

DESIGN-BUILD CONTRACT
ENERGY SECTOR ROADWAY REPAIR PROJECT

Between

Texas Department of Transportation

and

[DESIGN-BUILD CONTRACTOR]

Dated as of: _____, 2013

DESIGN-BUILD CONTRACT

Energy Sector Roadway Repair Project

TABLE OF CONTENTS

SECTION 1.	DEFINITIONS; DBC DOCUMENTS; INTERPRETATION OF DBC DOCUMENTS.....	2
1.1	Definitions.....	2
1.2	DBC Documents; Order of Precedence	2
1.3	Computation of Periods.....	3
1.4	Reference Information Documents	3
1.5	Federal Requirements.....	4
1.6	Incorporation of ATCs	4
1.7	TxDOT Monetary Obligations	4
SECTION 2.	OBLIGATIONS OF DB CONTRACTOR	4
2.1	Performance Requirements	4
2.2	General Obligations of DB Contractor	6
SECTION 3.	SUBMITTALS; DESIGN REQUIREMENTS AND DISCLAIMER; ROLES OF PROJECT MANAGEMENT CONSULTANT AND FHWA; GOVERNMENTAL APPROVALS	7
3.1	Submittal, Review and Approval Terms and Procedures	7
3.2	Design Requirements	8
3.3	Responsibility for Design.....	8
3.4	Role of Program Manager and TxDOT Consultants.....	9
3.5	Role of and Cooperation with FHWA	9
3.6	Governmental Approvals and Third Party Agreements.....	9
SECTION 4.	TIME; PROJECT SCHEDULE AND PROGRESS	10
4.1	Time of Essence; Notices to Proceed.....	10
4.2	Completion Deadlines.....	11
4.3	Scheduling of Design, Construction and Payment.....	11
4.4	Conditions to Commencement of Construction.....	11
4.5	Recovery Schedule.....	12
4.6	Performance Evaluations	12
SECTION 5.	CONTROL OF WORK.....	13
5.1	Control and Coordination of Work	13
5.2	Safety.....	13
5.3	Obligations to Minimize Impacts.....	13
5.4	Oversight, Inspection and Testing; Meetings.....	13
5.5	Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals	14
5.6	Nonconforming Work	14

SECTION 6.	ACCESS TO SITE; UTILITY ADJUSTMENTS; ENVIRONMENTAL COMPLIANCE.....	15
6.1	Acquisition of Project ROW	15
6.2	Costs of Acquisitions	15
6.3	Delays Regarding the Acquisition of Final Design ROW	15
6.4	Access to Project ROW	16
6.5	Utility Adjustments	16
6.6	Hazardous Materials Management.....	21
6.7	Environmental Compliance.....	22
SECTION 7.	CONTRACTING AND LABOR PRACTICES	23
7.1	DBE Requirements.....	23
7.2	Non-Discrimination; Equal Employment Opportunity	24
7.3	Subcontracts	24
7.4	Key Personnel; Qualifications of Employees	25
7.5	Responsibility for DB Contractor-Related Entities.....	27
7.6	Subcontracts with Affiliates	27
7.7	Labor Standards	27
7.8	Ethical Standards.....	28
7.9	Job Training and Small Business Opportunity Plan	29
7.10	Prevailing Wages	29
7.11	Uniforms	29
SECTION 8.	PERFORMANCE, PAYMENT, RETAINAGE AND WARRANTY BONDS; GUARANTEES	30
8.1	Provision of Bonds.....	30
8.2	No Relief of Liability	31
8.3	Guaranty	31
SECTION 9.	INSURANCE	31
9.1	General Insurance Requirements	31
9.2	Prosecution of Claims	36
9.3	Disclaimer	37
SECTION 10.	TITLE; SITE SECURITY; MAINTENANCE DURING CONSTRUCTION.....	37
10.1	Title	37
10.2	Site Security	37
10.3	Risk of Loss or Damage; Maintenance and Repair of Work	37
SECTION 11.	WARRANTIES.....	38
11.1	Warranties	38
11.2	Applicability of Warranties to Re-Done Work	40
11.3	Subcontractor Warranties.....	40
11.4	Effect of TxDOT Activities on Warranties.....	41
11.5	No Limitation of Liability	41
11.6	Damages for Breach of Warranty	41

SECTION 17.	LIQUIDATED DAMAGES AND LIMITATION OF LIABILITY	72
17.1	Liquidated Damages Respecting Delays.....	72
17.2	Acknowledgements Regarding Liquidated Damages	73
17.3	Payment; Satisfaction; Waiver; Non-Exclusive Remedy	73
17.4	Limitation of DB Contractor’s Liability	74
17.5	Limitation on Consequential Damages	74
SECTION 18.	INDEMNIFICATION	75
18.1	Indemnity by DB Contractor.....	75
18.2	Defense and Indemnification Procedures.....	77
SECTION 19.	PARTNERING AND DISPUTE RESOLUTION	79
19.1	General Dispute Resolution Provisions	79
19.2	Partnering	79
19.3	Dispute Resolution Procedures	79
19.4	Dispute Resolution: Additional Requirements for Subcontractor Disputes.....	79
19.5	Mediation or Other Alternative Dispute Resolution	80
19.6	Subsequent Proceedings.....	80
19.7	Continuation of Disputed Work.....	81
19.8	Records Related to Claims and Disputes	81
19.9	Interest.....	81
19.10	Attorney Fees	81
SECTION 20.	COMPLETION AND ACCEPTANCE; EARLY OPENING	81
20.1	Substantial Completion	81
20.2	Punch List.....	82
20.3	Final Acceptance	83
20.4	Early Opening	84
20.5	Clayton Act Assignment	84
SECTION 21.	RECORDS AND AUDITS; OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY	84
21.1	Escrowed Proposal Documents.....	84
21.2	Financial Reporting Requirements.....	86
21.3	Maintenance and Inspection of Records	87
21.4	Audits	88
21.5	Public Information Act.....	88
21.6	Ownership of Documents.....	89
21.7	Intellectual Property	89
SECTION 22.	VALUE ENGINEERING	91
22.1	General	91
22.2	Required Information.....	91
22.3	TxDOT Review and Approval.....	91
22.4	Price Adjustment.....	92
22.5	Use of VEs By TxDOT	92

SECTION 23.	COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS.....	92
23.1	Cooperation with Other Contractors	92
23.2	Interference by Other Contractors.....	92
23.3	Coordination with Utility Owners and Adjacent Property Owners	93
SECTION 24.	MISCELLANEOUS PROVISIONS	93
24.1	Representations and Warranties	93
24.2	Survival of Representations and Warranties	95
24.3	Amendments	95
24.4	Waiver	95
24.5	Independent Contractor	95
24.6	Successors and Assigns; Change of Control	95
24.7	Change of Organization or Name	96
24.8	Designation of Representatives; Cooperation with Representatives.....	96
24.9	Survival	96
24.10	Limitation on Third Party Beneficiaries	97
24.11	No Personal Liability of TxDOT Employees; Limitation on State’s Liability	97
24.12	Governing Law.....	97
24.13	Notices and Communications	97
24.14	Taxes	99
24.15	Interest on Amounts Due and Owing.....	99
24.16	Integration of DBC Documents	99
24.17	Severability	100
24.18	Headings.....	100
24.19	Entire Agreement	100
24.20	Counterparts	100

LIST OF EXHIBITS

EXHIBIT 1	Abbreviations and Definitions; Interpretation
EXHIBIT 2	DB Contractor's Proposal Commitments and ATCs
EXHIBIT 3	Federal Requirements
EXHIBIT 4	TxDOT-Provided Approvals
EXHIBIT 5	Maximum Payment Schedule
EXHIBIT 6	TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions
EXHIBIT 7	DB Contractor's DBE Performance Plan
EXHIBIT 8	DB Contractor's Job Training / Small Business Opportunity Plan
EXHIBIT 9	Performance Bond
EXHIBIT 10	Payment Bond
EXHIBIT 11	Retainage Bond
EXHIBIT 12	Warranty Bond
EXHIBIT 13	Form of Guaranty
EXHIBIT 14	Insurance Coverage Requirements
EXHIBIT 15	Form of Draw Request and Certificate
EXHIBIT 16	Form of Change Order
EXHIBIT 17	Initial Designation of Authorized Representatives
EXHIBIT 18	Progress Payment Certificate
EXHIBIT 19	Key Subcontractors
EXHIBIT 20	Locations

DESIGN-BUILD CONTRACT
Energy Sector Roadway Repair Project

This Design-Build Contract (this “Design-Build Contract” or this “DBC”) is entered into by and between the Texas Department of Transportation, a public agency of the State of Texas (“TxDOT”), and _____, a _____ (the “Design-Build Contractor” or “DB Contractor”), effective as of _____, 2013.

RECITALS

A. The State of Texas desires to facilitate private sector participation in the development of the State’s transportation system via design-build agreements, and to accomplish this purpose, the Texas Legislature has enacted Transportation Code, Chapter 223, Subchapter F (the “Code”) and TxDOT has adopted subchapter I in Chapter 9 of Title 43, Texas Administrative Code, relating to design-build contracts (the “Rules”) to accomplish this purpose.

B. TxDOT wishes to enter into an agreement with a design-build contractor to design and construct improvements to each of the site locations (the “Locations” and all such Locations together are referred to as the “Project”) identified on Exhibit 20 for the purpose of providing maintenance improvements and safety improvements, including repairs to roadways and bridges within the State highway system damaged by oversized vehicles, overweight loads, or by above normal vehicle usage in the development and production of energy resources.

C. Pursuant to the Code and the Rules, TxDOT issued a Request for Qualifications (as amended, the “RFQ”) on August 2, 2013.

D. TxDOT received seven qualification statements on August 29, 2013 and subsequently shortlisted [_____] proposers.

E. On September 27, 2013, TxDOT issued to the shortlisted proposers a Request for Proposals (as subsequently amended by addenda, the “RFP”) to design and construct the Project.

F. On or before [November 20, 2013], TxDOT received responses to the RFP, including the response of DB Contractor (the “Proposal”).

G. A proposal evaluation committee, comprised of TxDOT personnel, determined that DB Contractor was the proposer which best met the selection criteria contained in the RFP and that the Proposal was the one which provided the best value to the State of Texas.

H. On [_____], the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this Design-Build Contract.

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

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

L. The Parties intend for this Design-Build Contract to be a lump sum design-build agreement obligating DB Contractor to perform all work necessary to obtain completion of the Project by the deadlines specified herein for the Price, subject only to certain specified limited exceptions. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of

cost overruns, this Design-Build Contract includes restrictions affecting DB Contractor's ability to make claims for increases to the Price or extensions of the Completion Deadlines. DB Contractor has agreed in this Design-Build Contract to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Price.

M. TxDOT has provided to the DB Contractor in the Reference Information Documents signed and sealed final design plans for each Location of the Project (the "Final Design Documents"). Subject to approved Deviations or approved ATCs, the Final Design Plans are to be used by the DB Contractor as the basis for the construction of the Project.

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

SECTION 1. DEFINITIONS; DBC DOCUMENTS; INTERPRETATION OF DBC DOCUMENTS

1.1 Definitions

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

1.2 DBC Documents; Order of Precedence

The term "DBC Documents" shall mean the documents listed in this Section 1.2. Each of the DBC Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The DBC Documents are intended to be complementary and to describe and provide for a complete agreement.

