages

DB Contractor shall pay, or cause to be paid, to all applicable workers employed by it or its Subcontractors performing the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 7 to this DBA.

2.9 Project-Specific NTPs

Authorization for DB Contractor to proceed with Work under this Contract shall be provided through TxDOT's issuance of NTP1 and NTP2 as set forth in Section 8.1 of the General Conditions, except to the extent that any additional or optional Notices to Proceed or differing conditions to NTP1 or NTP2 are set forth below.

SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS

3.1 TxDOT-Provided Approvals

TxDOT is responsible for all of the TxDOT-Provided Approvals set forth below.

APPROVAL	DATE
Original IH35E Environmental Assessment FHWA Finding of No Significant Impact (FONSI)	December 28, 2011
Reevaluation of IH35E Environmental Assessment FONSI	February 25, 2014
Reevaluation of IH35E Environmental Assessment FONSI	November 19, 2014
Reevaluation of IH35E Environmental Assessment FONSI	March 4, 2020

3.1.1 TxDOT retains responsibility for obtaining all TxDOT-Provided Approvals (based on the Schematic Design) that TxDOT has not obtained as of the Effective Date.

3.1.2 All conditions and requirements of the TxDOT-Provided Approvals shall automatically be deemed included in the scope of the Work.

3.2 Project Specific Third Party Agreements

3.2.1 As described in Item 13 of the Design-Build Specifications, TxDOT has Third Party Agreements, including agreements with local Governmental Entities along the Project corridor that define the requirements for construction, maintenance and operation of traffic signals, illumination and roadway maintenance, and that specify the local Governmental Entities responsibilities and TxDOT's responsibilities with respect to the requirements. In accordance with Item 13 of the Design-Build Specifications, DB Contractor will assume and execute TxDOT's responsibilities and duties as defined in such Third Party Agreements to the extent set forth in Exhibit 8 to this DBA.

3.2.2 The following draft Third Party Agreements that have not been fully executed as of the Proposal Due Date are included in the RIDs: None. DB Contractor's obligations with respect to such Third Party Agreements are set forth in Exhibit 8 to this DBA. In the event changes in a final, executed Third Party Agreement from the draft Third Party Agreement that was included in the RIDs includes terms and conditions resulting in a material change to DB Contractor's obligations, DB Contractor shall be entitled to a Change Order to the extent set forth in Section 4.6.9.3.2(h) of the General Conditions.

SECTION 4. COMPENSATION

4.1 Price

As full compensation for performance of the Work and all other obligations of DB Contractor under the Contract Documents, TxDOT shall pay DB Contractor the lump sum price of \$[●] ("Price"), which shall be subject to adjustment in accordance with the Design-Build Contract. The Price shall be increased or decreased only by a Change Order issued in accordance with Section 4.6 of the General Conditions and Section 6 of this DBA. Payments shall be made in accordance with the terms and conditions of the General Conditions.

4.2 Limitations on Payments

4.2.1 Maximum Payment Schedule

The Maximum Payment Schedule for the Project is set forth in Exhibit 10 to this DBA.

4.2.2 NTP1 Maximum Payment Amount

The “NTP1 Maximum Payment Amount” is \$25,000,000.

4.3 Price Adjustment Due to Delay in NTP1

4.3.1 TxDOT anticipates that it will issue NTP1 concurrently with or shortly after execution and delivery of this DBA, but shall have the right in its sole discretion to defer issuance. If the effective date of NTP1 is more than 180 days after the Proposal Due Date, and such delay in issuing NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, the Price will be adjusted by adding the following (which amount may not be less than zero) to the Price:

$$\Delta = N * (\text{Price}) * ((A-B)/B)/T$$

where:

“Δ” is the adjustment amount distributed on a *pro rata* basis over the remaining payments on the Maximum Payment Schedule;

“N” is the number of days in the period starting 180 days after the Proposal Due Date and ending on the effective date of NTP1;

“A” is the ENR Construction Cost Index (CCI) value published for the effective date of NTP1;

“B” is the CCI published for the month that contains the day that is N +15 days prior to the 15th day of the month that contains the effective date of the NTP1; and

“T” is the number of days between the 15th of the month for which the CCI value for “A” was taken and the 15th of the month for which the CCI value for “B” was taken.

4.3.2 If a Change Order is issued during the period starting 180 days after the Proposal Due Date and ending on the effective date of NTP1, the price of the Change Order, if any, shall be adjusted based on the date that the Change Order is approved to the effective date of NTP1 using the formula set forth in Section 4.3.1 above, with “B” being the CCI for the month in which the Change Order is approved.

4.3.3 If NTP1 has not been issued on or before 365 days after the Effective Date, the Parties may mutually agree to terms allowing an extension in time for issuance of NTP1 and adjustment of the Price. DB Contractor shall provide evidence satisfactory to TxDOT, meeting the requirements of Section 4.6.5 of the General Conditions, justifying the amount of any Price increase. If the delay in issuance of NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, and DB Contractor does not wish to negotiate an extension, or if the Parties fail to reach agreement in accordance with this Section 4.3.3, then DB Contractor’s sole remedy shall be to terminate this Contract in accordance with Section 8.9.9 of the General Conditions.

4.3.4 DB Contractor shall not be entitled to any increase in the Price or extension of the Completion Deadlines, nor shall DB Contractor have a right to terminate this Contract, with respect to any delay in issuance of NTP1 due to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity.

SECTION 5. PERFORMANCE SECURITY

5.1 Bonds

With respect to DB Contractor's obligation to provide payment, performance and warranty bonds to TxDOT in accordance with Section 3.4 of the General Conditions, the following terms and conditions shall apply:

5.1.1 The "NTP1 Performance Bond Amount" is \$25,000,000.

5.1.2 The "NTP1 Payment Bond Amount" is \$25,000,000.

5.1.3 The "NTP2 Performance Bond Amount" is \$*[insert the portion of the Price allocable to Construction Work less the portion of the price allocable to Construction Work performed by Utility Owners]*.

5.1.4 The "NTP2 Payment Bond Amount" is \$*[insert the portion of the Price allocable to Construction Work less the portion of the price allocable to Construction Work performed by Utility Owners]*

5.1.5 Each bond and each rider required pursuant to Section 3.4 of the General Conditions shall be provided in the applicable form set forth in Exhibit 12 to this DBA.

5.2 Guaranty

5.2.1 As of the Effective Date, a Guaranty:

is not required; *or*

in the form attached to this DBA as Exhibit 13 shall be delivered and maintained in accordance with this Section 5.2 and the requirements of the Design-Build Contract, and the following shall be the Guarantor(s): _____

5.2.2 Each Guaranty assures performance of DB Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of this Design-Build Contract and so long as DB Contractor has any obligations under the Contract Documents.

5.2.3 DB Contractor shall report the Tangible Net Worth of DB Contractor, its Equity Members and Guarantors, if any, to TxDOT, on or before each anniversary of the Effective Date by means of audited financial statements of DB Contractor, its Equity Members and any Guarantors, and on a quarterly basis during the Term by means of certifications by the CFOs of the DB Contractor, its Equity Members and any Guarantors.

5.2.4 If at any time during the course of this DBA, the total combined Tangible Net Worth of DB Contractor, its Equity Members (as applicable) and any Guarantors, is less than \$125,000,000, DB Contractor shall provide one or more guarantees from a Guarantor acceptable to TxDOT so that the combined Tangible Net Worth of DB Contractor, its Equity Members (as applicable) and any Guarantors is at least \$125,000,000. Each such Guaranty shall be in the form attached as Exhibit 13, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations.

5.3 Insurance Special Provisions

[Except as is otherwise specified in this Section 5.3,] DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance coverage in accordance

with Section 3.5 of the General Conditions, and in accordance with the insurance policies, coverage, deductibles and limits specified therein.

SECTION 6. CHANGE ORDERS

6.1 Differing Site Conditions

DB Contractor shall be entitled to an increase in the Price or an extension of a Completion Deadline due to Differing Site Conditions only as provided in Section 4.6.9.1 of the General Conditions and this Section 6.1.

The “**Differing Site Conditions Deductible**” for the Project is the first \$0 in additional Reimbursable Differing Site Conditions Costs.

The “**Differing Site Conditions Deductible Cap**” for the Project is an aggregate \$0 for all Differing Site Conditions Deductibles borne by DB Contractor.

6.2 Relief Events

The terms “Force Majeure Events” and “Other Relief Events” shall have the meanings set forth in the General Conditions unless otherwise specified in this Section 6.2.

6.2.1 Section 4.6.9.3.2 of the General Conditions is hereby amended to add the following as a new subsection (j): “(j) Systems Integrator Delay”.

6.3 Hazardous Materials

DB Contractor shall be entitled to a Price increase or an extension of a Completion Deadline due to Hazardous Materials only as provided in Section 4.6.9.4 of the General Conditions and subject to Section 4.6 of the General Conditions, unless otherwise specified in this Section 6.3.

6.3.1 Reimbursable Amount

In accordance with Section 4.6.9.4.1 of the General Conditions, and subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as compensation for (a) 50% of DB Contractor’s Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed \$5,000,000 but do not exceed \$8,000,000, (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed \$8,000,000, and (c) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

6.3.2 Time Extensions

DB Contractor shall be entitled to an extension of a Completion Deadline due to Hazardous Materials only as provided in Section 4.6.9.4.2 of the General Conditions and subject to Section 4.6 of the General Conditions, unless otherwise specified in this Section 6.3.2.

6.4 Utilities

6.4.1 Unidentified Utilities

The “**Unidentified Utilities Deductible**” for the Project is, for each facility, the first \$50,000 of Basic Costs for the Utility Adjustment due to an Unidentified Utility.

The “**Unidentified Utilities Deductible Cap**” for the Project is an aggregate \$50,000 for all Unidentified Utilities Deductibles borne by DB Contractor.

DB Contractor shall be entitled to a Change Order with respect to certain additional Direct Costs and delays relating to Utility Adjustments, as specified in Section 4.5 of the General Conditions and subject to the restrictions and limitations set forth in Section 4.5 of the General Conditions and in Section 4.6 of the General Conditions, unless otherwise specified in this Section 6.4.

6.4.2 Not Used

6.4.3 [Pre-Proposal Utility Commitments]

[[Include if there are any Pre-Proposal Utility Commitments for the Project][Exhibit 23 to the DBA includes Pre-Proposal Utility Commitments concerning certain Utility Adjustments that are necessary for the Project. If the final executed PUA or UAA for the adjustment of a Utility that is the subject of a Pre-Proposal Utility Commitment includes material changes to the scope of the work for the Utility Adjustment from the scope of the work agreed to by the Utility Owner in the Pre-Proposal Utility Commitment, DB Contractor may request a Change Order for certain costs and for delays to the Critical Path resulting from such changed scope of the work for the Utility Adjustment to the extent permitted by this Section 6.4.3. If TxDOT, in its good faith discretion, issues a Change Order, the Change Order shall be in the amount of the incremental increase in DB Contractor’s Direct Costs and disruption damages, if any, incurred as a result of the changed scope of work. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. DB Contractor’s entitlement to a Change Order is subject to the following:

- a. DB Contractor shall notify TxDOT immediately if DB Contractor reasonably believes that the Utility Owner would not undertake or permit the Utility Adjustment(s) in a manner consistent with the scope of work in the Pre-Proposal Utility Commitment and the timely completion of the Project, in order to provide TxDOT with a reasonable opportunity to assist in resolving the dispute or in otherwise obtaining the Utility Owner’s timely cooperation with the Pre-Proposal Utility Agreement.
- b. DB Contractor’s Request for Change Order must document and prove the changes to the scope of work in the Pre-Proposal Utility Commitment and that the scope of work in the Pre-Proposal Commitment was agreed to in good faith between DB Contractor and the Utility Owner.
- c. DB Contractor shall not be entitled to a Change Order for any changes to the scope of work for a Utility Adjustment if the scope of work includes additional work or higher standards than are required by the Utility Accommodation Rules.
- d. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.
- e. Any Request for Change Order submitted pursuant to this Section 6.4.3 shall be subject to approval by TxDOT in its good faith discretion.]

6.4.4 Not Used

6.4.5 [Amendments to General Conditions Regarding Utilities]

6.4.5.1. [Section 4.6.3.1.1(c) of the General Conditions is hereby deleted in its entirety and replaced with the following:]

[(c) delays relating to Utilities, to the extent permitted by Sections 4.5.1, 4.5.5 and 4.6.9.2; and Section 6.4.3 of the Design-Build Agreement.]

6.4.5.2. [Section 4.6.3.1.2(c) of the General Conditions is hereby deleted in its entirety and replaced with the following:]

[(c) certain additional costs relating to Utility Adjustment Work, as described in Section 4.5 and Section 4.6.9.2, to the extent provided therein, additional costs for Utility Adjustment Work directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 4.6.9, and certain additional costs relating to agreements with Utilities to the extent provided in Section 6.4.3 of the Design-Build Agreement.]

6.5 Access to Right of Way

DB Contractor shall be entitled to a Change Order for delays to the Critical Path due to failure of TxDOT to make available a portion of the Schematic ROW, or any Additional Properties that must be acquired due to a TxDOT-Directed Change, Force Majeure Event, or a Necessary Basic Configuration Change, described in a condemnation packet within 365 days after approval of the Condemnation Package (“Eminent Domain Delay”), only to the extent provided in Sections 4.4.5.3 and 4.6.9.5 of the General Conditions and subject to the requirements of Section 4.6 of the General Conditions. The risk of any such Eminent Domain Delay, on an individual parcel basis, shall be borne equally by each Party for the first 100 days thereafter (i.e., for each parcel, DB Contractor shall be entitled to one day of time extension for every two days of delay). After the first 100 days following the 365-day period, DB Contractor shall be entitled to one day of time extension for each day of eligible delay.

The Contract Documents are hereby amended by the provisions set forth in Exhibit 25 to the DBA.

6.6 Necessary Basic Configuration Changes

DB Contractor shall be entitled to an increase in the Price due to a Necessary Basic Configuration Change only as provided in Section 4.6.9.6 of the General Conditions and subject to the requirements of Section 4.6 of the General Conditions, unless otherwise specified in this Section 6.6.

6.7 Form of Change Order

Each Request for Change Order and Change Order shall meet the requirements of Section 4.6 of the General Conditions and shall be provided in the applicable form set forth in Exhibit 14 to this DBA.

6.8 DB Contractor Reimbursement for Eminent Domain Assistance

In accordance with Section 4.4.2.1 of the General Conditions, DB Contractor shall be responsible for the performance of support services for the condemnation proceedings described in Item 15 of the Design-Build Specifications for any parcels within the Schematic ROW that require acquisition by eminent domain. DB Contractor shall be entitled to reimbursement for DB Contractor’s reasonable out-of-pocket costs of providing such services up to the maximum amounts set forth in Exhibit 11 to this DBA.

6.9 Not Used

6.10 Railroad Agreements

DB Contractor shall be entitled to an increase in the Price or an extension of a Completion Deadline due to delays and changes in DB Contractor's obligations arising from railroads and railroad agreements only as provided in this Section 6.10.

DB Contractor shall perform the Work in compliance and conformity with all construction and maintenance agreements and Preliminary Exhibit As for the Project and shall be responsible for the performance of TxDOT's obligations under the construction and maintenance agreement, except to the extent a construction and maintenance agreement or Preliminary Exhibit A requires modification due to an ATC included in Appendix 2 to Exhibit 2 or due to DB Contractor's design. In such event, DB Contractor shall be responsible for obtaining the required modifications to the construction and maintenance agreement or Preliminary Exhibit A in accordance with Section 6.10.2.1. In the event of a conflict between an approved Preliminary Exhibit A or construction and maintenance agreement and the Design-Build Specifications, the approved Preliminary Exhibit A or construction and maintenance agreement shall govern and control.

6.10.1 Railroad Documents

The following documents ("Railroad Documents") were included in a folder labeled "Railroad Documents" in the Reference Information Documents prior to the Proposal Due Date: *[Exhibit As, railroad term sheet(s) or other document(s) that DB Contractor is entitled to rely upon to be added]*. If the final executed version of a construction and maintenance agreement with a railroad contains conditions or requirements that differ materially from those contained in the applicable Railroad Documents pertaining to that railroad, and such changed conditions or requirements (a) have a material negative cost or schedule impact on DB Contractor's obligations under the Contract Documents, and (b) were not caused by the acts or omissions of DB Contractor, including modifications to the Schematic Design or the Railroad Documents that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order for certain costs and for delays to the Critical Path resulting from such material changes in conditions and requirements to the extent permitted by this Section 6.10.1. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs to comply with the changed conditions or requirements. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.2.3 and Section 4.6.6.3.

6.10.2 Railroad Agreement Delay

6.10.2.1. TxDOT shall be responsible for negotiating and entering into construction and maintenance agreements necessary for the Schematic Design, provided that DB Contractor shall be responsible for cooperating and coordinating with TxDOT, including by providing any schematics, plans or other information within 14 days of a request by TxDOT or the railroad for such schematics, plans or other information. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor shall be responsible for obtaining any approvals from railroads or agreements with railroads, including construction and maintenance agreements or modifications thereto, that are necessary to implement an ATC included in Appendix 2 to Exhibit 2 or are due to DB Contractor's design. The term "Railroad Agreement Delay" means a delay to a Critical Path that is directly attributable to the failure of TxDOT and a railroad to execute a construction and maintenance agreement within the time periods set forth in this Section 6.10.2.1, as applicable. DB Contractor shall be entitled to a time extension extending affected Completion Deadlines for delays to the Critical Path and increasing the Price for certain additional costs incurred directly attributable to a Railroad Agreement Delay as follows:

(a) In the event a Preliminary Exhibit A (draft or final) pertaining to the applicable construction and maintenance agreement was included in the RIDs prior to the Proposal Due Date, then DB Contractor shall be entitled to a time extension extending the applicable Completion Deadlines for any Railroad Agreement Delay if the

construction and maintenance agreement is not executed within 270 days after the Effective Date. For Change Orders extending a Completion Deadline in accordance with this Section 6.10.2.1(a), DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2 of the General Conditions. Except to the extent that this Section 6.10.2.1(a) allows compensation for Project Overhead, Change Orders under this Section 6.10.2.1(a) shall not include compensation for delay or disruption damages.

(b) If a Preliminary Exhibit A (draft or final) pertaining to the applicable construction and maintenance agreement was not included in the RIDs prior to the Proposal Due Date, then DB Contractor shall be entitled to a time extension extending the applicable Completion Deadlines for any Railroad Agreement Delay where the construction and maintenance agreement is not executed within 270 days after the Effective Date. For Change Orders extending a Completion Deadline in accordance with this Section 6.10.2.1(b), DB Contractor shall be entitled to delay and disruption damages, including Project Overhead to the extent permitted by Section 4.6.6.2 of the General Conditions.

6.10.2.2. DB Contractor shall not be entitled to any relief for Railroad Agreement Delays unless the delays and the effects of such delays are beyond the control of the DB Contractor-Related Entities and are not due to (1) changes in the DB Contractor's design from the Preliminary Exhibit A, (2) failure by DB Contractor to timely provide information requested by TxDOT or the railroad, or (3) any other act, omission, negligence, recklessness or intentional misconduct of or breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities.

6.10.2.3. No Change Order for delay to a Critical Path shall be allowable pursuant to Section 6.10.2.1 unless all of the following criteria are met:

(a) the general requirements and conditions for Change Orders set forth in Section 4.6 of the General Conditions, including Sections 4.6.6.2.3 and 4.6.6.3, have been met;

(b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that DB Contractor took advantage of Float time available early in the Project Schedule with respect to the affected railroad;

(c) DB Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct the applicable work; and

(d) no other circumstance exists that would delay the affected railroad related work even if the construction and maintenance agreement was obtained.

6.10.3 [Compliance with Railroad Agreements]

[The following agreement[s] between TxDOT and the railroad[s] ("Railroad Agreement[s]") [was][were] included in the Reference Information Documents prior to the Proposal Due Date: [construction and maintenance agreement(s) to be added]. If a railroad fails to comply with any material terms and conditions of its Railroad Agreement, and such breach by the railroad (a) has a material adverse impact on DB Contractor's obligations under the Contract Documents, and (b) were not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design or the Railroad Agreement that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order increasing the Price for certain costs and extending applicable Completion Deadlines for delays to the Critical Path directly attributable to the railroad's failure to comply with the Railroad Agreement to the extent permitted by this Section 6.10.3. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs for the material adverse changes to its obligations. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section

4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Sections 4.6.6.2.3 and 4.6.6.3.]

6.11 Delay Deductible Aggregate Cap

The "Delay Deductible Aggregate Cap" for the Project is 365 days for all Delay Deductibles borne by DB Contractor.

SECTION 7. FEES; LIQUIDATED DAMAGES

7.1 Fees for Early Issuance of NTP2

TxDOT may condition any early issuance of NTP2 pursuant to Section 8.1.1.6 of the General Conditions upon payment by DB Contractor to TxDOT the amount of \$1,000 for each day during the period that NTP2 has been issued and any condition to NTP2 remains unsatisfied.

7.2 Liquidated Damages and Fees Respecting Delays

7.2.1 The amounts of any Liquidated Damages for Delay for which DB Contractor may be liable pursuant to Section 8.7.1.1 of the General Conditions shall be as follows:

- (a) \$100,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days;
- (b) \$25,000 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

7.2.2 The amounts of any Qualifying Delay Late Fees for which DB Contractor may be liable pursuant to Section 8.7.1.2 of the General Conditions shall be as follows:

- (a) \$50,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed the Delay Deductible Aggregate Cap;
- (b) \$12,500 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

7.2.3 DB Contractor acknowledges that the liquidated damages and fees described in this Section 7.2 are reasonable in order to compensate TxDOT for damages it will incur as a result of late completion of the Project or portions thereof as set forth in this Section 7.2 and Section 8.7 of the General Conditions.

7.3 Liquidated Damages for Lane Closures and Lane Rental Charges

The Liquidated Damages for Lane Closures and Lane Rental Charges for which DB Contractor may be liable pursuant to Section 8.7.2 of the General Conditions shall be as set forth in Exhibit 15 to this DBA. DB Contractor acknowledges and agrees that such Liquidated Damages for Lane Closures and Lane Rental Charges are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures.

7.4 Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages

7.4.1 Key Personnel Change Fees

As deemed compensation to TxDOT for Losses described in Section 8.3.1.4 of the General Conditions, DB Contractor agrees to pay to TxDOT the following Key Personnel Change Fees amounts in accordance with such section. The Key

Personnel Change Fees shall be assessed in the amounts set forth below for changes to Key Personnel during the periods described below. Each period shall be determined by the progress percentages which are calculated by dividing the DB Contractor's earned to date amount set forth in the most recent Draw Request by the Price.

