

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS; INTERPRETATION

Unless otherwise specified, wherever the following abbreviations or terms are used in this DBC and the Technical Provisions, they shall have the meanings set forth below:

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACORD	Association for Cooperative Operations Research and Development
ACM	Asbestos-containing materials
ADA	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
ADT	Average Daily Traffic
ALJ	Administrative Law Judge
ANSI	American National Standards Institute
APS	Accessible Pedestrian Signal
AREMA	American Railway Engineering and Maintenance of Way Association
ASB	Asphalt Bond Breaker
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATP	Acceptance Test Plan
AWS	American Welding Society
BMP	Best Management Practice
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CAP	(Environmental) Compliance Action Plan
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CEPP	Comprehensive Environmental Protection Program
CFR	Code of Federal Regulations
CGP	Construction General Permit
CMP	Construction Monitoring Plan
CP	Communications Plan
CPCD	Concrete Pavement Contraction Design
CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQMP	Construction Quality Management Plan
CRCP	Continuously Reinforced Concrete Pavement
CSBE	Cement Stabilized Backfill Embankment
CSJ	Control Section Job
CTB	Cement Treatment Base
CTE	Coefficient Thermal Expansion
CTMS	Computerized Traffic Management System
CWA	Clean Water Act

CP	Communication Plan
DBC	Design-Build Contract
DBE	Disadvantaged Business Enterprise
DMS	Dynamic Message Signs
DQMP	Design Quality Management Plan
DSS	Decent, Safe and Sanitary (dwelling)
DUC	DB Contractor Utility Coordinator
DWC	Deferred Work Component
ECI	Environmental Compliance Inspector
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Document Management System
EMS	Environmental Management System
EMT	Electrical Metallic Tubing
ENR	Engineering News Record
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits, Issues and Commitments
EPTP	Environmental Protection Training Program
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIS	Flood Insurance Study
FM	Farm to Market Road
FWCA	Fish and Wildlife Coordination Act
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
GPS	Global Positioning System
HCR	Highway Condition Report
HEC	Hydraulic Engineering Circular
HMMP	Hazardous Materials Management Plan
HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IWP	Investigative Work Plan
LOMR	Letters of Map Revision
LPA	Local Public Agency
LRFD	Load and Resistance Factor Design
MMP	Maintenance Management Plan
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding

MPH	Miles Per Hour
MPLS	Multiple Protocol Label Switching
MS4	Municipal Separate Storm Sewer System
MSDS	Material Safety Data Sheet
MSE	Mechanically Stabilized Earth
MUTCD	Manual of Uniform Traffic Control Devices
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NBI	National Bridge Inventory
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NHPA	National Historical Preservation Act
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
NTCIP	National Transportation Communications for ITS Protocol
OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PBS	Project Baseline Schedule
PBS-1	Preliminary Project Baseline Schedule
PC	Point of Curvature
PCC	Point of Compound Curvature
PCO	Potential Change Order
PDF	Portable Document Format
PI	Plasticity Index or Point of Intersection, as appropriate
PM	Project Manager
PMP	Project Management Plan
POB	Point of Beginning
POC	Point of Commencing
PRC	Point of Reverse Curvature
PSL	Project Specific Location
PT	Point of Tangency
PUA	Possession and Use Agreement
PUAA	Project Utility Adjustment Agreement
PVC	Polyvinyl Chloride
QA	Quality Assurance
QC	Quality Control
QMP	Quality Management Plan
QS	Qualifications Submittal
RDVCS	Regional Data and Video Communications System
RFI	Request For Information
RCP	Reinforced Concrete Pipe
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Document(s)

ROD	Record of Decision
ROW	Right of Way
ROWIS	Right of Way Information System
RP	Recycling Plan
RPLS	Registered Professional Land Surveyor
RQD	Rock-Quality Designation
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SHSD	Standard Highway Sign Design for Texas
SI	Serviceability Index
SIR	Site Investigation Report
SOAH	Texas State Office of Administrative Hearings
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAC	Texas Administrative Code
TBPLS	Texas Board of Professional Land Surveying
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
TDLR	Texas Department of Licensing and Regulation
TCP	Traffic Control Plan
TDWR	Terminal Doppler Weather Radar
THC	Texas Historical Commission
TMC	Traffic Management Center
TMP	Traffic Management Plan
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAFM	Utility Adjustment Field Modification
UAR	TxDOT Utility Accommodation Rules
UCS	User Classification Sub-system
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Agreement
UM	Utility Manager
USPAP	Uniform Standards of Professional Appraisal Practice
US	United States Highway
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standard of Professional Appraisal Practices
UTM	Universal Transverse Mercator
UTP	Unshielded Twisted Pair
VE	Value Engineering
VGA/HDMI	Video Graphics Adaptor/High Definition Multimedia Interface

WBS Work Breakdown Structure
XML Extensible Markup Language

Abbreviated Utility Assembly shall mean the collection of plans and other information and materials which DB Contractor is required to submit to TxDOT in connection with each Utility proposed to remain at its original location within the Project ROW, as more particularly described in the Technical Provisions; a single Abbreviated Utility Assembly may address more than one such Utility.

Acceleration Costs shall mean those fully documented increased costs reasonably incurred by DB Contractor (that is, costs over and above what DB Contractor would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

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

Adjacent Work shall mean any project, work, improvement or development to be planned, designed or constructed which could or does impact the Project and/or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

Adjust shall mean to perform a Utility Adjustment.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the DBC Documents to a Utility Owner’s “applicable Adjustment Standards” refer to those that are applicable pursuant to Section 6.5.3.4 of the DBC.

Affected Third Parties Plan shall have the meaning set forth in the Technical Provisions.

Affidavit of Property Interest shall mean the document describing an Existing Utility Property Interest claimed by a Utility Owner, as more particularly described in the Technical Provisions.

Affiliate shall mean:

- (a) any shareholder, member, partner or joint venture member of DB Contractor,
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, DB Contractor or any of its shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) DB Contractor, (ii) any of the shareholders, members, partners or joint venture members of DB Contractor, or (iii) any Affiliate of DB Contractor under clause (b) of this definition.

