



**DESIGN-BUILD AGREEMENT
I-35 NEX SOUTH PROJECT**

between

TEXAS DEPARTMENT OF TRANSPORTATION

and

LONE STAR CONSTRUCTORS, NEX

Dated as of: August 16, 2023

Bexar County

**DESIGN-BUILD AGREEMENT
I-35 NEX South Project**

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DESIGN-BUILD AGREEMENT

I-35 NEX SOUTH PROJECT

This Design-Build Agreement (this “**DBA**”), dated as of August 16, 2023 (the “**Effective Date**”), is entered into by and between:

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

And

DB Contractor: Lone Star Constructors, NEX, a Texas joint venture, consisting of Fluor Enterprises, Inc., a California corporation and Austin Bridge & Road, LP, a Delaware limited partnership,

the location of whose principal office is:

8122 Whisper Oak
San Antonio, Texas 78266.

RECITALS

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

B. TxDOT wishes to enter into an agreement with DB Contractor to design and construct approximately four miles of non-tolled improvements along I-35 from I-410 South to I-410 North, including transitions along I-35 from Petroleum Drive to I-410 South, and along the portion of I-410 South from I-35/I-410 South Interchange to 0.3 miles north of Seguin Road/FM 78 (the “**Project**” or the “**I-35 NEX South Project**”). In addition, TxDOT wishes to enter into an agreement with DB Contractor to maintain the Project for an initial specified mandatory term, as well as for specified additional optional terms.

C. Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the “**Rules**”), TxDOT issued a Request for Qualifications (as amended, the “**RFQ**”) on April 15, 2022.

D. TxDOT received four qualification statements on July 8, 2022 and subsequently shortlisted three proposers.

E. On November 9, 2022, TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the “**RFP**”) to design, construct and maintain the Project.

F. On or before March 28, 2023 (the “**Proposal Due Date**”), TxDOT received four responses to the RFP, including the response of DB Contractor (the “**Proposal**”).

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

H. On May 25, 2023, the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this DBA.

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

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

K. The Executive Director of TxDOT has been authorized to enter into this DBA pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order 116481, dated May 25, 2023.

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

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

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

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

SECTION 1. CONTRACT

1.1 Abbreviations

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

| | |
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| DBA | Design-Build Agreement |
| CMA | Capital Maintenance Agreement |
| CMC | the Capital Maintenance Agreement and the CMA General Conditions, including all exhibits attached thereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC. |

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

1.2 Definitions

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

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| Adjustment Standards | means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the Contract Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 4.5.3.5 of the General Conditions. For purposes of the SAWS Utility Adjustment Work, the "Adjustment Standards" shall be the "SAWS Standards," as defined in the SAWS ILA, to the extent that the SAWS Standards are not inconsistent with the terms of the SAWS ILA. |
| Advance Utility Relocation Agreement | has the meaning set forth in <u>Section 6.4.4.1</u> of this DBA. |
| Aesthetics and Landscape Plan | means the plan DB Contractor prepares in conformance with the Project's aesthetics concepts as more particularly described in Section 23.1.2 of the Design-Build Specifications. |
| Allowance | shall have the meaning set forth in <u>Exhibit 9</u> to this DBA. |
| Basic Configuration | has the meaning set forth in <u>Exhibit 1</u> to this DBA. |
| Betterment | <p>has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreements or, for the SAWS Utilities, the SAWS ILA; in all other cases, "Betterment" means any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:</p> <ul style="list-style-type: none"> (a) any upgrading that is required for accommodation of the Project; (b) replacement devices or materials that are of equivalent standards although not identical; (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size; (d) any upgrading required by applicable Law; (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); (f) any upgrading required by published, current design practices regularly followed by the Utility Owner in its own work; or (g) any upgrading for which there are direct benefits to or are required for the Project. <p>For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.</p> |