POSITION	KEY PERSONNEL CHANGE FEES			
	PERIOD 1 (0%-40% Progress Percentage)	PERIOD 2 (40%-60% Progress Percentage)	PERIOD 3 (60%-80% Progress Percentage)	PERIOD 4 (80%-100% Progress Percentage)
Project Manager	\$150,000	\$150,000	\$75,000	\$75,000
Construction Manager	\$150,000	\$150,000	\$75,000	\$75,000
Design Manager	\$150,000	\$75,000	\$75,000	\$37,500
Lead Maintenance of Traffic (MOT) Engineer	\$150,000	\$150,000	\$75,000	\$75,000
Independent Quality Firm Manager	\$150,000	\$150,000	\$150,000	\$150,000
Professional Services Quality Assurance Manager	\$150,000	\$75,000	\$75,000	\$37,500

7.4.2 Key Personnel Unavailability Liquidated Damages

As deemed compensation to TxDOT for Losses described in Section 8.3.1.5 of the General Conditions, DB Contractor agrees to pay to TxDOT the following Key Personnel Unavailability Liquidated Damages amounts in accordance with such section, for each day that the relevant Key Personnel role is not filled by an approved individual:

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)
Project Manager	\$10,000
Construction Manager	\$10,000
Design Manager	\$10,000
Lead Maintenance of Traffic (MOT) Engineer	\$10,000
Independent Quality Firm Manager	\$10,000

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)
Professional Services Quality Assurance Manager	\$10,000

7.5 Additional Acknowledgements Regarding Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges

DB Contractor further agrees and acknowledges that:

7.5.1 As of the Effective Date, the amounts of Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges set forth herein represent good faith estimates and evaluations by the Parties as to the actual potential damages that TxDOT would incur as a result of DB Contractor’s act or omission, and do not constitute a penalty.

7.5.2 DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

7.5.3 The Parties have agreed to Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges in order to fix and limit DB Contractor’s costs and to avoid later Disputes over what amounts of damages are properly chargeable to DB Contractor.

7.5.4 Such sums are reasonable in light of the anticipated or actual harm caused, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

7.6 Noncompliance Points

The performance of the Work will not be subject to noncompliance points.

SECTION 8. IDENTIFIED SUBCONTRACTORS AND KEY PERSONNEL

8.1 Identified Subcontractors

Identified Subcontractors for the Project are all team members identified in the Proposal as set forth in Exhibit 17 to this DBA.

8.2 Key Personnel

Key Personnel positions for the Project, and the approved individuals filling such Key Personnel roles as of the Effective Date, are as set forth in Exhibit 18 to this DBA. TxDOT requires the ability to contact certain Key Personnel, as specified in Exhibit 18, 24 hours per day, seven days per week.

SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES

9.1 Notices and Communications

9.1.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication or posted to TxDOT's SharePoint site for the Project with receipt confirmed by telephone and followed by a hard copy, to the addresses set forth in this Section 9.1, as applicable (or to such other address as may from time to time be specified in writing by such Person).

9.1.2 All notices, correspondence and other communications to DB Contractor shall be delivered to the following address or as otherwise directed by DB Contractor's Authorized Representative:

[DB Contractor / Firm Name]
[Address]
[Address]
Attention: [Name]
Telephone: [●]
E-mail: [●]

In addition, copies of all notices to proceed and suspension, termination and default notices shall be delivered to the following Persons:

[Firm Name]
[Address]
[Address]
Attention: [Name]
Telephone: [●]
E-mail: [●]

9.1.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the I-35E Phase 2 Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Dallas District
4777 E. Highway 80
Mesquite, TX 75170-6643
Attention: Mo Bur, P.E.
Telephone: (214) 320-6100
E-mail: mo.bur@txdot.gov

With a copy to:

Texas Department of Transportation
Project Finance, Debt & Strategic Contracts Division
125 East 11th Street
Austin, Texas 78701
Attention: Mr. Benjamin Asher
Telephone: (512) 463-8611
E-mail: benjamin.asher@txdot.gov

In addition, copies of all notices regarding Disputes, termination and default notices shall be delivered to the following:

Texas Department of Transportation
General Counsel Division
125 East 11th Street
Austin, Texas 78701
Attention: Jack Ingram
Telephone: (512) 463-8630
E-mail: jack.ingram@txdot.gov

9.2 Designation of Representatives

9.2.1 TxDOT and DB Contractor shall each designate Authorized Representative(s) who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Exhibit 19 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 9.1.

9.2.2 The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the administration, design and construction of the Project and negotiate on behalf of each of the Parties, but who do not have authority to bind TxDOT or DB Contractor.

SECTION 10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties

DB Contractor represents and warrants that:

10.1.1 During all periods necessary for the performance of the Work, DB Contractor and all Subcontractors will maintain all required authority, license status, professional ability, skills and capacity to perform the Work in accordance with the requirements contained in the Contract Documents.

10.1.2 As of the Effective Date, DB Contractor has evaluated the constraints affecting the Project, including the Schematic ROW limits, as well as the conditions of any TxDOT-Provided Approvals, and has reasonable grounds for believing and does believe that the Project can be administered, designed and constructed within such constraints.

10.1.3 DB Contractor has evaluated the feasibility of performing the Work within the Completion Deadlines and for the Price, accounting for constraints affecting the Project and has reasonable grounds for believing and does believe that such performance (including meeting all Completion Deadlines for the Price) is feasible and practicable.

10.1.4 Except as to parcels that TxDOT lacked title or access to prior to the Proposal Due Date, DB Contractor, in accordance with Good Industry Practice, examined or had the opportunity to examine the Site and surrounding locations, performed or had the opportunity to perform appropriate field studies and geotechnical investigations of the Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species affecting the Site or surrounding locations; and as a result of such opportunity for review, inspection, examination and other activities, DB Contractor is familiar with and accepts the physical requirements of the Work, subject to DB Contractor's rights to seek relief under Section 4.6 of the General Conditions. Before commencing any Work on a particular portion or aspect of the Project, DB Contractor shall verify all governing dimensions of the Site and shall examine all adjoining work (including any Adjacent Work) that may have an impact on

such Work. DB Contractor shall ensure that any Design Documents and Construction Documents furnished as part of the Work accurately depict all governing and adjoining dimensions.

10.1.5 DB Contractor has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this DBA. Except as specifically permitted under Section 4.6 of the General Conditions, DB Contractor shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment or materials not expressly provided for in the Contract Documents. As of the Effective Date, DB Contractor has no reason to believe that any Governmental Approval required to be obtained by DB Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

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

10.1.7 As of the Effective Date, DB Contractor is duly organized as specified in the preamble to this DBA and validly existing under the laws of the state of its organization, and has all requisite power and all required licenses to carry on its present and proposed obligations under the Contract Documents. DB Contractor and, if applicable, each of its members is duly qualified to do business, and is in good standing, in the State of Texas as of the Effective Date, and will remain in good standing throughout the term of the Design-Build Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

10.1.8 The execution, delivery and performance of the Contract Documents to which DB Contractor is (or will be) a party have been (or will be) duly authorized by all necessary [corporate] action [of DB Contractor]; each person executing Contract Documents on behalf of DB Contractor has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of DB Contractor; and the Contract Documents to which DB Contractor is (or will be) a party have been (or will be) duly executed and delivered by DB Contractor.

10.1.9 Neither the execution and delivery by DB Contractor of the Contract Documents to which DB Contractor is (or will be) a party nor the consummation of the transactions contemplated hereby or thereby is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the organizational documents or other governing instruments of DB Contractor.

10.1.10 Each of the Contract Documents to which DB Contractor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of DB Contractor, enforceable against DB Contractor and, if applicable, each member of DB Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

10.1.11 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on DB Contractor that challenges DB Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents to which DB Contractor is a party, or that challenges the authority of the DB Contractor official executing the Contract Documents; and DB Contractor has disclosed to TxDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which DB Contractor is aware.

10.1.12 As of the Proposal Due Date, DB Contractor disclosed to TxDOT in writing all organizational conflicts of interest of DB Contractor and its Subcontractors of which DB Contractor was actually aware; and between the Proposal Due Date and the Effective Date, DB Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to DB Contractor or its Subcontractors identified in its Proposal that have not been approved in writing by TxDOT. For this purpose, organizational conflict of interest has the meaning set forth in the Instructions to Proposers.

10.1.13 At any time a Guaranty is required to be in place pursuant to the Contract Documents, the applicable Guarantor is duly organized, validly existing and in good standing under the laws of the state of its organization, is duly qualified to do business in and is in good standing in the State of Texas, and will remain in good standing for as long as any obligations guaranteed by such Guarantor remain outstanding under the Contract Documents, and each such Guarantor has all requisite power and authority to carry on its present and proposed obligations under the Contract Documents.

10.1.14 At any time a Guaranty is required to be in place pursuant to the Contract Documents, all required approvals have been obtained with respect to the execution, delivery and performance of such Guaranty, and performance of such Guaranty will not result in a breach of or a default under the applicable Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected.

10.1.15 Each Guaranty has been duly authorized by all necessary corporate action, has been duly executed and delivered by each Guarantor, and constitutes the legal, valid and binding obligation of such Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

10.2 Survival of Representations and Warranties

The representations and warranties of DB Contractor contained herein shall survive the expiration or earlier termination of this Contract.

SECTION 11. MISCELLANEOUS PROVISIONS

11.1 Dispute Resolution Procedures

Disputes shall be resolved pursuant to the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code and subject to (i) the procedures set forth in Sections 4.9 and 4.10 of the General Conditions and (ii) the requirements set forth in Exhibit 20 to this DBA.

The Parties' agreement regarding Dispute Resolution Procedures as set forth in this Section 11.1 shall survive expiration or earlier termination of the Term and continue in effect thereafter for so long as either Party has any obligation originating under the Contract Documents.

11.2 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter.

11.3 Severability

If any clause, provision, section or part of the Contract Documents is ruled invalid under Section 11.1 hereof and Sections 4.9 and 4.10 of the General Conditions, or otherwise by a court having proper jurisdiction, then the Parties shall (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

11.4 Survival

DB Contractor's representations and warranties, the dispute resolution provisions contained in Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions, the indemnifications and releases contained in Section 7.12 of the General Conditions, the express rights and obligations of the Parties following termination of this DBA under Section 8.8 and Section 8.9 of the General Conditions, the provisions regarding invoicing and payment under Section 9.3 of the General Conditions, the obligations regarding Final Reconciliation under Section 9.7 of the General Conditions and all other provisions which by their inherent character should survive termination of this DBA and completion of the Work, shall survive the termination of this DBA and completion of the Work. The provisions of Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions shall continue to apply after expiration or earlier termination of this DBA to all Claims and Disputes between the Parties arising out of the Contract Documents.

11.5 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.6 [Joint and Several Liability]

[This Section 11.6 to be included only if DB Contractor is a joint venture.] [Each of the [●], [●] and [●] agree that it is jointly and severally liable for the performance of DB Contractor's liabilities and obligations under the Contract Documents; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of Design-Build Contractor. If any other Party or replacement Party to this DBA is or becomes a joint venture or a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under the Contract Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.]

IN WITNESS WHEREOF, this DBA has been executed as of the date first set forth above.

DB CONTRACTOR:
[DB Contractor]

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Name: [●]

Title: [●]

Date: _____

By: _____

Name: James M. Bass

Title: Executive Director

Date: _____

EXHIBIT 1

PROJECT SCOPE

The Work shall conform to the Basic Configuration and be consistent with the Schematic Design. DB Contractor shall design and construct the Elements described below as the Basic Configuration:

1. the Schematic Design ROW;
2. the number of lanes as set forth in the Schematic Design;
3. the approximate location of ramps as set forth in the Schematic Design;
4. minimum lengths of auxiliary lanes as set forth in the Schematic Design;
5. minimum turn lane storage lengths as set forth in the Schematic Design;
6. reconstruction of IH35E from I-635 to the Denton County Line, approximately 6 miles in length, with minimum limits as shown on the Schematic Design.
 - reconstruction of the existing six general purpose lanes to eight general purpose lanes, with auxiliary lanes(s) between entrance ramps and exit ramps;
 - reconstruction of the existing two Managed Lanes with access ramps to and from the toll managed lanes, including all tolling infrastructure;
 - reconstruction of three to four lane collector-distributors as set forth in the Schematic Design;
 - widening of the existing I-35E bridges over Belt Line Rd and railroad crossings;
 - reconstruction of the existing two lane frontage roads to two lane frontage roads with auxiliary lanes in each direction;
 - reconstruction of undercrossing/overcrossings and associated entrance and exit ramps; and
 - reconstruction of cross streets.

EXHIBIT 2

Appendix 1: DB Contractor's Proposal Commitments

Appendix 2: ATCs

APPENDIX 1 TO EXHIBIT 2

DB CONTRACTOR'S PROPOSAL COMMITMENTS

[To be inserted from Proposal]

No.	Proposal Location	Proposal Commitment
1		
2		
3		
4		
5		

APPENDIX 2 TO EXHIBIT 2

ATCs

The following table lists DB Contractor's Alternative Technical Concepts (ATCs), which are described in further detail in the applicable ATC submittals, that DB Contractor may incorporate into the Project. TxDOT approves the Deviations listed below, subject to satisfaction of any conditions set forth in the approval letters from TxDOT to DB Contractor. Such Deviations, subject to satisfaction of any conditions to approval, expressly supersede any conflicting provisions in the Design-Build Specifications. No other Deviations are permitted in connection with the ATCs. DB Contractor is solely responsible for and bears the schedule and cost risk associated with the implementation or non-implementation of any ATC, including (a) obtaining any third party approvals (including Environmental Approvals and all other Governmental Approvals) required to implement the ATC, (b) the acquisition of any right of way outside the Schematic ROW that is necessary to implement the ATC, and (c) any studies, analyses or further environmental evaluations required to implement the ATC. Moreover, DB Contractor is not entitled to a Change Order for time or money as a result of (i) Site conditions (e.g., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way, or (ii) any delay, inability or cost associated with the acquisition of right of way required to implement the ATC. The ATCs, to the extent utilized by DB Contractor, shall otherwise meet all requirements of the Design-Build Specifications.

ATC No.	ATC Description	Section(s) of the Contract Documents from which Deviations are Permitted	Date of Approval Letter
1.			
2.			
3.			
4.			

EXHIBIT 3

PORTIONS OF REFERENCE INFORMATION DOCUMENTS INCORPORATED IN THE CONTRACT DOCUMENTS FOR PURPOSES OF DB CONTRACTOR RELIEF

- The documents under the folder titled “Utility Strip Map” in the RIDs to the extent set forth in Section 4.5.1 of the General Conditions and Section 4.6.9.2 of the General Conditions.
- The documents under the folder titled “I-35E Phase 2 Geotechnical Information” in the RIDs to the extent set forth in Section 4.6.9.1 of the General Conditions.
- The Preliminary Exhibit As under the folder titled “Railroad Documents” in the RIDs to the extent set forth in Section 6.10 of the DBA.
- The Railroad Documents under the folder titled “Railroad Documents” in the RIDs to the extent set forth in Section 6.10.1 of the of the DBA.
- The Railroad Agreements under the folder titled “Railroad Agreements” in the RIDs to the extent set forth in Section 6.10.3 of the DBA.
- The portions of the Schematic Design that define "Schematic ROW" and the portions of the Schematic Design that define "Basic Configuration" for purposes of a Change Order for Necessary Basic Configuration Changes or for TxDOT's failure to make available a portion of the Schematic ROW, to the extent set forth in Section 4.6.9.6 of the General Conditions and Section 6.5 of the DBA, respectively.
- The following documents constitute the Signed and Sealed Engineering Data for the Project for purposes of a TxDOT-Directed Change:
 - The documents under the folder titled “Right-of-Way-Parcel Legal Descriptions”.
- The following level A subsurface utility engineering (SUE) documents are included in the RIDs:
 - The documents under the folder titled “Utility Strip Map - Level A”.

EXHIBIT 4
CMC AMENDMENTS

As set forth in Section 2.1.4 of the DBA, DB Contractor shall be obligated to perform the Maintenance Services and all other obligations set forth in the Capital Maintenance Agreement. Consequently, the General Conditions are amended as follows: (i) underlined text is hereby added to the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. A new Section 4.6.5.6 is hereby added to the General Conditions as follows:

4.6.5.6 Change Order Affecting Capital Maintenance Agreement

Each Change Order shall be signed by DB Contractor in its capacity as both the DB Contractor under the DBC and the DB Contractor under the CMC. Each Change Order shall state whether a change order will also be required under the CMC as a result of the change in the Work, and the reasons for such change order. If DB Contractor fails to notify TxDOT that a change order will be required under the CMC as required by this Section 4.6.5.6, such failure shall constitute DB Contractor's waiver of any right to seek such a change order.

2. Section 7.6.1.1 of the General Conditions is hereby revised as follows:

7.6.1.1 DB Contractor shall be responsible for maintenance of the Work and the Site in accordance with Item 27 of the Design-Build Specifications. Upon Final Acceptance, TxDOT shall assume the maintenance obligations for the Project; provided, however, DB Contractor shall be responsible for the Maintenance Services pursuant to the terms of the CMC Documents. DB Contractor shall be relieved from responsibility for maintenance of all other portions of the Project except that DB Contractor shall be responsible for (a) maintenance of improvements owned by third parties until control of and maintenance responsibility for such improvements has been formally transferred to the third parties; (b) maintenance of mitigation sites in accordance with the Environmental Compliance and Mitigation Plan required by Section 4.2.4.2 and any other extended maintenance responsibilities set forth in the Design-Build Specifications; and (c) maintenance within any work zones that DB Contractor implements during the performance of corrective Work in accordance with the Warranty under Section 3.8. This Section 7.6.1.1 shall not apply to, or limit, DB Contractor's obligations under the CMC Documents.

3. A new Subsection 8.8.1.1(r) is added to the General Conditions as follows:

(r) An Event of Default under the CMC Documents.

4. A new Subsection 8.8.1.2(e) is added to the General Conditions as follows:

(e) Respecting a DB Contractor Default under clause (r) of Section 8.8.1.1, any cure period permitted under the terms of the CMC Documents.

5. A new Section 9.4.3 is added to the General Conditions as follows:

9.4.3 Withholding for Maintenance Security

TxDOT shall retain from the Final Payment, and if it reasonably appears there will be insufficient funds at Final Payment, from progress payments, an amount equal to the initial penal sum of the Maintenance Performance Bond required pursuant to Section 3.2.3 of the CMA General Conditions, calculated as of the date of Substantial Completion (the "Retained Security Amount"), as security for the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions. DB Contractor shall have the option at any time to deliver an irrevocable letter of credit equal to the Retained Security Amount in lieu of the retained sums in a form and on terms acceptable to TxDOT in its sole discretion. TxDOT shall release the Retained Security Amount or letter of credit, as applicable, to DB Contractor upon the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions, which shall be no later than 120 days prior to the Initial Maintenance Term Commencement Date. In the event TxDOT does not receive the Maintenance Security required under Section 3.2 of the CMA General Conditions by the deadline set forth therein, DB Contractor shall forfeit as liquidated damages and not as a penalty such sums, or if a letter of credit is provided in lieu of retained amounts, TxDOT shall have the right to draw on the letter of credit.

EXHIBIT 5

JOB TRAINING PLAN

[To be replaced by the TxDOT-approved DB Contractor Job Training Plan]

EXHIBIT 6

DBE PERFORMANCE PLAN

[To be replaced by the TxDOT-approved DB Contractor DBE Performance Plan]

[Insert DB Contractor Name Here]

DBE Performance Plan & Subcontracting Plan

Project: [Insert Project Name Here]

Prepared by: [Insert Name Here] , [Insert title Here]

Initial Draft: [Insert date here]

Revision 1: [Insert date here]

[Include additional revisions and dates, as applicable]

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Appendix #	Description
1	Standard Professional Services Agreement
2	Standard Subcontract Document
3	Federally Required Provisions
4	DBE Compliance and Monitoring Process Workflow

DBE Performance Plan & Subcontracting Plan

The [Insert DB Contractor Name] shall update the DBE Performance Plan quarterly or more frequently as requested by the Department.

Items in italics are recommendation and for information only.

This DBE Performance Plan is a pre-approved sample template listing the items that must be included in the DBE Performance Plan per TxDOT's programmatic contract documents. Although this is a pre-approved sample template, it is the DB Contractor's responsibility to comply with Contract Document requirements related to the Departments DBE Program.

1. Definitions

For specific definitions regarding terms applicable to the DBE Program, please refer to DBE Special Provision in the General Conditions and 49CFR26.

2. Policy Statement

It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26 and Department's DBE Program apply to this Design-Build Contract as follows.

The DB Contractor will solicit DBEs through reasonable and available means (reasonable and available means as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program), or show Good Faith Efforts to meet the DBE goals for this Design-Build Contract.

The DB Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this Design-Build Contract. The DB Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Design-Build Contract. Failure to carry out these requirements is a material breach of this Design-Build Contract, which may result in the termination of this Design-Build Contract or such other remedy as the Department deems appropriate.

The requirements of this Special Provision must be physically included in any subcontract including all tiers of subcontracts.

By signing the Design-Build Contract, the DB Contractor certifies that the DBE goals as stated in the Design-Build Contract will be met by obtaining commitments from DBEs or that, if the DBE goal as stated in the Design-Build Contract is not met, the DB Contractor will provide acceptable evidence of Good Faith Efforts to meet the DBE goals.

3. Disadvantaged Business Enterprises (DBE) Commitment

[Insert DB Contractor Name] is committed to fully integrating meaningful DBE participation into our team for this TxDOT [Insert Project name here] (Project) through outreach, technical assistance/supportive services, compliance monitoring and reporting. [Insert DB Contractor Name] proposes to accomplish maximum DBE participation through an organized outreach, solicitation, and subcontracting plan.

This commitment is made in support of the Project goals as stated in Section 2.6 – DBE Goals of the DBA:

The DBE participation goals for the Project are established as 12.5% of the Price less the cost of (a) Professional Services performed by Utility Owners (b) Construction Work performed by Utility Owners. [Insert DB Contractor Name] commits to:

- 1) Submitting commitments on DBE design firms within 60 days of NTP1 (contract execution) and
- 2) Submitting commitments on DBE construction firms prior to the commencement of construction. Should an existing DBE firm receive additional work, the DB Contractor will submit a revised DBE commitment form for the firm to the Department.

[Insert DB Contractor Name] is committed to implementing the Project’s DBE program in accordance with the federal and local guidelines found in 49 CFR Part 26 and the Department’s DBE program. The [Insert DB Contractor Name] team is aware of its obligations as stated in 26 CFR 26.53(e) and Department’s DBE Special Provision (Attachment 3-2). [Insert DB Contractor Name] is committed to complying with all DBE program regulations.

This commitment will be supported by a quarterly tracking system to guide the acquisition of subcontractor services in the achievement of the Project goals. See Section 11 for details.