1.2.1 In the event of any conflict among the DBC Documents, the order of precedence shall be as set forth below:

1. Change Orders and DBC Document amendments (excluding amendments to the Technical Provisions), and all exhibits and attachments thereto;
2. This Design-Build Contract (or DBC), including all exhibits hereto and the executed originals of exhibits that are contracts, but excluding Exhibit 2);
3. Technical Provisions amendments, and all exhibits and attachments to such amendments;
4. The Technical Provisions, and all exhibits and attachments to the Technical Provisions;
5. DB Contractor's Proposal Commitments and ATCs (as set forth in Exhibit 2);
and
6. The Final Design Documents, provided that: (a) specifications contained therein shall have precedence over plans; and (b) any other Deviations approved in accordance with this DBC with respect to the Final Design Documents shall have priority over conflicting requirements of other DBC Documents only to the extent that the conflicts are specifically identified to TxDOT by DB Contractor and such Deviations are approved by TxDOT in writing.

1.2.2 Notwithstanding the order of precedence among DBC Documents set forth in Section 1.2.1, in the event and to the extent that Exhibit 2 expressly specifies that it is intended to supersede specific provisions of the DBC Documents, Exhibit 2 shall control over the specified provisions. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that

can reasonably be interpreted as offers to provide higher quality items than otherwise required by the DBC Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains statements, offers, terms, concepts or designs which TxDOT considers to be more advantageous than the requirements of the other DBC Documents, all such statements, offers, terms, concepts or designs shall be considered DBC Document requirements and shall have the priority of DBC amendments and Technical Provision amendments, as applicable.

1.2.3 Portions of the Reference Information Documents, including the Final Design Documents, are referenced in the DBC Documents for the purpose of defining requirements of the DBC Documents. The Reference Information Documents shall be deemed incorporated in the DBC Documents to the extent that they are so referenced, with the same order of priority as the DBC Document in which the reference occurs.

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

1.2.5 Notwithstanding the order of precedence among DBC Documents set forth in this Section 1.2, other than Section 1.2.2, if a DBC Document contains differing provisions on the same subject matter than another DBC Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a DBC Document or set of DBC Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

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

1.3 Computation of Periods

If the date to perform any act or give any notice specified in the DBC Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Business Day. Notwithstanding the foregoing, requirements contained in the DBC Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be performed as specified, even though the date in question may fall on a non-Business Day.

1.4 Reference Information Documents

TxDOT has provided and disclosed the Reference Information Documents to DB Contractor. Except as provided in Section 1.2.3, the Reference Information Documents are not mandatory or binding on DB Contractor. Except as provided in Section 1.2.3, TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the DBC Documents, Governmental Approvals or Laws. DB Contractor shall have no right to additional compensation or

time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

1.5 Federal Requirements

DB Contractor shall comply and require its Subcontractors to comply with all federal requirements applicable to transportation projects that receive federal-aid funding or other federal funds or credit, including those requirements set forth in Exhibit 3, notwithstanding that the Project may not in fact receive any federal-aid funding or other federal funds or credit. In the event of any conflict between any applicable Federal Requirements and the other requirements of the DBC Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

1.6 Incorporation of ATCs

1.6.1 If the DBC Documents incorporate any approved ATCs and either: (a) DB Contractor does not comply with one or more TxDOT conditions of pre-approval for the ATC or (b) DB Contractor does not obtain a third party approval required for the ATC, then DB Contractor shall comply with the DBC Document requirements that would have been applicable but for the ATC, including acquiring DB Contractor-Designated ROW necessary to comply with the DBC Documents, without any increase in the Price, extension of the Completion Deadlines or any other Change Order.

1.6.2 ATCs contained in proposals submitted by unsuccessful proposers may, in TxDOT's sole discretion, be presented to the DB Contractor as a Request for Change Proposal in accordance with Section 13.2.1 of this DBC.

1.7 TxDOT Monetary Obligations

All TxDOT monetary obligations under the DBC Documents are subject to appropriation by the Texas Legislature. This Section 1.8 applies to all monetary obligations of TxDOT set forth in the DBC Documents, notwithstanding any contrary provisions of the DBC Documents. The DBC Documents do not create a debt under the Texas Constitution.

SECTION 2. OBLIGATIONS OF DB CONTRACTOR

2.1 Performance Requirements

2.1.1 Performance of Work; Project Management Plan

2.1.1.1. The Work shall include the design and construction of the Project as set forth herein, conforming to the Final Design Documents for each Location. The Work shall comply with all the requirements of the DBC Documents, except as otherwise approved in writing by TxDOT. Subject to the terms of Section 13, the cost of all Work, including such materials, services and efforts as are necessary for the Work, are included in the Price. DB Contractor is responsible for all quality assurance and quality control activities necessary to manage the Work. DB Contractor shall undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the approved Project Management Plan and Good Industry Practice. DB Contractor shall carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan. DB Contractor shall cause each of its Subcontractors at every level to comply with the applicable requirements of the approved Project Management Plan. In accordance with the Project Management Plan, DB Contractor shall provide written notice to TxDOT of the commencement of construction Work with respect to a Location not later than 10 days prior to such commencement of Work.

2.1.1.2. DB Contractor shall develop the Project Management Plan as provided in the Technical Provisions and its component parts, plans and other documentation in accordance with the requirements set forth in Section 2 of the Technical Provisions and Good Industry Practice. DB Contractor shall submit to TxDOT for approval, in its discretion, each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. TxDOT may propose any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by DB Contractor.

2.1.1.3. Except as described in the Technical Provisions, DB Contractor shall not commence or permit the commencement of any aspect of the Work before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by TxDOT.

2.1.2 Performance Standards; Deviations

2.1.2.1. DB Contractor shall furnish all aspects of the Work and shall construct the Project and/or Utility Adjustments included in the Work as designed, free from defects (except to the extent that such defects are inherent in prescriptive specifications required under the DBC Documents) and in accordance with: (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the DBC Documents, (c) the Project Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan and all component plans prepared or to be prepared thereunder, and (g) the Construction Documents, in each case taking into account the Project ROW limits and other constraints affecting the Project.

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

2.1.2.3. DB Contractor acknowledges that prior to the Effective Date it had the opportunity to identify any provisions of the Technical Provisions that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify TxDOT in writing of such fact and of the changes to the provision that DB Contractor believed were the minimum necessary to render it correct and safe.

2.1.2.4. DB Contractor may apply for TxDOT approval of Deviations from applicable Technical Provisions regarding the design or construction of the Project. All applications shall be in writing. TxDOT shall consider in its sole discretion, but have no obligation to approve, any such application. DB Contractor shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves TxDOT's applicable safety standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in a written document signed by TxDOT's Authorized Representative. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the dispute resolution procedures of this DBC.

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

extension shall be available with respect to Differing Site Conditions, and no delay or disruption damages shall be recovered. To the extent that additional costs are incurred in connection with the Project due to changes in DB Contractor's obligations relating to the Work resulting from the existence of Differing Site Conditions and which are not reimbursed by insurance proceeds, TxDOT shall be responsible for any such additional costs incurred directly attributable to changes in DB Contractor's obligations hereunder resulting from occurrences of Differing Site Conditions, and a Change Order shall be issued to compensate DB Contractor for such additional costs.

13.7.1.2. During progress of the Work, if Differing Site Conditions are encountered, DB Contractor shall immediately notify TxDOT thereof telephonically or in person, to be followed immediately by written notification. DB Contractor shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by TxDOT. In the event that any Governmental Approvals specify a procedure to be followed, DB Contractor shall follow the procedure set forth in the Governmental Approvals.

13.7.1.3. DB Contractor hereby acknowledges and agrees that it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions. DB Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost.

13.7.1.4. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by DB Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by DB Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any work stoppage in affected areas during the investigation period described above.

13.7.2 Utilities

DB Contractor shall be entitled to a Change Order with respect to certain additional costs and/or delays relating to Utility Adjustments, as specified in Section 6.5 and subject to the restrictions and limitations set forth in Section 6.5 and in this Section 13. In all other respects, DB Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in DB Contractor's obligations relating to the Work resulting from the existence of any Utilities on the Site.

13.7.3 Force Majeure Events

Subject to the limitations contained in, and upon DB Contractor's fulfillment of all applicable requirements of, this Section 13, TxDOT shall issue Change Orders: (a) to compensate DB Contractor for additional costs incurred directly attributable to Force Majeure Events, and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event, to the extent that it is not possible to work around such event. DB Contractor's rights to recover additional costs incurred arising directly from Force Majeure Events shall not include delay and disruption damages.

13.7.4 Hazardous Materials Management

If compensation is payable to DB Contractor pursuant to Section 6.6 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or the Reimbursable Hazardous Materials Costs for the work in

question, subject to the limitations set forth in this Section 13.7.4, including the cost sharing provisions set forth in Section 13.7.4.1.

13.7.4.1. Determination of Reimbursable Amount

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

In cases involving reimbursement for Hazardous Materials Management under this Section 13.7.4, allowable costs shall be limited to the incremental costs incurred in performing Hazardous Materials Management after completion of the testing process to determine whether Hazardous Materials are present (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing, including Phase 1 Investigations and Phase 2 Investigations, are included in the Price and DB Contractor shall not be entitled to additional compensation therefor.

Except as otherwise provided and subject to the limitations in this Section 13.7, TxDOT shall compensate DB Contractor for DB Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Unknown Hazardous Materials encountered by DB Contractor.

Except as otherwise provided and subject to the limitations in this Section 13, DB Contractor shall be entitled to a Change Order in accordance with Section 13.7.3 to compensate DB Contractor for DB Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Hazardous Materials falling within the definition of Force Majeure Event. Such events shall be handled in accordance with Section 13.7.3.

13.7.4.2. Time Extensions

DB Contractor shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Hazardous Materials, regardless of the total quantities. If DB Contractor encounters Hazardous Materials for which DB Contractor is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path ("Hazardous Materials Delay"), then the risk of such Hazardous Materials Delay shall be borne by TxDOT. If a Hazardous Materials Delay is concurrent with another delay which is DB Contractor's responsibility hereunder, then such Hazardous Materials Delay shall be borne 100% by DB Contractor. The foregoing shall not preclude DB Contractor from obtaining a time extension with respect to any Hazardous Material which qualifies as a Force Majeure Event. Notwithstanding anything to the contrary contained in this Section 13.7.4, if DB Contractor is prohibited from working at a particular Location due to the discovery of Hazardous Materials for which DB Contractor is entitled to a Change Order during the last 12 months prior to the Completion Deadline, then DB Contractor shall be entitled to an extension of the applicable

Completion Deadline for any Critical Path delays resulting from such discovery of Hazardous Materials.

13.7.4.3. Limitations on Change Orders

Entitlement to compensation or a time extension shall be limited to work performed pursuant to DB Contractor's Hazardous Materials Management Plan, Investigative Work Plan and Site Investigative Report for such Unknown Hazardous Materials as approved by TxDOT, in writing. No compensation or time extension shall be allowed with respect to: (a) immaterial quantities of Unknown Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) any costs that could have been avoided, (d) Hazardous Materials on any Additional Properties not expressly described in Section 6.8.1.3, (e) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site, or (f) any Hazardous Materials that do not fall within the definition for Unknown Hazardous Materials or clause (g) of the definition for Force Majeure Event. Utilities (other than Service Lines) shall not be considered "buildings, fixtures or other improvements" for purposes of this Section 13.7.4.

13.7.4.4. Insurance Proceeds

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

13.8 Matters Not Eligible for Change Orders and Waiver

DB Contractor acknowledges and agrees that no increase in the Price or extension of a Completion Deadline is available except in circumstances expressly provided for herein, that such Price increase and time extension shall be available only as provided in this Section 13 and that DB Contractor shall bear full responsibility for the consequences of all other events and circumstances.

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

13.9 Disputes

If TxDOT and DB Contractor agree that a request to increase the Price and/or extend any Completion Deadline by DB Contractor has merit, but are unable to agree as to the amount of such Price increase and/or time extension, TxDOT agrees to revise the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by DB Contractor to reduce the amount of the Price increase or time extension as deemed appropriate by TxDOT. In such event, TxDOT will execute

and deliver the revised Change Order to DB Contractor within a reasonable period after receipt of a request by DB Contractor to do so, and thereafter will make payment and/or grant a time extension based on such revised Change Order. The failure of TxDOT and DB Contractor to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all claims by DB Contractor of any nature arising from or relating to the Work covered by the Change Order. DB Contractor’s Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by DB Contractor with respect to the Dispute (crediting TxDOT for any corresponding reduction in DB Contractor’s other costs) and shall in no event exceed the amounts allowed by Section 13.6 with respect thereto.