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| C&M Agreement | means the construction and maintenance agreement between TxDOT and a railroad that provides TxDOT license and permission to perform work within railroad right of way. |
| Capital Maintenance Agreement | means that certain Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project. |
| Capital Maintenance Contract or CMC | means the Capital Maintenance Agreement and the CMA General Conditions, including all exhibits attached thereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC. |
| Capital Maintenance Contract Documents or CMC Documents | has the meaning set forth in Section 1.2 of the Capital Maintenance Agreement. |
| Chargeable Lane Closure Code | has the meaning set forth in Section A.2 of <u>Exhibit 15</u> to this DBA. |
| Completion Deadlines | has the meaning set forth in <u>Recital A</u> to this DBA. |
| Contract Documents | means the Milestone 1 Completion Deadline, Milestone 2 Completion Deadline, the Substantial Completion Deadline and the Final Acceptance Deadline. |
| CMA General Conditions | has the meaning set forth in <u>Section 1.3</u> of this DBA. |
| CPS Energy | has the meaning set forth in Section 1.3.2 of the Capital Maintenance Agreement. |
| Critical Path | means CPS Energy, a municipally-owned utility of the City of San Antonio. |
| DB Contractor or Design-Build Contractor | means each critical path on the Project Schedule, which ends on a Completion Deadline (i.e., the term shall apply only following consumption of all available Float for the applicable Completion Deadline in the schedule). The lower case term "critical path" means the activities and durations associated with the longest chains of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack. |
| Delay Deductible Aggregate Cap | means Lone Star Constructors, NEX, a joint venture, consisting of Fluor Enterprises, Inc., a California corporation, and Austin Bridge & Road, LP, a Delaware limited partnership, together with its successors and assigns. |
| Design-Build Agreement | has the meaning set forth in <u>Section 6.11</u> of this DBA. |
| Design-Build Specifications or DB Specifications | has the meaning set forth in the preamble hereof. |
| Differing Site Conditions | means the Design-Build Specifications, items 10-28 included in the RFP. |
| | means (a) man-made subsurface or man-made latent conditions of an unusual nature, (b) subsurface or surface natural physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract Documents, (c) an Abandoned Utility that is a water or wastewater Utility 18 inches in diameter or greater; or (d) an Abandoned Utility that is a Utility duct bank with 4 or more conduits. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography (ii) variations in subsurface moisture content and variations |

in the water table; (iii) Utility facilities, including Abandoned Utilities (other than as described in clause (c) or (d) above); (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; (vi) any conditions which constitute or are caused by a Relief Event; (vii) any subsurface or surface conditions that are ascertainable from the information included in the RIDs prior to the Proposal Due Date; and (viii) karst and the discovery of Karst Features.

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| Differing Site Conditions Deductible | has the meaning set forth in <u>Section 6.1</u> of this DBA. |
| Differing Site Conditions Deductible Cap | has the meaning set forth in <u>Section 6.1</u> of this DBA. |
| Dispute Resolution Procedures | means the formal process for resolving Disputes described in <u>Section 11.1</u> and <u>Exhibit 20</u> to this DBA. None of the Disputes Review Panel Process and Informal Resolution Procedures are included in the Dispute Resolution Procedures. |
| DRP Rules | means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding procedures applicable to the resolution of all claims and disputes of every kind or character arising under agreements such as and including the Contract Documents. |
| Effective Date | has the meaning set forth in the preamble to this DBA. |
| Eminent Domain Delay | has the meaning set forth in <u>Section 6.5</u> of this DBA. |
| Final Acceptance Deadline | has the meaning set forth in <u>Section 2.4.1</u> of this DBA. |
| Float | means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect a Completion Deadline. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule. |
| Full Roadway Closure | has the meaning set forth in Section B.2 of <u>Exhibit 15</u> to this DBA. |
| General Conditions | has the meaning set forth in <u>Section 1.3.2</u> of this DBA. |
| I-35 NEX South Project | has the meaning set forth in Recital B to this DBA. |
| Ineligible Matters | <p>Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;</p> <p>Any claim or dispute that does not arise under the Contract Documents;</p> <p>Any claim that is not actionable against TxDOT by DB Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof;</p> <p>Any claim for indemnity under Section 7.12 of the General Conditions;</p> <p>Any claim for injunctive relief;</p> <p>Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;</p> |