4. Anticipated Areas of Consulting & Contracting Opportunities

[DBE contracting opportunities are not limited to these examples and DB Contractor shall perform a thorough analysis of all contracting opportunities to be placed in this section]

<i>Signing</i>	<i>Erosion Protection</i>	<i>Design Survey support</i>
<i>Illumination</i>	<i>Storm Sewer</i>	<i>Subsurface utility services</i>
<i>Signals</i>	<i>Waterline</i>	<i>Design support</i>
<i>Striping</i>	<i>Sanitary Sewer</i>	<i>Environ support services</i>
<i>Painting</i>	<i>Sidewalk</i>	<i>Utility relocation design</i>
<i>Barricades</i>	<i>Driveways</i>	<i>Design Quality Services</i>
<i>Guardrail</i>	<i>Riprap</i>	<i>Environmental Compliance</i>
<i>Crash Attenuators</i>	<i>Misc. Concrete</i>	<i>Construction Quality Control</i>
<i>Sod/Seeding</i>	<i>Re-Steel (furnish & place)</i>	<i>Construction Quality Acceptance</i>
<i>Landscaping</i>	<i>Geotechnical Services]</i>	

DB Contractor will insert a procurement timeline for each contracting opportunity, initially, and as the project schedule is updated in accordance to DBE Special Provision, Attachment 3-2.

This list is not comprehensive but represents initial management view of possible project opportunities.

A link to the list of qualified DBEs’ can be found Section 2 of the DBE Special Provision, Attachment 3-2 or below:

<https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>

5. Outreach

Our outreach programs in partnership with the Department should occur throughout the term of the DBC and will include:

- [Good faith efforts performed to date.

- During the Proposal phase, DBEs were interviewed and selected for professional services. *[DB Contractor shall provide a summary if applicable or remove statement if not applicable]*
- Holding DBE project informational meetings.
- Incorporation of opportunities in project website.
- Project and contracting advertisements in local and minority publications.
- Collaboration with other organizations to present/advertise project opportunities.
- Collaboration with TxDOT's Programs for DBE's such as PAVED, TBOD and the local TUCP.
- Participation at DBE-related events and conferences.
- Provision of project plans at plan rooms maintained by minority and women business organizations.
- Project Marketing Collateral.
- One-on-one Meeting with interested firms.
- Project Presentations.]
- *[DB Contractor shall include any other outreach or activities that DB Contractor has performed or plans to perform throughout the term of the DBC.]*

6. Professional Services Procurement

a. General

Professional services firms are chosen on a Qualification Based Selection process. The general steps followed are outlined below. The process is more subjective than construction subcontracting which relies on prequalified firms. The criteria outlined in Section 6.d (1) must be evaluated and matched to the needs of the project and how all commitments are fulfilled.

DBE professional service firms will have their certification verified. All firms will be required to meet the Department's criteria for performing professional services in their respective discipline.

[DB Contractor to insert approach here to include steps in providing information to potential DBE firms, as well as, how the DB Contractor expects to receive information from the DBE firms...]

b. Proposal Phase Solicitations

DBE firms that were identified as meeting the requirements of Section 6.d below as well as being available as exclusive partners during the proposal phase were engaged by teaming agreements and participated in the proposal process. Subsequent to award, negotiations will be conducted with these firms. The following firms were included in our proposal and upon award will contribute towards meeting the DBE contract goals (pending DBE commitment approval by TxDOT):

- *[List DBE firms here]*

c. Execution Phase Solicitations

- (1) The solicitation of additional professional services to meet the DBE requirement may become necessary during the execution of the Project for a variety of reasons such as:
 - (a) Added scope to the Project;
 - (b) Scope that was not fully defined during the Proposal preparation;
 - (c) Additional assistance or resources were determined to be necessary to support the Project schedule; and

- (d) The inability to successfully negotiate a scope of service or fee with a previously selected firm.

DBE goals are based on the value of the executed contract. The DBE participation value may increase, or decrease based on changes to the project contract value.

- (2) A new solicitation will be issued for the services needed. The proposals submitted must be responsive to the solicitation. The following section outlines procedures for the selection process.
- (3) Solicitations for proposals will be made based on need determinations discussed in the previous sections. Various resources will be used to target the subcontracting community such as but not limited to:
 - (a) Use our corporate vendor list;
 - (b) Contacts developed from outreach events;
 - (c) Use of the Department's DBE directory;
 - (d) Use of the TUCP, the local DBE certifying agency;
 - (e) Coordination with other subcontractor advocacy groups; and
 - (f) Local DBE organizations.
- (4) Any DBE firm selected must have their certification verified through the TUCP directory.

d. Proposal Evaluation & Negotiation

- (1) The following criteria will be used for professional services:

[At a minimum the following items will be checked by the DB Contractor]

 - (a) Ability to provide the number of qualified personnel to complete the required tasks on time;
 - (b) Possess the requisite licenses for both the firm and personnel to authorize participation;
 - (c) Documentation of design project completion on time and within budget;
 - (d) Quality of previous project work completed, including references from past project owners (clients);
 - (e) Ability to start when required; and
 - (f) Consideration of the DBE goals for the Project.
- (2) Attempt to negotiate scope, schedule of values, terms, conditions, and price with the selected proposer.

- (3) If the negotiations stall or fail, repeat the process.

7. Construction Subcontractor Procurement

a. General

It is prevalent practice in the design-build procurement process for the Design-Builder to solicit pricing from the subcontracting community based on 30% (or less) plans. [Therefore, DB Contractor to insert approach here to include plan development stage and potential risk to the DBE subcontractor...]

b. Bid Package Development

- (1) *[Insert DB Contractor process to include approach to providing fully developed plans to the subcontracting community, direction on how a bid package will be developed, etc....]*

c. DBE Identification & Solicitations

- (1) [Solicitations will contain the following information regarding the requested price proposal:
- *Project information*
 - *Scope or items of work*
 - *Date proposal is due*
 - *Where to view plans and specs*
 - *Where and how to submit price proposal*
 - *To whom the proposal should be directed*
 - *To whom all questions should be directed*
 - *A CPM schedule illustrating when the work is to be performed*
 - *Environmental, Permits, Issues, & Commitment (EPIC) Sheets associated with the work to be performed*
- (2) *First time responders to a [Insert DB Contractor Name] solicitation will be required to complete a subcontractor questionnaire and participate in an interview to determine qualifications, capabilities and capacity to avoid potential issues such as DBEs failing to perform a commercially useful function. If selected, the DBE firm will be required to use Department's Compliance Monitoring and Tracking System to report work progress.*
- (3) *Every effort will be made to allow two weeks to respond to any price proposal solicitation however this cannot be guaranteed. Exceptions may be granted on a case basis for non-critical items at the option of [Insert DB Contractor Name].*

- (4) *Responsiveness – [Insert DB Contractor Name] will attempt to contact any subcontractor that did not respond to the solicitation. The reason for not quoting, if provided, will be documented.*

d. **Proposal Evaluation**

- (1) *[Insert DB Contractor process for evaluating bid proposals]*

8. Subcontract Agreement

a. Subcontract agreements (Subcontract) shall identify, define, and include those specific services, items, terms, and conditions that are consistent with the Contract and the scope of work including anticipated duration. The Department will monitor and ensure a commercially useful function (CUF) review is performed. These reviews are for the purpose of ensuring that the DBE is performing and managing the work.

b. The Subcontract will be prepared and submitted with all required conditions and attachments for execution.

c. The following items are clearly defined and included in all professional services subcontracts:

- (1) Identification of parties;
- (2) Definition of work (scope, methods, end results);
- (3) Definition of Client's responsibility;
- (4) Provisions for contract changes;
- (5) DBE Special Provision;
- (6) Compensation;
- (7) Method of payment; and
- (8) Federally required provisions.

d. The following terms and items are included in all construction subcontracts:

- (1) Parties to the contract;
- (2) Contract start and end dates;
- (3) Scope of Work, including deliverables;
- (4) DBE Special Provision;
- (5) Schedule of Values;
- (6) Payment due dates;
- (7) Terms and conditions relating to premature contract termination;

- (8) Terms and conditions relative to undue delays;
 - (9) Means to resolve claims and disputes;
 - (10) Indemnification terms and conditions; and
 - (11) Federally required provisions.
- e. Any exceptions taken by the Subcontractor with regards to any of the business terms and conditions of the subcontract document will be negotiated (that is in the purview to negotiate).
- f. Upon complete execution of the document, a copy will be provided to the Department.

9. Execution of the Work

a. DBE Responsibilities

- (1) Subcontracted work will be executed in a professional manner.
- (2) The subcontractor will be an independent business and employer under the laws of Texas and will assume all the rights and responsibilities accordingly.
- (3) The subcontractor will be required to diligently and faithfully execute the work covered by its agreement.
- (4) The subcontractor will comply with all of the requirements of its subcontract and the Contract.
- (5) The subcontractor will be required to provide monthly progress in the Department's Compliance Monitoring and Tracking System.

b. Administration

- (1) The subcontractor will report monthly, in the Department's Compliance Monitoring and Tracking System, at an agreed upon recurring monthly date, their progress quantities for the previous pay period for verification by and concurrence of the Project Manager, Deputy Project Manager, or the Construction Manager.
- (2) The subcontractor will be required to carry the requisite insurance outlined in the Contract. Good Faith Efforts (GFE) in accordance with 49 CFR Part 26, Appendix A, Item F must be followed prior to rejecting a DBE proposal for failure to provide insurance as outlined in the Contract.
- (3) The subcontractor will comply with administrative obligations imposed by federal requirements.
- (4) The subcontractor will be required to submit any applicable reports, in the Department's Compliance Monitoring and Tracking System, such as but not limited to:
 - (a) Monthly progress quantities;
 - (b) Daily quality control reports;

- (c) Certified payrolls; and
- (d) DBE participation reports.

c. Direction and Management

- (1) The subcontractor will receive overall schedule and work priorities from Project Manager, Deputy Project Manager, or Construction Manager.
- (2) The subcontractor is an independent business and will be required to plan, manage, oversee, and execute their contracted work in accordance with project schedule and the direction of the Project Manager, Deputy Project Manager, or Construction Manager.
- (3) The subcontractor will be a licensed participant in the contractor's document management software at a security level deem appropriate by the Project Manager, Deputy Project Manager, or Construction Manager.

d. Quality

- (1) The subcontractor will be obligated to abide by the Project Quality Management Plan (QMP).
- (2) The subcontractor will be accountable for their deficient work and responsible for the implementation of the approved correction or remedy.
- (3) The subcontractor will be responsible for initiating their own technical submittals associated with the items of work.

e. Environment

- (1) Protection of the environment is a priority for every project. The Subcontractor shall abide by the Project Comprehensive Environmental Protection Plan (CEPP).
- (2) The subcontractor will be required to attend the project environmental briefing/training.
- (3) The subcontractor will be required to comply with all environmental commitments on the project that have direct bearing on its work.
- (4) The subcontractor will comply with all applicable permits, laws, and regulations governing this project and the work subcontracted.

f. Safety

- (1) The subcontractor is required to have its own safety program or model one after the contractor's.
- (2) The subcontractor will insure their safety program is no less stringent than the Project Safety & Health Plan.
- (3) The subcontractor will comply with the Project Safety & Health Plan.
- (4) The subcontractor will participate in project safety briefings.

- (5) The subcontractor shall be responsible for the safety of its employees.
- (6) The subcontractor shall comply with all local, state, and federal safety requirements and regulations.

g. Commercially Useful Function (CUF)

- (1) Field supervision to monitor DBE work performance to verify compliance with the subcontract document paying particular attention to whether the DBE is using its own forces and equipment. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Report any activity of concern to DBE Program Coordinator or DBE Program Manager.
- (2) Work with the Department on DBE work schedules so that a CUF review can be scheduled and conducted early in the project.
- (3) Follow-up with the Department on CUF findings.
- (4) Assist the Department as necessary on CUF monitoring throughout the course of the project.
- (5) In the event of a non-CUF finding, consult with the Department on:
 - (a) Impacts to the project goals and the need for additional DBE credit; and
 - (b) Whether other administrative actions are appropriate.

h. Assistance to DBEs

- (1) [Insert DB Contractor Name] shall not provide any assistance to the DBE in the general performance of its work. The term assistance is defined in the broadest possible sense:
 - (a) Labor, equipment, or materials;
 - (b) Supervision;
 - (c) Ordering materials for the DBE from their suppliers;
 - (d) Fuel; and
 - (e) Any other item one would reasonably expect a viable subcontractor to provide for themselves.
- (2) The only exceptions permitted by specification and allowed by [Insert DB Contractor Name] are under emergency conditions where:
 - (a) The safety of workers and the public is at risk;

- (b) The work in progress is subject to a total loss (i.e. lose a concrete pour); and
 - (c) The traveling public will be seriously impacted, and excessive travel delays incurred.
- (3) In the event of any emergencies as defined by Section 9.h (2), the Project Manager or is designated representative is required to call in a report to Compliance Manager outlining the circumstances and the assistance rendered. The Department will be notified immediately. A DBE EMERGENCY ASSISTANCE – CALL IN LOG will be completed. The DBE Liaison Officer will assess the value of the assistance. The value of the assistance will be deducted from the Project DBE monthly progress report.
- (4) [Insert DB Contractor Name] serves as an advocate for all its subcontractors (DBE and non-DBE) with the Department in the event of changes, change orders, and payment.
- (5) Joint Checks for DBEs
- (a) The request for a joint check request must emanate from the DBE and/or their supplier. The request must be on the DBE's letterhead or equivalent. If no joint check agreement is provided to [Insert DB Contractor Name], the Subcontractor will utilize the Contractor's version. If a joint check agreement is provided by the DBE and/or their vendor, the Chief Financial Officer (CFO) must review and edit as necessary to maintain compliance with the DBE special provision and provides sound legal protection for [Insert DB Contractor Name].
 - (b) Prior to any joint check being issued, its use must be approved by the Department. CFO will prepare a request using the Department's Form 2178 signed by the DBE Liaison Officer. The form will be submitted to the Department by fax or email. Copies of the DBE's request, the joint check agreement and the associated Department Form 2178 will remain on file for audit purposes.
 - (c) CFO prepares the joint check in the amounts acceptable to the DBE and their supplier. The check will be sent to the DBE in a manner requested by the DBE (i.e. US Mail, Fed-Ex, etc.) All requirements shown on Department Form 2178 will be followed as well as those outlined in governing laws, rules, and regulations. Under no circumstances will the check be mailed directly to the supplier or will the DBE be required to endorse the check on our premises for [Insert DB Contractor Name] direct mailing to the supplier.

10. Payment

a. Monthly Progress Payments

- (1) Monthly progress payments will be made by the 10th business day following payment received by [Insert DB Contractor Name] for the items of work performed by the subcontractor. Payment to each DBE subcontractor will be recorded in the Department's Compliance Monitoring and Tracking System. All DBE subcontractors are required to pay their subcontractors within 10 business days following payment received by the DB Contractor.

- (2) A number of instances can impact payment time that are outside the control of the DB Contractor or higher tier Consultant:
 - (a) The failure of the subcontractor to provide an invoice in a timely manner;
 - (b) Quality issues with the subcontractor's work;
 - (c) Apparent prompt pay or violations of other federally required provisions;
 - (d) Failure to pay vendors for materials purchased and used in the project;
 - (e) The Department's failure to provide copies of pay estimates in a timely manner; and
 - (f) Delays by the Department in payments to the DB Contractor.

b. Withholding Progress Payments

- (1) Progress payments may be withheld for any violation or breach of a subcontract requirement such as but not limited to:
 - (a) Failure to comply with prompt pay requirements;
 - (b) Failure to be responsive to the Department or [Insert DB Contractor Name]; or
 - (c) Failure to comply with any subcontract provision that creates a non-compliance with the Contract.
- (2) Efforts by [Insert DB Contractor Name] will be made to expeditiously remedy any impediments so that payments can be made as soon as possible.
- (3) Any payment dispute will be reflected and reported monthly in the Department's tracking system.

11. Reporting

[Insert DB Contractor Name] will comply with the contract compliance monitoring and tracking requirements as stipulated in General Conditions, Attachment 3-2. [Insert DB Contractor Name] and DBEs will provide any noted and requested contract compliance-related data electronically in the Department's compliance monitoring and tracking system. This includes commitments, monthly payments, substitutions, good faith efforts, and Final Report (see Attachment 3-2).

a. DBE Commitment Schedule

We will attach a DBE commitment Form and supporting documentation, as described in Section 2.3.4 of Attachment 3-2, via the Department's tracking system upon selection of DBE subcontractor. Progress of commitments towards goal attainment will be monitored as required in Attachment 3-2.

b. Monthly Reporting Schedule

DBE monthly progress will be reported via the Department's Compliance Monitoring and Tracking System within 15-days after the end of a calendar month.

c. **Quarterly DBE Progress Tracking**

A quarterly report will be generated which will track commitments, progress, and projected outcomes for DBE participation. The report will track areas available for participation to guide solicitations when construction packages are ready for distribution.

d. **Final DBE Report Schedule**

Per the General Conditions, Attachment 3-2, final determination of DBE participation will occur once final payment is made to all DBEs on the Project is made thru the Department's Compliance Monitoring and Tracking System and after the DBEs work is satisfactorily complete, even if final acceptance has not occurred.

e. **DBE Truckers**

If truckers are to be used towards the Project goals, in addition to all the required forms, the DBE Trucking Utilization Form 2660 will be submitted for approval by the District and prior to hauling services performed for DBE credit. A request can occur via the Department's Compliance Monitoring and Tracking System as an attachment or manual submission.

The [Insert DB Contractor Name] shall update the DBE Performance Plan quarterly or more frequently as requested by the Department. If the Project's Preliminary Baseline Schedule is updated impacting the DBE firm schedule, [Insert DB Contractor Name] will issue a new schedule to the DBE firm.

12. Good Faith Efforts Documentation

Documentation from solicitation process as described in Sections 6 and 7 will be maintained. Should it become necessary to submit a good faith effort demonstration, documentation in accordance with Exhibit 6 of the DBA shall be followed.

13. Termination

- a. Termination for convenience of a DBE subcontractor is NOT allowed unless the prime contract is terminated for convenience by the Owner.
- b. Termination may occur due to the direction of the Department.
- c. Termination for breach of contract may be for any action(s) include but are not limited to:
 - (1) Safety/OSHA violations;
 - (2) Environmental violations;
 - (3) Illegal or illicit conduct (misappropriation, etc.);
 - (4) Failure to perform work according to the Department's specifications;
 - (5) Violation of DBE rules and regulations (i.e. commercially useful function, etc.);
 - (6) Nonpayment of employees or bills (materials);

- (7) Non-responsive to the project schedule;
 - (8) Failure to provide adequate resources;
 - (9) Unprofessional conduct; and
 - (10) A subcontractor removal request by the Department.
- d. Any actions that could lead to termination for a DBE subcontractor must be documented and forwarded to the Department for concurrence. DB Contractor must adhere to the requirements set forth in Attachment 3-2 – DBE Special Provision.
 - e. Adequate opportunities must be afforded to the DBE to remedy deficiencies in accordance with the terms of the subcontract.
 - f. Consultation with and approval by the Department must occur prior to taking any termination action for a DBE subcontractor.

14. Replacement

If the DBE is part of a Project goal and the DBE quits and/or is terminated, [Insert DB Contractor Name] should solicit new quotations for the remaining work from other DBEs or solicit quotations for other work available for DBEs. [Insert DB Contractor Name] will document the termination/substitution requests in the Department's Compliance Monitoring and Tracking System.

Submit to the Department for approval following the "Contract Award" procedures.

If no DBEs can be found to fulfill the goal, document and submit "Good Faith Efforts" in the Department's Compliance Monitoring and Tracking System using Form 2603 (See Sections 6, 7, and 12 for procedures).

15. DBE Program Oversight

a. DB Contractor:

- (1) DBE Liaison Officer – [Insert name here], [Insert title here]
- (2) Program Administration – [Insert name here], [Insert title here]
- (3) Project Manager – [Insert name here]
- (4) Deputy Project Manager – [Insert name here]
- (5) Construction Manager – [Insert name here]
- (6) Document Manager – [Insert name here]

b. The Department:

- (1) District DBE Coordinator
- (2) District Project Manager

Appendix 1

Standard Professional Services Agreement

[To be Added By DB Contractor]

Appendix 2

Standard Subcontract Agreement

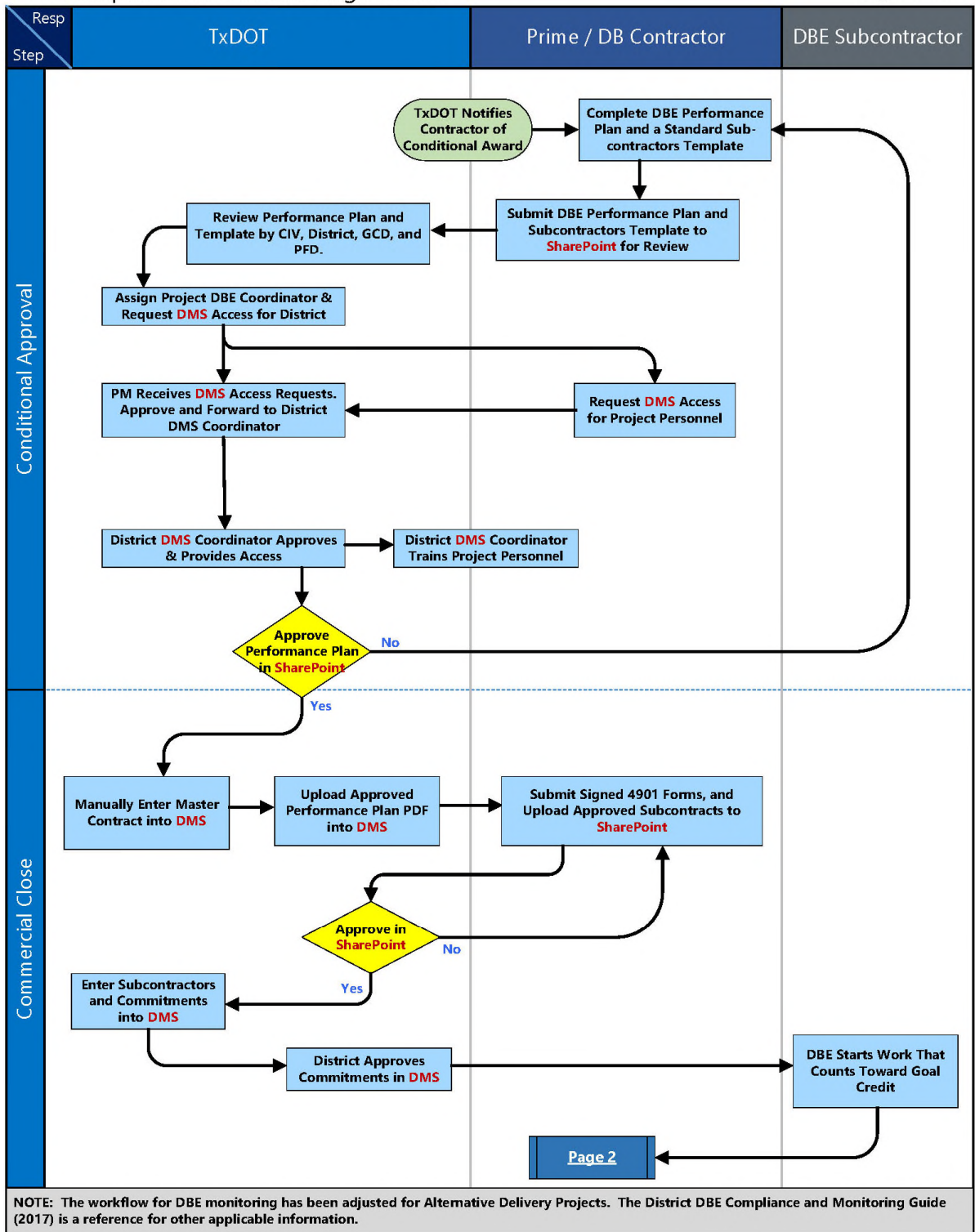
[To be Added By DB Contractor]

Appendix 3
Federally Required Provisions

Appendix 4

Design Build Projects: DBE Compliance and Monitoring Process

1-3-2018
Page 1 of 2



Appendix 4, Cont'd.