For purposes of this definition the term “control” shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. “**Affiliated**” shall mean having the status of an Affiliate.

Alternate Procedure shall mean the alternate procedure for processing Utility Adjustments for FHWA approval pursuant to 23 CFR Section 645.119, which was approved by the FHWA for TxDOT by letter dated October 16, 1973.

Alternate Procedure List shall mean the list of Utilities to be Adjusted (and related information) which TxDOT will submit to the FHWA, as the same may be amended from time to time.

Alternative Technical Concept (ATC) shall have the meaning set forth in Section 3.1 of the ITP.

Antiquities Permit shall mean the permit(s) required under the Antiquities Code of Texas enacted in 1969, to be obtained from the Texas Historical Commission as discussed in the Technical Provisions.

Assembly shall mean the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment as more particularly described in the Technical Provisions.

Authorized Representative shall have the meaning set forth in Section 24.6.1 of the DBC.

Basic Configuration shall mean the following elements defining the Project as set forth in the Final Design Documents:

- (a) the Final Design ROW and control of access as shown in the Final Design Documents plans;
- (b) the number of lanes for the Final Design Documents;
- (c) the approximate location of ramps;
- (d) lengths of the auxiliary lanes as shown in the Final Design Documents;
- (e) turn lane storage lengths as shown in the Final Design Documents; and
- (f) the approximate location of interchanges and the type of interchanges.

Basic Costs shall mean the costs for the following, whether incurred by DB Contractor directly or reimbursed by DB Contractor to a Utility Owner: (i) Professional Services associated with, and construction, of a Utility Adjustment, plus (ii) acquisition of New Utility Property

Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Final ROW required for a Utility Adjustment.

Best Management Practices (BMP) shall have the meaning set forth in *Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement(s); in all other cases, “Betterment” shall mean any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) any upgrading which is required by the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner’s written “standards” meeting the requirements described in the Technical Provisions; or
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.

Business Day shall mean days on which TxDOT is officially open for business.

Certificate of Final Acceptance shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Acceptance.

Certificate of Final Warranty Acceptance shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Warranty Acceptance.

Certificate of Substantial Completion shall mean the certificate issued by TxDOT indicating that a Location has achieved the conditions for Substantial Completion.

Change in Law shall mean: (a) the adoption of any Law after the Proposal Due Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective as of the Proposal Due Date. The term “**Change in Law**” also excludes any change in or new Law relating to DB Contractor’s general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, Medicare, unemployment and other payroll-related taxes.

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

- (a) A change in possession of the power to direct or control the management of DB Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of DB Contractor, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (b) An upstream reorganization or transfer of direct or indirect interests in DB Contractor so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of DB Contractor;
- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls DB Contractor; or
- (d) The exercise of minority veto or voting rights (whether provided by applicable Law, by DB Contractor's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of DB Contractor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements.

Change Order shall mean a written order issued by TxDOT to DB Contractor delineating changes in the Work within the general scope of the DBC Documents or in the terms and conditions of the DBC Documents in accordance with Section 13 of the DBC and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

Change Order Work shall mean all efforts and costs necessary to accomplish a Change Order.

Claim shall mean: (a) a demand by DB Contractor, which is or potentially could be disputed by TxDOT, for a time extension under the DBC Documents or payment of money or damages from TxDOT to DB Contractor or (b) a demand by TxDOT, which is or potentially could be disputed by DB Contractor, for payment of money or damages from DB Contractor to TxDOT.

Code shall have the meaning set forth in Recital A of the DBC.

Collateral Savings shall mean those measurable net reductions in TxDOT's costs of operation resulting from a VE, including costs of maintenance by TxDOT or any third party, logistics, TxDOT-furnished property and future costs associated with the Project.

Communications Plan (CP) shall mean the TxDOT-DB Contractor Communications Plan as described in the Technical Provisions.

Competent Person shall mean an individual who, by way of training and/or experience, is knowledgeable of applicable health and safety standards, is capable of identifying workplace hazards, is designated, and has authority to take appropriate actions as referred to in OSHA standards and documents.

Completion Deadline(s) shall mean the Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.

Comprehensive Environmental Protection Program (CEPP) shall mean the document obligating DB Contractor to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment, as further described in the Technical Provisions.

Construction Documents shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project (or Location of the Project, as applicable) and/or the Utility Adjustments in accordance with the DBC Documents.

Construction General Permit shall mean a permit under the TPDES program for the management of storm water discharges from construction sites as more particularly described in the Technical Provisions.

Construction Monitoring Plan (CMP) shall mean the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and the DBC Documents as more particularly described in the Technical Provisions.

Construction Quality Acceptance Firm (CQAF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the CQP. The initial approved CQAF is _____.

Construction Quality Acceptance Manager (COAM) shall mean the person appointed by the CQAF who is responsible for management and quality acceptance functions, as more particularly described in the Technical Provisions.

Construction Quality Control Manager (CQCM) shall mean the person assigned by DB Contractor who is responsible for management of the quality control aspect of the CQMP, as more particularly described in the Technical Provisions.

Construction Quality Management Plan (CQMP) shall mean the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in the Technical Provisions.

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

Corridor Structure Type Study and Report shall mean a preliminary bridge type study report to evaluate potential superstructure and substructure configurations which may be suitable for the proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 13 of the Technical Provisions.

Cost and Schedule Proposal shall mean DB Contractor's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with the DBC.

Cost to Cure shall mean an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the TxDOT Appraisal and Review Manual.

Critical Path shall mean each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack.

Cultural Resource Management Personnel shall mean the persons designated by the Construction Quality Control Manager to provide expertise in monitoring impacts to cultural resources during the course of the Work pursuant to the Technical Provisions, and their respective staffs.

Customer Groups shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in the Technical Provisions.

Day(s) or **day(s)** shall mean calendar days unless otherwise expressly specified.

DBC Documents has the meaning set forth in Section 1.2 of the Design-Build Contract.