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| | Any claim arising solely in tort or that is covered by the Texas Tort Claims Act; |
| | Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof); |
| | Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in Section 4.9 of the General Conditions and <u>Exhibit 20</u> hereof apply; |
| | Any claim for, or dispute based on, remedies expressly created by statute; and |
| | Any Dispute that is actionable only against a Surety. |
| Initial Maintenance Term Commencement Date | has the meaning set forth in Section 1.2 of the CMA. |
| Instructions to Proposers | means the Instructions to Proposers issued by TxDOT on November 9, 2022, , as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda. |
| Karst Feature | means caves and mesocavernous voids in landforms and subsurface features produced by dissolution of limestone bedrock. |
| Karst Feature Mitigation | has the meaning set forth in <u>Section 6.9.1</u> of this DBA. |
| Karst Investigation Delay | has the meaning set forth in <u>Section 6.9.5</u> of this DBA. |
| Karst Mitigation Delay | has the meaning set forth in <u>Section 6.9.3</u> of this DBA. |
| Karst Species Specialist | means a specialist in karst invertebrates that is designated by the DB Contractor to assist with the determination of whether a Karst Feature is occupied or presumed occupied by endangered karst invertebrates, as more particularly described in Section 12.3.10 of the Design-Build Specifications. |
| Key Personnel | means the positions identified in <u>Exhibit 18</u> to this DBA. |
| Lane Closure | means closure of any traffic lane, or the reduction in width of any traffic lane to less than 11 feet, or, for traffic lanes with an existing width of less than 11 feet, to less than such lane's existing width, in any portion of the Project or a connecting highway, as applicable, and for any duration, including main lanes, ramps, direct connectors, frontage roads, access roads and cross roads. |
| Lane Closure Notice | has the meaning set forth in Section B.1 of <u>Exhibit 15</u> to this DBA. |
| Licensed Professional Geoscientist | means the specialist that is designated by the DB Contractor to assist in the mapping of Karst Features and development of Karst Feature closure plans, as more particularly described in Section 12.3.8 of the Design-Build Specifications. |
| Limited NTP2 | has the meaning set forth in <u>Section 2.9</u> of this DBA. |
| Liquidated Damages | means the liquidated damages, including Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, specified in DBA <u>Sections 7.2, 7.3 and 7.4</u> , and General Conditions Sections 8.3.1, 8.7.1.1 and 8.7.2. |

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| Maintenance Management System (MMS) | has the meaning set forth in Section 27.6 of the Design-Build Specifications. |
| Maintenance NTP1 | has the meaning set forth in Section 1.2 of the CMA. |
| Maintenance Performance Bond | has the meaning set forth in Section 1.2.2 of the CMA General Conditions. |
| Maintenance Security | has the meaning set forth in Section 1.2 of the CMA. |
| Maintenance Services | has the meaning set forth in Section 1.2.2 of the CMA General Conditions. |
| Milestone(s) | means one or both of Milestone 1 and Milestone 2, as applicable. |
| Milestone 1 | means the design and construction of the work items for Milestone 1 identified in <u>Appendix 1 to Exhibit 1</u> to this DBA. |
| Milestone 1 Completion | means achievement of Milestone Completion for Milestone 1. |
| Milestone 1 Completion Deadline | means the Milestone Completion date for Milestone 1 set forth in the table in <u>Section 2.4.1</u> of this DBA. |
| Milestone 2 | means the design and construction of the work items for Milestone 2 identified in <u>Appendix 1 to Exhibit 1</u> to this DBA. |
| Milestone 2 Completion | means achievement of Milestone Completion for Milestone 2. |
| Milestone 2 Completion Deadline | means the Milestone Completion date for Milestone 2 set forth in the table in <u>Section 2.4.1</u> of this DBA. |
| Milestone Completion | means, for each Milestone, the satisfaction of the criteria set forth in <u>Section 2.4.2</u> of this DBA as and when confirmed by TxDOT's issuance of a certificate of Milestone Completion. |
| Milestone Completion Deadline | means one or both of the Milestone 1 Completion Deadline and Milestone 2 Completion Deadline, as applicable. |
| Minimum Tangible Net Worth Requirement | means the amount set forth in <u>Section 5.2.3</u> of this DBA, which represents the minimum amount required for the total combined Tangible Net Worth of DB Contractor, its joint venture members if DB Contractor is a joint venture or its partners if DB Contractor is a partnership and any Guarantors. |
| NCE Cure Period | means the period of time DB Contractor has to cure a particular Noncompliance Event as set forth in the Noncompliance Events Table attached to <u>Exhibit 16</u> to this DBA. |
| NEPA Approvals | means the following TxDOT-Provided Approvals: 2015 Finding of No Significant Impact, issued July 2, 2015; 2015 Final Environmental Assessment, issued July 2, 2015, Re-evaluation #1 of the 2015 Final EA and FONSI, issued September 23, 2019 and Re-evaluation #5 of the 2015 Final EA and FONSI, issued November 2, 2022. |
| New Utility | means a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to DB Contractor prior to the Proposal Due Date. The term does not include any Utilities that SAWS has cost responsibility for adjusting pursuant to Section 3.B.2 of the SAWS ILA. |
| Non-Chargeable Lane Closure | has the meaning set forth in Section A.1 of <u>Exhibit 15</u> to this DBA. |