Design Build Projects:
DBE Compliance and Monitoring Process

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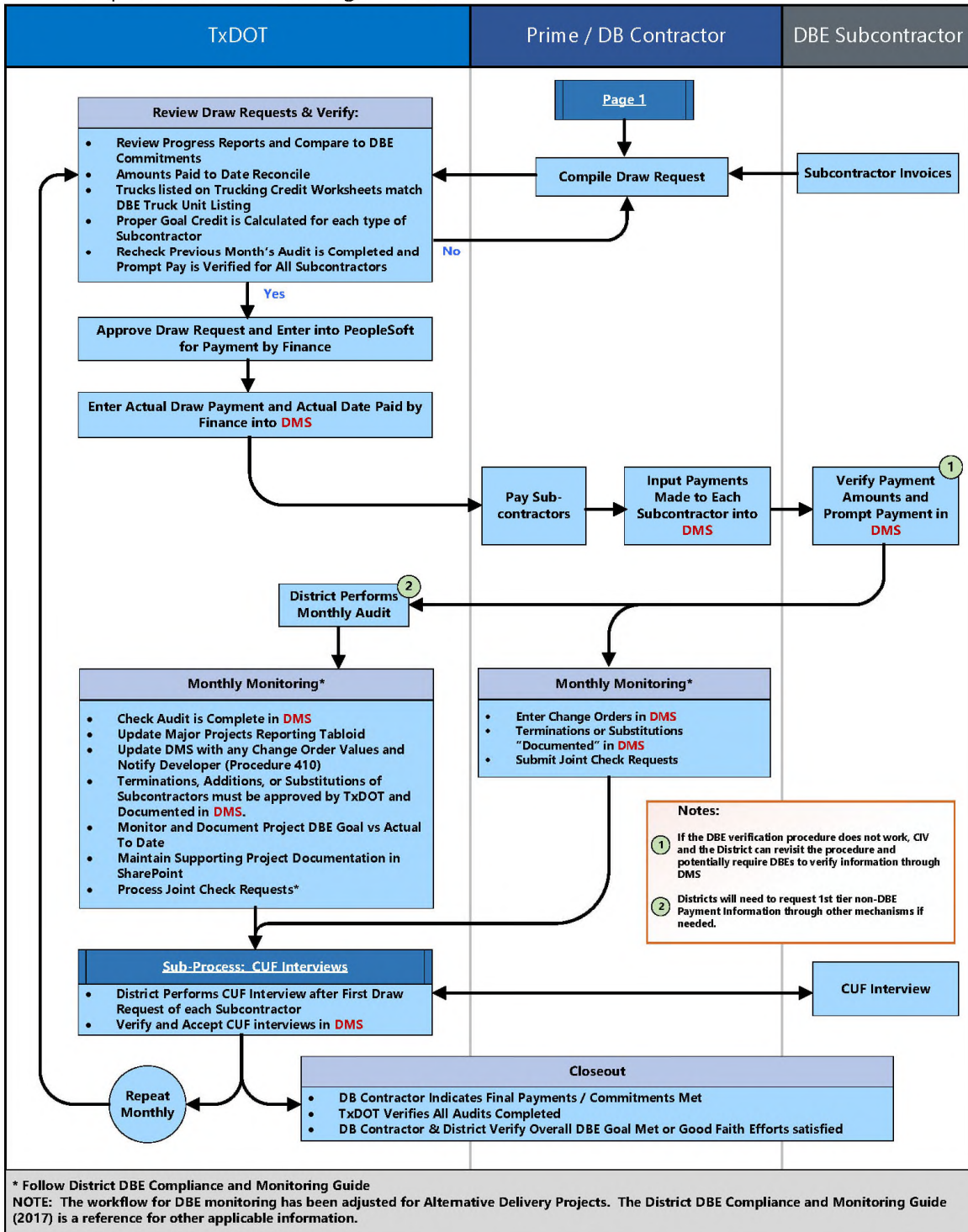


EXHIBIT 7

PREVAILING WAGE RATES

[See Attached]



The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 01-03-2020.

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 1/3/2020	ZONE TX03 1/3/2020	ZONE TX04 1/3/2020	ZONE TX05 1/3/2020	ZONE TX06 1/3/2020	ZONE TX07 1/3/2020	ZONE TX08 1/3/2020	ZONE TX24 1/3/2020	ZONE TX25 1/3/2020	ZONE TX27 1/3/2020	ZONE TX28 1/3/2020	ZONE TX29 1/3/2020	ZONE TX30 1/3/2020	ZONE TX37 1/3/2020	ZONE TX38 1/3/2020	ZONE TX42 1/3/2020	
1428	Agricultural Tractor Operator						\$12.69					\$12.35			\$11.75			
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88	\$15.72	\$15.58	\$15.55	\$15.72	\$13.28	\$15.32	\$15.62	\$14.36	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40	
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87	\$14.05	\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99	
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21	\$11.65	\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	\$11.78	
1112	Batching Plant Operator, Asphalt																	
1115	Batching Plant Operator, Concrete																	
1214	Blaster																	
1615	Boom Truck Operator						\$18.36											
1444	Boring Machine Operator																	
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.08	\$11.99		\$11.04	\$11.62		\$11.74	\$11.41	\$10.30		\$10.23	\$10.60	\$12.68	\$11.05	
1144	Communications Cable Installer																	
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85	\$12.64	\$12.56	\$12.77	\$12.44	\$14.12	\$13.04	\$13.38	\$12.64	\$12.80	\$12.79	\$12.98	\$13.32	
1318	Concrete Pavement Finishing Machine Operator				\$16.05		\$15.48			\$16.05		\$19.31				\$13.07		
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											\$16.34					\$11.71	
1333	Concrete Saw Operator				\$14.67					\$14.48	\$17.33						\$13.99	
1399	Concrete/Gunite Pump Operator																	
1344	Crane Operator, Hydraulic 80 tons or less				\$18.22		\$18.36			\$18.12	\$18.04	\$20.21			\$18.63	\$13.86		
1345	Crane Operator, Hydraulic Over 80 Tons																	
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$16.82	\$14.39	\$13.85	\$17.27		\$15.87			\$17.27		\$14.67			\$16.42	\$14.97	\$13.87	
1343	Crane Operator, Lattice Boom Over 80 Tons				\$20.52		\$19.38			\$20.52		\$17.49			\$25.13	\$15.80		
1306	Crawler Tractor Operator	\$13.96	\$16.63	\$13.62	\$14.26		\$15.67			\$14.07	\$13.15	\$13.38			\$14.60	\$13.68	\$13.50	
1351	Crusher or Screen Plant Operator																	
1446	Directional Drilling Locator						\$11.67											
1445	Directional Drilling Operator				\$20.32		\$17.24											
1139	Electrician	\$20.96		\$19.87	\$19.80		\$26.35		\$20.27	\$19.80		\$20.92					\$27.11	\$19.87
1347	Excavator Operator, 50,000 pounds or less	\$13.46	\$12.56	\$13.67	\$17.19		\$12.88	\$14.38	\$13.49	\$17.19		\$13.88			\$14.09	\$12.71	\$14.42	
1348	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.52	\$17.04		\$17.71			\$16.99	\$18.80	\$16.22				\$14.53	\$13.52	
1150	Flagger	\$9.30	\$9.10	\$8.50	\$10.28	\$8.81	\$9.45	\$8.70		\$10.06	\$9.71	\$9.03	\$8.81	\$9.08	\$9.90	\$10.33	\$8.10	
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91	\$12.71	\$12.87	\$12.38	\$12.26	\$13.84	\$12.98	\$13.07	\$13.61	\$12.82	\$14.73	\$12.23	\$12.25	
1160	Form Setter, Paving & Curb	\$12.36	\$12.16	\$13.93	\$11.83	\$10.71	\$12.94			\$13.16	\$12.54	\$11.33	\$10.69		\$13.33	\$12.34	\$13.93	
1360	Foundation Drill Operator, Crawler Mounted				\$17.99					\$17.99							\$17.43	
1363	Foundation Drill Operator, Truck Mounted		\$16.86	\$22.05	\$21.51		\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	\$22.05	
1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40	\$13.85		\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17	
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33	\$14.96		\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	\$13.02	
1329	Joint Sealer																	
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.03	\$10.54	\$11.02	\$10.15	
1175	Laborer, Utility	\$11.80	\$11.53	\$12.70	\$12.17	\$11.81	\$12.27	\$12.11	\$11.33	\$12.32	\$11.80	\$11.53	\$11.23	\$11.50	\$11.95	\$11.73	\$12.37	
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$15.68		\$14.12			\$15.18	\$13.58	\$12.87		\$13.21	\$14.13	\$14.29	\$12.90	
1187	Mechanic	\$20.14	\$15.47	\$17.47	\$17.74	\$17.00	\$17.10			\$17.68	\$18.94	\$18.58	\$17.00	\$16.61	\$18.46	\$16.96	\$17.47	
1380	Milling Machine Operator	\$15.54	\$14.64	\$12.22	\$14.29		\$14.18			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	\$12.80	
1390	Motor Grader Operator, Fine Grade	\$17.49	\$16.52	\$16.88	\$17.12	\$18.37	\$18.51	\$16.69	\$16.13	\$17.19	\$18.35	\$17.07	\$17.74	\$17.47	\$17.08	\$15.69	\$20.01	
1393	Motor Grader Operator, Rough	\$16.15	\$14.62	\$15.83	\$16.20	\$17.07	\$14.63	\$18.50		\$16.02	\$16.44	\$15.12	\$16.85	\$14.47	\$17.39	\$14.23	\$15.53	

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1413	Off Road Hauler			\$10.08	\$12.26		\$11.88			\$12.25		\$12.23			\$13.00	\$14.60	
1196	Painter, Structures					\$21.29	\$18.34						\$21.29			\$18.62	
1396	Pavement Marking Machine Operator	\$16.42		\$13.10	\$13.55		\$19.17	\$12.01		\$13.63	\$14.60	\$13.17		\$16.65	\$10.54	\$11.18	\$13.10
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															\$14.95	
1205	Pipelayer		\$11.87	\$14.64	\$13.17	\$11.17	\$12.79		\$11.37	\$13.24	\$12.66	\$13.24	\$11.17	\$11.67		\$12.12	\$14.64
1384	Reclaimer/Pulverizer Operator	\$12.85			\$11.90		\$12.88			\$11.01		\$10.46					
1500	Reinforcing Steel Worker	\$13.50	\$14.07	\$17.53	\$16.17		\$14.00			\$16.18	\$12.74	\$15.83		\$17.10		\$15.15	\$17.72
1402	Roller Operator, Asphalt	\$10.95		\$11.96	\$13.29		\$12.78	\$11.61		\$13.08	\$12.36	\$11.68			\$11.71	\$11.95	\$11.50
1405	Roller Operator, Other	\$10.36		\$10.44	\$11.82		\$10.50	\$11.64		\$11.51	\$10.59	\$10.30		\$12.04	\$12.85	\$11.57	\$10.66
1411	Scraper Operator	\$10.61	\$11.07	\$10.85	\$12.88		\$12.27		\$11.12	\$12.96	\$11.88	\$12.43		\$11.22	\$13.95	\$13.47	\$10.89
1417	Self-Propelled Hammer Operator																
1194	Servicer	\$13.98	\$12.34	\$14.11	\$14.74		\$14.51	\$15.56	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	\$14.11
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									\$15.96							
1515	Spreader Box Operator	\$12.60		\$13.12	\$14.71		\$14.04			\$14.73	\$13.84	\$13.68		\$13.45	\$11.83	\$13.58	\$14.05
1705	Structural Steel Welder															\$12.85	
1509	Structural Steel Worker						\$19.29									\$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						\$16.00										
1440	Trenching Machine Operator, Heavy						\$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	\$14.46	\$13.63	\$13.41	\$15.00	\$15.93	\$15.66			\$16.24	\$16.39	\$14.30	\$16.62	\$15.63	\$14.28	\$16.03	\$13.41
1612	Truck Driver Transit-Mix				\$14.14					\$14.14							
1600	Truck Driver, Single Axle	\$12.74	\$10.82	\$10.75	\$13.04	\$11.61	\$11.79	\$13.53	\$13.16	\$12.31	\$13.40	\$10.30	\$11.61		\$11.97	\$11.46	\$10.75
1606	Truck Driver, Single or Tandem Axle Dump Truck	\$11.33	\$14.53	\$11.95	\$12.95		\$11.68		\$14.06	\$12.62	\$11.45	\$12.28		\$13.08	\$11.68	\$11.48	\$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	\$12.49	\$12.12	\$12.50	\$13.42		\$12.81	\$13.16		\$12.86	\$16.22	\$12.50			\$13.80	\$12.27	\$12.50
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		\$14.02		\$14.86		\$15.97		\$13.74	\$14.84					\$13.78		
1520	Work Zone Barricade Servicer	\$10.30	\$12.88	\$11.46	\$11.70	\$11.57	\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.96	\$10.54	\$11.67	\$11.76

Notes:

Any worker employed on this project shall be paid at the rate of one and one half 1-1/2 times the regular rate for every hour worked in excess of forty (40) hours per week.

The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.

**TEXAS COUNTIES IDENTIFIED BY
WAGE RATE ZONES: 2, 3, 4, 5, 6, 7, 8, 24, 25, 27, 28, 29, 30, 37, 38, 42**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	28	Donley	37	Karnes	27	Reagan	37
Andrews	37	Duval	30	Kaufman	25	Real	37
Angelina	28	Eastland	37	Kendall	7	Red River	28
Aransas	29	Ector	2	Kenedy	30	Reeves	8
Archer	25	Edwards	8	Kent	37	Refugio	27
Armstrong	2	El Paso	24	Kerr	27	Roberts	37
Atascosa	7	Ellis	25	Kimble	37	Robertson	7
Austin	38	Erath	28	King	37	Rockwall	25
Bailey	37	Falls	28	Kinney	8	Runnels	37
Bandera	7	Fannin	28	Kleberg	27	Rusk	4
Bastrop	7	Fayette	27	Knox	37	Sabine	28
Baylor	37	Fisher	37	Lamar	28	San Augustine	28
Bee	27	Floyd	37	Lamb	37	San Jacinto	38
Bell	7	Foard	37	Lampasas	7	San Patricio	29
Bexar	7	Fort Bend	38	LaSalle	30	San Saba	37
Blanco	27	Franklin	28	Lavaca	27	Schleicher	37
Borden	37	Freestone	28	Lee	27	Scurry	37
Bosque	28	Frio	27	Leon	28	Shackelford	37
Bowie	4	Gaines	37	Liberty	38	Shelby	28
Brazoria	38	Galveston	38	Limestone	28	Sherman	37
Brazos	7	Garza	37	Lipscomb	37	Smith	4
Brewster	8	Gillespie	27	Live Oak	27	Somervell	28
Briscoe	37	Glasscock	37	Llano	27	Starr	30
Brooks	30	Goliad	29	Loving	37	Stephens	37
Brown	37	Gonzales	27	Lubbock	2	Sterling	37
Burleson	7	Gray	37	Lynn	37	Stonewall	37
Burnet	27	Grayson	25	Madison	28	Sutton	8
Caldwell	7	Gregg	4	Marion	28	Swisher	37
Calhoun	29	Grimes	28	Martin	37	Tarrant	25
Callahan	25	Guadalupe	7	Mason	27	Taylor	2
Cameron	3	Hale	37	Matagorda	27	Terrell	8
Camp	28	Hall	37	Maverick	30	Terry	37
Carson	2	Hamilton	28	McCulloch	37	Throckmorton	37
Cass	28	Hansford	37	McLennan	7	Titus	28
Castro	37	Hardeman	37	McMullen	30	Tom Green	2
Chambers	38	Hardin	38	Medina	7	Travis	7
Cherokee	28	Harris	38	Menard	37	Trinity	28
Childress	37	Harrison	42	Midland	2	Tyler	28
Clay	25	Hartley	37	Milam	28	Upshur	4
Cochran	37	Haskell	37	Mills	37	Upton	37
Coke	37	Hays	7	Mitchell	37	Uvalde	30
Coleman	37	Hemphill	37	Montague	37	Val Verde	8
Collin	25	Henderson	28	Montgomery	38	Van Zandt	28
Collingsworth	37	Hidalgo	3	Moore	37	Victoria	6
Colorado	27	Hill	28	Morris	28	Walker	28
Comal	7	Hockley	37	Motley	37	Waller	38
Comanche	37	Hood	28	Nacogdoches	28	Ward	37
Concho	37	Hopkins	28	Navarro	28	Washington	28
Cooke	37	Houston	28	Newton	28	Webb	3
Coryell	7	Howard	37	Nolan	37	Wharton	27
Cottle	37	Hudspeth	8	Nueces	29	Wheeler	37
Crane	37	Hunt	25	Ochiltree	37	Wichita	5
Crockett	8	Hutchinson	37	Oldham	37	Wilbarger	37
Crosby	2	Irion	2	Orange	38	Willacy	30
Culberson	8	Jack	28	Palo Pinto	28	Williamson	7
Dallam	37	Jackson	27	Panola	28	Wilson	7
Dallas	25	Jasper	28	Parker	25	Winkler	37
Dawson	37	Jeff Davis	8	Parmer	37	Wise	25
Deaf Smith	37	Jefferson	38	Pecos	8	Wood	28
Delta	25	Jim Hogg	30	Polk	28	Yoakum	37
Denton	25	Jim Wells	27	Potter	2	Young	37
DeWitt	27	Johnson	25	Presidio	8	Zapata	30
Dickens	37	Jones	25	Rains	28	Zavala	30
Dimmit	30			Randall	2		

EXHIBIT 8

DB CONTRACTOR OBLIGATIONS RELATED TO PROJECT-SPECIFIC THIRD PARTY AGREEMENTS

All DB Contractor obligations related to Third Party Agreements have been incorporated, as appropriate, into the requirements found in the Design-Build Specifications.

The Parties acknowledge and agree that no draft Third Party Agreements were included in the RIDs.

EXHIBIT 9

NOT USED

EXHIBIT 10

MAXIMUM PAYMENT SCHEDULE

EXHIBIT 11

**MAXIMUM REIMBURSEMENT AMOUNTS FOR
EMINENT DOMAIN ASSISTANCE**

1. For each parcel that is acquired by eminent domain, within 30 days of providing evidence of payment of invoices, DB Contractor shall be entitled to reimbursement of its out-of-pocket fees and expenses for expert witnesses incurred in connection with the condemnation proceedings set forth in Section 15.4.4.3 of the Design-Build Specifications subject to the limitations in this Exhibit 11. DB Contractor shall provide the proposed expert witness fee and expense structure to TxDOT for approval no later than 45 days prior to the commencement of services by the expert. DB Contractor shall not be reimbursed for any expert witness fees or expenses incurred prior to approval of the fee and expense structure by TxDOT. DB Contractor shall not be entitled to any mark-ups, including for overhead and profit, in connection with expert witness fees and expenses.

2. For each parcel that is acquired by eminent domain, within 30 days of providing evidence of payment of invoices, DB Contractor shall be entitled to reimbursement of all other reasonable out-of-pocket costs (with the exception of expert witness fees and expenses) up to the amount of \$10,000 per parcel for the performance of condemnation support services from and after the date of TxDOT's approval of the Condemnation Package, as such services are described in Section 15.4.4.2 of the Design-Build Specifications. DB Contractor shall not be entitled to any mark-ups, including for overhead and profit, in connection with such costs.

EXHIBIT 12

FORMS OF BONDS

Appendix 1: Form of Performance Bond

Appendix 2: Form of Payment Bond

Appendix 3: Form of Warranty Bond

APPENDIX 1 TO EXHIBIT 12

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

I-35E Phase 2 Project

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Contract for the I-35E Phase 2 Project, duly executed and delivered as of [DATE] (the “DBC”) on the terms and conditions set forth therein; and

WHEREAS, upon award of the DBC, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”) *[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]*, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$_____, subject to increase in accordance with the NTP2 Rider attached hereto (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 3.4.3 of the General Conditions.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBC.

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges, as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Project called for in the Contract Documents with respect to those obligations of Principal that survive such Final Acceptance of the Project.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the DBC; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBC, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the DBC, and if Surety elects to act under Subparagraph 4.a, 4.b or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the DBC, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBC. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBC, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges under the DBC.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$ _____ *[Insert amount that is 10% of the Price]*. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

NTP2 RIDER

To be attached to
and form a part of
Bond No.

Type of
Bond: **Performance Bond**

dated
effective

(MONTH-DAY-YEAR)
[DB Contractor]

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of \$_____ [ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners] effective upon issuance by the Obligee of NTP2 under the DBC.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective (MONTH-DAY-YEAR)

Signed and Sealed (MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____
(PRINCIPAL)

(SURETY)

By: _____
Attorney in fact

APPENDIX 2 TO EXHIBIT 12

FORM OF PAYMENT BOND

[To be replaced by actual Payment Bond]

I-35E PHASE 2 PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Contract for the I-35E Phase 2 Project, duly executed and delivered as of [DATE] (the “DBC”) on the terms and conditions set forth therein; and

WHEREAS, upon award of the DBC, Principal is required to furnish a bond (this “Bond”) guaranteeing payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”) *[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]*, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$[●], subject to increase in accordance with the NTP2 Rider attached hereto (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 3.4.4 of the General Conditions.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBC.

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety’s prior written consent thereto having been obtained, does not increase the Price by more than \$_____ *[Insert amount that is 10% of the Price]*. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of Bond No.

Bond No.