13.10 Changes Not Requiring Change Order

Changes in the Work or requirements in the DBC Documents which have no net cost effect on the Price or impact to the Completion Deadlines may be approved in writing by TxDOT as a Deviation, and in such event shall not require a Change Order. Any other change in the requirements of the DBC Documents shall require either a Directive Letter or a Change Order.

SECTION 14. SUSPENSION

14.1 Suspensions for Convenience

TxDOT may, at any time and for any reason, by written notice, order DB Contractor to suspend all or any part of the Work required under the DBC Documents for the period of time that TxDOT deems appropriate for the convenience of TxDOT. DB Contractor shall promptly comply with any such written suspension order. DB Contractor shall promptly recommence the Work upon receipt of written notice from TxDOT directing DB Contractor to resume work. Any such suspension for convenience shall be considered a TxDOT-Directed Change; provided that TxDOT shall have the right to direct suspensions for convenience not exceeding 48 hours each up to a total of 96 hours, which shall not be considered a TxDOT-Directed Change.

14.2 Suspensions for Cause

14.2.1 Upon TxDOT’s delivery of notice of a DB Contractor Default for any of the following breaches or failures to perform and DB Contractor’s failure to fully cure and correct, within the applicable cure period, if any, TxDOT shall have the right and authority to suspend for cause any affected portion of the Work by written order to DB Contractor:

- (a) The existence of conditions unsafe for workers, other Project personnel or the general public;
- (b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);
- (c) Performance of Nonconforming Work;
- (d) Failure to carry out and comply with Directive Letters;
- (e) Failure of Key Personnel to be available as required by Section 7.4;
- (f) Certain failures to remove and replace personnel as set forth in Section 7.7.3; or

(g) Failure to provide proof of required insurance coverage as set forth in Section 9.1.4.3.

14.2.2 DB Contractor shall promptly comply with any such written suspension order, even if DB Contractor disputes the grounds for suspension. DB Contractor shall promptly recommence the Work upon receipt of written notice from TxDOT directing DB Contractor to resume work. TxDOT shall have no liability to DB Contractor, and DB Contractor shall have no right to any adjustment in the Price or Completion Deadline(s) in connection with any suspension of Work properly founded on any of the grounds set forth in Section 14.2.1. If TxDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the dispute resolution procedures of this DBC that such grounds did not exist, it shall be treated as a suspension for TxDOT's convenience under Section 14.1.

14.3 Responsibilities of DB Contractor During Suspension Periods

During periods that Work is suspended, DB Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. DB Contractor shall continue other Work that has been or can be performed at the Site or offsite during the period that Work is suspended.

SECTION 15. TERMINATION FOR CONVENIENCE; TERMINATION BASED ON DELAY IN NTPS

15.1 Termination for Convenience

15.1.1 TxDOT may, at any time, terminate this DBC and the performance of the Work by DB Contractor, in whole or in part, for TxDOT's convenience ("Termination for Convenience"). TxDOT shall terminate by delivering to DB Contractor a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this DBC under this Section 15 shall not relieve DB Contractor or any Surety or Guarantor of its obligation for any claims arising prior to termination.

15.1.2 Within three days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, DB Contractor shall meet and confer with TxDOT for the purpose of developing a transition plan for the orderly transition of the terminated Work, demobilization and transfer of the Project to TxDOT within 15 days after the date DB Contractor receives such notice of termination. The transition plan shall be in form and substance acceptable to TxDOT. DB Contractor shall immediately follow such plan once approved, regardless of any delay in preparation or acceptance of the transition plan.

15.1.3 DB Contractor acknowledges and agrees that TxDOT has no obligation to issue NTP1 hereunder, and further agrees that unless and until NTP1 is issued, TxDOT shall have no liability to DB Contractor hereunder, except as provided under Section 15.8.

15.2 DB Contractor's Responsibilities After Receipt of Notice of Termination

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by TxDOT, DB Contractor shall timely comply with the following obligations independent of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due DB Contractor under this DBC:

15.2.1 Stop the Work as specified in the notice.

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

15.2.3 Enter into no further Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Work.

15.2.4 Unless instructed otherwise by TxDOT, terminate all Subcontracts and Utility Agreements to the extent they relate to the Work terminated.

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

15.2.6 Subject to the prior written approval of TxDOT, settle all outstanding liabilities and claims arising from termination of Subcontracts and Utility Agreements that are required to be terminated hereunder.

15.2.7 Within 30 days after notice of termination is delivered, DB Contractor shall provide TxDOT with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by DB Contractor or any person or entity on behalf of or for the account of DB Contractor) for use in or respecting the terminated Work, or on order or previously completed but not yet delivered from Suppliers for use in or respecting such Work. In addition, if requested by TxDOT, on or about the effective date of termination, DB Contractor shall transfer title and deliver to TxDOT or TxDOT's Authorized Representative, through bills of sale or other documents of title, as directed by TxDOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided TxDOT assumes in writing all of DB Contractor's obligations under any contracts relating to the foregoing that arise after the effective date of termination.

15.2.8 On or about the effective date of termination, DB Contractor shall execute and deliver to TxDOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to TxDOT, acting reasonably, assigning and transferring to TxDOT all of DB Contractor's right, title and interest in and to the following: (a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, Record Drawings, surveys, and other documents and information pertaining to the design or construction of the terminated Work; (b) all samples, borings, boring logs, geotechnical data and similar data and information relating to the terminated Work; (c) all books, records, reports, test reports, studies and other documents of a similar nature relating to the terminated Work; and (d) All other work product used or owned by DB Contractor or any Affiliate relating to the terminated Work.

15.2.9 Complete performance in accordance with the DBC Documents of all Work not terminated, except to the extent performance of the remaining Work is rendered impossible due to the scope of the Partial Termination for Convenience.

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

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

15.2.12 Immediately safely demobilize and secure construction, staging, lay down and storage areas for the Project and Utility Adjustments included in the Work in a manner satisfactory to TxDOT, and remove all debris and waste materials, except as otherwise approved by TxDOT in writing.

15.2.13 Assist TxDOT in such manner as TxDOT may require prior to and for a reasonable period following the effective date of termination to ensure the orderly transition of the terminated Work and its management to TxDOT, and shall, if appropriate and if requested by TxDOT, take all steps as may be necessary to enforce the provisions of Subcontracts pertaining to the surrender of the terminated Work.

15.2.14 Carry out such other directions as TxDOT may give for the termination of the Work.

15.2.15 Take such other actions as are necessary or appropriate to mitigate further cost.

15.3 Settlement Proposal

Within 90 days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, DB Contractor shall submit a final termination settlement proposal to TxDOT in the form and with the certification prescribed by TxDOT. DB Contractor's termination settlement proposal shall then be reviewed by TxDOT and acted upon, returned with comments, or rejected. If DB Contractor fails to submit the proposal within the time allowed, TxDOT may determine, on the basis of information available, the amount, if any, due DB Contractor because of the termination, shall pay DB Contractor the amount so determined and shall be bound by TxDOT's determination.

15.4 Amount of Negotiated Termination Settlement

DB Contractor and TxDOT may agree, as provided in Section 15.3, upon the whole or any part of the amount or amounts to be paid to DB Contractor by reason of the total or partial termination of the Work for convenience pursuant to Section 15.1. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Price as reduced by the amount of payments otherwise made and the Price of Work not terminated. Upon determination of the settlement amount, a Change Order will be issued, and DB Contractor will be paid the agreed amount as described in this Section 15.4.

15.5 No Agreement as to Amount of Termination Settlement

If DB Contractor and TxDOT fail to agree upon either all or some portion of the amount to be paid DB Contractor by reason of a Termination for Convenience pursuant to Section 15.1, the amount payable (exclusive of interest charges) shall be determined by TxDOT in accordance with the

following, but without duplication of any items or of any amounts agreed upon in accordance with [Section 15.4](#):

15.5.1 TxDOT will pay DB Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) DB Contractor's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by [Section 13.6.3](#) for all Work performed, including mobilization, demobilization, work in progress and work done to secure the applicable portion of the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to TxDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies and equipment to be retained by DB Contractor, amounts realized by the sale of such items, and for other appropriate credits against the cost of the Work, including those deductions that would be permitted in connection with Final Payment.

(b) A sum, as profit on clause (a) above, determined by TxDOT to be fair and reasonable; provided DB Contractor establishes to TxDOT's satisfaction that it is reasonably probable that DB Contractor would have made a profit had the DBC been completed and provided further, that the profit allowed shall in no event exceed 4 percent of the cost;

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

(d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to [Section 15.2.10](#) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under this DBC, including the reasonable cost to DB Contractor of handling material returned to the Supplier, delivered to TxDOT or otherwise disposed of as directed by TxDOT, and including a reasonable allowance for DB Contractor's administrative costs in determining the amount payable due to termination of this DBC.

15.5.2 The total amount to be paid to DB Contractor, exclusive of costs described in [Sections 15.5.1\(b\)](#) and [\(c\)](#), may not exceed the total Price less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to TxDOT by DB Contractor, such refund shall be paid directly to TxDOT or otherwise credited to TxDOT. Except for normal spoilage, and except to the extent that TxDOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to DB Contractor under [Section 15.5.1](#), the fair value, as determined by TxDOT, of equipment, machinery, materials, supplies and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to TxDOT, or sold pursuant to [Section 15.2.11](#). Information contained in the EPDs may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, this DBC shall be amended to reflect the agreed termination payment, DB Contractor shall be paid the agreed amount, and the Price shall be reduced to reflect the reduced scope of Work.

15.5.3 If a termination hereunder is partial, DB Contractor may file a proposal with TxDOT for an equitable adjustment of the Price for the continued portion of this DBC. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this DBC.

15.6 Reduction in Amount of Claim

The amount otherwise due DB Contractor under this Section 15 shall be reduced by: (a) the amount of any claim which TxDOT may have against any DB Contractor-Related Entity in connection with this DBC, (b) the agreed price for, or the proceeds of sale, of property, materials, supplies, equipment or other things acquired by DB Contractor or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to TxDOT, (c) all unliquidated advance or other payments made to or on behalf of DB Contractor applicable to the terminated portion of the Work or DBC, (d) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners, (e) the cost of repairing any Nonconforming Work (or, in TxDOT’s sole discretion, the amount of the credit to which TxDOT is entitled under Section 5.6.2); and (f) any amounts due or payable by DB Contractor to TxDOT.

15.7 Subcontracts

15.7.1 Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such termination rights and obligations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 15.

15.7.2 Each Subcontract shall provide that, in the event of a termination for convenience by TxDOT, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

15.8 Termination Based on Delay to Issuance of NTPs

(a) If NTP1 has not been issued within 180 days after the Effective Date due to no act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, DB Contractor, as its sole remedy, shall have the right to terminate this DBC, which right shall be exercised by delivery of notice of termination to TxDOT. In such event, TxDOT’s sole liability to DB Contractor is to pay DB Contractor the same payment for work product as provided to unsuccessful Proposers pursuant to Section 6.3 of the ITP, provided that all other conditions for such payment are met.