DB Contractor shall mean _____, a _____, together with its successors and assigns.

DB Contractor Default has the meaning set forth in Section 16.1.1 of the DBC.

DB Contractor-Designated ROW shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Final Design ROW that DB Contractor determines is necessary or advisable to be

acquired for the Project and which acquisition is approved by TxDOT to be acquired at DB Contractor's cost and expense. The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the DB Contractor-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that DB Contractor may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of DB Contractor.

DB Contractor-Initiated VE shall mean a VE proposal developed by DB Contractor.

DB Contractor-Related Entities shall mean: (a) DB Contractor, (b) DB Contractor's shareholders, partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom DB Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

DB Contractor Release(s) of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DB Contractor-Related Entity; regardless of cause; or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any DB Contractor-Related Entity in violation of the requirements of the DBC Documents or any applicable Law or Governmental Approval.

DBE Performance Plan shall mean DB Contractor's plan for meeting the DBE participation goals set forth in Section 7.1 of the DBC.

DBE Special Provisions shall mean TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 6 to the DBC.

Decent, Safe and Sanitary (DSS) Dwelling shall mean the condition of a dwelling such that it meets applicable housing and occupancy codes as defined in 49 CFR Part 24.

Demolition and Abandonment Plan shall mean the plan prepared by DB Contractor and which considers the types and sizes of Utilities and structures that will be abandoned during the Term as more particularly described in Section 10.2 of the Technical Provisions.

Design-Build Contract (DBC) shall mean this Design-Build Contract including all exhibits and attachments hereto, as such documents may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms hereof.

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project (or Segment of the Project, as applicable) and/or the Utility Adjustments in accordance with the DBC Documents, the Governmental Approvals and applicable Law.

Design Exception shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

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

Design Quality Management Plan (DQMP) shall mean the plan prepared by DB Contractor setting forth the internal quality control and quality assurance procedures to be followed during performance of Professional Services, as more particularly described in the Technical Provisions.

Design Speed means the speed used to determine the various geometric design features of the roadway.

Design Waiver shall mean a deviation from the minimum requirements in a non-controlling category as identified in the TxDOT Roadway Design Manual.

Deviations shall mean: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the DBC Documents issued under Section 13 of the DBC. "**Deviation**" includes a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual.

Differing Site Condition shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (b) subsurface or surface 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 DBC. The 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; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; and (vi) any conditions which constitute or are caused by a Force Majeure Event.

Directive Letter shall have the meaning set forth in Section 13.1.1.2 of the DBC.

Disadvantaged Business Enterprise or **DBE** shall have the meaning set forth in Exhibit 6 to the DBC.

Dispute means any Claim, dispute, disagreement or controversy between TxDOT and DB Contractor concerning their respective rights and obligations under the DBC Documents including concerning any alleged breach or failure to perform and remedies.

Dispute Resolution Procedures means collectively, the procedures established under Sections 19.3, 19.4 and 19.3.5 of the DBC and the applicable portions of Section 201.112 of the Code and the dispute resolution procedures established thereunder as described in Title 43 of the Texas Administrative Code, Section 9.2, as the same may be amended from time to time.

Drainage Design Report shall mean the report documenting all components of the Project's drainage system as more particularly described in Section 12.2.1 of the Technical Provisions.

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit 15 to the DBC.

Effective Date shall mean the date of the DBC or such other date as shall be mutually agreed upon in writing by TxDOT and DB Contractor.

Electronic Data Management System (EDMS) shall mean the secure data management system provided by DB Contractor containing all of the data DB Contractor is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in the Technical Provisions.

Element means an individual component, system or subsystem of the Project or of a Utility Adjustment included in the Construction Work, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Table Baseline, further subdivided by Auditable Section where appropriate.

Emergency means any unplanned event, beyond the control of DB Contractor-Related Entities and not resulting from the actions or omissions of DB Contractor-Related Entities, within the Project Right of Way that (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the environment, to property adjacent to the Project or to the safety of Users or the public, or (b) is recognized by the Texas Department of Public Safety as an emergency.

Emergency Services shall mean law enforcement, ambulance service and other similar services from agencies with whom DB Contractor establishes protocols for incident response, safety and security procedures, as set forth in the Emergency Management Plan.

Engineer, as used in the Technical Provisions and the Final Design Documents, shall mean TxDOT or its applicable representative.

Engineer in Responsible Charge shall mean the professional engineer accountable for direction, control and supervision to assure that the Work has been critically examined and evaluated for compliance with appropriate professional standards and the requirements of the DBC Documents.

ENR Construction Cost Index shall mean the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including New Environmental Approvals and those approvals identified in the Technical Provisions.

Environmental Commitment (Environmental Permits, Issues and Commitments) (EPIC) shall mean an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

Environmental Commitments Document shall mean: (i) the document describing anticipated Environmental Commitments pertaining to the Project released to Proposers on or before the Proposal Due Date, including any updates provided to Proposers on or before such date.

Environmental Compliance and Mitigation Plan (ECMP) shall mean the DB Contractor's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in the Technical Provisions.

Environmental Compliance Inspectors (ECIs) shall mean the person(s) retained or employed by DB Contractor who provide on-site monitoring of the Project and the Work as more particularly described the Technical Provisions.

Environmental Law shall mean any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) Health and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "**Environmental Laws**" shall also include the following:

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

Environmental Management System shall mean the system and program that includes monitoring field activities for environmental compliance by environmental inspectors, producing weekly reports, providing an environmental training program including a training staff, and developing an environmental team as more particularly described in the Technical Provisions.

Environmental Monitoring Report shall mean the method by which DB Contractor documents compliance with the CMP as described in the Technical Provisions.

Environmental Protection Training Program (EPTP) shall mean that program to be initiated by DB Contractor and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the Environmental Commitments and environmental requirements set forth in all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in the Technical Provisions.

Environmental Team (ET) shall mean the personnel team appointed by DB Contractor to ensure compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in the Technical Provisions.