Type of
Bond:

Payment Bond

dated
effective

(MONTH-DAY-YEAR)

[DB Contractor]

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of \$_____ [ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners] effective upon issuance by the Obligee of NTP2 under the DBC.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective (MONTH-DAY-YEAR)

Signed and Sealed (MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____ (PRINCIPAL)

(SURETY)

By: _____
Attorney in fact

APPENDIX 3 TO EXHIBIT 12

FORM OF WARRANTY BOND

[To be replaced with actual Warranty Bond]

I-35E PHASE 2 PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Contract for the I-35E Phase 2 Project, duly executed and delivered as of [●] (the “DBC”), on the terms and conditions set forth therein; and

WHEREAS, as a condition to Final Acceptance and release of the Performance Bond and Payment Bond as set forth in the DBC, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations under the Contract Documents after Final Acceptance, including payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”) [*If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.*], an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$_____ [**Insert amount that is 10% of the Price**] (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, as they may be amended or supplemented, including without limitation the fulfillment of all Warranties, and payment of claims by Subcontractors and Suppliers, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the Bonded Sum.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBC.
2. This Bond shall inure to the benefit of all Subcontractors and Suppliers with respect to the Work, other than entities having an equity interest in Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.
3. The guarantees contained herein shall survive Final Acceptance of the Project.
4. Whenever Principal shall fail to pay the lawful claims of any of the persons identified in Paragraph 2 above with respect to the Work, excluding entities having an equity interest in Principal, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

5. Whenever Principal shall be, and is declared by the Obligee to be, in default with respect to its obligations under the Contract Documents, provided that the Obligee is not then in material default thereunder, Surety shall promptly take one of the following actions with the consent of the Obligee:

- a. arrange for Principal to perform and complete the DBC;
- b. complete the Work in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors;
- c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work (as defined in the DBC), through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBC, and pay to the Obligee the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or
- d. waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefor to the Obligee or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefor.

6. If Surety does not proceed as provided in Paragraph 5 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 5.d of this Bond, and the Obligee refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligee shall be entitled to enforce any remedy available to the Obligee.

7. After the Obligee has terminated the Principal's right to complete the DBC, and if Surety elects to act under Subparagraph 5.a, 5.b or 5.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the DBC, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBC. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBC, Surety is obligated without duplication for:

- a. the responsibilities of the Principal for correction of defective work and completion of the Work;
- b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and
- c. Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges under the DBC.

8. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Sureties' prior written consent thereto having been obtained, does not increase the Price by more

than \$_____ [Insert amount that is 10% of the Price]. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

9. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered
as of _____, 20__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

EXHIBIT 13

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of [●] by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

A. _____, as design-build contractor ("DB Contractor"), and TxDOT are parties to that certain Design-Build Contract (the "DBC") pursuant to which DB Contractor has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce TxDOT to (i) enter into the DBC; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. DB Contractor is a _____. The Guarantor is _____. The execution of the DBC by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the DBC with DB Contractor. Therefore, in consideration of TxDOT's execution of the DBC and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.** Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of DB Contractor arising out of, in connection with, under or related to the Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against DB Contractor. If any payment made by DB Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting DB Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which DB Contractor has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence,

validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of DB Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not DB Contractor is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against DB Contractor. Guarantor hereby waives the right to require TxDOT to proceed against DB Contractor, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between DB Contractor and TxDOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of DB Contractor from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by DB Contractor of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of DB Contractor under the DBC. Accordingly, in the event that DB Contractor's obligations have been changed by any modification, agreement or stipulation between DB Contractor and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. Liability of Guarantor.

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by DB Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and DB Contractor with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of DB Contractor, if and as permitted by the DBC, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release,

surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its sole discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of DB Contractor; or (iv) any defenses, set-offs or counterclaims that DB Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against DB Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by, Guarantor, DB Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of DB Contractor under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 8.8.1.3 of the General Conditions; (f) any defense based upon any act or omission of TxDOT that directly or indirectly results in or aids the discharge or release of DB Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy that it may now have or may hereafter acquire against DB Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against DB Contractor, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as DB Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by DB Contractor or any shareholders, partners,

members, joint venturers of DB Contractor to Guarantor without the prior written consent of TxDOT. Any payment by DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by DB Contractor.

b. If TxDOT forecloses on any real property collateral pledged by DB Contractor:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from DB Contractor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations are secured by real property.

8. Cumulative Rights. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a [*corporation/limited liability company*] duly organized, validly existing, and in good standing under the laws of the State of [●], and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit or other authorization, right restriction or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of DB Contractor and the ability of DB Contractor to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to DB Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of DB Contractor and will keep itself fully informed as to all aspects of the financial condition of DB Contractor, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of DB Contractor now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity that challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to TxDOT:	Texas Department of Transportation _____ _____ Attention: _____ Telephone: _____ Facsimile: _____
With copies to:	Texas Department of Transportation Office of General Counsel _____ Attention: _____ Telephone: _____ Facsimile: _____
If to Guarantor:	_____ _____ _____ Attention: _____ Telephone: _____ Facsimile: _____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty that are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of DB Contractor or by any defense that DB Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any

such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if DB Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve DB Contractor of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individual or entity, such individuals or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to DB Contractor and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to DB Contractor under the DBC except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of DB Contractor and any other defense to formation of the DBC, and (c) defenses available to DB Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 8.8.1.3 of the General Conditions.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT 14

CHANGE ORDER AND DELAY DEDUCTIBLE DETERMINATION FORMS

- Appendix 1: Form of Request for Change Order
- Appendix 2: Form of Change Order
- Appendix 3: Form of Request for Delay Deductible Determination
- Appendix 4: Form of Delay Deductible Determination

APPENDIX 1 TO EXHIBIT 14

FORM OF REQUEST FOR CHANGE ORDER

REQUEST FOR CHANGE ORDER NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION:

SCOPE:

REASON FOR REQUEST FOR CHANGE ORDER:

DB Contractor Authorized Representative

Date: _____

SECTION II

The total amount of this Request for Change Order is \$ _____. Documentation supporting the Request for Change Order is attached as Exhibits _____ through _____.

Payment Activity/Project Schedule Items Added/Deducted:

Activity No.	Description	Amount
_____	_____	_____

This Request for Change Order is for (check the applicable categories below):

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below); or
- _____ A unit price/quantities Change Order (provide information in Section IIB below); or
- _____ A Force Account Change Order (provide information in Section IIC below)

Section IIA¹

Lump sum price is \$ _____

Section IIB²

UNIT PRICE ITEM	UNIT PRICE	ESTIMATED QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table based on estimated quantities: \$ _____

Section IIC³

Summary of Request for Change Order by Force Account Categories: [Additives/(Credits)]

- A. DB Contractor Labor (construction)
1. Wages (unburdened) \$ _____
 2. Insurance and taxes⁴ (45% of A.1) \$ _____
- B. DB Contractor and Subcontractor Labor (professional services)
1. Wages (unburdened) \$ _____

¹ Section IIA to be included and completed for negotiated, lump sum Change Orders pursuant to General Conditions Section 4.6.7.

² Section IIB to be included and completed for unit price Change Orders pursuant to General Conditions Section 4.6.7.7.

³ Section IIC to be included and completed for Force Account Change Order pursuant to General Conditions Section 4.6.8.

⁴ For insurance and taxes including the cost of premiums on public liability and workers' compensation insurance, Social Security, and unemployment insurance taxes (see General Conditions Section 4.6.8.1)

2.	Labor surcharge (145% of B.1, which includes overhead and profit)	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment ⁵ (includes 15% overhead and profit)	\$ _____
E.	Subcontracts (Force Account basis)	\$ _____
F.	Utility Owner Direct Costs	\$ _____
G.	Overhead and Profit	
1.	Labor ⁶ (25% of A.1)	\$ _____
2.	Materials (15% of C)	\$ _____
3.	Subcontracts (5% of E)	\$ _____
4.	Utility Owner Direct Costs (5% of F)	\$ _____
H.	Project Overhead (Qualifying Delay)	\$ _____
I.	Grand Total	\$ _____

SECTION III

The number of days of Delay Deductible credited toward the Delay Deductible Aggregate Cap by this Request for Change Order is _____ calendar days.

- Ø Prior TxDOT determined days of Delay Deductible (pursuant to Change Orders and Delay Deductible Determinations other than this Change Order): _____ calendar days
- Ø Total days of Delay Deductible credit requested toward the Delay Deductible Aggregate Cap by this Request for Change Order: + _____ calendar days
- Ø Total days of Delay Deductible credit requested toward the Delay Deductible Aggregate Cap including with this Request for Change Order: _____ calendar days
- Ø The number of days in the Delay Deductible Aggregate Cap less the number of days of Delay Deductible credit requested including with this Request for Change Order is _____ calendar days.

SECTION IV⁷

The status of the Substantial Completion Deadline is as follows:

- Ø Unaffected by this Request for Change Order
- Ø Affected by (increasing) (decreasing) the Substantial Completion Deadline by _____ calendar days.

The status of the Final Acceptance Deadline is as follows:

- Ø Unaffected by this Request for Change Order
- Ø Affected by (increasing) (decreasing) the Final Acceptance Deadline by _____ calendar days after Substantial Completion.

Accordingly, the summary of the Substantial Completion Deadline and the Final Acceptance Deadline are as follows:

⁵ Tabulated in accordance with the most recent version of the Rental Rate Blue Book and General Conditions Section 4.6.8.3.1

⁶ For overhead, superintendence, profit, and small tools (see General Conditions Section 4.6.8.1)

⁷ Revise list of Completion Deadlines if applicable to the Project

1. Substantial Completion Deadline: _____
(+ or - _____ days from base of _____ calendar days after NTP1)
2. Final Acceptance Deadline: _____
(+ or - _____ days from base of _____ calendar days after Substantial Completion)

Justification for Request for Change Order with reference to the Agreement:

Change order required under CMC? Yes _____/No _____

If yes, state reason:

The undersigned Authorized Representative of DB Contractor hereby certifies, under penalty of perjury, as follows:

- (a) the above three sections represent a true and complete summary of all aspects of this Request for Change Order;
- (b) the amount of Delay Deductible credit, time and/or compensation requested is justified as to entitlement and amount;
- (c) this Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;
- (d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and
- (e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

If the foregoing Request for Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

DB Contractor Authorized Representative

Date: _____

SECTION V (Reviewed/Approved by TxDOT District Engineer)

TxDOT District Engineer

Date: _____

Comments:

SECTION VI (Reviewed by FHWA Project Representative, if applicable)

FHWA Project Representative

Date: _____

Comments:

SECTION VII (Reviewed by TxDOT Chief Engineer, if applicable)⁸

TxDOT Chief Engineer

Date: _____

Comments:

[Include if signature not required] [Not Applicable - This Change Order is less than \$10 million and does not exceed the \$30 million cumulative threshold. Upon concurrence by the Project Finance, Debt and Strategic Contracts Division Director and General Counsel Division, the District Engineer will have final approval of the Change Order for execution.]

SECTION VIII (Reviewed by Chief Financial Officer, if applicable)⁹

TxDOT Chief Financial Officer

Date: _____

⁸ If not required, insert "NOT APPLICABLE" in signature line.

⁹ If not required, insert "NOT APPLICABLE" in signature line.

Comments:

[Include if signature not required] [Not Applicable - This Change Order is less than \$10 million and does not exceed the \$30 million cumulative threshold. Upon concurrence by the Project Finance, Debt and Strategic Contracts Division Director and General Counsel Division, the District Engineer will have final approval of the Change Order for execution.]

SECTION IX (Reviewed by TxDOT Executive Director, if applicable)¹⁰

TxDOT Executive Director

Date: _____

Comments:

[Include if signature not required] [Not Applicable - This Change Order is less than \$10 million and does not exceed the \$30 million cumulative threshold. Upon concurrence by the Project Finance, Debt and Strategic Contracts Division Director and General Counsel Division, the District Engineer will have final approval of the Change Order for execution.]

¹⁰ If not required, insert "NOT APPLICABLE" in signature line.

APPENDIX 2 TO EXHIBIT 14

FORM OF CHANGE ORDER

CHANGE ORDER NO. _____ CSJ NO. _____ CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION:

SCOPE:

REASON FOR CHANGE ORDER:

DB Contractor Authorized Representative

Date: _____

SECTION II

The total amount of this Change Order is \$ _____. Documentation supporting the Change Order is attached as Exhibits _____ through _____.

Payment Schedule Items Added/Deducted:

Activity No.	Description	Amount
_____	_____	_____

This Change Order is for (check the applicable categories below):

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below);
- _____ A unit price/quantities Change Order (provide information in Section IIB below);
- _____ A Force Account Change Order (provide information in Section IIC below)

Section IIA¹

Lump sum price is \$ _____

Section IIB²

UNIT PRICE ITEM	UNIT PRICE	ESTIMATED QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table based on estimated quantities: \$ _____

Section IIC³

Summary of Force Account Categories: [Additives/(Credits)]

- A. DB Contractor Labor (construction)
- | | |
|--|----------|
| 1. Wages (unburdened) | \$ _____ |
| 2. Insurance and taxes ⁴ (45% of A.1) | \$ _____ |
- B. DB Contractor and Subcontractor Labor (professional services)

¹ Section IIA to be included and completed for negotiated, lump sum Change Orders pursuant to General Conditions Section 4.6.7.
² Section IIB to be included and completed for unit price Change Orders pursuant to General Conditions Section 4.6.7.7.
³ Section IIC to be included and completed for Force Account Change Order pursuant to General Conditions Section 4.6.8.
⁴ For insurance and taxes including the cost of premiums on public liability and workers' compensation insurance, Social Security, and unemployment insurance taxes (see General Conditions Section 4.6.8.1)

1.	Wages (unburdened)	\$ _____
2.	Labor surcharge (145% of B.1, which includes overhead and profit)	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment ⁵ (includes 15% overhead and profit)	\$ _____
E.	Subcontracts (Force Account basis)	\$ _____
F.	Utility Owner Direct Costs	\$ _____
G.	Overhead and Profit	
1.	Construction Labor ⁶ (25% of A.1)	\$ _____
2.	Materials (15% of C)	\$ _____
3.	Subcontracts (5% of E)	\$ _____
4.	Utility Owner Direct Costs (5% of F)	\$ _____
H.	Project Overhead (Qualifying Delay)	\$ _____
I.	Not To Exceed Amount	\$ _____

SECTION III

The number of days of Delay Deductible credited toward the Delay Deductible Aggregate Cap by this Change Order is _____ calendar days.

- Prior TxDOT determined days of Delay Deductible (pursuant to Change Orders and Delay Deductible Determinations other than this Change Order): _____ calendar days
- Total days of Delay Deductible credited to the Delay Deductible Aggregate Cap by this Change Order: + _____ calendar days
- Total days of Delay Deductible credited toward the Delay Deductible Aggregate Cap including with this Change Order: _____ calendar days
- The number of days in the Delay Deductible Aggregate Cap less the number of days of Delay Deductible credited toward the cap is _____ calendar days.

SECTION IV⁷

The status of Substantial Completion is as follows:

- Unaffected by this Change Order
- Affected by (increasing) (decreasing) the date of Substantial Completion by _____ calendar days.
- Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance is as follows:

- Unaffected by this Change Order

⁵ Tabulated in accordance with the most recent version of the Rental Rate Blue Book and General Conditions Section 4.6.8.3.1

⁶ For overhead, superintendence, profit, and small tools (see General Conditions Section 4.6.8.1)

⁷ Revise list of Completion Deadlines if applicable to the Project

- Ø Affected by (increasing) (decreasing) the date of Final Acceptance by _____ calendar days.
- Ø Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

Accordingly, the summary of the dates of Substantial Completion and Final Acceptance and Float are as follows:

1. Substantial Completion: _____
(+ or - _____ days from base of _____ calendar days after NTP1)
2. Final Acceptance: _____
(+ or - _____ days from base of _____ calendar days after Substantial Completion)
3. Number of days of Project Float _____

Justification for Change Order with reference to the Contract Documents:

Change order required under Capital Maintenance Contract? Yes _____/No _____
If yes, state reason:

The undersigned Authorized Representative of DB Contractor hereby certifies, under penalty of perjury, as follows:

- (a) he above three sections represent a true and complete summary of all aspects of this Request for Change Order;
- (b) the amount of Delay Deductible credit, time and/or compensation requested is justified as to entitlement and amount;
- (c) this Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;
- (d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and
- (e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

If the foregoing Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

DB Contractor Authorized Representative

Date: _____

SECTION V (Reviewed by TxDOT District Engineer)

TxDOT District Engineer

Date: _____

Comments:

SECTION VI (Reviewed by FHWA Project Representative, if applicable)

FHWA Project Representative

Date: _____

Comments:

SECTION VII (Reviewed by TxDOT Chief Engineer, if applicable)⁸

TxDOT Chief Engineer

Date: _____

Comments:

[Include if signature not required] [Not Applicable - This Change Order is less than \$10 million and does not exceed the \$30 million cumulative threshold. Upon concurrence by the Project Finance, Debt and Strategic Contracts Division Director and General Counsel Division, the District Engineer will have final approval of the Change Order for execution.]

SECTION VIII (Reviewed by Chief Financial Officer, if applicable)⁹

⁸ If not required, insert "NOT APPLICABLE" in signature line.

⁹ If not required, insert "NOT APPLICABLE" in signature line.

TxDOT Chief Financial Officer

Date: _____

SECTION IX (Reviewed by TxDOT Executive Director, if applicable)¹⁰

TxDOT Executive Director

Date _____

Comments:

[Include if signature not required] [Not Applicable - This Change Order is less than \$10 million and does not exceed the \$30 million cumulative threshold. Upon concurrence by the Project Finance, Debt and Strategic Contracts Division Director and General Counsel Division, the District Engineer will have final approval of the Change Order for execution.]

¹⁰ If not required, insert "NOT APPLICABLE" in signature line.

APPENDIX 3 TO EXHIBIT 14

FORM OF REQUEST FOR DELAY DEDUCTIBLE DETERMINATION

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION OF QUALIFYING DELAY:

IMPACT TO CRITICAL PATH:

REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:

DB Contractor Authorized Representative

Date: _____

SECTION II

The total delay to the Critical Path resulting from the Qualifying Delay described above is _____ days. Documentation supporting the Request for Delay Deductible Determination is attached as Exhibits _____ through _____.

The number of days of Delay Deductible that DB Contractor requests be credited toward the Delay Deductible Aggregate Cap is _____ calendar days.

The number of days in the Delay Deductible Aggregate Cap less the number of days of Delay Deductible credited toward the cap is _____ calendar days.

The undersigned Authorized Representative of DB Contractor hereby certifies, under penalty of perjury, as follows:

- (a) the above represents a true and complete summary of all aspects of this Request for a Delay Deductible Determination;
- (b) the total delay to the Critical Path resulting from the Qualifying Delay is entirely within the Delay Deductible, and DB Contractor is not seeking an extension of a Completion Deadline or increase in Price on account of the delay to the Critical Path;
- (c) the requested credit toward the Delay Deductible Aggregate Cap is justified; and
- (d) the Time Impact Analysis and supporting documentation form the basis for the Request for Delay Deductible Determination is complete, accurate and current.

If the foregoing Request for Delay Deductible Determination includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

DB Contractor Authorized Representative

Date: _____

SECTION III (Reviewed by TxDOT District Engineer)

TxDOT District Engineer

Date: _____

Comments:

SECTION IV (Reviewed by FHWA Project Representative, if applicable)

FHWA Project Representative

Date: _____

Comments:

SECTION V (Reviewed by TxDOT Chief Engineer, if applicable)

TxDOT Chief Engineer

Date: _____

Comments:

SECTION VI (Reviewed by Chief Financial Officer, if applicable)

TxDOT Chief Financial Officer

Date: _____

Comments:

SECTION VII (Reviewed by TxDOT Executive Director, if applicable)

TxDOT Executive Director

Date: _____

Comments:

APPENDIX 4 TO EXHIBIT 14

FORM OF DELAY DEDUCTIBLE DETERMINATION

DELAY DEDUCTIBLE DETERMINATION NO. _____

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION OF QUALIFYING DELAY:

IMPACT TO CRITICAL PATH:

REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:

SECTION II

Based on the information provided in the Request for Delay Deductible Determination, TxDOT has determined the total delay to the Critical Path resulting from the Qualifying Delay described above is _____ days.

The number of days of Delay Deductible that is credited toward the Delay Deductible Aggregate Cap in connection with this Delay Deductible Determination is _____ calendar days.

The total number of days credited toward the Delay Deductible Aggregate Cap for all Change Orders and Delay Deductible Determinations is ____ calendar days.

The number of days in the Delay Deductible Aggregate Cap less the number of days of Delay Deductible credited toward the cap is ____ calendar days.

SECTION III (Approved by TxDOT District Engineer)

TxDOT District Engineer

Date: _____

Comments:

SECTION IV (Reviewed by FHWA Project Representative, if applicable)

FHWA Project Representative

Date: _____

Comments:

SECTION V (Reviewed by TxDOT Chief Engineer, if applicable)

TxDOT Chief Engineer

Date: _____

Comments:

SECTION VI (Reviewed by Chief Financial Officer, if applicable)

TxDOT Chief Financial Officer

Date: _____

Comments:

SECTION VII (Reviewed by TxDOT Executive Director, if applicable)

TxDOT Executive Director

Date: _____

Comments:

EXHIBIT 15

**LANE RENTAL CHARGES AND LIQUIDATED DAMAGES
FOR LANE CLOSURES**

Liquidated Damages for Lane Closures and Lane Rental Charges shall be assessed for certain Lane Closures during the term of the DBC, including the warranty period, in accordance with this Exhibit 15.

A. Non-Chargeable Lane Closures and Chargeable Lane Closures

1. A “Non-Chargeable Lane Closure” is (i) a Lane Closure for which the minimum number of lanes and movements to be maintained during construction are observed, as described in Item 26 of the Design-Build Specifications, or (ii) a Lane Closure required due to Incidents or Emergencies that are not attributable to, could have been avoided by or are exacerbated by the actions of a DB Contractor-Related Entity, and only to the extent necessary to remediate the Incident or Emergency.
2. A “Chargeable Lane Closure” is any Lane Closure that is not a Non-Chargeable Lane Closure, regardless of whether TxDOT has approved the Lane Closure as part of an approved TCP.

B. General Requirements for Lane Closures

General Requirements for Lane Closures are set forth in Section 26.2.1.3 of the Design-Build Specifications.

C. Liquidated Damages for Lane Closures and Lane Rental Charges

No Lane Rental Charges and no Liquidated Damages shall be assessed for a Non-Chargeable Lane Closure.

Either Liquidated Damages or Lane Rental Charges shall be assessed for Chargeable Lane Closures, as provided in more detail below. The Liquidated Damages for Lane Closures and Lane Rental Charges for which DB Contractor may be liable pursuant to Section 8.7.2 of the General Conditions and Section 7.3 of the DBA are established as below in Table 15- 1 and Table 15-2.