(b) If NTP2 has not been issued within 365 days after the issuance of NTP1 due solely to a delay in issuance of the Environmental Approval, DB Contractor, as its sole remedy, may conditionally elect to terminate this DBC by providing TxDOT with written notice of such conditional election. If DB Contractor delivers a written notice of its conditional election to terminate, TxDOT shall have the choice of either accepting such notice of termination or continuing this DBC in effect by delivering to DB Contractor written notice of TxDOT’s choice not later than 30 days after receipt of DB Contractor’s notice. If TxDOT does not deliver written notice of its choice within such 30-day period, then it will be deemed to have accepted DB Contractor’s election to terminate this DBC. In such event, the termination shall be deemed a Termination for Convenience and handled in accordance with this Section 15; provided, however, the maximum amount of liability by TxDOT shall be \$2,000,000. Notwithstanding anything to the contrary

contained herein, if a Termination for Convenience occurs prior to issuance of NTP2, whether under this Section 15.9 or otherwise, the amount payable to DB Contractor shall in no event exceed \$2,000,000, inclusive of all progress payments made for performance of NTP1 Work and all amounts payable with respect to the termination. If TxDOT delivers timely written notice choosing to continue this DBC in effect, then the Price adjustment provisions described in Section 12.1.8.1 shall be extended and continue in effect for the duration of the delay in issuance of the Environmental Approval, or until earlier termination of this DBC.

15.9 No Consequential Damages

Under no circumstances shall DB Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of any termination under this Section 15. The payment to DB Contractor determined in accordance with this Section 15 constitutes DB Contractor's exclusive remedy for a termination hereunder.

15.10 No Waiver; Release

15.10.1 Notwithstanding anything contained in this DBC to the contrary, a termination under this Section 15 shall not waive any right or claim to damages which TxDOT may have and TxDOT may pursue any cause of action which it may have at Law, in equity or under the DBC Documents.

15.10.2 TxDOT's payment to DB Contractor of the amounts required under this Section 15 shall constitute full and final satisfaction of, and upon payment TxDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that DB Contractor may have against TxDOT arising out of or relating to the terminated Work. Upon such payment, DB Contractor shall execute and deliver to TxDOT all such releases and discharges as TxDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

15.11 Dispute Resolution

The failure of the Parties to agree on amounts due under this Section 15 shall be a Dispute to be resolved in accordance with Section 19.

15.12 Allowability of Costs

All costs claimed by DB Contractor under this Section 15 must be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

SECTION 16. DEFAULT; REMEDIES

16.1 Default of DB Contractor

16.1.1 Events and Conditions Constituting Default

DB Contractor shall be in breach of this DBC upon the occurrence of any one or more of the following events or conditions (each a "DB Contractor Default"):

(a) DB Contractor: (i) fails to begin Work within 30 days following issuance of NTP1 or NTP2 or (ii) fails to satisfy all conditions to commencement of the Construction Work, and commence the Construction Work with diligence and continuity;

(b) DB Contractor fails to complete all required Work by the applicable Completion Deadline, as the same may be extended pursuant to this DBC;

(c) DB Contractor fails to perform the Work in accordance with the DBC Documents, including conforming to applicable standards set forth therein in design and construction of the Project, or refuses to correct, remove and replace Nonconforming Work;

(d) DB Contractor suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work (exclusive of work stoppage: (i) due to termination by TxDOT, (ii) due to and during the continuance of a Force Majeure Event or suspension by TxDOT, or (iii) due to and during the continuance of any work stoppage under Section 16.4);

(e) DB Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under this DBC for the benefit of relevant parties, or fails to comply with any requirement of this DBC pertaining to the amount, terms or coverage of the same;

(f) DB Contractor makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this DBC in violation of Section 24.4;

(g) DB Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and Suppliers and in accordance with applicable Laws, or fails to make payment to TxDOT when due of any amounts owing to TxDOT under this DBC;

(h) DB Contractor materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by DB Contractor under the DBC Documents;

(i) Any representation or warranty in the DBC Documents made by DB Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of DB Contractor to TxDOT pursuant to the DBC Documents is false or materially misleading or inaccurate when made or omits material information when made;

(j) DB Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(k) An involuntary case is commenced against DB Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to DB Contractor or DB Contractor's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of DB Contractor or any substantial part of DB Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by DB Contractor in good faith or shall remain undischarged and unstayed for a period of 60 days; or

(l) A voluntary or involuntary case or other act or event described in clauses (j) and (k) of this Section 16.1.1 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undischarged and unstayed for a period of 60 days) with

respect to: (i) any member of DB Contractor with a material financial obligation owing to DB Contractor for equity or shareholder loan contributions, or (ii) any Guarantor of DB Contractor.

16.1.2 Notice and Opportunity to Cure

For the purpose of TxDOT's exercise of other remedies and subject to remedies that this Section 16 expressly states may be exercised before lapse of a cure period, DB Contractor shall have the following cure periods with respect to the following DB Contractor Defaults:

(a) Respecting a DB Contractor Default under clauses (a), and (c) through (g) of Section 16.1.1, a period of 15 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default; provided that TxDOT shall have the right, but not the obligation, to effect cure, at DB Contractor's expense, if a DB Contractor Default under clause (e) of Section 16.1.1 continues beyond five days after such notice is delivered.

(b) Respecting a DB Contractor Default under clauses (h) and (i) of Section 16.1.1, a period of 30 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default; provided that: (i) if the DB Contractor Default is of such a nature that the cure cannot with diligence be completed within such time period and DB Contractor has commenced meaningful steps to cure immediately after receiving the default notice, DB Contractor shall have such additional period of time, up to a maximum cure period of 60 days, as is reasonably necessary to diligently effect cure, and (ii) as to clause (i), cure will be regarded as complete when the adverse effects of the breach are cured.

(c) Respecting a DB Contractor Default under clauses (b), (j), (k) and (n) of Section 16.1.1, no cure period, and there shall be no right to notice of a DB Contractor Default under clauses (b), (j), (k) and (n) of Section 16.1.1.

(d) Respecting a DB Contractor Default under clauses (l) of Section 16.1.1, a period of ten days from the date of the DB Contractor Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to TxDOT for the benefit of the Project, in the amount of, as applicable: (i) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of DB Contractor or (ii) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor.

16.1.3 Declaration of Event of Default

If any event or condition described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, TxDOT may declare that an "Event of Default" has occurred. The declaration of an Event of Default shall be in writing and given to DB Contractor and the Surety.

16.2 TxDOT Remedies for DB Contractor Default

16.2.1 Termination for Default

16.2.1.1. In the event of any DB Contractor Default that is or becomes an Event of Default, TxDOT may terminate this DBC or a portion thereof for default, including terminating DB Contractor's rights of entry upon, possession, control and operation of the Project, in which case, the procedures set forth in Section 15.2 shall apply. If this DBC or a portion thereof is terminated for default, TxDOT shall have the following rights without further notice and without waiving or releasing DB Contractor from any obligations and DB Contractor shall have the following obligations (as applicable):

(a) TxDOT may deduct from any amounts (including interest thereon as permitted under this DBC) payable by TxDOT to DB Contractor such amounts payable by DB Contractor to TxDOT, including reimbursements owing, Liquidated Damages, amounts TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers or other Persons, amounts of any Losses that have accrued, the cost to complete or remediate uncompleted Work or Nonconforming Work or other damages or amounts that TxDOT has determined are or may be payable to TxDOT under the DBC Documents.

(b) TxDOT shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required from DB Contractor under the DBC Documents or Subcontracts.

(c) TxDOT may appropriate any or all materials, supplies and equipment on the Site as may be suitable and acceptable and may direct the Surety to complete this DBC or may enter into an agreement for the completion of this DBC according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the requirements of the DBC Documents, including completion of the Work by TxDOT.

(d) If TxDOT exercises any right to perform any obligations of DB Contractor, in the exercise of such right TxDOT may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as TxDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.1.2. DB Contractor and each Guarantor shall be jointly and severally liable to TxDOT for all costs reasonably incurred by TxDOT or any Person acting on TxDOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). TxDOT shall be entitled to withhold all or any portion of further payments to DB Contractor until Final Acceptance or the date on which TxDOT otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time TxDOT will determine whether and to what extent DB Contractor is entitled to further payments. Promptly following Final Acceptance or the date on which TxDOT otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and TxDOT shall notify DB Contractor and each Guarantor in writing of the amount, if any, that DB Contractor and each Guarantor shall pay TxDOT or TxDOT shall pay DB Contractor or its Surety with respect thereto. TxDOT's Recoverable Costs will be deducted from any moneys due or which may become due DB Contractor or its Surety. If such expense exceeds the sum which would have been payable to DB Contractor under this DBC, then DB Contractor and each Guarantor shall be liable and shall pay to TxDOT the amount of such excess.

16.2.1.3. In lieu of the provisions of this Section 16.2.1 for terminating this DBC for default and completing the Work, TxDOT may, in its sole discretion, pay DB Contractor for the parts already done according to the provisions of the DBC Documents and may treat the parts remaining undone as if they had never been included or contemplated by this DBC. No Claim

under this Section 16.2.1.3 will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by DB Contractor.

16.2.1.4. If this DBC is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a Termination for Convenience pursuant to Section 15.

16.2.2 DB Contractor Defaults Related to Safety

Notwithstanding anything to the contrary in this DBC, if in the good faith judgment of TxDOT a DB Contractor Default results in an emergency or danger to persons or property, and if DB Contractor is not then diligently taking all necessary steps to rectify or deal with such emergency or danger, TxDOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to): (a) immediately take such action as may be reasonably necessary to rectify the emergency or danger, in which event DB Contractor shall pay to TxDOT on demand the cost of such action, including TxDOT's Recoverable Costs, or (b) suspend the Work and/or close or cause to be closed any and all portions of the Project affected by the emergency or danger. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this DBC, shall not expose TxDOT to any liability to DB Contractor and shall not entitle DB Contractor to any other remedy, it being acknowledged that TxDOT has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. TxDOT's good faith determination of the existence of such a failure, emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such emergency or danger, as determined by TxDOT, acting reasonably, TxDOT shall allow the Work to continue or such portions of the Project to reopen, as the case may be.

16.2.3 Damages

16.2.3.1. Subject to Section 17, TxDOT shall be entitled to recover any and all damages available at Law (subject to the duty at law to mitigate damages) on account of the occurrence of a DB Contractor Default. DB Contractor shall owe any such damages that accrue after the occurrence of the DB Contractor Default and the delivery of notice thereof, if any, required by this DBC regardless of whether the DB Contractor Default is subsequently cured.

16.2.3.2. DB Contractor, the Surety and Guarantor shall not be relieved of liability for continuing Liquidated Damages on account of a DB Contractor Default or by TxDOT's declaration of an Event of Default, or by actions taken by TxDOT under this Section 16.2.

16.2.4 Performance Security

Upon the occurrence of an Event of Default and without waiving or releasing DB Contractor from any obligations, TxDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other performance security available to TxDOT under this DBC with respect to the Event of Default in question. Where access to a bond, letter of credit or other performance security is to satisfy damages owing, TxDOT shall be entitled to make demand, draw, enforce and collect, regardless of whether the Event of Default is subsequently cured. TxDOT will apply the proceeds of any such action to the satisfaction of DB Contractor's obligations under this DBC, including payment of amounts due TxDOT. The foregoing does not limit or affect TxDOT's right to give notice to or

make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other performance security, immediately after TxDOT is entitled to do so under the bond, letter of credit, guaranty or other performance security.

16.2.5 Other Rights and Remedies; Cumulative Remedies

Subject to Sections 17.4 and 17.5, TxDOT shall also be entitled to exercise any other rights and remedies available under this DBC, or available at law or in equity, and each right and remedy of TxDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TxDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies.

16.3 Event of Default Due Solely to DB Contractor's Failure to Achieve Completion Deadlines

16.3.1 If an Event of Default consists solely of DB Contractor's failure to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, TxDOT's sole remedy for such Event of Default shall be the right to assess Liquidated Damages, provided that: (a) such Event of Default does not delay such Substantial Completion or Final Acceptance beyond 180 days of the applicable Completion Deadline; and (b) DB Contractor continues to diligently perform the Work despite such Event of Default. Nothing in this Section 16.3 shall prejudice any other rights or remedies that TxDOT may have due to any other Event of Default during such 180-day period.