Environmental Training Staff shall mean Project personnel with experience as set forth in the Technical Provisions to develop and implement an Environmental Protection Training Program as more particularly described in the Technical Provisions.

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

Escrowed Proposal Documents (EPDs) shall have the meaning set forth in Section 21.1 of the DBC.

Estimated VE Net Savings shall mean (i) the amount of any savings in TxDOT's costs resulting from the VE (taking into consideration the costs incurred in reviewing the VE and any impact the VE may have on project revenue), *less* (ii) the actual costs of studying and preparing the VE as substantiated by DB Contractor and approved by TxDOT in writing in accordance with the Change Order procedures set forth in the DBC, *less* (iii) (A) for a VE that reduce the DB Contractor's costs, any additional costs incurred by TxDOT, including the costs incurred in connection with the VE. DB Contractor's profit shall not be considered part of the cost or (B) for a VE that increase the DB Contractor's cost, any additional costs incurred by DB Contractor and approved by TxDOT in accordance with the Change Order procedures in Section 13 of the DBC resulting from the VE.

Event of Default shall have the meaning set forth in Section 16.1.3 of the DBC.

Executive Director shall mean the executive director of the Texas Department of Transportation, or his or her successor.

Existing Utility Property Interest shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Expendable Materials shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

Federal Requirements shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 3 to the DBC.

Final Acceptance shall mean: (a) for each Segment, as applicable, the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the DBC, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance for such

Segment, and (b) for the Project, Final Acceptance of the Project as provided in Section 20.3.6 of the DBC.

Final Acceptance Deadline shall mean each of the deadlines as determined pursuant to Section 4.2.2 of the DBC, as such deadlines may be adjusted by Change Order pursuant to the DBC.

Final Design shall mean, depending on the context: (a) the Final Design Documents; or (b) the design concepts set forth in the Final Design Documents.

Final Design Documents has the meaning ascribed to such term in the Recitals and shall include the complete final construction drawings, specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project (or Location of the Project, as applicable) as provided by TxDOT to DB Contractor.

Final Design ROW shall mean any real property (which term is inclusive of all estates and interests in real property), including detention ponds as well as improvements and fixtures, within the proposed ROW lines established on the Final Design Documents, as such limits may be adjusted from time to time in accordance with the DBC Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

Final Payment shall mean payment by TxDOT of the final installment of the Price for the Work.

Final Reconciliation means the process described in Section 12.4 for determining the undisputed amount owed to DB Contractor after Final Acceptance, and a schedule for payment of such amount.

Final Warranty Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 11.1.6 of the DBC, as and when confirmed by TxDOT's issuance of a Certificate of Final Warranty Acceptance.

Float shall mean the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

Future Contract Savings shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VE submitted by DB Contractor.

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

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (1) causes direct physical damage to the Project and (2) has been proclaimed a disaster or state of emergency by the President of the United States,

- the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction;
- (b) Any epidemic in the geographic vicinity of the Project;
 - (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
 - (d) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;
 - (e) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;
 - (f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires DB Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in DB Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (4) specifically targets the Project or DB Contractor;
 - (g) Any Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials which: (1) occurs after the Proposal Due Date (and for Third Party Releases, also after the date TxDOT makes the parcel available to DB Contractor for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;
 - (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
 - (i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB Contractor-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and
 - (j) The addition of any new condition or requirement in the Environmental Approvals based on the Final Design Documents and the Final Design ROW,

subject to the limitations and conditions described in Sections 6.7.1.2 and 6.7.2 of the DBC.

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

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;
- (v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;
- (vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents, as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any Change in Law which has the effect of modifying a Utility Owner’s required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by DB Contractor (or reimbursed by DB Contractor), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and
- (viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (j) above.

Generally Accepted Accounting Principles (GAAP) shall mean such accepted accounting practice as, in the opinion of the accountant, conforms at the time to a body of generally accepted accounting principles in the United States.

Geotechnical Engineering Reports shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in the Technical Provisions.

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

Governmental Approval shall mean any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory

agencies, agents, or employees, which authorize or pertain to the Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

Governmental Entity shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT.

Guaranteed Obligations shall have the meaning set forth in the Guaranty.

Guarantor shall mean each of the entities which provided a guaranty in the form of Exhibit 13 of some or all of the obligations of DB Contractor under the DBC Documents.

Guaranty shall mean each guaranty executed by a Guarantor guaranteeing some or all of the obligations of DB Contractor under the DBC Documents.

Hazardous Materials shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term “**Hazardous Materials**” includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;

- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Delay has the meaning set forth in Section 13.7.4.2 of the DBC.

Hazardous Materials Management shall mean procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

Hazardous Materials Management Plan (HMMP) shall mean the plan prepared by DB Contractor for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in the Technical Provisions.

Hazardous Materials Manager shall mean the person designated by the Construction Quality Control Manager to provide expertise in the safe handling of Hazardous Materials, as more particularly described in the Technical Provisions.

Identified Utility shall mean any Utility impacted by the Project to which any one or more of the following applies:

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).
- (c) The Utility is an overhead Utility existing as of the Proposal Due Date or which commenced installation prior to the Proposal Due Date.
- (d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).
- (e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on the Utility Strip Map that is a component or extension of an Identified Utility is considered a part of the Identified Utility.

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other

characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on public right of way, and it is in fact located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

Incident shall mean a localized disruption to the free flow of traffic on or safety of users of the Project that is beyond the control of DB Contractor and does not result from actions or omissions of DB Contractor.

Incidental Utility Adjustment Work shall mean all of the following work that DB Contractor is responsible for performing, or causing to be performed, at its own expense and that is necessary or determined by DB Contractor to be required for the construction and/or accommodation of the Project:

- (a) Service Line Utility Adjustments including appurtenances (excluding any Service Line Utility Adjustment for which the owner of the affected real property has been compensated pursuant to the Technical Provisions - Right of Way, and provided that DB Contractor shall obtain all temporary rights of entry needed for such Adjustments in accordance with the Technical Provisions - Right of Way);
- (b) Temporary Utility Adjustments;
- (c) Utility Appurtenance Adjustments;
- (d) Temporary Protections in Place; and
- (e) Resurfacing and re-stripping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by DB Contractor.