Table 15-1: Liquidated Damages for Lane Closures and Lane Rental Charges for I-35E Mainlanes

Northbound/Southbound I-35E Mainlanes	Time Period A	Time Period B	Time Period C	Time Period D
	Liquidated Damages Per Hour	Lane Rental Charges Per Hour	Lane Rental Charges Per Hour	Lane Rental Charges Per Hour
One Lane Closed*	\$8,500	\$8,500	\$50	\$50
Two Lanes Closed**	\$50,000	\$50,000	\$9,500	\$100
Three or more Lanes Closed - including Full Mainlane Closure***	\$90,000	\$90,000	\$35,000	\$13,000

*A full closure and detour of a one lane ramp or one lane direct connection shall be assessed as “One Lane Closed”.

**A full closure and detour of a two lane ramp or two lane direct connection shall be assessed as “Two Lanes Closed”.

*** A Full Mainlane Closure means a Lane Closure of three or more lanes that are not Managed Lanes.

Table 15-2: Liquidated Damages for Lane Closures and Lane Rental Charges for I-35E Managed Lanes

Northbound/Southbound I-35E Managed Lanes	Time Period A	Time Period B	Time Period C	Switch Period
	Liquidated Damages Per Hour	Lane Rental Charges Per Hour	Lane Rental Charges Per Hour	
One or more Lanes Closed* - including Full Managed Lanes Closure**	\$30,700	\$2,000	\$700	\$0

* A full closure and detour of a one lane ramp or one lane direct connection shall be assessed as “One Lane Closed”.

**A Full Managed Lanes Closure means a Lane Closure of two Managed Lanes.

Lane Closures implemented by DB Contractor as directed by TxDOT related to work performed by Systems Integrator shall be exempt from Liquidated Damages for Lane Closures and Lane Rental Charges.

Liquidated Damages for Lane Closures and Lane Rental Charges shall be assessed in quarter-hour increments for any Lane Closure during the Term. The assessment of Liquidated Damages for Lane Closures and Lane Rental Charges shall be for Lane Closures during which one or more lanes (including main lanes, Managed Lanes, and direct connectors) are closed or have a width that is less than the minimum requirements as described in Item 26.2.1.2 of the Design-Build Specifications.

DB Contractor shall report to TxDOT on a daily basis any Lane Closures or reduced widths that give rise to Liquidated Damages for Lane Closures or Lane Rental Charges.

Provision of liquidated damage values for Time Period A does not imply TxDOT’s consent to closing freeway or ramp lanes during the peak periods (Time Period A) and DB Contractor is not permitted to schedule Lane Closures during Time Period A.

The first \$5,000,000.00 of cumulative Lane Rental Charges incurred by DB Contractor with respect to Lane Closures as described above will not be assessed against DB Contractor (the “Lane Rental Bank”).

D. Minimum Number of Lanes and Allowable Lane and Roadway Closures

Requirements for the minimum number of lanes and allowable lane and roadway closures are set forth in Section 26.2.1.3 of the Design-Build Specifications.

E. Crossing Streets

Lane closure requirements related to cross streets and driveways are set forth in Section 26.2.1.3 of the Design-Build Specifications and Section 26.2.2 of the Design-Build Specifications, respectively.

F. Holidays

Lane closure requirements and the application of Liquidated Damages for Lane Closures or Lane Rental Charges related to holidays are set forth in Section 26.2.1.4 of the Design-Build Specifications.

G. Special Events

The following are "Special Events" for the purpose of this Exhibit 15:

- State Fair of Texas (no lane closures after 6:00am on Fridays through 9:00pm on Sundays; no full closures for any direction of any facility from opening day through the closing day except for at night during hours that the State Fair of Texas is closed)
- The University of Texas vs. University of Oklahoma Football Game (no lane closures beginning four hours prior to the event and ending three hours following event completion)

TxDOT has the right to modify the list of Special Events as they are renamed or replaced. Subject to DB Contractor's right to a Change Order in accordance with Section 4.6.9.8 of the General Conditions, TxDOT also has the right to (a) reschedule a Special Event, (b) lengthen, shorten, or otherwise modify these restrictions as actual traffic conditions may warrant, or (c) add a "Special Event" for certain major events that are currently unknown to TxDOT, which will be handled on an individual basis as they arise. TxDOT shall provide written notice to DB Contractor of any changes to the Special Events. These events could include, but are not limited to, parades for sports championships, major political events, major Arts District events, and large athletic events (such as marathons).

Should any Lane Closures violate the Special Event-related restrictions above, Liquidated Damages for Lane Closures and Lane Rental Charges, as appropriate, will be assessed based on the next higher Time Period than what would otherwise apply based upon those shown in Table 26-1 and Table 26-2 of the Design-Build Specifications (that is, a Time Period B violation will be assessed as a Time Period A closure, etc.).

H. Incidents and Emergencies

Lane closure requirements related to Incidents and Emergencies are set forth in Section 26.2.1.6 of the Design-Build Specifications.

I. Time Periods

Time Periods are set forth in Table 26-1 and Table 26-2 in Section 26.2.1.7 of the Design-Build Specifications.

EXHIBIT 16

NOT USED

EXHIBIT 17

IDENTIFIED SUBCONTRACTORS

[To Be Inserted From Proposal]

EXHIBIT 18

KEY PERSONNEL

POSITIONS	INDIVIDUAL
Project Manager	
Construction Manager	
Design Manager	
Lead Maintenance of Traffic (MOT) Design Engineer	
Independent Quality Firm Manager	
Professional Services Quality Assurance Manager	

EXHIBIT 19

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representatives: TxDOT's Executive Director, the Dallas District Engineer and their designees.

DB Contractor's Authorized Representatives: *(To be provided by DB Contractor)*

EXHIBIT 20

DISPUTES RESOLUTION REQUIREMENTS

1. Dispute Resolution Procedures. If the procedures set forth in Sections 4.9 and 4.10 of the General Conditions fail to resolve an issue and DB Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the DRP Rules, as the same may be amended from time to time. This Exhibit 20 shall not apply to: (a) Claims that are not actionable against TxDOT by DB Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 2 of this Exhibit 20, (b) Claims arising solely in tort; (c) Claims for indemnity under Section 7.12 of the General Conditions; (d) Claims for injunctive relief; (e) Claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (f) Claims arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Exhibit 20); (g) any Dispute based on remedies expressly created by statute; or (h) any Dispute that is actionable only against a Surety.

2. Additional Requirements for Subcontractor Disputes. For purposes of this Exhibit 20, a "Subcontractor Dispute" shall include any Dispute by a Subcontractor, including any pass-through claims by a lower tier Subcontractor, against DB Contractor that is actionable by DB Contractor against TxDOT and arises from Work, materials or other services provided or to be provided under the Contract Documents. If DB Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

a. DB Contractor shall identify clearly in all submissions pursuant to this Exhibit 20, that portion of the Dispute that involves a Subcontractor Dispute.

b. Failure of DB Contractor to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by DB Contractor, as provided hereunder, shall constitute a release and discharge of TxDOT by DB Contractor on account of, and with respect to, such Subcontractor Dispute.

c. DB Contractor shall require in all Subcontracts that all Subcontractors of any tier:

i. agree to submit Subcontractor Disputes to DB Contractor in a proper form and in sufficient time to allow processing by DB Contractor in accordance with this Exhibit 20;

ii. agree to be bound by the terms of this Exhibit 20 to the extent applicable to Subcontractor Disputes;

iii. agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Exhibit 20 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against DB Contractor;

iv. agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through DB Contractor, shall be stayed until completion of all steps required under this clause (c); and

v. agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against DB Contractor.

3. Mediation. DB Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation. DB Contractor and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Exhibit 20 for processing a Dispute are tolled, day for day, during mediation.

4. Subsequent Proceedings.

a. **Exclusive Jurisdiction and Venue.** The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, which is permitted to be brought by a Party in court arising out of the Contract Documents, shall be the district courts of Travis County, Texas.

b. **Admissibility of Disputes Resolution Proceedings.** The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties' submittals and any TxDOT determinations shall be in the sole discretion of the appropriate administrative officer or the court in accordance with applicable Law.

5. Continuation of Disputed Work. At all times during the procedures for resolving Disputes set forth in this DBC, DB Contractor and all Subcontractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this DBC, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. DB Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work even if DB Contractor's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

6. Records Related to Claims and Disputes. Throughout the course of any Work that is the subject of any Dispute that is the subject of the procedures for resolving Disputes in this DBC, DB Contractor shall keep separate and complete records of any extra costs, expenses, and/or other monetary effects relating to the disputed Work, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the Contract Documents).

7. Interest.

a. This Section 7 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

b. In the event a DB Contractor elects to pursue a formal Dispute with TxDOT under this Exhibit 20, TxDOT shall notify DB Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. A payment becomes overdue and begins to accrue interest in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251.

8. Attorneys' Fees. A Party shall pay the attorneys' fees of the other party for Disputes brought pursuant to this Exhibit 20 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

EXHIBIT 21

OPERATING PROCEDURES

1. GENERAL

Nothing in these Operating Procedures supersedes the Contract Documents or the Disputes Review Panel Agreements unless mutually agreed by the Parties.

These procedures are for the purpose of providing guidelines for operation of the Panel. They are based on the DBC and current practice of disputes review panels, and are intended to be flexible to meet circumstances that may arise during the life of the Project.

The Panel will assist the parties in facilitating the timely resolution of disputes, claims and other controversies arising out of the work on the Project.

The Parties should not default in their normal responsibility to settle issues by indiscriminately referring disputes to the Panel. The Panel will encourage the parties to resolve issues without resorting to the Disputes Review Panel Process.

As provided in Section 4.9 of the General Conditions, except for their participation in the Panel's activities, neither the DB Contractor nor TxDOT will solicit or receive advice or consultation on job site construction from the Panel or its members on matters dealing with the conduct of the work or resolution of problems. During hearings and site visits, no Panel member will express any opinion concerning the merit of any facet of a controversy or a potential dispute.

The Parties will furnish to each of the Panel members all documents necessary for the Panel to perform its functions including regular written reports, baseline CPM and updates and other relevant data.

The Panel encourages the use of e-mail to transmit agenda, reports and documents of reasonable size.

It must be emphasized and firmly understood that individual Panel members are not the "representative of" or "advocate for" the party which nominated them. The entire Panel must function as an objective, impartial, and independent body at all times. In order to avoid any suggestion of partiality, there must be no individual communication concerning the project between Panel members and employees of the DB Contractor or TxDOT or of their agents and/or sub-contractors during the life of the Project. The Parties will direct any matters needing attention between meetings of the Panel to the Panel Chairperson who shall be the only person to deal directly with the designated contact persons for the TxDOT and the DB Contractor.

The Panel will at all times be impartial, unbiased and neutral in all of its actions. There will be no ex parte communication, rendering of advice or other consultations between any Panel member and TxDOT or any DB Contractor-Related Entities.

2. FREQUENCY OF MEETINGS

The Panel will meet initially at 3-month intervals and at such other times as requested by the Parties. If conditions warrant, the Panel Chairperson, in consultation with the Parties, may reduce or increase the time between meetings to better serve the Parties. Factors to be considered include work progress, occurrence of unusual events and the number and complexity of potential Disputes. The ensuing Panel meeting will be scheduled at each Panel regular meeting.

The Panel requests cooperation of the Parties to the end that no changes be requested to scheduled meeting dates unless absolutely necessary and unavoidable.

In the event that a member of the Panel is unable to attend a scheduled meeting, the Panel Chairperson will attempt to reschedule the meeting. Should rescheduling not be possible, the other two Panel members will attend the meeting without the third.

3. AGENDA FOR MEETINGS

The Panel Chairperson will develop an agenda for each meeting and submit the draft agenda to the Parties 14 calendar days prior to the scheduled meeting date for review and suggested changes.

The Panel Chairperson will send the approved agenda, a memo confirming the Panel meeting and the Panel member travel schedules to the Parties and the Panel members.

The agenda will provide an opportunity for the Panel to hear a round table discussion by the Parties on the status of the work, a brief discussion of any issues and include ample time for a site visit.

At the conclusion of the meeting, the Panel will conduct a field observation of active sections of the Work accompanied by representatives of both the DB Contractor and TxDOT. The Parties will point out all areas of the Project that are subject to a potential issue.

4. MINUTES OF MEETINGS

The Parties may request the Panel Chairperson to prepare a summary of regular meetings, and if no request is made, the Panel Chairperson at his or her sole discretion may prepare a summary of regular meetings. If minutes are prepared, the minutes will be circulated to all parties for comments, additions and corrections. Minutes as so amended will be adopted at the next meeting.

5. PROCEDURES FOR DISPUTE HEARINGS

5.1 Procedure to Take a Dispute to the Panel

After the Parties have diligently attempted to negotiate to settle a Dispute pursuant to Section 4.9.5 of the General Conditions, either Party may refer it to the Panel. After all requirements of the DBC are met, the referring Party transmits a written notice meeting the requirements of Section 4.9.5.3 of the General Conditions to the Panel and the other Party.

The scope of the hearing and subsequent recommendation can be merit (entitlement) only, merit with guidelines for quantum if merit is found, or merit with quantum amount if merit is found. Dispute resolution panels usually hear entitlement and, if appropriate, give guidelines for quantum. If the Parties cannot then negotiate quantum, the Panel considers quantum and issues an appropriate recommendation following a second hearing.

All hearings will be held at the job site except as agreed by the Parties.

The Panel, in a meeting or conference call with the Parties, will determine whether the hearing should be in conjunction with the next meeting or at a specially scheduled meeting, and agree on a date and time required for documentation and hearing preparation. Then the Panel Chairperson, in conference with the Parties, will set dates for completion of each of the documents described below.

Pursuant to Section 4.9.8 of the General Conditions, discovery shall only be permitted at the sole discretion of the Panel.

The Parties may submit documentary evidence for the hearing, which shall be exchanged by the Parties in accordance with Section 4.9.8 of the General Conditions. The Panel may also request that the Parties jointly prepare a statement of dispute and stipulated facts and a common reference document.

1. Statement of Dispute and Stipulated Facts

An agreed simple statement of the dispute on a single page ideally limited to one paragraph.

2. Common Reference Document (CRD)

A common set of exhibits prepared jointly by the Parties to facilitate Panel review and understanding of the referring Party's written notice and other Party's response, and to minimize confusion during the hearing. The CRD should include stipulations to as many facts, dates, quantities, etc., as possible. The CRD should include all documents that either Party wants to use in support of their position. The Parties are encouraged to include visual aids, exhibits, charts or summaries of documents in order to facilitate the Panel's understanding of the issues, and to avoid the submission of voluminous records that are not necessary for the Panel's understanding and consideration.

To the greatest extent possible, the Parties should assemble all documents in chronological order. Large documents (submittals, daily records, photographs, etc.) may be included as appendices. It facilitates Panel review and is helpful during the hearing if the documents are assembled in subsections with a descriptive tab on each, e.g.:

- A. Correspondence, in chronological order.
- B. Contract Documents: Portions of specifications, drawings, geotechnical reports, change orders, etc. that are pertinent to the dispute.
- C. Job Records: Pertinent shift, daily and weekly reports, diary pages, submittals, schedules, drawings, pictures, etc.
- D. Reports: Any reports prepared specifically for the dispute by outside parties, consultants, etc.
- E. Other

A master index should be prepared and all pages should be numbered sequentially (e.g., Bates stamp) in the lower right hand corner.

Other than the list of representatives described below, the Parties may not send the Panel any further exhibits or correspondence regarding the Dispute, without prior approval, between the time of submittal of the above pre-hearing documentation and the hearing.

5.2 List of Representatives

At least two weeks prior to the hearing date, the Parties exchange and submit to the Panel a list of the representatives and, if permitted by the Panel, testifying witnesses that each Party intends to have present at the hearing. Only a limited number of representatives from each Party should attend the hearing. The list of representatives and, if permitted, witnesses should contain the following information: the person's name, title, professional affiliation, and, if the person is a testifying witness, a brief summary of the matters that the person will address.

5.3 Presentation of Dispute

The hearing will be informal. The Panel will conduct the proceedings. The referring Party will make an initial presentation of its case, followed by the respondent. Then, one or more rebuttals to any assertion by the other Party may be presented until the Panel determines that all aspects of the Dispute have been adequately covered. The Panel

members may ask questions, request clarification, or ask for additional data. In large or complex cases, the hearing may be continued as necessary in order to consider and fully understand all the evidence presented by both Parties.

One person for each Party should be designated as the primary presenter, although other individuals may give portions of the presentations as required.

The Panel members will control the hearings and guide the discussion of issues by questioning the Parties or focusing their presentation in order to expeditiously obtain all information that the Panel deems necessary to make its findings and recommendations.

Only one person, who has been recognized by the Panel Chairperson, may speak at a time. The Parties should address the Panel members, not each other. Except in summation, repetitious discussion is discouraged.

No questions or interruptions by one Party will be allowed during the other Party's presentation. Dialogue between the Parties will be allowed only in exceptional situations and with the approval of the Panel Chairperson. At its sole discretion, the Panel may permit questioning of one Party by another Party if it facilitates the clarification of an issue. The Panel Chairperson will control and limit such questioning and response.

Panel members may interrupt to ask presenters to repeat statements that were not understood and may request pauses when presentations are too fast for adequate note taking. The Panel may also interrupt presentations when necessary to clarify a point or receive an explanation, which might be lost if left to a later time. The Panel may ask for additional factual documentation.

Documents and/or exhibits that were not included with the pre-hearing submissions will usually be inadmissible. If the Panel decides to permit their introduction, the hearing will be extended as necessary for the other Party to review the new information and to consider its position and present a rebuttal. If necessary the hearing may be adjourned and reconvened at a future date.

In exceptional cases a hearing transcript by a court reporter may be utilized if requested by either Party and if the Panel deems that a transcript will expedite its deliberations. No audio or video recording will be permitted. In the event that only one Party requests a court reporter, that Party shall bear the cost, including the furnishing of one copy of the transcript to the non-requesting Party and to each Panel member. Otherwise the cost shall be shared equally.

Paper reproductions of overheads and computer screens such as Power Point, shall be provided to the Panel members prior to their use in the hearing.

5.4 Redundant Evidence and Oral Statements

The Panel may limit the presentation of documents or oral statements when it deems them to be irrelevant or redundant, or when it determines such material is of no added value to the Panel in understanding the facts and circumstances of the dispute and arriving at its findings and recommendations.

5.5 Disputes Involving Subcontractors

The Panel will not consider Disputes between Subcontractors and the DB Contractor unless they are actionable by the DB Contractor against TxDOT and actually "passed-through" to TxDOT.

The DB Contractor must clearly identify the portions of the Dispute in all pre-hearing submissions that involve a Subcontractor(s) and the identity of the Subcontractor(s). The DB Contractor must ensure that all Subcontractor documents are timely exchanged and submitted to the Panel as part of the DB Contractor's package, all as above described.

At any hearing regarding a Dispute that includes one or more Subcontractor Disputes, the DB Contractor will have a senior Subcontractor representative with direct and actual knowledge of the Dispute present. Such representative may assist in or make the presentation of the Subcontractor issues and answer questions.

5.6 Panel Deliberations

After the Dispute hearing is concluded, the Panel will meet to formulate findings and its recommendations for resolution of the Dispute. All deliberations will be conducted in private and will be confidential. The Panel may request post-hearing submittals including exhibits, job records, and written responses to the Panel's post-hearing questions directed in writing to either of the Parties. All such post-hearing submittals and written answers to directed questions sent to the Panel are to be simultaneously sent to the other Party.

5.7 Recommendation

Written Panel Recommendations will be forwarded to the Parties in accordance with the provisions of Section 4.9.11 of the General Conditions.

The Panel will make every reasonable attempt to formulate unanimous Panel Recommendations but in the event that is not possible, a minority or dissenting recommendation will be prepared and included with the majority recommendation. All Panel Recommendations will include information and expanded rationales to aid the parties in fully understanding them.

If requested by either Party following delivery of the Panel Recommendations, the Panel shall meet with TxDOT and the DB Contractor to provide additional clarification of the Panel Recommendations.

Pursuant to Section 4.9.13 of the General Conditions, Panel Recommendations will not be admissible as evidence in any subsequent dispute resolution proceedings.

6. OTHER

The Panel reserves the right, with the agreement of the Parties, to revise the above procedures depending upon the circumstances of any particular Dispute.

EXHIBIT 22

DISPUTES REVIEW PANEL AGREEMENT

THIS DISPUTES REVIEW PANEL AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20__, among: the Texas Department of Transportation, hereinafter referred to as “TxDOT”, _____, hereinafter referred to as “DB Contractor”, and _____, hereinafter referred to as “Panel Member”. Panel Member is a member of the Disputes Review Panel, hereinafter referred to as the “Panel” for the _____ (“Project”). TxDOT, DB Contractor, and Panel Member may be referred to individually herein as a “Party” or collectively as the “Parties”. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated _____ between TxDOT and DB Contractor (the “DBC”).

WHEREAS, TxDOT is now engaged in the development of the Project; and

WHEREAS, the DBC provides for DB Contractor to develop, design and build the Project and further provides for the establishment and operation of a Panel to assist in resolving certain disputes, claims and other controversies as specified therein; and

WHEREAS, the Panel is comprised of three members, one who was selected by TxDOT, one who was selected by DB Contractor, and the Panel Chairperson who was selected by the first two members and approved by TxDOT and DB Contractor.

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

I. DESCRIPTION OF WORK

The DBC provides for establishment of the Panel to assist in the resolution of Disputes between TxDOT and DB Contractor. The purpose of the Panel is to fairly and impartially consider the Disputes placed before it, and to provide written Panel Recommendations to both TxDOT and DB Contractor, for resolution of these Disputes. Panel Member shall perform the services necessary to participate on the Panel in accordance with the scope of work set forth herein.

II. SCOPE OF SERVICES

The scope of services of the Panel includes the following.

A. Adopting Operating Procedures:

At the first regular meeting after the effective date of this Agreement, the Panel will meet with DB Contractor and TxDOT to establish the rules and procedures (“Operating Procedures”) which will govern the Panel’s participation in the Project as set forth in the Section 4.9 of the General Conditions. In establishing the Operating Procedures, the Parties shall first consider the Form of Operating Procedures included in Exhibit 21 to the Design-Build Agreement, along with the other members of the Panel, and make any revisions necessary to the effective operation of the Panel and efficient resolution of Disputes. The agreed upon Operating Procedures shall not conflict with any provisions of the DBC. The Panel may establish any internal rules and procedures not covered in the DBC.

B. Conducting Regular Progress Meetings:

All regular meetings are expected to be held at or near the Project site. The regular progress meetings shall be held no less frequently than quarterly through Final Acceptance, although TxDOT and DB Contractor may request more frequent meetings, consistent with the construction activities and the matters under consideration and Dispute. Each meeting is expected to consist of a round table discussion and a field inspection of the work being performed on the Project. A member of TxDOT's staff is expected to conduct the round table discussion, and the round table discussion attendees are expected to include selected personnel from TxDOT and DB Contractor. The agenda for each meeting will be set by the Panel in accordance with Section 4.9.3.2 of the General Conditions.