16.3.2 If Substantial Completion or Final Acceptance has not occurred within 180 days from the applicable Completion Deadline, TxDOT shall have the right to: (a) terminate this DBC; (b) continue to assess Liquidated Damages subject only to the limitations set forth in Section 17.1; and/or (c) exercise any other right or remedy under this DBC, at law or in equity.

16.4 Right to Stop Work for Failure by TxDOT to Make Undisputed Payment

DB Contractor shall have the right to stop Work if TxDOT fails to make an undisputed payment due hereunder within 15 Business Days after TxDOT's receipt of written notice of nonpayment from DB Contractor. Any such work stoppage shall be considered a suspension for convenience under Section 14.1 and shall be considered a TxDOT-Directed Change. DB Contractor shall not have the right to terminate this DBC for default as the result of any failure by TxDOT to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon written notice from DB Contractor to TxDOT, the nonpayment may be deemed a Termination for Convenience pursuant to Section 15.

SECTION 17. LIQUIDATED DAMAGES AND LIMITATION OF LIABILITY

17.1 Liquidated Damages Respecting Delays

DB Contractor shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Substantial Completion and Final Acceptance of the Project by the applicable Completion Deadline, as the same may be extended pursuant to this DBC ("Liquidated Damages for Delay"). The amounts of such Liquidated Damages for Delay are as follows:

(a) For each day after the Substantial Completion Deadline for the Project through the date of Substantial Completion of the Project, not to exceed 180 days in the aggregate, the per-day

dollar amounts set forth in the chart below based on the number of Locations for which Substantial Completion has not been achieved on each applicable day:

Number of Locations	Amount of Liquidated Damages
1	\$11,000
2 – 4	\$12,500
5 – 7	\$14,000
8 – 10	\$15,500
11 or more	\$17,000

(b) \$9,000 per day for each day after the Final Acceptance Deadline for the Project and through the date of Final Acceptance of the Project;

Liquidated Damages for Delay shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this DBC, and shall continue to accrue until the date of the applicable Substantial Completion or Final Acceptance or until termination of this DBC. Subject to Section 16.3.1, Liquidated Damages for Delay shall constitute TxDOT’s sole right to damages for such delay.

17.2 Acknowledgements Regarding Liquidated Damages

DB Contractor further agrees and acknowledges that:

17.2.1 In the event that DB Contractor fails to achieve Substantial Completion or Final Acceptance of the Project by the applicable Completion Deadline, TxDOT will incur substantial damages.

17.2.2 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Section 17.1.2.

17.2.3 As of the Effective Date, the amounts of Liquidated Damages for Delay represent good faith estimates and evaluations by the Parties as to the actual potential damages that TxDOT would incur as a result of late Substantial Completion of a Location or late Final Acceptance of the Project, and do not constitute a penalty.

17.2.4 The Parties have agreed to such Liquidated Damages for Delay in order to fix and limit DB Contractor’s costs and to avoid later Disputes over what amounts of damages are properly chargeable to DB Contractor.

17.2.5 Such sums are reasonable in light of the anticipated or actual harm caused by delayed Substantial Completion of a Location or delayed Final Acceptance of the Project, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

17.2.6 Liquidated Damages are not intended to, and do not, liquidate DB Contractor’s liability under the indemnification provisions of Section 18.1, even though third party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to the Liquidated Damages.

17.3 Payment; Satisfaction; Waiver; Non-Exclusive Remedy

17.3.1 DB Contractor shall pay any Liquidated Damages owing under this Section 17 within 20 days after TxDOT delivers to DB Contractor TxDOT’s invoice or demand therefor, such invoice or demand to be issued not more often than monthly.

17.3.2 TxDOT shall have the right to deduct and offset Liquidated Damages from any amounts owing DB Contractor. TxDOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by DB Contractor pursuant to this DBC to satisfy Liquidated Damages not paid when due.

17.3.3 Permitting or requiring DB Contractor to continue and finish the Work or any part thereof after a Completion Deadline as applicable, shall not act as a waiver of TxDOT's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to TxDOT.

17.3.4 Subject to Section 16.3, TxDOT's right to, and imposition of, Liquidated Damages are in addition, and without prejudice, to any other rights and remedies available to TxDOT under this DBC, at law or in equity respecting the breach, failure to perform or DB Contractor Default that is the basis for the Liquidated Damages or any other breach, failure to perform or DB Contractor Default, except for recovery of the monetary damage that the Liquidated Damages are intended to compensate.

17.4 Limitation of DB Contractor's Liability

Notwithstanding any other provision of the DBC Documents, to the extent permitted by applicable Law, TxDOT will not seek indemnification and defense under Section 18 or to recover damages from DB Contractor resulting from breach of this DBC (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of: (a) all those costs reasonably incurred by TxDOT or any Person acting on TxDOT's behalf in completing or correcting the Work or having the Work completed or corrected by another Person, including the cost of the work required or arising under the Warranties; (b) an amount equal to \$10,000,000 (which amount shall specifically include any Liquidated Damages paid pursuant to this Section 17); (c) any amounts paid by or on behalf of DB Contractor which are covered by insurance proceeds; and (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or intentional misconduct on the part of any DB Contractor-Related Entity.

17.5 Limitation on Consequential Damages

17.5.1 Notwithstanding any other provision of the DBC Documents and except as set forth in this Section 17.5.1 and Section 17.5.2, to the extent permitted by applicable Law, neither party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this DBC, tort (including negligence) or any other theory of liability, and each party hereby releases the other party from any such liability.

17.5.2 The foregoing limitations on DB Contractor's liability for punitive, indirect, incidental or consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following: (a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 9, and (ii) covered by the proceeds of insurance actually carried by or insuring DB Contractor under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 9, or (iii) DB Contractor is deemed to have self-insured the Loss pursuant to Section 9.2.3; (b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness, bad faith or gross negligence on the part of any DB Contractor-Related Entity; (c) DB Contractor's indemnities set forth in Section 18.1 or elsewhere in the DBC Documents; (d) DB Contractor's obligation to pay Liquidated Damages in accordance with Section 17.1 or any other provision of the DBC Documents; and (e) Losses arising out of DB Contractor

SECTION 18. INDEMNIFICATION

18.1 Indemnity by DB Contractor

18.1.1 SUBJECT TO SECTION 18.1.2, DB CONTRACTOR SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS AND LOSSES, IN EACH CASE IF ASSERTED OR INCURRED BY OR AWARDED TO ANY THIRD PARTY, ARISING OUT OF, RELATING TO OR RESULTING FROM:

(a) THE BREACH OR ALLEGED BREACH OF ANY OF THE CONTRACT DOCUMENTS BY ANY DB CONTRACTOR-RELATED ENTITY;

(b) THE FAILURE OR ALLEGED FAILURE BY ANY DB CONTRACTOR-RELATED ENTITY TO COMPLY WITH THE GOVERNMENTAL APPROVALS, ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER LAWS (INCLUDING LAWS REGARDING HAZARDOUS MATERIALS MANAGEMENT);

(c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE WORK, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO TXDOT OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS AGREEMENT; PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM TXDOT'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO TXDOT BY DB CONTRACTOR;

(d) THE ACTUAL OR ALLEGED ACT, ERROR, OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT OF ANY DB CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK;

(e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY DB CONTRACTOR-RELATED ENTITY WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY ANY DB CONTRACTOR-RELATED ENTITY;

(f) ANY AND ALL STOP NOTICES AND/OR LIENS FILED IN CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, AND ANY OTHER LIABILITY TO SUBCONTRACTORS FOR FAILURE TO PAY SUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT TXDOT HAS PAID ALL UNDISPUTED AMOUNTS OWING TO DB CONTRACTOR WITH RESPECT TO SUCH WORK;

(g) ANY ACTUAL OR THREATENED DB CONTRACTOR RELEASE OF HAZARDOUS MATERIALS;

(h) THE CLAIM OR ASSERTION BY ANY OTHER CONTRACTOR OR DB CONTRACTOR THAT ANY DB CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR OR DB CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER CONTRACTOR OR DB CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, EXCEPT WHERE THE DB CONTRACTOR-RELATED ENTITY WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK;

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

(j) (i) ANY DB CONTRACTOR-RELATED ENTITY'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT TXDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN TXDOT AND A THIRD PERSON, WHERE TXDOT HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO DB CONTRACTOR UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF ANY DB CONTRACTOR-RELATED ENTITY WHICH RENDER TXDOT UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT TXDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN TXDOT AND A THIRD PERSON, WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO DB CONTRACTOR;

(k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, VIOLATION OF LAW BY ANY DB CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH DB CONTRACTOR'S PERFORMANCE OF THE WORK;

(l) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF: (i) THE FAILURE OF ANY DB CONTRACTOR-RELATED ENTITY TO COMPLY WITH GOOD INDUSTRY PRACTICES, REQUIREMENTS OF THE CONTRACT DOCUMENTS, PROJECT MANAGEMENT PLAN OR GOVERNMENTAL APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE INTENTIONAL MISCONDUCT OR NEGLIGENCE OF ANY DB CONTRACTOR-RELATED ENTITY, OR (iii) THE ACTUAL PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER'S PROPERTY BY ANY DB CONTRACTOR-RELATED ENTITY; and

(m) ERRORS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROJECT AND/OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK.

18.1.2 Subject to the releases and disclaimers herein, including all the provisions set forth in Section 3.1.8 of this DBC, DB Contractor's indemnity obligation shall not extend to any third party Loss to the extent caused by: (a) the negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party; (b) TxDOT's material breach of any of its obligations under the DBC Documents; (c) an Indemnified Party's material violation of any Laws or Governmental Approvals; or (d) an unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Technical Provisions, but only where prior to

occurrence of the third party Loss: (i) DB Contractor complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement created a potentially unsafe condition or (ii) DB Contractor knew of and reported to TxDOT the potentially unsafe requirement.

18.1.3 In claims by an employee of DB Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for DB Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.4 For purposes of this Section 18.1, "third party" means any person or entity other than an Indemnified Party and DB Contractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party which is within the scope of the indemnities and which is not covered by the Indemnified Party's worker's compensation program.

18.2 Defense and Indemnification Procedures

18.2.1 If any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 18.1, TxDOT shall by writing as soon as practicable after receipt of the claim: (a) inform DB Contractor of the claim, (b) send to DB Contractor a copy of all written materials TXDOT has received asserting such claim and (c) notify DB Contractor that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless DB Contractor accepts the tender of the claim in accordance with Section 18.2.3. As soon as practicable after DB Contractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies. TxDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

18.2.2 If the insurer under any applicable insurance policy accepts the tender of defense, TXDOT and DB Contractor shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 18.2.3 shall apply.

18.2.3 If the defense is tendered to DB Contractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that DB Contractor: (a) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (b) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (c) rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this DBC.

18.2.4 If DB Contractor accepts the tender of defense under Section 18.2.3(a), DB Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and DB Contractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (a) DB Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and (b) the Indemnified Party shall fully cooperate in said defense, provide to DB Contractor all materials and

access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and DB Contractor concerning such defense.