Indemnified Parties shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Instructions to Proposers (ITP) shall mean the Instructions to Proposers issued by TxDOT on September 27, 2013 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

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

Intelligent Transportation System (ITS) shall mean the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in the Technical Provisions.

Investigative Work Plan (IWP) shall mean a plan prepared by DB Contractor addressing the methods, techniques, and analytical testing requirements to adequately characterize the extent of impacts by Hazardous Materials to an area of concern.

Job Training and Small Business Opportunity Plan shall mean the plan set forth in Exhibit 8 to the DBC.

Key Personnel shall mean the following positions: (1) Project Manager; (2) Design Manager; (3) Construction Manager; (4) Design Quality Assurance Manager; (5) Construction Quality Control Manager; (6) Construction Quality Acceptance Manager; and (7) Safety Manager.

Key Personnel Liquidated Damages shall mean the liquidated damages described in Section 7.4 of the DBC.

Key Subcontractor shall mean the Subcontractors identified on Exhibit 19 and any Subcontractors whose compensation exceeds \$3,000,000.

Key Subcontracts shall mean a Subcontract with a Key Subcontractor.

Law or **Laws** shall mean: (a) any statute, law, code, regulation, ordinance, rule or common law; (b) any binding judgment (other than regarding a Claim or Dispute); (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute); (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the DBC Documents); or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity; in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. “**Laws**”, however, excludes Governmental Approvals.

License Agreement shall mean any license agreement for construction, maintenance, and use of railroad ROW between an operating railroad and TxDOT as more particularly described in the Technical Provisions.

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

Liquidated Damages shall mean Key Personnel Liquidated Damages and Liquidated Damages for Delay.

Liquidated Damages for Delay shall mean the liquidated damages specified in Sections 17.1 of the DBC.

Locations shall mean each of those site locations for the Project identified on Exhibit 20.

Losses shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys’, accountants’ and expert witnesses’ fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the

DBC)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Maintenance Management Plan shall mean the plan prepared by DB Contractor and which defines the process and procedures for the maintenance of the Project for the Term of DBC as more particularly described in the Technical Provisions.

Major Culvert shall mean a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A major culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Certain major culverts are classified as bridges when they provide an opening of more than 20 feet, measured parallel to the roadway; such culverts may be included in the bridge inventory.

Major River Crossing shall mean a crossing with a 100-year storm event flow in excess of 10,000 cubic feet per second (cfs).

Management Plans shall mean all of the management plans listed in the Technical Provisions.

Maximum Payment Schedule shall mean the curve described in Section 4.3.2 of the DBC which constitutes a cap on the aggregate amount of payments which may be made to DB Contractor hereunder at any specified time.

Minor Culvert shall mean any culvert that is not classified as a Major Culvert.

Municipal Separate Storm Sewer System (MS4) shall mean the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in the Technical Provisions.

National Wetland Inventory shall mean the system of mapping wetlands in the U.S. by the U.S. Fish and Wildlife Service.

Natural Resource Biologist shall mean the team member designated by the Construction Quality Control Manager to provide expertise on monitoring impacts on wildlife and the natural environment due to construction activities related to the Work as more particularly described in the Technical Provisions.

New Environmental Approval shall mean: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval.

New Utility shall mean a Utility installed within the Final Design ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to DB Contractor prior to the Proposal Due Date.

Nonconforming Work shall mean Work that does not conform to the requirements of the DBC Documents, the Governmental Approvals, applicable Law or the Design Documents.

Notice of Intent (NOI) shall mean the notice of intent prepared and submitted by DB Contractor to the TCEQ under the Construction General Permit for storm water discharges from construction sites as more particularly described in the Technical Provisions.

Notice of Partial Termination for Convenience shall mean written notice issued by TxDOT to DB Contractor terminating part of the Work of DB Contractor for convenience under Section 15.1 of the DBC.

Notice of Termination for Convenience shall mean written notice issued by TxDOT to DB Contractor terminating the Work of DB Contractor for convenience under Section 15.1 of the DBC.

NTP1 means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the portion of the Work described in Section 4.1.3 of the DBC.

NTP1 Payment Bond Amount has the meaning set forth in Section 8.1.2 of the DBC.

NTP1 Performance Bond Amount has the meaning set forth in Section 8.1.1 of the DBC.

NTP2 means a written notice issued by TxDOT to DB Contractor pursuant to Section 4.1.4 of the DBC authorizing DB Contractor to proceed with the remaining Work and other activities pertaining to the Project.

NTP2 Payment Bond Amount has the meaning set forth in Section 8.1.4 of the DBC.

NTP2 Performance Bond Amount has the meaning set forth in Section 8.1.3 of the DBC.

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

Ordinary Surface Finish shall have the meaning set forth in Section 13.3.1 of the Technical Provisions.

Party shall mean DB Contractor or TxDOT, as the context may require, and **“Parties”** shall mean DB Contractor and TxDOT, collectively.

Payment Bond shall mean the NTP1 Payment Bond described in Section 8.1.2 and NTP2 Payment Bond described in Section 8.1.4, as applicable.

PCO Notice shall have the meaning set forth in Section 13.3.2.3 of the DBC.

Performance Bond shall mean the NTP1 Performance Bond described in Section 8.1.1 and the NTP2 Performance Bond described in Section 8.1.3, as applicable.

Person shall mean any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Plans means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

Possession and Use Agreement shall have the meaning set forth in the Technical Provisions.

PMP Elements shall have the meaning set forth in the Technical Provisions.

Preliminary Bridge Layouts shall mean the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in the Technical Provisions.

Preliminary Project Baseline Schedule (PBS-1) shall mean the original Project Schedule submitted with the Proposal.

Price shall mean the price set forth in Section 12.1.1 of the DBC, as it may be modified from time to time in accordance with the express provisions of the DBC.