C. Advisory Opinions:

If requested by TxDOT and DB Contractor, the Panel shall provide TxDOT and DB Contractor with an oral advisory opinion after concurrent submissions by TxDOT and DB Contractor of brief written summaries of the issue(s) in Dispute, pertinent facts and circumstances, and relevant provisions of the Contract Documents. The submissions from TxDOT and DB Contractor shall meet the requirements of and advisory opinions shall be provided in accordance with Section 4.9.6 of the General Conditions and any applicable provisions of the Operating Procedures.

D. Conducting Hearings on Disputes:

Upon receipt by the Panel of a Dispute, either from TxDOT or DB Contractor, the Panel shall convene a hearing to review and consider the Dispute in accordance with the procedures set forth in Section 4.9 of the General Conditions of the DBC and the Operating Procedures. Both TxDOT and DB Contractor shall be given a full and adequate opportunity to present their evidence at these hearings in accordance with Section 4.9 of the General Conditions of the DBC.

It is expressly understood that all Panel members, including Panel Member, are to act impartially and independently in the consideration of facts and conditions surrounding any dispute. Ex parte contact with representatives of TxDOT or DB Contractor is prohibited and is grounds for removal of Panel Member from the Panel.

**III.
PANEL RESPONSIBILITIES**

The Panel is organized in accordance with Section 4.9 of the General Conditions of the DBC for the purposes described therein. Section 4.9 is incorporated by reference herein. The Panel is intended to provide recommendations for resolving disputes, claims and other controversies between TxDOT and DB Contractor, arising under the DBC. The Panel will conduct hearings regarding Disputes under the DBC, including determining compensation payable with respect to such Disputes. If requested by TxDOT and DB Contractor, the Panel may provide Panel Recommendations on merit only, with compensation to be determined later if TxDOT and DB Contractor are unable to resolve the Dispute.

The Panel Recommendations shall be based on the pertinent provisions of the General Conditions and other Contract Documents and the facts and circumstances involved in the Dispute. Panel Recommendations shall be furnished in writing to TxDOT and DB Contractor.

Panel Member represents, warrants and covenants on his/her behalf that he/she:

- (a) Has been provided with a copy of the DBC and other Contract Documents and has taken the time necessary to become familiar with and understand Section 4.9 of the General Conditions;
- (b) Satisfies the requirements for Panel membership set forth in Section 4.9 of the General Conditions;

(c) Shall not seek or accept other employment by TxDOT, any firm under contract with TxDOT, the DB Contractor, any Guarantor or any DB Contractor-Related Entity during the term of this Agreement or within one calendar year after his/her termination, withdrawal, or the termination of this Agreement;

(d) Shall not discuss employment, nor make any agreement regarding employment with TxDOT, the DB Contractor, any Guarantor or any DB Contractor-Related Entity during the term of this Agreement;

(e) Shall not take any other action that would result in disqualification from service as a Panel member; and

(f) Shall immediately notify TxDOT and the DB Contractor if circumstances arise which impair his/her qualification as a Panel member.

Panel Member shall conduct all Panel business in accordance with this Agreement and Section 4.9 of the General Conditions. In the event of any conflict between this Agreement and Section 4.9 of the General Conditions, Section 4.9 of the General Conditions shall control.

All Panel members are to act independently in the consideration of facts and conditions surrounding any Dispute. Panel Member acknowledges that neither TxDOT nor DB Contractor is permitted to seek Panel Member's advice or consultation, ex parte, although either TxDOT or DB Contractor may seek such advice or consultation from the entire Panel, at a Panel meeting, after first giving notice to all parties who might thereafter be parties before the Panel in a Dispute involving that matter. A Panel member who has ex parte contact with TxDOT or DB Contractor or their representatives shall be subject to removal from the Panel for cause.

Panel Member further covenants to TxDOT and the DB Contractor that he/she:

(a) Shall be bound by and perform his/her obligations in accordance with the procedures set forth in Section 4.9 of the General Conditions;

(b) Shall protect the confidentiality of information provided by TxDOT and DB Contractor; and

(c) Shall disclose during the term of this Agreement any potential conflicts of interest as described in Section 4.9.2.5 of the General Conditions.

IV. DB CONTRACTOR RESPONSIBILITIES

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, DB Contractor shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or the resolution of problems.

The DB Contractor shall furnish to Panel Member one copy of all documents it has, other than those furnished by TxDOT, which are pertinent to the performance of the Panel.

V. TxDOT'S RESPONSIBILITIES

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, TxDOT shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or resolution of problems.

TxDOT shall furnish the following:

A. Contract Documents and Other Documents

TxDOT shall furnish Panel Member one copy of (a) the DBC and all related Contract Documents, including, but not limited to, the Design-Build Specifications, any modifications or amendments to the Contract Documents, (b) Project Schedule Updates, and (c) other documents, as agreed by TxDOT and DB Contractor that are pertinent to the performance of the DBC, and necessary to the Panel's work.

B. Coordination

TxDOT will, in cooperation with DB Contractor, coordinate the operations of the Panel.

C. Services

TxDOT and DB Contractor will arrange for or provide conference facilities at the Project Office or TxDOT's facilities, and will provide secretarial and copying services.

**VI.
TIME FOR BEGINNING AND COMPLETION**

The Panel shall begin operation upon execution of Disputes Review Panel Agreements between TxDOT, DB Contractor and each of the members of the Panel, and written authorization by TxDOT, and shall terminate its activities upon later of (a) completion of all work required to be performed by DB Contractor under the DBC (including, unless the DBC is terminated earlier, work required pursuant to the Warranties) or (b) conclusion of any proceedings before the Panel.

Except for choosing a Panel Chairperson if Panel Member is a Party-appointed member, Panel Member shall not begin any work under the terms of this Agreement until authorized in writing by TxDOT.

**VII.
PAYMENT**

Invoices of the Panel members for services performed as described in this Article VII shall be paid by DB Contractor subject to approval by TxDOT and DB Contractor. Payments shall constitute full compensation for work performed and services rendered, and for all materials, supplies and incidentals necessary to serve on the Panel. TxDOT shall reimburse the DB Contractor for one half of these fees and expenses in accordance with the DBC.

A. Payment for Services and Expenses

Panel Member shall be entitled to be paid at the hourly rate of \$_____ [\$200 – 450 depending on qualifications] prorated for each quarter-hour for actual time spent (a) at regular Panel meetings at the Project site, including site visits; (b) at hearings conducted by the Parties; (c) choosing the Panel Chairperson, if applicable; and (d) if approved in advance by TxDOT, actual time spent on pre-meeting and pre-hearing review of information and documents provided to the Panel, consultation and discussion with other members of the Panel, telephonic meetings and discussions with the Panel and parties to a Dispute, post-hearing deliberations with the other members of the Panel, drafting Panel Recommendations, and reconsideration and modifications of Panel Recommendations when appropriate. Panel Member shall not be entitled to compensation for travel time.

Reasonable and necessary direct expenses will be reimbursed without markup to Panel Member. These expenses may include, but are not limited to, travel expenses from the Panel Member's point-of-departure to the initial point-of-arrival in accordance with the State travel expenditure guidelines, printing, long distance telephone, postage and

courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting date. All expenses shall be subject to TxDOT standard requirements.

B. Payments

Panel Member may submit invoices for payment for work completed not more often than once per month during the progress of work. Such invoices shall be in a format approved by TxDOT and DB Contractor, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours, or portions thereof, expended by Panel Member together with direct expenses. Satisfactorily submitted invoices shall be paid within 30 days of approval by TxDOT and DB Contractor.

C. Inspection of Cost Records

Panel Member shall keep, available for inspection by representatives of TxDOT or DB Contractor for a period of four years after final payment, the cost records and accounts pertaining to this Agreement.

VIII. ASSIGNMENT

Panel Member shall not assign any of the work of this Agreement.

IX. TERMINATION OF AGREEMENT

This Agreement may be terminated by mutual agreement of TxDOT and DB Contractor at any time upon not less than four weeks' prior written notice to the Panel members.

Panel Member may withdraw from the Panel by providing four weeks' prior written notice to the other Parties. Panel Member may be terminated for or without cause as specified in the DBC.

Each of TxDOT and DB Contractor shall be entitled to replace the Panel member selected by such Party without cause and without agreement of the other Parties (other than approval of the replacement). The Panel Chairperson may be replaced without cause only with the agreement of TxDOT and DB Contractor.

Should the need arise to appoint a replacement Panel member, the replacement member shall be appointed in the same manner as the original member was appointed. The selection of a replacement Panel member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 20 days.

X. LEGAL RELATIONS

The Parties hereto mutually understand and agree that Panel Member, in the performance of his/her duties on the Panel, is acting in the capacity of an independent agent and not as an employee of either TxDOT or DB Contractor.

Panel Member is absolved of any personal or professional liability arising from the activities and recommendations of the Panel. TxDOT and DB Contractor each agree to hold harmless Panel Member from such liability to the extent permitted by law.

**XI.
MISCELLANEOUS**

This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

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

PANEL MEMBER

By: _____

DB CONTRACTOR:

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT 23

PRE-PROPOSAL UTILITY COMMITMENTS

[Include any Utility Owner commitments (a) regarding Utility Adjustments that are necessary for the accommodation of the Project, (b) that were approved by TxDOT prior to the Proposal Due Date in accordance with Section 2.13 of the ITP, and (c) that were included in the Proposal in accordance with Section 4.5 of Exhibit B to the ITP.]

EXHIBIT 24

UTILITY AMENDMENTS

The General Conditions are amended as follows: (i) underlined text is hereby added to the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 3.8.1 of the General Conditions is hereby amended as follows:

DB Contractor warrants that (a) all Work furnished pursuant to the Contract Documents shall conform to Good Industry Practice, (b) all Construction Work shall be free of defects, (c) all Design Work shall meet the standard of care for engineering and architectural services set forth in Section 4.1.2.2.1, (d) the Project shall be fit for use for the intended function, (e) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (f) the Work shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties"). DB Contractor agrees that all such Warranties for Utility Adjustments for City Utilities shall extend to both TxDOT and the applicable City Utility Owner, and DB Contractor agrees to take any further action required to evidence such Warranties to the applicable City Utility Owner.

2. Section 4.5 of the General Conditions is hereby revised as follows:

4.5 Utilities

DB Contractor is responsible for causing, in accordance with the Project Schedule, all Utility Adjustment Work necessary to accommodate the design and construction of the Project. All Utility Adjustment Work performed by DB Contractor shall comply with the Contract Documents. DB Contractor shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards applicable to the Professional Services and Construction Work and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Section 4.6, DB Contractor shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact or be impacted by the Project (whether located within or outside the Project ROW) are compatible with the Project. DB Contractor agrees that (a) the Price (as it may be modified hereunder) covers all of the Utility Adjustment Work to be furnished, performed or paid for by DB Contractor, (b) it is feasible to obtain and perform all necessary Utility Adjustments within the time deadlines of the Contract Documents (as they may be modified pursuant to Section 4.6), and (c) the Price includes contingencies deemed adequate by DB Contractor to account for the potential risks of additional costs and delays relating to Utility Adjustments, except to the extent that an adjustment to the Price is permitted under this Section 4.5 and in accordance with Section 4.6.

The Utility Adjustment Work for the City Utilities is included in the Work (including all requirements to be included in the City Utility Agreements) and the Price includes all costs associated with the City Reimbursable Utility Adjustments and DB Contractor's Utility coordination and permitting costs associated with all City Utilities.

DB Contractor shall not be required to enter into a PUA with the City Utility Owners. DB Contractor and TxDOT will negotiate in good faith with each of the City Utility Owners the applicable City Utility Agreement setting the terms and price of the Utility Adjustment Work for the applicable City Utilities, based on the draft agreements included in the RID. Notwithstanding anything to the contrary in the

Contract Documents, DB Contractor shall comply with the requirements for all Utility Adjustment Work for City Utilities in accordance with the requirements set forth in the applicable City Utility Agreement, without any right to any additional increase in the Price. If any of the City Utility Owners elects not to use DB Contractor to perform the applicable Utility Adjustments, TxDOT and DB Contractor will enter into a reductive Change Order removing such Utility Adjustments from the Work and decreasing the Price by: (a) with respect to City of Dallas Reimbursable Utility Adjustments, \$[Insert amount from Form P-2], (b) with respect to City of Carrollton Reimbursable Utility Adjustments, \$[Insert amount from Form P-2], (c) with respect to City of Farmers Branch Reimbursable Utility Adjustments, \$[Insert amount from Form P-2] and (d) with respect to City of Irving Reimbursable Utility Adjustments, \$[insert amount from Form P-2].

4.5.1 New Utilities and Unidentified Utilities

DB Contractor's entitlement to Change Orders for additional compensation or extension of time on account of New Utilities and omissions or inaccuracies in the Utility Strip Map shall be limited as set forth in this Section 4.5.1 and Section 4.6.9.2. DB Contractor shall use its best efforts to minimize costs for which DB Contractor is entitled to compensation pursuant to Section 4.6.9.2, and to minimize any delay for which DB Contractor is entitled to an extension of the Completion Deadline pursuant to Section 4.6.9.2, subject to DB Contractor's obligation to comply with all applicable requirements of the Contract Documents, including the Utility Accommodation Rules (UAR).

4.5.2 Utility Enhancements

DB Contractor shall be responsible for addressing any requests by Utility Owners that DB Contractor design or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancements").

4.5.2.1 If a Utility Owner requests that DB Contractor design or construct a Betterment, then subject to Section 4.5.3.4, DB Contractor (or TxDOT and DB Contractor, if the Utility Owner is a City Utility Owner) shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to DB Contractor (or by the applicable City Utility Owner to TxDOT for payment to DB Contractor if the Utility Owner is a City Utility Owner). Any such agreement shall be set forth in the applicable Utility Agreement. Any such Betterment shall be deemed added to the scope of the Work only upon execution by the Utility Owner and DB Contractor and approval by TxDOT (or execution by the applicable City Utility Owner and TxDOT, if the Utility Owner is a City Utility Owner) of a Utility Agreement identifying and providing for performance of such Betterment. Any change in the scope of the Work pursuant to this Section 4.5.2.1 shall not be treated as a TxDOT-Directed Change or extend the Completion Deadlines.

4.5.2.2 The Price shall not be increased on account of any Betterment added to the Work. Instead, DB Contractor shall have the right to collect payment for such work directly from the Utility Owner, subject to the provisions of the applicable Utility Agreement. The amount of compensation payable by the Utility Owner to DB Contractor or TxDOT for a Betterment shall be determined pursuant to the process set forth in the applicable Utility Agreement. DB Contractor shall submit to TxDOT a copy of each invoice delivered to a Utility Owner pursuant to this Section 4.5.2.2, concurrently with its delivery to the Utility Owner.

4.5.2.3 If a Utility Owner (other than a City Utility Owner) requests that DB Contractor design or construct a Utility Owner Project, then subject to Section 4.5.3.4, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to

DB Contractor. Any such agreement shall be a separate contract between DB Contractor and the Utility Owner; and any such Utility Owner Project shall be performed outside of this Design-Build Contract and the Work, without any impact on the Price and the Completion Deadlines and shall be subject to Section 4.5.8. The compensation payable by the Utility Owner to DB Contractor for a Utility Owner Project shall be determined in a manner acceptable to both DB Contractor and the Utility Owner. Notwithstanding the foregoing, for any Utility Owner Project where the Utility Owner is a City Utility Owner, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the applicable City Utility Owner, providing for DB Contractor to perform such work at the applicable City Utility Owner's expense, which agreement upon approval by TxDOT may be incorporated as part of the initial applicable City Utility Agreement or an amendment thereto, with payments to be made by the applicable City Utility Owner to TxDOT and from TxDOT to DB Contractor pursuant to an increase in the Price solely for the costs of such Utility Owner Project included in a negotiated Change Order in accordance with Section 4.6 if such Utility Owner Project is included in an amendment to the applicable City Utility Agreement. DB Contractor shall not be entitled to a time extension for any Utility Owner Project negotiated in accordance with this Section 4.5.2.3.

- 4.5.2.4** DB Contractor is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that DB Contractor design or construct Utility Enhancements. Any Betterment performed as part of a Utility Adjustment, whether by DB Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Under no circumstances shall DB Contractor proceed with any Utility Enhancement that is incompatible with the Project or that cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the Completion Deadlines. Under no circumstances will DB Contractor be entitled to any Price increase or time extension hereunder as the result of any Utility Enhancement, whether performed by DB Contractor or by the Utility Owner. DB Contractor may, but is not obligated to, design and construct Utility Enhancements. DB Contractor shall promptly notify TxDOT of any requests by Utility Owners that DB Contractor considers to be Betterments, and shall keep TxDOT informed as to the status of negotiations with Utility Owners concerning such requests. DB Contractor shall provide TxDOT with such information, analyses, and certificates as may be requested by TxDOT in order to determine compliance with this Section 4.5.2.

4.5.3 Utility Agreements

- 4.5.3.1** As described in the Design-Build Specifications, DB Contractor is responsible for preparing and entering into Utility Agreements (other than the City Utility Agreements) with the Utility Owners, and TxDOT agrees to cooperate as reasonably requested by DB Contractor in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. TxDOT is not providing any assurances to DB Contractor that the Utility Owners will accept, without modification, the standard Utility Agreement forms specified in the Design-Build Specifications. DB Contractor is solely responsible for the terms and conditions of all PUAAs and UAAAs into which it enters (subject to the requirements of the Contract Documents, including Section 14.1.3 of the Design-Build Specifications). Utility Agreements ~~entered into by DB Contractor~~ shall not be considered Contract Documents. Except for extensions of Completion Deadlines to the extent permitted by Section 4.5.5.2, DB Contractor shall not be entitled to any increase in the Price or to any time extension on account of the terms of any Utility Agreement (including those related to any Betterment).
- 4.5.3.2** TxDOT will not be a party to the Utility Agreements (other than the City Utility Agreements); however, DB Contractor shall cause the Utility Agreements (other than the City Utility Agreements) to designate TxDOT as an intended third-party beneficiary thereof and to permit assignment of DB

Contractor's right, title and interest thereunder to TxDOT without necessity for Utility Owner consent. DB Contractor shall not enter into any agreement with a Utility Owner that purports to bind TxDOT in any way, unless TxDOT has executed such agreement as a party thereto. However, TxDOT's signature indicating approval or review of an agreement between DB Contractor and a Utility Owner, or its status as a third-party beneficiary, shall not bind TxDOT as a party to such agreement.

- 4.5.3.3** If a conflict occurs between the terms of a Utility Agreement and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between DB Contractor and TxDOT.
- 4.5.3.4** DB Contractor shall comply with and timely perform all obligations imposed on DB Contractor by any Utility Agreement.
- 4.5.3.5** Each Utility Adjustment (whether performed by DB Contractor or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreements. DB Contractor is solely responsible for negotiating any terms and conditions of its Utility Agreements that might limit a Utility Owner's amendments and additions to its Adjustment Standards after the Proposal Due Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreements, and all other requirements specified in the Contract Documents.

4.5.4 Failure of Utility Owners to Cooperate

- 4.5.4.1** DB Contractor shall use best efforts to obtain the cooperation of the applicable Utility Owner as necessary for each Utility Adjustment. DB Contractor's Project Manager and TxDOT's Project Manager will meet weekly to discuss the progress of each Utility Adjustment. DB Contractor shall notify TxDOT immediately if (a) DB Contractor is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) DB Contractor reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (c) DB Contractor becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between DB Contractor and a Utility Owner with respect to the Project, despite DB Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that TxDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. DB Contractor shall provide TxDOT with such information as TxDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to TxDOT any notice or request for assistance, DB Contractor shall continue to use diligent efforts to pursue the Utility Owner's cooperation.
- 4.5.4.2** If DB Contractor requests TxDOT's assistance pursuant to Section 4.5.4.1, DB Contractor shall provide evidence reasonably satisfactory to TxDOT that (a) the Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (d) the Utility Owner is not cooperating (the foregoing items (a) through (d) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by DB Contractor to obtain the cooperation of the Utility Owner or resolve the dispute; provided,

however, that TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its sole discretion. If TxDOT holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its sole discretion not to exercise those rights, then TxDOT shall assign those rights to DB Contractor upon DB Contractor's request; provided, however, that such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. DB Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to DB Contractor. Any assistance provided by TxDOT shall not relieve DB Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 4.5.4.

- 4.5.4.3** If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1, based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(a) and (b), then DB Contractor shall take such action as is appropriate to satisfy the conditions and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1 based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(c) and (d), then DB Contractor shall take such action as DB Contractor deems advisable during the next 30 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until DB Contractor succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence DB Contractor presents, that the conditions to assistance have been satisfied. DB Contractor shall have the right to submit the question of the reasonableness of TxDOT's determination through the dispute resolution process described in Section 4.9, Section 4.10 and DBA Exhibit 20.

4.5.5 Delays by Utility Owners

- 4.5.5.1** The term "Uncooperative Utility Delay" means (i) with respect to Utility Owners that are not City Utility Owners, a delay to a Critical Path that is directly attributable to a Utility Owner's failure to cooperate with DB Contractor in performing Utility Adjustment Work within the time period reasonably scheduled by DB Contractor for performance of such work, where DB Contractor and the Utility Owner have not yet executed a Utility Agreement addressing such Utility Adjustment Work, and (ii) with respect to City Utility Owners, a delay to a Critical Path that is directly attributable to the failure to cooperate in good faith with TxDOT and DB Contractor in performing Utility Adjustment Work within the time period reasonably scheduled by DB Contractor for performance of such work by an applicable City Utility Owner, where the applicable City Utility Agreement has not yet been executed. If an Uncooperative Utility Delay occurs, then, subject to Section 4.6.9.11, DB Contractor shall be entitled to a Change Order to extend affected Completion Deadlines and for Project Overhead subject to the following risk sharing thresholds:

- (a) DB Contractor shall bear 100% of the risk of such Uncooperative Utility Delays for the first 60-cumulative days of each occurrence of Uncooperative Utility Delay and shall not be entitled to an extension of Completion Deadlines or Project Overhead for this these first 60-day period cumulative days;
- (b) DB Contractor and TxDOT shall share equally in the risk of such Uncooperative Utility Delay for any delays over 60 days and up to 120 days for each occurrence (i.e., any affected

Completion Deadline shall be extended by one day for every two full days of Uncooperative Utility Delays), and shall be entitled to an extension of affected Completion Deadlines for Uncooperative Utility Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for this 60-day period these 60 cumulative days;

- (c) DB Contractor and TxDOT shall share equally in the risk of such Uncooperative Utility Delays over 120 cumulative days and up to 180 cumulative days for each occurrence (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Uncooperative Utility Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during this 60-day period these 60 cumulative days; and
- (d) TxDOT shall bear 100% of the risk of Uncooperative Utility Delays for any delays exceeding that exceed 180 cumulative days per occurrence, and DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2 for this period Uncooperative Utility Delays that exceed 180 cumulative days.