18.2.5 If DB Contractor responds to the tender of defense as specified in Section 18.2.3(b) or 18.2.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

18.2.6 The Indemnified Party may assume its own defense by delivering to DB Contractor written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (a) a conflict exists between it and DB Contractor which prevents or potentially prevents DB Contractor from presenting a full and effective defense; (b) DB Contractor is otherwise not providing an effective defense in connection with the claim; or (c) DB Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

18.2.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, DB Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending, except to the extent the Indemnified Party conducts its own defense as a result of DB Contractor's denial of such defense pursuant to Section 18.2.3(c). In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense conducted under Section 18.2.3(a), it shall have the right to settle or compromise the claim with DB Contractor's prior written consent, which shall not be unreasonably withheld or delayed;

(b) In the case of a defense conducted under Section 18.2.3(b), it shall have the right to settle or compromise the claim with DB Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to DB Contractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by DB Contractor; and

(c) In the case of a defense conducted under Section 18.2.3(c), it shall have the right to settle or compromise the claim without DB Contractor's prior written consent and without prejudice to its rights to be indemnified by DB Contractor. If a dispute resolver determines that DB Contractor wrongfully denied the defense of the Indemnified Party, the Indemnified Party shall be entitled to reimbursement of the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, and indemnification of amount paid to settle or compromise the claim, in addition to interest at the rate calculated in accordance with Section 24.13 payable on such defense and settlement amounts from the date such costs and expenses are incurred by the Indemnified Party.

18.2.8 The Parties acknowledge that while Section 18.1 contemplates that DB Contractor will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of

such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 18.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

18.2.9 In determining responsibilities and obligations for defending suits pursuant to this Section 18.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 General Dispute Resolution Provisions

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Work.

19.2 Partnering

19.2.1 Schedule; Participation

As soon as possible after execution of this DBC, TxDOT and DB Contractor shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and DB Contractor. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

19.2.2 Confidentiality

Subject to the requirements of the Public Information Act, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute resolution proceeding, unless such statements or materials are admissible or discoverable under applicable Law.

19.3 Dispute Resolution Procedures

If partnering fails to resolve an issue and DB Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the dispute resolution procedures established thereunder, as the same may be amended from time to time. This Section 19 shall not apply to: (a) Claims that are not actionable against TxDOT by DB Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 19.4, (b) Claims arising solely in tort; (c) Claims for indemnity under Section 18; (d) Claims for injunctive relief; (e) Claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (f) Claims arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Section 19); (g) any Dispute based on remedies expressly created by statute; or (h) any Dispute that is actionable only against a Surety.

19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

For purposes of this Section 19, a “Subcontractor Dispute” shall include any Dispute by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against DB Contractor that is actionable by DB Contractor against TxDOT and arises from Work, materials or other services provided or to be provided under the DBC Documents. If DB Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

(a) DB Contractor shall identify clearly in all submissions pursuant to this Section 19, that portion of the Dispute that involves a Subcontractor Dispute.

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

(c) DB Contractor shall require in all Subcontracts that all Subcontractors of any tier: (i) agree to submit Subcontractor Disputes to DB Contractor in a proper form and in sufficient time to allow processing by DB Contractor in accordance with this Section 19; (ii) agree to be bound by the terms of this Section 19 to the extent applicable to Subcontractor Disputes; (iii) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 19 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against DB Contractor; (iv) agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through DB Contractor, shall be stayed until completion of all steps required under this clause (c); and (v) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against DB Contractor.

19.5 Mediation or Other Alternative Dispute Resolution

DB Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. DB Contractor and TxDOT shall share equally the expenses of the mediation or other alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 19 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

19.6 Subsequent Proceedings

19.6.1 Exclusive Jurisdiction and Venue

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

19.6.2 Admissibility of Dispute Resolution Proceedings

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

19.7 Continuation of Disputed Work

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

19.8 Records Related to Claims and Disputes

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

19.9 Interest

This Section 19.9 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

In the event a DB Contractor elects to pursue a formal Dispute with TxDOT under this Section 19, TxDOT shall notify DB Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. Except as provided in this paragraph, a payment becomes overdue and begins to accrue interest on the 31st day after the later of: (1) the date TxDOT provides notice of Final Acceptance of the Project under Section 20.3.5; or (2) the date TxDOT receives a contract claim pursuant to Texas Transportation Code, Section 201.112 and the dispute resolution procedures established thereunder. If the resolution of a disputed claim results in the award of an amount which is less than the amount requested in the original claim, then the DB Contractor shall submit a corrected invoice. The unpaid balance of the corrected invoice becomes overdue and begins to accrue interest on the 31st day after TxDOT receives the corrected invoice.

19.10 Attorney Fees

This Section 19.10 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251. A Party shall pay the attorney's fees of the other party for Disputes brought pursuant to this Section 19 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

SECTION 20. COMPLETION AND ACCEPTANCE; EARLY OPENING

20.1 Substantial Completion

20.1.1 Requirements

20.1.1.1. TxDOT will issue a written Certificate of Substantial Completion at such time as Substantial Completion occurs for each Location, as applicable.

20.1.1.2. In determining whether Substantial Completion of a Location has occurred, TxDOT may consider and require satisfaction of the following criteria: (a) whether all major safety features are installed and functional; (b) whether the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items); (c) whether all lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and frontage roads) set forth in the Design Documents are in their final configuration and available for public use; and (d) whether DB Contractor has otherwise completed the Work, in accordance with the DBC Documents such that the Location is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items that do not affect the ability to safely open for such normal use by the traveling public.

20.1.2 Notification of Substantial Completion

20.1.2.1. DB Contractor shall provide TxDOT with not less than 20 days' prior written notification of the date DB Contractor determines it will achieve Substantial Completion of each Location, as applicable. During such 20-day period, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's orderly, timely inspection and review of the Location and the applicable Final Design Documents and Construction Documents, and TxDOT's issuance of a Certificate of Substantial Completion for the applicable Location.

20.1.2.2. During such 20-day period, TxDOT shall conduct an inspection of the Location and its components, a review of the applicable Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion of the applicable Location is achieved.

20.1.2.3. DB Contractor shall provide TxDOT a second written notification when DB Contractor determines it has achieved Substantial Completion of a Location. Within five days after expiration of the 20-day period and TxDOT's receipt of the second notification, TxDOT shall either: (a) issue the Certificate of Substantial Completion for the Location or (b) notify DB Contractor in writing setting forth, as applicable, why the Location has not reached Substantial Completion. If TxDOT and DB Contractor cannot agree as to the date of Substantial Completion of a Location, such Dispute shall be resolved according to the dispute resolution procedures set forth in this DBC.

20.2 Punch List

20.2.1 The Project Management Plan shall establish procedures and schedules for preparing a Punch List and completing Punch List work. Such procedures and schedules shall conform to the following provisions.

20.2.2 The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion of a Location, or shall follow such inspections.

20.2.3 DB Contractor shall prepare and maintain the Punch List. DB Contractor shall deliver to TxDOT not less than five days' prior written notice stating the date when DB Contractor will commence Punch List field inspections and Punch List preparation. TxDOT may, but is not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If DB Contractor objects to the addition of an item by TxDOT, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the dispute resolution procedures set forth in this DBC. DB Contractor shall deliver to TxDOT a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

20.2.4 DB Contractor shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the DBC Documents, within the time period to be set forth in the Project Management Plan and in any case by the Final Acceptance Deadline.

20.3 Final Acceptance

20.3.1 Promptly after achieving Substantial Completion of all Locations, DB Contractor shall perform all remaining Work for such Locations, including completion of all Punch List items.

20.3.2 TxDOT will issue a Certificate of Final Acceptance for the Project at such time as all of the following conditions have been satisfied: (a) TxDOT has issued a Certificate of Substantial Completion for all Locations; (b) all Punch List items shall have been completed and delivered to the reasonable satisfaction of TxDOT; (c) TxDOT has received a complete set of the Record Drawings in form and content required by the Technical Provisions; (d) all Utility Adjustment Work and other work that DB Contractor is obligated to perform for or on behalf of third parties with respect to the Project has been accepted by such third parties, and DB Contractor has paid for all work by third parties that DB Contractor is obligated to pay for, other than disputed amounts and amounts which have not been submitted to DB Contractor for payment by Utility Owners; (e) all personnel, supplies, equipment, waste materials, rubbish and temporary facilities of each DB Contractor-Related Entity shall have been removed from the applicable portion of the Project ROW, DB Contractor shall restore and repair all damage or injury arising from such removal to the satisfaction of TxDOT, and the Site shall be in good working order and condition; (f) DB Contractor shall have delivered to TxDOT a certification representing that there are no outstanding claims of DB Contractor or claims, Liens or stop notices of any Subcontractor, Supplier, laborer, Utility Owner or other Persons with respect to the Work, other than any previously submitted unresolved claims of DB Contractor and any claims, Liens or stop notices of a Subcontractor, Supplier, laborer, Utility Owner or other Persons being contested by DB Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by TxDOT and, with respect to all claims, Liens or stop notices of a Subcontractor, Supplier, laborer, Utility Owner and other Person, shall include a representation by DB Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim; (g) DB Contractor has paid in full all liquidated damages that are owing to TxDOT pursuant to this DBC and are not in Dispute, and has provided to TxDOT reasonable security for the full amount of liquidated damages that may then be the subject of an unresolved Dispute; and (h) there exists no uncured DB Contractor Defaults.

20.3.3 DB Contractor shall provide TxDOT with written notification when DB Contractor determines it has achieved Final Acceptance of the Project. During the 15-day period following receipt of such notification, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's and the orderly, timely inspection and review of the Project and the Record Drawings, and TxDOT's issuance of a Certificate of Final Acceptance for the Project.

20.3.4 During such 15-day period, TxDOT shall conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance for the Project are satisfied.

20.3.5 Within five days after expiration of such 15-day period, TxDOT shall either: (a) issue a Certificate of Final Acceptance for the Project or (b) notify DB Contractor in writing setting forth, as applicable, why Final Acceptance of the Project has not been achieved. If TxDOT and DB Contractor cannot agree as to the date of Final Acceptance of the Project, such Dispute shall be resolved according to the dispute resolution procedures set forth in this DBC.

20.3.6 TxDOT will deem Final Acceptance of the Project to be achieved upon TxDOT's issuance of a Certificate of Final Acceptance for the Project.

20.4 Early Opening

Prior to Substantial Completion of a Location, TxDOT shall have the right to open to traffic a Location portions of the Location to the extent such portions are safe and necessary or advisable, in TxDOT's sole determination, for traffic circulation. No early openings shall constitute Substantial Completion or Final Acceptance or waive the requirements thereof.

20.5 Clayton Act Assignment

DB Contractor shall assign to TxDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to the DBC Documents or any Subcontract. This assignment shall be made and become effective at the time TxDOT tenders Final Payment for the Project to DB Contractor, without further acknowledgment by the Parties.

SECTION 21. RECORDS AND AUDITS; OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

21.1 Escrowed Proposal Documents

Prior to execution of this DBC, DB Contractor delivered to TxDOT one copy of all cost, unit pricing, price quote and other documentary information used in preparation of the Price (the "EPDs"). Upon execution of this DBC, the EPDs shall be held in locked fireproof cabinet(s) supplied by DB Contractor and located in TxDOT's project office with the key held only by DB Contractor. Concurrently with approval of each Change Order or amendment to any DBC Document, one copy of all documentary information used in preparation of the Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) 180 days have elapsed from the later of Final Acceptance of the Project or termination of this DBC, as applicable; (b) all Claims or Disputes regarding the Work have been settled; and (c) Final Payment has been made and accepted.

21.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by DB Contractor, TxDOT and its consultants and any dispute resolver in accordance with Section 19, in connection with approval of the Project Schedule, negotiation of Change Orders and resolution of Claims or Disputes under the DBC Documents, and also as described in Section 21.1.6. TxDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

21.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of DB Contractor and shall be considered to be in DB Contractor's possession, subject to TxDOT's right to review the EPDs as provided in this Section 21.1. DB Contractor will have and control the keys to the filing cabinet containing the EPDs. TxDOT acknowledges that DB Contractor may consider that the EPDs constitute trade secrets or proprietary information. TxDOT shall have the right to copy the EPDs for the purposes set forth in this Section 21.1, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to EPDs that constitute trade secrets or proprietary information.

21.1.3 Representation

DB Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Price. DB Contractor agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. DB Contractor further agrees that the EPDs are not part of the DBC Documents and that nothing in the EPDs shall change or modify any DBC Document.