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

Program Manager shall mean [_____] or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

Progress Payment Certificate shall have the meaning set forth in Section 12.7 of the DBC.

Progress Report shall mean the monthly report that DB Contractor must prepare and submit to TxDOT as more particularly described in the Technical Provisions.

Project shall have the meaning set forth in Recital B to the DBC.

Project Baseline Schedule (PBS) shall mean the schedule consistent with the Completion Deadlines, submitted by DB Contractor for approval as a condition of NTP2, setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in the Technical Provisions.

Project Management Plan (PMP) shall mean the document complying with BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT, describing quality assurance and quality control activities necessary to manage the design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in the Technical Provisions.

Project Manager (PM) shall mean the individual designated by DB Contractor and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of DB Contractor, pursuant to Section 2.2.2 of the DBC.

Project ROW or Project Right of Way shall mean the Final Design ROW and the Additional Properties, but excluding therefrom any portion of the Final Design ROW eliminated from the Project by a Change Order.

Project Schedule shall mean one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project Recovery Schedule) for all Work leading up to and including Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with the Technical Provisions.

Project Specific Locations shall mean areas in which DB Contractor proposes Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the Environmental Approvals, such as construction work sites, field office locations, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

Project Status Schedule Update shall mean the update of the Project Schedule to reflect the current status of the Project, as more particularly described in the Technical Provisions.

Project Utility Adjustment Agreement (PUAA) shall mean an agreement between DB Contractor and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in the Technical Provisions. A document is a “**Project Utility Adjustment Agreement**” if it meets the foregoing definition, without regard to the title of the document.

- (a) **Project Utility Adjustment Agreement (DB Contractor-Managed)** shall mean a Project Utility Adjustment Agreement providing for design and construction by DB Contractor of the Utility Adjustment(s) addressed therein.
- (b) **Project Utility Adjustment Agreement (Owner-Managed)** shall mean a Project Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustment(s) addressed therein.

Proposal shall mean DB Contractor’s original Proposal submitted in response to the RFP, including any clarifications.

Proposal Due Date shall mean [November 20, 2013], the deadline for submission of the Proposal to TxDOT.

Proposer shall mean each entity that was shortlisted based on TxDOT’s evaluation of submissions in response to the Request for Qualifications for the Project issued on August 2, 2013, as amended.

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

Protection in Place shall mean any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility’s location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Public Information Act shall mean the Texas Government Code Chapter 552.001 *et seq.*, as amended from time to time.

Punch List shall mean the itemized list of the Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

Quality Management Plan (QMP) shall mean the set of TxDOT-approved plans for quality management and control of the Project and Work, as described in the Technical Provisions.

Quitclaim Deed shall mean a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in the Technical Provisions.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-05.

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

Recovery Schedule shall mean the schedule DB Contractor is required to provide under Section 4.5 of the DBC.

Reference Information Documents (RID) shall mean those documents posted by TxDOT to [RID Website]. Except as expressly provided in the DBC Documents, the Reference Information Documents are not considered DBC Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.

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

Registered Professional Land Surveyor (RPLS) shall mean a person registered by the Texas Board of Professional Land Surveying to practice the profession of land, boundary, or property surveying or other similar professional practices.

Reimbursable Hazardous Materials Costs shall mean DB Contractor's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.8.4 of the DBC, provided that the 25% and 145% mark-ups allowed under Section 13.7.1 of the DBC shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 13.7.2 of the DBC shall be reduced to 7.5%.

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

Released for Construction Documents shall mean DB Contractor's Design Documents issued for the purpose of construction that have been reviewed and accepted by TxDOT, as applicable, authorizing construction.

Replacement Housing Calculation shall mean the opportunity to provide the displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

Replacement Utility Property Interest shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstated in a new location as a part of the Utility Adjustment Work. The term

specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Request for Change Order shall mean a written notice issued by DB Contractor to TxDOT under Section 13.3.2.5 of the DBC, advising TxDOT that DB Contractor seeks a Change Order.

Request for Change Proposal shall mean a written notice issued by TxDOT to DB Contractor under Section 13.2.1 of the DBC, advising DB Contractor that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 13.2.1 of the DBC.

Request for Information (RFI) shall mean a written request prepared by DB Contractor after Design Documents have been released for construction to initiate the process for potential design changes or clarifications.

Request for Partnering shall have the meaning set forth in Section 13.3.2.2 of the DBC.

Request for Proposals (RFP) shall have the meaning set forth in Recital E of the DBC.

Reserved Rights shall mean all of the following:

- (a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and
- (b) all right to use, and use of:
 - (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;
 - (ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;
 - (iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and
 - (iv) any area or space over, on, under or adjacent to the Project ROW for any other commercial or non-commercial development or use.

Retainage Bond shall mean the bond required in accordance with Section 8.1.5 of the DBC and/or the supplemental bond required in accordance with Section 8.1.11, as applicable.

RFP Documents shall mean 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 DBC Documents and the Reference Information Documents and any addenda issued in connection therewith.

RFQ shall have the meaning set forth in Recital C of the DBC.

Right of Entry (ROE) Agreement shall mean a written agreement between the record title owner and DB Contractor granting TxDOT, DB Contractor or assignees permission to enter the applicable parcel that is to be acquired.

Rules shall mean Title 43, Part 1, Chapter 9, Subchapter I of the Texas Administrative Code.

Safety and Health Plan shall mean the plan describing DB Contractor's policies, plans and controls to ensure the health and safety of personnel and the general public affected by the Project, as more particularly described in Section 2.5 of the Technical Provisions.

Schedule Activity shall mean the smallest division of the Work at each WBS level to be tracked in the Project Schedule. Schedule Activities are activities critical in ensuring the timely completion of the Project. In addition to construction tasks, Schedule Activities include quality assurance tasks, environmental tasks, fabrication of structural steel and precast and prestressed concrete structures, material and equipment procurement, Utility Adjustment Work and delivery to the site or storage locations and maintenance of traffic tasks.

Service Line shall mean a utility line, up to and including the meter, that connects the main line and services to individuals, businesses and other entities.