If an Uncooperative Utility Delay is concurrent with another Uncooperative Utility Delay by the same Utility Owner or by another Utility Owner, only one of the delays shall be counted.

4.5.5.2 Subject to the requirements and limitations in this Section 4.5 and Section 4.6, DB Contractor shall be entitled to a Change Order for delays to the Critical Path caused directly by a Utility Owner's failure to perform Utility Adjustment Work within the time period required in the executed Utility Agreement, as it may be extended in accordance with Section 4.5.5.2.1 ("Utility Owner Delay"), provided that (a) the time period established in the executed Utility Agreement for the Utility Owner's performance of the Utility Adjustment Work is reasonable and agreed upon by DB Contractor, Utility Owner, and TxDOT, (b) DB Contractor has taken all reasonable and appropriate steps to secure the Utility Owner's timely performance of the Utility Adjustment Work and (c) DB Contractor has notified TxDOT of the potential delay sufficiently in advance of any delay to the Critical Path to provide TxDOT with an opportunity to take steps to ensure the timely performance of the Utility Adjustment Work by the Utility Owner.

4.5.5.2.1 The Utility Agreement shall include an anticipated start date for the Utility Adjustment Work to be performed by the Utility Owner to begin. If the Utility Owner is not provided with sufficient access to the work area on the anticipated start date set forth in the executed Utility Agreement, the time period for the Utility Owner's performance established in the Utility Agreement shall be extended with a new time period to be agreed upon by DB Contractor, Utility Owner, and TxDOT.

4.5.5.2.2 If a Utility Owner Delay occurs, then, subject to Section 4.6.9.11:

- (a) DB Contractor shall bear 100% of the risk of such Utility Owner Delay for the first 60 days of each occurrence of Utility Owner Delay, and DB Contractor shall not be entitled to Project Overhead for such 60-day period;
- (b) DB Contractor and TxDOT shall share equally in the risk of such Utility Owner Delay for any delays over 60 days and up to 120 days for each occurrence (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delays), and DB Contractor shall not be entitled to Project Overhead for this 60-day period;

- (c) DB Contractor and TxDOT shall share equally the risk of such Utility Owner Delay over 120 days and up to 180 days for each occurrence (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delays) and DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2 during this 60-day period; and
- (d) TxDOT shall bear 100% of the risk of such Utility Owner Delay for any delays exceeding 180 days per occurrence, and DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2 for this period.

~~4.5.5.2 The following risk sharing thresholds apply to Utility Owner Delays:-~~

- ~~(a) DB Contractor shall bear 100% of the risk of the first 60 cumulative days of Utility Owner Delays and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;~~
- ~~(b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Utility Owner Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;~~
- ~~(c) DB Contractor and TxDOT shall share equally the risk of Utility Owner Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and~~
- ~~(d) TxDOT shall bear 100% of the risk of Utility Owner Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to an extension of affected Completion Deadlines and Project Overhead to the extent permitted by Section 4.6.6.2.2 for Utility Owner Delays that exceed 180 cumulative days.~~

4.5.5.3 No Change Order for delay to a Critical Path shall be allowable pursuant to Section 4.5.5.1 or Section 4.5.5.2 unless all of the following criteria are met:

- (a) the general requirements and conditions for Change Orders set forth in Section 4.6 have been met;
- (b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that (i) DB Contractor took advantage of Float time available early in the Project Schedule for coordination activities with respect to the affected Utility and (ii) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation but has been unable to obtain such cooperation;
- (c) if applicable, DB Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner;
- (d) DB Contractor or the Utility Owner has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct such Utility Adjustment;

- (e) no other circumstance exists that would delay the affected Utility Adjustment even if the Utility Owner were cooperative; and
- (f) the delay is allowable under Section 4.6.6.3.

4.5.5.4 Except as set forth in Section 4.5.5.1 and Section 4.5.5.2, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs (other than for Project Overhead) which it may incur as a result of any delays caused by a Utility Owner, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 4.5.5.1 or Section 4.5.5.2. Any action or inaction by TxDOT as described in Section 4.5.4.2 or Section 4.5.5.2 shall have no bearing on the restriction set forth in this Section 4.5.5.4.

4.5.6 Utility Adjustment Costs

4.5.6.1 Subject to Section 4.5.1, DB Contractor is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding costs attributable to Betterments and any other costs for which the Utility Owner is responsible under applicable Law. DB Contractor shall fulfill this responsibility either by performing the Utility Adjustment Work itself at its own cost (except that any assistance provided by any DB Contractor-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work, in compliance with Section 14.2.4 of the Design-Build Specifications), or by reimbursing the Utility Owner for its Utility Adjustment Work (however, DB Contractor has no obligation to reimburse Utility Adjustment costs for any Service Line Utility Adjustment for which the affected property owner has been compensated pursuant to Section 4.4.2). DB Contractor is solely responsible for collecting directly from the Utility Owner any reimbursement due to DB Contractor for Betterment costs or other costs incurred by DB Contractor for which the Utility Owner is responsible under applicable Law.

4.5.6.2 For each Utility Adjustment, the eligibility of Utility Owner costs (both indirect and direct) for reimbursement by DB Contractor, as well as the determination of any Betterment or other costs due to DB Contractor, shall be established in accordance with applicable Law and the applicable Utility Agreements, all of which shall incorporate by reference 23 CFR Part 645 Subpart A.

4.5.6.3 For each Utility Adjustment, DB Contractor shall (a) compensate the Utility Owner for the market value of each Existing Utility Property Interest relinquished pursuant to Section 14.2.4 of the Design-Build Specifications, to the extent TxDOT would be required to do so by applicable Law and provided that TxDOT has approved the Utility Owner's claim or (b) reimburse the Utility Owner's reasonable acquisition costs for a Replacement Utility Property Interest. The Utility Owner will determine which method of compensation is satisfactory. DB Contractor shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith (including any incurred by TxDOT on DB Contractor's behalf for eminent domain proceedings or otherwise) in accordance with Section 4.4.2. DB Contractor shall be responsible for all eligible costs of right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting and related services for either compensating the Utility Owner for or replacing each Existing Utility Property Interest, including all costs and expenses associated with negotiation and condemnation action. DB Contractor shall also carry out the duties in Section 14.2.4.2 of the Design-Build Specifications.

4.5.6.4 If for any reason DB Contractor is unable to collect any amounts owed to DB Contractor by any Utility Owner, then (a) TxDOT shall have no liability for such amounts; (b) DB Contractor shall have no right

to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owing to DB Contractor from TxDOT; and (c) DB Contractor shall have no right to stop work or to exercise any other remedies against TxDOT on account of such Utility Owner's failure to pay DB Contractor.

4.5.6.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, DB Contractor shall coordinate with TxDOT and such local Governmental Entity regarding accounting for and approval of those costs.

4.5.6.6 DB Contractor shall maintain a complete set of records for the costs of each Utility Adjustment (whether incurred by DB Contractor or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and DB Contractor costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. DB Contractor also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the Contract Documents. This Work includes the deliverables identified in the final closeout procedures of Section 14.5.3 of the Design-Build Specifications.

4.5.7 FHWA Utility Requirements

4.5.7.1 Unless TxDOT advises DB Contractor otherwise, the following provisions apply to Utility Adjustments.

4.5.7.2 The Project will be subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and 23 CFR Section 635.410 (Buy America) and FHWA associated policies. DB Contractor shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A and 23 CFR Section 635.410.

4.5.7.3 DB Contractor shall prepare and deliver to TxDOT the Alternate Procedure List in appropriate format, together with all other documentation required by FHWA or TxDOT for compliance with the FHWA Alternate Procedure.

4.5.7.4 Promptly upon determining that any Utility Owner not referenced on the Alternate Procedure List is impacted by the Project, DB Contractor shall submit to TxDOT all documentation required by FHWA or TxDOT to add these Utilities to the Alternate Procedure List.

4.5.7.5 TxDOT will forward the approved list to DB Contractor.

4.5.8 Applications for Utility Permits

4.5.8.1 It is anticipated that during the Work, Utility Owners will apply for utility permits to install Utilities that would cross or longitudinally occupy the Project ROW, or to modify, upgrade, relocate or expand existing Utilities within the Project ROW for reasons other than accommodation of the Project. The provisions of this Section 4.5.8 shall apply to all such permit applications. TxDOT shall provide DB Contractor with a copy of each such permit application received after the Effective Date, within 30 days after TxDOT's receipt of such application.

4.5.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, DB Contractor shall furnish the most recent Project design information or as-built plans, as applicable,

to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities.

- 4.5.8.3** DB Contractor shall assist TxDOT in deciding whether to approve a permit described in Section 4.5.8.1. Within a time period that will enable TxDOT to timely respond to the application, DB Contractor shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, DB Contractor shall furnish to TxDOT Utility No Conflict Sign-Off Forms, signed by both DB Contractor's Utility Design Coordinator (UDC) and DB Contractor's Utility Manager (UM), using the standard forms included in the Contract Documents. DB Contractor shall limit the grounds for its recommendation to the grounds on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval. However, TxDOT shall have the right to issue Utility permits in its sole discretion. Applications for Utility permits and associated coordination described in this Section 4.5.8 shall not be subject to a Change Order and are not considered a New Utility or Unidentified Utility as described in Section 4.5.1.

4.5.9 Security for Utility Adjustment Costs; Insurance

- 4.5.9.1** Upon request from a Utility Owner entitled to reimbursement of Utility Adjustment costs, DB Contractor shall, at its sole cost, provide security for such reimbursement by way of a payment bond, letter of credit or retention account, in such amount and on such terms as are negotiated in good faith between DB Contractor and the Utility Owner (or between TxDOT, DB Contractor and the applicable City Utility Owner, where the Utility Owner is a City Utility Owner).

- 4.5.9.2** DB Contractor may satisfy a Utility Owner's requirement that DB Contractor provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by DB Contractor or any Subcontractor pursuant to Section 3.5.

4.5.10 Additional Restrictions on Change Orders for Utility Adjustments

- 4.5.10.1** In addition to all of the other requirements and limitations contained in this Section 4.5 and in Section 4.6 the entitlement of DB Contractor to any Change Order under this Section 4.5 or Section 4.6.9.2 shall be subject to the restrictions and limitations set forth in this Section 4.5.10.

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

- 4.5.10.3** As part of the Work, DB Contractor is responsible for causing all Utility Adjustment Work and Incidental Utility Adjustment Work to occur, for reimbursing the Utility Owners for their costs of performing or furnishing Utility Adjustment Work and Incidental Utility Adjustment Work, and, subject to Sections 4.5.5.1 and 4.5.5.2, for scheduling all Utility Adjustment Work and Incidental Utility Adjustment Work (whether performed by DB Contractor or the affected Utility Owner) so as to meet the Completion Deadlines herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by DB Contractor, or if DB Contractor performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting time extension and no resulting change in the Price. The foregoing shall not affect TxDOT's right to any credit that may be owing under Section 4.6.

- 4.5.10.4** DB Contractor shall not be entitled to a Change Order for any costs or delays that are attributable to (a) any errors, omissions, inaccuracies, inconsistencies or other defects in designs ~~failure of a design~~ furnished by any Utility Owner, including any failure of such designs to comply with the requirements of Section 14.3 of the Design-Build Specifications or (b) any defect in ~~failure of~~ construction performed by a Utility Owner or other failure of such construction to comply with the requirements of Section 14.4 of the Design-Build Specifications.
- 4.5.10.5** DB Contractor shall not be entitled to a Change Order for any costs or delays resulting from the performance of Incidental Utility Adjustment Work by DB Contractor or any Utility Owner (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 4.6.9.2).
- 4.5.10.6** Any Change Order increasing the Price pursuant to this Section 4.5 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.
- 4.5.10.7** DB Contractor shall not be entitled to any increase in the Price for any costs of coordinating with Utility Owners (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 4.6.9.2).
- 4.5.10.8** Except to the extent set forth in Section 4.6.9.2.3 with respect to Level A SUE, any information with respect to Utilities provided in the Reference Information Documents is for DB Contractor's reference only, has not been verified, and shall not be relied upon by DB Contractor. Without limiting the generality of the foregoing, DB Contractor acknowledges that such information does not identify most of the Service Lines that may be impacted by the Project and that there may be other facilities impacted by the Project that are not identified in such information. DB Contractor shall verify all information with respect to Utilities included in the Reference Information Documents and shall perform its own investigations as provided in Sections 14.3.1 and 14.4.2 of the Design-Build Specifications. Accordingly, there shall be no changes in the Price and no time extensions on account of any inaccuracies in the Reference Information Documents with respect to any Utilities. Except as provided in Section ~~4.6.9.2~~4.9.6.2, DB Contractor shall not be entitled to any increase in the Price or time extension as a result of any of the following:
- (a) any increase in the extent or change in the character of the Utility Adjustment Work necessary to Adjust any Utility from that anticipated by DB Contractor;
 - (b) any difference in the cost to Adjust a Utility from that anticipated by DB Contractor;
 - (c) any inaccuracy in the information included in the Reference Information Documents as to the existence, location, ownership, type, or any other characteristic of any Utility;
 - (d) any inaccuracy in the Reference Information Documents as to whether any Utility is located within privately owned property or public right of way; or
 - (e) any inaccuracy in the Reference Information Documents as to the existence or nature of any rights or interest relating to the occupancy of any real property by any Utility.
- 4.5.10.9** Inasmuch as DB Contractor is both furnishing the design of and constructing the Project, DB Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering each such opportunity, DB Contractor shall consider the impact of design changes on Utility Adjustments to the extent practical. Accordingly, except as otherwise provided in Section 4.6 with respect to TxDOT-Directed Changes, the following provisions shall apply with respect to any increase or decrease in the cost of the Work and any delay associated with design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature or extent of anticipated Utility Adjustments:

- (a) DB Contractor shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes.
- (b) DB Contractor shall not be entitled to any increase in the Price for any such additional costs that DB Contractor incurs (including both additional costs of Utility Adjustment Work and the costs of any additional Work on other aspects of the Project undertaken in order to avoid or minimize Utility Adjustments).
- (c) If TxDOT incurs any such additional costs, then DB Contractor shall reimburse TxDOT for such costs within 10 days after receipt of TxDOT's invoice therefor, or in TxDOT's sole discretion, TxDOT may deduct the amount of reimbursement due from any payment due to DB Contractor under this Design-Build Contract.
- (d) TxDOT shall not be entitled to a credit on account of reductions in the cost of the Work due to any such avoided or minimized Utility Adjustments.

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

4.5.10.11 Except as specified in this Section 4.5 or in Section 4.6, DB Contractor shall not be entitled to any Change Order with respect to any Utility Adjustments, including any act or omission of any Utility Owner that may result in a delay to the Project Schedule or in DB Contractor's incurring costs not included in the Price.

3. Section 7.12.1(i) of the General Conditions is hereby amended as follows:

(i) DB CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, INCLUDING ITS OBLIGATIONS IN CONNECTION WITH CITY UTILITIES, OR ANY DISPUTE BETWEEN DB CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT

EXHIBIT 25

REMAINING PROJECT ROW

ROW Acquisition

Parcels to be acquired by DB Contractor:

RCSJ 0196-03-247: Parcel 30E, 32

RCSJ 0196-03-248: Parcel 7, 9, 31

Relocation Assistance

Parcels for which DB Contractor is responsible for relocation:

RCSJ 0196-03-247: Parcel 11

RCSJ 0196-03-248: Parcel 25,26,27,30,37

The General Conditions are amended as follows: (i) underlined text is hereby added to the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 4.4.1.1 of the General Conditions is hereby revised as follows:

4.4.1.1 All Project ROW, including Additional Properties but excluding temporary interests in property for Project Specific Locations, shall be acquired by DB Contractor in the name of the State. DB Contractor shall undertake and complete the acquisition of all **Remaining** Project ROW, including Additional Properties, in accordance with Item 15 of the Design-Build Specifications, the approved Right of Way Acquisition Management Plan and all applicable Laws relating to such acquisition, including the Uniform Act. DB Contractor shall also be responsible for submitting the completed files in accordance with the closeout procedures as defined by TxDOT in Section 15.2.11 of the Design-Build Specifications.

2. Section 4.4.1.3 of the General Conditions is hereby revised as follows:

4.4.1.3 TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages and Condemnation Packages for **Remaining** Project ROW, (b) except as provided below, undertake eminent domain proceedings, if necessary, for **Remaining** Project ROW in accordance with the procedures and time frames established in Item 15 of the Design-Build Specifications and the approved Right of Way Acquisition Management Plan, and (c) provide review and approval for the following Submittals: payment Submittals, relocation Submittals, administrative settlement Submittals and closing Submittals for **Remaining** Project ROW in accordance with the procedures and time frames established in the Design-Build Specifications and the approved ROW Acquisition Management Plan. TxDOT shall also provide review and approval for final closeout procedures established in Section 15.2.12 of the Design-Build Specifications.

3. Section 4.4.2.1 of the General Conditions is hereby revised as follows:

4.4.2.1 For real property needed for ROW within the Schematic ROW, TxDOT shall be responsible for (a) the purchase price of such real property, (b) any market rental consideration paid in connection with PUAs in accordance with Section 15.4.1 of the Design-Build Specifications, (c) relocation assistance payments required in connection with such real property and (d) title insurance for such real property. Subject to the immediately preceding sentence and Section 4.4.2.6, DB Contractor shall be responsible for the performance and the costs of all right of way engineering, surveying, appraisals, administration, acquisition, relocation assistance, environmental permitting (other than certain mitigation requirements expressly excluded under Section 4.7.1) and related services for all such parcels **that are Remaining Project ROW (excluding the Additional Properties)**, including all costs and expenses of negotiation. If TxDOT incurs and pays any such costs and expenses on DB Contractor's behalf, DB Contractor shall reimburse TxDOT within 10 days of TxDOT's submittal to DB Contractor of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. For any parcels within the Schematic ROW that require acquisition by eminent domain, DB Contractor shall be responsible for the performance of support services for the condemnation proceedings described in Item 15 of the Design-Build Specifications; provided, however, that DB Contractor shall be entitled to reimbursement for DB Contractor's reasonable out-of-pocket costs for providing such services to the extent allowed in accordance with DBA Exhibit 11. Such costs may be included in any Draw Request after the services are provided and incurred by DB Contractor. DB Contractor's responsibility for such support services shall terminate upon Final Acceptance of the Project, except that DB Contractor shall ensure that any expert witnesses employed by DB Contractor-Related Entities are available to assist TxDOT in connection with any condemnation proceedings, including discovery, depositions, pre-hearings and hearings after Final Acceptance. Notwithstanding the foregoing, TxDOT shall be responsible for the legal costs for the Office of the Attorney General or fees for private counsel retained as directed by the Office of the Attorney General in connection with any condemnation actions, except for such legal fees and costs that arise out of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of a DB Contractor-Related Entity in the performance of its obligations under the Contract Documents.

4. Section 4.4.5 of the General Conditions is hereby revised as follows:

4.4.5 Negotiations and Condemnation Proceedings

4.4.5.1 Negotiations for any **Remaining** Project ROW shall be undertaken as set forth in the Contract Documents, including Section 15.4.1 of the Design-Build Specifications. DB Contractor shall obtain TxDOT's written approval of any offer to be extended to an owner of any interest in **Remaining** Project ROW prior to making such offer, in accordance with Section 15.3.6 of the Design-Build Specifications. DB Contractor shall notify TxDOT in writing, for its concurrence, of the failure of negotiations with respect to the acquisition of any parcel included in the **Remaining** Project ROW and shall submit to TxDOT for approval a Condemnation Package for the parcel as described in Section 15.4.4 of the Design-Build Specifications. TxDOT shall have 10 Business Days either to (a) approve the Condemnation Package or (b) provide its comments or request for additional information to DB Contractor if TxDOT determines that the Condemnation Package is incomplete or otherwise deficient. DB Contractor shall incorporate any suggested changes and provide any additional information requested by TxDOT and shall resubmit the Condemnation Package to TxDOT for review and approval. TxDOT shall have 10 Business Days to approve or provide comments to DB Contractor on any resubmittals.

- 4.4.5.2** Condemnation proceedings **for any Remaining Project ROW** will be brought by TxDOT within a reasonable time following approval by TxDOT of a complete Condemnation Package for the parcel as described in Section 15.4.4 of the Design-Build Specifications. TxDOT will deliver the petition for the parcel to DB Contractor within 105 days from the date of approval of the Condemnation Package. For Project ROW other than DB Contractor-Designated ROW, TxDOT will provide the payment for the parcel within 45 days from the date the Special Commissioners' award is filed with the court. For DB Contractor-Designated ROW, DB Contractor will provide the payment for the parcel after the date the Special Commissioners' award is filed with the court. Subject to the cost reimbursement provisions in Exhibit 11 to the DBA, DB Contractor shall cooperate in all respects with TxDOT and shall cause all expert witnesses, appraisers, surveyors, land planners and other consultants utilized by DB Contractor in connection with the acquisition of the **Remaining** Project ROW subject to condemnation to be available to and assist TxDOT in connection with the condemnation proceedings, including discovery, depositions, prehearing preparation, Special Commissioners' hearing, jury trial, or other proceedings. Counsel engaged for settlement and condemnation proceedings shall be from the Office of the Attorney General representing TxDOT.
- 4.4.5.3** Except as provided in Section 4.4.2.5, DB Contractor shall be entitled to a Change Order in accordance with Section 4.6.9.5 for delays to the Critical Path due to **(a)** failure of TxDOT to make available the portion of the **Remaining** Schematic ROW or any Additional Properties that must be acquired due to a TxDOT-Directed Change, Relief Event, or a Necessary Basic Configuration Change, described in a condemnation packet within the number of days after approval of the Condemnation Package specified in Section 6.5 of the DBA, **and (b) failure of TxDOT to make available the portion of the Schematic ROW that is not the Remaining Project ROW within 365 days after NTP1, in each case** excluding any delay caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity in performing the services required under the Contract Documents; provided, however, that the risk of delay following the expiration of such period shall be subject to the risk sharing provisions set forth in Section 6.5 of the DBA. In the event DB Contractor is entitled to an extension of a Completion Deadline, DB Contractor shall also be entitled to Project Overhead to the extent permitted in Section 4.6.6.2. The term "make available," as used herein, means to make available for (a) relocation of occupants and personal property, for occupied parcels, (b) demolition, for unoccupied, improved parcels, or (c) construction, for unoccupied, unimproved parcels. DB Contractor through due diligence shall initiate, cooperate and be responsible for all efforts necessary for the processing of the administrative portion of the condemnation action, up to and including the deposit of the award of Special Commissioners.