21.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been determined and shall show cost or price elements in sufficient detail as is adequate to enable TxDOT to understand how DB Contractor calculated the Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total cost or price and individual components of that cost or price were determined. The EPDs shall itemize the estimated costs or price of performing the required work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit. The EPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by DB Contractor under Section 9. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by DB Contractor to arrive at the Price, and any adjustments to the Price under this DBC.

21.1.5 Form of EPDs

Except as otherwise provided in the RFP, DB Contractor shall submit the EPDs in such format as is used by DB Contractor in connection with its Proposal. DB Contractor represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of DB Contractor prior to delivery, and that the EPDs meet the requirements of Section 21.1.4. DB Contractor further represents and warrants that all EPDs provided were or will be personally examined prior to delivery by an authorized officer of DB Contractor, and that they shall meet the requirements of Section 21.1.4.

21.1.6 Review by TxDOT to Confirm Completeness

TxDOT may at any time conduct a review of the EPDs to determine whether they are complete. If TxDOT determines that any data is missing from an EPD, DB Contractor shall provide such data within three Business Days after delivery of TxDOT's request for such data. At that time of its submission to TxDOT, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. DB Contractor shall have no right to add documents to the EPDs except upon TxDOT's request. The EPDs associated with any Change Order or Price adjustment under this DBC shall be reviewed, organized and indexed in the same manner described in Section 4.3 of the ITP.

21.2 Financial Reporting Requirements

21.2.1 DB Contractor shall deliver to TxDOT financial and narrative reports, statements, certifications, budgets and information as and when required under the DBC Documents.

21.2.2 DB Contractor shall furnish, or cause to be furnished, to TxDOT such information and statements as TxDOT may reasonably request from time to time for any purpose related to the Project, the Work or the DBC Documents. In addition, DB Contractor shall deliver to TxDOT the following financial statements for each Guarantor, at the times specified below:

21.2.2.1. Within 60 days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

21.2.2.2. Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP is required; and

21.2.2.3. Upon request of TxDOT for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to TxDOT as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

21.2.3 DB Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by TxDOT in connection with any Project financing. Without limiting the generality of the foregoing, DB Contractor shall provide such information deemed necessary or desirable by TxDOT for inclusion in TxDOT's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. DB Contractor shall provide customary representations and warranties to TxDOT and the capital markets as to the correctness, completeness and accuracy of any information furnished.

21.2.4 DB Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by TxDOT to assist or facilitate the submission by TxDOT of any documentation, reports or analysis required by the State of Texas and/or any other Governmental Entity with jurisdiction over the Project.

21.2.5 All reports and information delivered by DB Contractor under Sections 21.2.3 and 21.2.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

21.3 Maintenance and Inspection of Records

21.3.1 Except for EPDs (which shall be maintained as set forth in Section 21.1), DB Contractor shall keep and maintain in Travis County, Texas, or in another location TxDOT approves in writing in its sole discretion, all books, records and documents relating to the Project, Project Right of Way, Utility Adjustments or Work, including copies of all original documents delivered to TxDOT. DB Contractor shall keep and maintain such books, records and documents in accordance with applicable provisions of the DBC Documents, and of the Project Management Plan, and in accordance with Good Industry Practice. DB Contractor shall notify TxDOT where such records and documents are kept.

21.3.2 DB Contractor shall make all its books, records and documents available for inspection by TxDOT and its authorized representatives and legal counsel at DB Contractor's principal offices in Texas, or at TxDOT's project office for EPDs, at all times during normal business hours, without charge. DB Contractor shall provide copies thereof to TxDOT, or make available for review to TxDOT: (a) as and when expressly required by the DBC Documents or (b) for those not expressly required, upon request and at no expense to DB Contractor. TxDOT may conduct any such inspection upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 21.3.2 are subject to the following:

21.3.2.1. DB Contractor reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions, provided that in no event shall DB Contractor be entitled to assert any such exemption to withhold traffic and revenue data; and

21.3.2.2. DB Contractor shall retain records and documents for the respective time periods set forth in Texas State Records Retention Schedule or, if not addressed therein, for a minimum of five years after the date the record or document is generated; provided that if the DBC Documents specify any different time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved.

21.4 Audits

21.4.1 TxDOT shall have such rights to review and audit DB Contractor, its Subcontractors and their respective books and records as and when TxDOT deems necessary in connection with Claim or Disputes or for purposes of verifying compliance with the DBC Documents and applicable Law. Without limiting the foregoing, TxDOT shall have the right to audit DB Contractor's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. TxDOT may conduct any such audit of books and records upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. Any rights of the FHWA to review and audit DB Contractor, its Subcontractors and their respective books and records are set forth in Exhibit 3.

21.4.2 Full compliance by DB Contractor with the provisions of this Section 21.4 is a contractual condition precedent to DB Contractor's right to seek relief under Section 19.

21.4.3 DB Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with TxDOT audits, and shall cause all Subcontractors other than TxDOT and Governmental Entities acting as Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provides in connection with TxDOT audits.

21.4.4 DB Contractor's internal and third party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in the Technical Provisions.

21.4.5 Nothing in the DBC Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. DB Contractor understands and acknowledges that: (a) the State auditor may conduct an audit or investigation of any Person receiving funds from the State directly under this DBC or indirectly through a Subcontract, (b) acceptance of funds directly under this DBC or indirectly through a Subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds, and (c) a Person that is the subject of an audit or investigation must provide the State auditor with access to any information the State Auditor considers relevant to the investigation or audit.

21.5 Public Information Act

21.5.1 DB Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by DB Contractor, are subject to the provisions of the Public Information Act. If DB Contractor believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act or excepted from disclosure under the Public Information Act, DB Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 21.5 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the

provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. DB Contractor is advised to contact legal counsel concerning such Law and its application to DB Contractor.

21.5.2 If TxDOT receives a request for public disclosure of materials marked “CONFIDENTIAL,” TxDOT will use reasonable efforts to notify DB Contractor of the request and give DB Contractor an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable Law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to DB Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

21.5.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by DB Contractor to TxDOT, TxDOT’s sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and DB Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of TxDOT’s voluntary intervention or participation in litigation, DB Contractor shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys’ fees and costs, TxDOT incurs in connection with any litigation, proceeding or request for disclosure.

21.6 Ownership of Documents

Subject to Section 21.7, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the DBC Documents shall be considered “works made for hire” for which TxDOT owns the copyright. Design Documents shall become TxDOT’s property upon preparation; Construction Documents shall become TxDOT’s property upon delivery to TxDOT; and other documents prepared or obtained by DB Contractor in connection with the performance of its obligations under the DBC Documents, including studies, manuals, Record Drawings, technical and other reports and the like, shall become the property of TxDOT upon DB Contractor’s preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to TxDOT upon preparation or receipt thereof by DB Contractor. DB Contractor shall maintain all other documents described in this Section 21.6 in accordance with the requirements of Section 21.3 and shall deliver copies to TxDOT as required by the DBC Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to TxDOT as a condition to Final Acceptance.

21.7 Intellectual Property

21.7.1 All Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, shall remain exclusively the property of DB Contractor or its Affiliates or Subcontractors that supply the same, notwithstanding any delivery of copies thereof to TxDOT.

21.7.2 TxDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and

sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of DB Contractor, including with respect to Source Code and Source Code Documentation, solely in connection with the Project and any State Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity; provided that TxDOT shall have the right to exercise such license only at the following times:

(a) From and after the expiration or earlier termination of this DBC for any reason whatsoever; and

(b) During any time that a receiver is appointed for DB Contractor, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which DB Contractor is the debtor, in which case TxDOT may exercise such license only in connection with the Project.

21.7.3 Subject to the license and rights granted to TxDOT pursuant to Section 21.7.2, TxDOT shall not at any time sell any Proprietary Intellectual Property of DB Contractor or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

21.7.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of TxDOT generally or with respect to the Project.

21.7.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a State Highway or other road, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of TxDOT or any such State or regional Governmental Entity in connection with the Project or another State Highway or other road, tolled or untolled. All such sublicenses shall be subject to Section 21.7.6.

21.7.6 Subject to Section 21.5, TxDOT shall:

(a) Not disclose any Proprietary Intellectual Property of DB Contractor to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of TxDOT relating thereto;

(b) Enter into a commercially reasonable confidentiality agreement if requested by DB Contractor with respect to the licensed Proprietary Intellectual Property; and

(c) Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of DB Contractor and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

21.7.7 Notwithstanding any contrary provision of this DBC, in no event shall TxDOT or any of its directors, officers, employees, consultants or agents be liable to DB Contractor, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 21.7.6 if such breach is not the result of gross negligence or intentional misconduct. DB Contractor hereby irrevocably waives all claims to any such damages.

21.7.8 DB Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

21.7.9 With respect to any Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, owned by a Person other than DB Contractor, including any Affiliate, and other than TxDOT or a Governmental Entity acting as a Subcontractor, DB Contractor shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for DB Contractor and TxDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any State Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 21.7.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as “shrink wrap software”) owned by such a Person where such a license cannot be extended to TxDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by TxDOT set forth in Sections 21.7.3 through 21.7.6 shall also apply to TxDOT’s licenses in such Proprietary Intellectual Property.

SECTION 22. VALUE ENGINEERING

22.1 General

This Section 22 sets forth the requirements applicable to preparation, review and approval of Value Engineering recommendations (“VEs”) for the purpose of enabling DB Contractor and TxDOT to take advantage of potential cost savings or provide potential improvements to the Work through changes in the requirements relating to the Work. Either Party may initiate a VE. DB Contractor shall have the right to refuse to consider such TxDOT-Initiated VE, provided that nothing herein is intended to alter TxDOT’s right to issue TxDOT-Directed Changes in accordance with Section 13.

22.2 Required Information

At a minimum, the following information shall be submitted by DB Contractor with each VE: (a) a statement that the submission is a VE, and a narrative description of the proposed change and any schedule considerations; (b) description of the existing requirements in the DBC Documents which are involved in the proposed change; (c) discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item; (d) itemization of the requirements of the DBC Documents which must be changed if the VE is approved; (e) a complete cost analysis including DB Contractor’s cost estimate for performing the subject Work in accordance with the DBC Documents compared to DB Contractor’s cost estimate for performing the subject Work in accordance with the proposed changes; (f) justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the DBC Documents, including environmental compliance requirements; and (g) a description of any previous use or tests of the VE and the conditions and results. DB Contractor shall provide any additional information requested by TxDOT in a timely manner.

22.3 TxDOT Review and Approval

Upon receipt, TxDOT will process a VE, but DB Contractor shall have no Claim for additional costs or delays in connection with TxDOT’s consideration, review or rejection of a VE. DB Contractor may withdraw all or part of any VE at any time prior to approval. In the event DB

Contractor withdraws a VE, DB Contractor shall be liable for costs incurred by TxDOT in reviewing the withdrawn VE. Each Party shall bear its own costs in connection with the preparation and review of rejected VEs. TxDOT may approve, in its sole discretion, in whole or in part, by Change Order, any VE submitted. The decision of TxDOT as to rejection or approval of any VE shall be at the sole discretion of TxDOT and shall be final and not subject to partnering, dispute resolution or appeal.

22.4 Price Adjustment

If TxDOT accepts a VE, the Price shall be adjusted in accordance with the following terms. For VEs that reduce the DB Contractor's costs, the Price shall be reduced by an amount equal to the sum of: (a) 100% of any additional costs incurred by TxDOT, including the costs incurred in reviewing the VE and any impact the VE may have on project revenue, but excluding the amounts due to the DB Contractor, resulting from the VE (excluding any impact on the Price itself) plus (b) 50% of Estimated VE Net Savings. For VEs that result in an increase in the DB Contractor's costs, the Price shall be increased by an amount equal to the sum of: (a) 100% of any additional costs incurred by DB Contractor and approved by TxDOT in accordance with the Change Order procedures in Section 13 resulting from the VE plus (b) 50% of Estimated VE Net Savings. DB Contractor is not entitled to share in either Collateral Savings or Future Contract Savings. In the event that DB Contractor proceeds with a DB Contractor-requested Change Order that TxDOT believes should be characterized as a VE, and it is later determined through the dispute resolution process that the change meets the technical qualifications for a VE, the Price shall be reduced by an amount equal to the sum of: (a) 100% of any additional costs incurred by TxDOT resulting from the VE plus (b) 75% of estimated net savings.