Site shall mean Project ROW, Replacement Utility Property Interests, and any temporary rights or interests that DB Contractor may acquire at its own cost and expense in connection with the Project.

Site Investigative Report (SIR) shall mean the report summarizing the DB Contractor's Hazardous Materials investigative work as required by the Technical Provisions.

Small Bridge shall mean a bridge that is not crossing a Major River Crossing.

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

State shall mean the State of Texas.

State Highway (SH) means a highway designated as part of the state highway system under Section 201.103, Texas Transportation Code.

Subcontract shall mean any agreement by DB Contractor with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a

Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

Subcontractor shall mean any Person with whom DB Contractor has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of DB Contractor and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.

Subcontractor Dispute shall have the meaning set forth in Section 19.4 of the DBC.

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

Substantial Completion, with respect to any Location, shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1 of the DBC, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion for such Location. With respect to the Project as a whole, **Substantial Completion** shall mean the occurrence of Substantial Completion for all Locations.

Substantial Completion Deadline shall mean the deadline as determined pursuant to Section 4.2.1 of the DBC, as such deadline may be adjusted by Change Order pursuant to the DBC.

Supplemental Utility Assembly shall mean the collection of agreements, plans and other information and materials which DB Contractor is required to submit to TxDOT in connection with each Utility Adjustment being added to an existing PUAA by means of a UAAA as more particularly described in the Technical Provisions.

Supplier shall mean any Person not performing work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to DB Contractor or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Surety shall mean each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Payment Bond, Performance Bond, or Warranty Bond.

Tangible Net Worth shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

Technical Provisions (TP) means the Project-specific technical provisions entitled "Technical Provisions for the Energy Sector Roadway Repair Project" and all exhibits and attachments thereto, as such documents may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms of this DBC.

Term shall mean the period of time commencing upon issuance by TxDOT of NTP1 and continuing thereafter through Final Acceptance of the Project, unless terminated earlier in accordance with this DBC.

Termination for Convenience shall mean a termination of the DBC made pursuant to Section 15.1 of the DBC.

Texas Accessibility Standards shall mean the standards for accessibility and regulations issued by the Texas Department of Licensing and Regulation.

Theoretical Gores shall have the meaning set forth in the *Texas Manual on Uniform Traffic Control Devices*.

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

Third Party Release(s) of Hazardous Material shall mean any and all spills of Hazardous Material on the Final Design ROW by a third party who is not acting in a capacity of a DB Contractor-Related Entity that occurs on or after the date TxDOT makes available to DB Contractor the affected parcel.

Threatened or Endangered Species shall mean any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 13.7 of the DBC.

Traffic Control Coordinator shall mean the person designated by DB Contractor to oversee the implementation of the traffic control plans, as more particularly described in the Technical Provisions.

Traffic Management Plan shall mean the plan prepared by DB Contractor for the management of traffic during construction, as more particularly described in the Technical Provisions.

TxDOT shall mean the Texas Department of Transportation, any assignee and any other entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the DBC Documents.

TxDOT Administrative Settlement Committee shall mean the committee established within TxDOT under the direction of the Right of Way Administrator.

TxDOT-Caused Delays shall mean unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the DB Contractor-Related Entities:

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make available within the time periods set forth in Section 6.3.1 or Section 6.3.2 of the DBC, as applicable;
- (c) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the DBC Documents as an express prerequisite to DB Contractor's right to proceed or act (which, for the avoidance of doubt, does not include Submittals and matters governed by Section 3.1.5 of the DBC, within the time periods (if any) indicated in the DBC Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from DB Contractor requesting such action in accordance with the terms and requirements of the DBC Documents;
- (d) failure or inability of TxDOT make available certain TxDOT-furnished ITS equipment specified in the Technical Provisions, provided that DB Contractor provided adequate notice to TxDOT for retrieval of such TxDOT-furnished ITS equipment in accordance with said Section; and
- (e) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the DBC, if such Work exposed or examined is in conformance with the requirements of the DBC Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (g) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct DB Contractor to suspend the Work.

TxDOT Consultant(s) shall mean any firm or persons under contract to TxDOT to perform services for or on the behalf of TxDOT.

TxDOT-Directed Changes shall mean any changes in the scope of the Work or terms and conditions of the DBC Documents (including changes in the standards applicable to the Work) that increase DB Contractor's costs by more than \$10,000, which TxDOT has directed DB Contractor to perform as described in Section 13.2 of the DBC, including Suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 14.1 of the DBC.

TxDOT-Initiated VE shall mean a VE proposal that TxDOT requests DB Contractor to develop.

TxDOT-Provided Approvals shall mean the Environmental Approval(s) set forth in Exhibit 4 to the DBC.

TxDOT Release(s) of Hazardous Material means, except as provided below, the introduction in, on or under the Project ROW of Hazardous Material directly by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any DB Contractor-Related Entity). "**TxDOT Release(s) of Hazardous Material**" excludes, however, (i) any Hazardous Materials so introduced that were in or part of construction materials and

equipment incorporated into the Project and (ii) any Hazardous Materials so introduced that were in, on or under DB Contractor-Designated ROW.

TxDOT's Recoverable Costs means:

- (a) The costs of any assistance, action, activity or Work undertaken by TxDOT which DB Contractor is liable for or is to reimburse under the terms of the DBC Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TXDOT staff and employees performing such action, activity or Work; plus
- (b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the DBC Documents and continuing until paid.

TxDOT Standard Specifications shall mean the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the Texas Department of Transportation including all revisions thereto applicable on the Effective Date.

TxDOT Traffic Engineering Standard Sheets shall mean the traffic related drawings and standards provided on TxDOT's webpage for Statewide TxDOT CAD Standard Plan Files.

TxDOT Utility Manual shall mean the Utility Manual issued by the Right of Way Division of TxDOT on November 5, 1990, as the same may be amended, supplemented or replaced from time to time.

Unidentified Utility(ies) shall mean any Utility impacted by the Project (other than a Service Line) which is neither an Identified Utility nor a New Utility, including any Utility which would be a New Utility but for the fact that it is an extension of an Identified Utility; *provided, however*, that in no case shall any temporary line in connection with any Utility be considered an Unidentified Utility.

Uniform Act shall mean the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

Unknown Hazardous Materials means Hazardous Materials that meet all of the following criteria:

- (a) The Hazardous Materials are in, on or under the Final Design ROW, or parcels added to the Site by a TxDOT-Directed Change or required due to a Force Majeure Event as of the date TxDOT makes available to DB Contractor the affected parcel or detention pond, as applicable;

- (b) The existence of such Hazardous Materials was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date; and
- (c) The Hazardous Materials are not required to be removed and disposed of due to a DB Contractor Release of Hazardous Materials.

For purposes of this definition, “makes available” means (i) the Effective Date for parcels acquired as of the Effective Date or (ii) as to parcels not yet acquired as of the Effective Date, the date DB Contractor first receives access to the parcel in accordance with the DBC Documents. The term Unknown Hazardous Materials does not include Hazardous Materials falling within paragraph (g) of the definition for Force Majeure Event.

Update of an Appraisal shall have the meaning set forth in the Technical Provisions.

User(s) means the registered owner of a vehicle traveling on the Project or any portion thereof.

Utility or **utility** shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term “Utility” or “utility” specifically excludes: (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line, up to and including the meter, connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.

Utility Accommodation Rules (UAR) shall mean the Utility Accommodation Rules issued by TxDOT, at 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, as the same may be amended, supplemented or replaced by TxDOT from time to time.

Utility Adjustment shall mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term “**Utility Adjustment**” shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project 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.

Utility Adjustment Agreement Amendment (UAAA) shall mean an agreement between DB Contractor and the Utility Owner that amends a Project Utility Adjustment Agreement, as more particularly described in the Technical Provisions.

Utility Adjustment Field Modifications has the meaning set forth in the Technical Provisions.

Utility Adjustment Concept Plan shall mean a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and DB Contractor's recommendation for all of the Adjusted locations, of each Utility impacted by the Project, as more particularly described in the Technical Provisions.

Utility Adjustment Plans shall mean the set of plans, specifications, and cost estimates prepared by DB Contractor and approved by the corresponding Utility Owner in connection with the design work for any Utility Adjustment, as more particularly described in the Technical Provisions.

Utility Adjustment Submittals shall mean Submittals, submitted in accordance herewith and with any Project Utility Adjustment Agreement, in each case arising out of or relating to the relevant Utility Adjustments.

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is DB Contractor's responsibility pursuant to Section 6.5 of the DBC. Any Utility Adjustment Work furnished or performed by DB Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement shall mean a UAAA or a PUAA, as the context may require.

Utility Appurtenance Adjustment shall mean the adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

Utility Assembly shall mean the collection of agreements, plans and other information and materials which DB Contractor is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Project Utility Adjustment Agreement and any applicable Amendments), as more particularly described in the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

Utility Assembly Checklist shall mean a checklist listing the required components of a Utility Assembly, as referenced in the Technical Provisions.

Utility Assembly Number or **Assembly Tracking Number** shall mean the unique number given by the DB Contractor to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

Utility Coordinator or DB Contractor Utility Coordinator (DUC) shall mean the utility staff personnel designated by the DB Contractor to coordinate the utility adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with either the Utility Owner and/or TxDOT and its consultants.

Utility Design Coordinator (UDC) shall mean the Registered Professional Engineer designated by the DB Contractor to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in the Technical Provisions.

Utility Enhancement shall mean a Betterment or a Utility Owner Project, as referenced in [Section 6.5.2](#) of the DBC,

Utility Joint Use Agreement or **Utility Joint Use Acknowledgment** shall mean an agreement between TxDOT and a Utility Owner that establishes the rights and obligations of TxDOT and the Utility Owner with respect to occupancy of the Project ROW by a Utility owned by such Utility Owner.

Utility Manager (UM) shall mean the senior staff utility administrator designated by DB Contractor to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in the Technical Provisions.

Utility Owner shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Owner Delay shall mean a delay to a Critical Path that is solely and 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 Utility Owner have not yet executed a Utility Agreement addressing such Utility Adjustment Work.

Utility Owner Project shall mean the design and construction by or at the direction of a Utility Owner (or by DB Contractor pursuant to [Section 6.5.2.3](#) of the DBC) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Utility Strip Map shall mean the map depicting existing Utilities identified by TxDOT which are included in the Reference Information Documents.

Utility Tracking Report shall mean the report prepared by DB Contractor and which lists all Utilities located within the Project ROW or otherwise potentially affecting the Project as more particularly described in the Technical Provisions.

Value Engineering (VEs) shall mean a proposal developed and documented by DB Contractor which: (a) would modify or require a change in any of the requirements of or constraints set forth in the DBC Documents in order to be implemented; and (b) changes the Price without impairing essential functions or characteristics of the Project, including service life, economy of operation, ease of maintenance, desirability and safety, as determined by TxDOT in its sole discretion, and provided that it is not based solely upon a change in quantities, performance or reliability or a relaxation of the requirements contained in the DBC Documents.

Warranty(ies) shall have the meaning set forth in [Section 11.1.1](#) of the DBC.

Warranty Bond shall have the meaning set forth in [Section 8.1.7](#) of the DBC.

Warranty Term shall have the meaning set forth in [Section 11.1.2](#) of the DBC.

Water Quality Specialist shall mean the person designated by the Construction Quality Control Manager to provide expertise in water quality, as more particularly described in the Technical Provisions.

Work shall mean all of the work required under the DBC Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by DB Contractor, reimbursement of Utility Owners for Utility Adjustment Work furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by DB Contractor as required by the DBC Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts which such DBC Documents expressly specify will be performed by Persons other than the DB Contractor-Related Entities.

Interpretation of DBC Documents

In the DBC Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; unless otherwise indicated references to sections, appendices or schedules are to this DBC; words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the DBC Documents defining the Project or the Work shall not be deemed all-inclusive.

[END OF DEFINITIONS]