22.5 Use of VEs By TxDOT

All approved or disapproved VEs will become the property of TxDOT, and shall contain no restrictions imposed by DB Contractor on their use or disclosure. TxDOT retains the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the VE on any other or subsequent projects without any obligation or liability to DB Contractor.

SECTION 23. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS

23.1 Cooperation with Other Contractors

DB Contractor acknowledges that TxDOT has awarded and/or may award contracts for construction and other work at or near the Site, and that other projects at or near the Site may be in various stages of design and construction. DB Contractor and any DB Contractor-Related Entity shall fully cooperate and be solely responsible for coordinating with such other contractors and projects, and shall schedule and sequence the Work as reasonably necessary to accommodate the work of such other contractors and projects. Further, DB Contractor shall conduct its Work and perform its obligations under the DBC Document without interfering with or hindering the progress or completion of the work being performed by other contractors or of the work relating to such other projects.

23.2 Interference by Other Contractors

If DB Contractor asserts that any of TxDOT's other contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then, subject only to the

right to a Change Order for TxDOT-Caused Delays, DB Contractor's sole remedy shall be to seek recourse against such other contractors.

23.3 Coordination with Utility Owners and Adjacent Property Owners

DB Contractor shall coordinate with Utility Owners and owners of property adjoining the Project, and with their respective contractors, as more particularly described in the DBC Documents.

SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Representations and Warranties

DB Contractor represents and warrants that:

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

24.1.2 As of the Effective Date, DB Contractor has evaluated the constraints affecting design and construction of the Project, including the Final Design ROW limits as well as the conditions of the TxDOT-Provided Approvals, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

24.1.3 DB Contractor has evaluated the feasibility of performing the Work within the Completion Deadlines and for the Price, accounting for constraints affecting the Project and has reasonable grounds for believing and does believe that such performance (including achievement of Substantial Completion and Final Acceptance by the applicable Completion Deadlines for the Price) is feasible and practicable.

24.1.4 DB Contractor has taken steps reasonably necessary to ascertain the nature and location of the Work, that it has investigated and satisfied itself as to the general and local conditions which can affect each Location and/or the performance of the Work, including (1) conditions bearing upon transportation, disposal, handling, and storage of materials and equipment; (2) the availability of labor, water, electric power, utilities and roads; (3) uncertainties of weather, river stages, tides or similar conditions in connection with the Project; (4) the adequacy of lay-down, storage and parking; (5) the character of equipment and facilities needed preliminary to and during the performance of the Work, and (6) all site dimensions (including topography) and all measurements relevant to the Work and each Location. In connection therewith, the DB Contractor acknowledges that, subject to Section 13, it will bear all risks associated with any such general and local conditions which can affect the Project, the Locations and/or the performance of the Work, and the DB Contractor shall not be relieved of its responsibility to perform the Work for the Price by the Completion Dates as a result of any such conditions.

24.1.5 DB Contractor has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this DBC. Except as specifically permitted under Section 13, DB Contractor shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the DBC Documents. As of the Effective Date, DB Contractor has no reason to believe that any Governmental Approval required to be obtained by DB Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the DBC Documents.

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

24.1.7 As of the Effective Date, DB Contractor is a [_____] duly organized and validly existing under the laws of the State of Texas with all requisite power and all required licenses to carry on its present and proposed obligations under the DBC Documents. DB Contractor is composed of [_____]. Each member of DB Contractor is duly qualified to do business, and is in good standing, in the State of Texas as of the Effective Date, and will remain in good standing throughout the term of this DBC and for as long thereafter as any obligations remain outstanding under the DBC Documents.

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

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

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

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

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

24.2 Survival of Representations and Warranties

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

24.3 Amendments

The DBC Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this DBC.

24.4 Waiver

No waiver of any term, covenant or condition of the DBC Documents shall be valid unless in writing and signed by the obligee Party. The exercise by a Party of any right or remedy provided under the Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. Except as provided otherwise in the DBC Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the DBC Documents.

24.5 Independent Contractor

DB Contractor is an independent contractor, and nothing contained in the DBC Documents shall be construed as creating any relationship between TxDOT and DB Contractor other than that of Project owner and independent contractor. None of DB Contractor, any Subcontractor, and any of their respective employees is or shall be deemed to be an employee of TxDOT.

24.6 Successors and Assigns; Change of Control

24.6.1 The DBC Documents shall be binding upon and inure to the benefit of TxDOT and DB Contractor and their permitted successors, assigns and legal representatives.

24.6.2 TxDOT may transfer and assign all or any portion of its rights, title and interests in and to the DBC Documents, including rights with respect to the Payment and Performance Bond(s), Guarantees, letters of credit and other security for payment or performance (a) without DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT and (b) to any other Person with the prior written approval of DB Contractor and the Surety.

24.6.3 In the event of TxDOT's assignment of all of its rights, title and interests in the DBC Documents as permitted hereunder, DB Contractor shall have no further recourse to TxDOT under the DBC Documents or otherwise except as specifically provided by other contractual agreement or by statute.

24.6.4 DB Contractor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the DB Contractor's interest in this DBC or any portion thereof without TxDOT's prior written approval, except to any entity that is under the same ultimate management control as DB Contractor. DB Contractor shall not sublease or grant any other special occupancy or use of the Project to any other Person that is not in the ordinary course of DB Contractor performing the Work, without TxDOT's prior written approval. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null and void ab initio and TxDOT, at its option, may declare any such attempted action to be a material DB Contractor Default.

24.6.5 DB Contractor shall not voluntarily or involuntarily cause, permit or suffer any Change of Control prior to Final Acceptance of the Project without TxDOT's prior written approval. If there occurs any voluntary or involuntary Change of Control without TxDOT's prior written approval, TxDOT, at its option, may declare it to be a material DB Contractor Default.

24.6.6 Where TxDOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control prior to Final Acceptance, TxDOT may withhold or condition its approval in its sole discretion. Any such decision of TxDOT to withhold consent shall be final, binding and not subject to the dispute resolution procedures set forth in this DBC.

24.6.7 Assignments and transfers of DB Contractor's interest permitted under this Section 24.4 or otherwise approved in writing by TxDOT shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to TxDOT, in which the transferee, without condition or reservation, assumes all of DB Contractor's obligations, duties and liabilities under this DBC and the other DBC Documents then in effect and agrees to perform and observe all provisions thereof applicable to DB Contractor. Each transferee shall take DB Contractor's interest subject to, and shall be bound by, the Project Management Plan, the Key Subcontracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by TxDOT in writing in its good faith discretion.

24.7 Change of Organization or Name

24.7.1 DB Contractor shall not change the legal form of its organization in a manner that adversely affects TxDOT's rights, protections and remedies under the DBC Documents without the prior written approval of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion.

24.7.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

24.8 Designation of Representatives; Cooperation with Representatives

24.8.1 TxDOT and DB Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the DBC Documents ("Authorized Representative"). Exhibit 17 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 24.11. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the design and construction of the Project and negotiate on behalf of each of the Parties, but who do not have authority to bind TxDOT or DB Contractor.

24.8.2 DB Contractor shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

24.9 Survival

DB Contractor's representations and warranties, the dispute resolution provisions contained in Section 19, the indemnifications and releases contained in Section 18, the express rights and obligations of the Parties following termination of this DBC under Sections 15 and 16, the

provisions regarding invoicing and payment under Section 12.2, the obligations regarding Final Reconciliation under Section 12.5, and all other provisions which by their inherent character should survive termination of this DBC and/or completion of the Work, shall survive the termination of this DBC and/or completion of the Work. The provisions of Section 19 shall continue to apply after expiration or earlier termination of this DBC to all Claims and Disputes between the Parties arising out of the DBC Documents.

24.10 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the DBC Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.8, the duties, obligations and responsibilities of the Parties to the DBC Documents with respect to third parties shall remain as imposed by Law. The DBC Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Subcontractor or any Person other than DB Contractor.

24.11 No Personal Liability of TxDOT Employees; Limitation on State's Liability

24.11.1 TxDOT's Authorized Representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under the DBC Documents. They shall not be liable to any DB Contractor-Related Entity either personally or as employees of TxDOT for actions in their ordinary course of employment.

24.11.2 The Parties agree to provide to each other's Authorized Representative written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in the DBC Documents, and shall otherwise provide notice in such form and within such period as is required by Law.

24.11.3 In no event shall TxDOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Site during the period DB Contractor has operation and control of the Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity. DB Contractor expressly acknowledges and agrees that TxDOT's rights in this DBC to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward DB Contractor or any other Person, all of which are hereby expressly disclaimed.

24.12 Governing Law

The DBC Documents shall be governed by and construed in accordance with the Laws of the State of Texas.

24.13 Notices and Communications

24.13.1 Notices under the DBC Documents shall be in writing and: (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight

mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in Sections 24.11.2 and 24.11.3, as applicable (or to such other address as may from time to time be specified in writing by such Person).

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

Telephone: _____
Facsimile: _____
E-mail: _____

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

E-mail: _____

24.13.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the Energy Sector Roadway Repair Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
7600 Chevy Chase Drive, Building II Suite 400
Austin, Texas 78752
Attn: Mr. Frank Holzmann, P.E.
Telephone:
E-mail: frank.holzmann@txdot.gov

With a copy to:

Texas Department of Transportation
Chief Planning & Projects Officer
125 East 11th Street
Austin, TX 78701
Attn: Mr. Russell Zapalac, P.E.
Telephone: (512) 305-9516
E-mail: russell.zapalac@txdot.gov

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

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: jack.ingram@txdot.gov

24.13.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by DB Contractor's Authorized Representative and technical representatives designated by TxDOT.

24.14 Taxes

24.14.1 DB Contractor shall pay, prior to delinquency, all applicable taxes. DB Contractor shall have no right to an adjustment to the Price or any other Claim, except as provided in Section 24.12.2, due to its misinterpretation of Laws respecting taxes or incorrect assumptions regarding applicability of taxes.

24.14.2 With respect to Expendable Materials any DB Contractor-Related Entity purchases, DB Contractor shall submit or cause the DB Contractor-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event DB Contractor is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse DB Contractor for such sales tax. Reimbursement shall be due within 60 days after TxDOT receives from DB Contractor written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. DB Contractor agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable Materials. If materials purchased for the Work are not wholly used or expended on the Project, such that they do not qualify as Expendable Materials, DB Contractor will be responsible for applicable sales taxes.

24.15 Interest on Amounts Due and Owing

Unless expressly provided otherwise in this DBC or in the case of TxDOT's Recoverable Costs, all amounts to which a Party is entitled to assess, collect, demand or recover under this DBC shall earn interest from the date on which such amount is due and owing at the lesser of: (a) 12% per annum or (b) the maximum rate allowable under applicable Law.

24.16 Integration of DBC Documents

TxDOT and DB Contractor agree and expressly intend that, subject to Section 24.15, this DBC and other DBC Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.17 Severability

If any clause, provision, section or part of the DBC Documents is ruled invalid under Section 19 or otherwise by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the DBC Documents, which shall be construed and enforced as if the DBC Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.18 Headings

The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this DBC.

24.19 Entire Agreement

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

24.20 Counterparts

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

IN WITNESS WHEREOF, this Design-Build Contract has been executed as of the date first set forth above.

DB Contractor:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

[DB Contractor]

By _____

By: _____

Name: _____

Title: _____

Executive Director