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| Noncompliance Charges | means the liquidated amounts specified in <u>Exhibit 16</u> to this DBA. |
| Noncompliance Event (NCE) | means any DB Contractor breach or failure to meet one of the requirements as set forth in <u>Exhibit 16</u> to this DBA. |
| Noncompliance Events Table | means the table set forth in Attachment 1 to <u>Exhibit 16</u> to this DBA. |
| Noncompliance Points | means the points that may be assessed for certain breaches or failures to perform by DB Contractor, as set forth in <u>Exhibit 16</u> to this DBA. |
| NTP1 Maximum Payment Amount | means the amount set forth in <u>Section 4.2.2</u> of this DBA as it may be revised in accordance with Section 4.6 of the General Conditions. |
| NTP1 Payment Bond Amount | means the amount set forth in <u>Section 5.1.2</u> of this DBA. |
| NTP1 Performance Bond Amount | means the amount set forth in <u>Section 5.1.1</u> of this DBA. |
| NTP2 Payment Bond Amount | means the amount set forth in <u>Section 5.1.4</u> of this DBA. |
| NTP2 Performance Bond Amount | means the amount set forth in <u>Section 5.1.3</u> of this DBA. |
| Persistent DB Contractor Noncompliance | has the meaning set forth in <u>Exhibit 16</u> to this DBA. |
| Price | means the price set forth in <u>Section 4.1</u> of this DBA, as it may be modified from time to time in accordance with the express provisions of the DBC. |
| Project | has the meaning set forth in <u>Recital B</u> to this DBA. |
| Project Design Exceptions | means the I-35 NEX South Design Exceptions set forth in Table 19-4 of the DB Specifications. |
| Project Overhead Percentage | means 8.5 percent. |
| Proposal | has the meaning set forth in <u>Recital F</u> to this DBA. |
| Proposal Due Date | has the meaning set forth in <u>Recital F</u> to this DBA. |
| Railroad Documents | has the meaning set forth in <u>Section 6.10.1</u> of this DBA. |
| Railroad Submittal Review Delay | has the meaning set forth in <u>Section 6.10.2</u> of this DBA. |
| Reference Information Documents (RID) | means the documents posted to the RID folders for the Project, located at https://txadp.sharepoint.com/sites/i35nexso-rid as of the Effective Date. Except as otherwise expressly provided in <u>Exhibit 3</u> to this DBA, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT. |
| Reimbursable Karst Features Costs | has the meaning set forth in <u>Section 6.9.2</u> of this DBA. |
| Request for Proposals (RFP) | has the meaning set forth in <u>Recital E</u> to this DBA. |
| Retained Security Amount | has the meaning set forth in Section 5 of <u>Exhibit 4</u> to this DBA. |
| Right of Way Use Restrictions Map or ROW Use Restrictions Map | means and consists of the right of way use restrictions map prepared for the Project contained in the Reference Information Documents, depicting restrictions placed on certain properties as set forth in Section 2.1.2.1 of this DBA. |

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| RFP Documents | means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, the CMC Documents, the Reference Information Documents and any addenda issued in connection therewith. |
| Request for Qualifications (RFQ) | has the meaning set forth in <u>Recital C</u> to this DBA. |
| Rules | has the meaning set forth in <u>Recital C</u> to this DBA. |
| San Antonio District Utility Requirements | means the utility related drawings, documents and standards provided in the “San Antonio District Utility Requirements” folder in the RIDs. |
| SAWS | means the San Antonio Water System, a municipally-owned utility of the City of San Antonio. |
| SAWS Cost Work | has the meaning set forth in the SAWS ILA. |
| SAWS Delay | has the meaning set forth in <u>Section 6.4.2</u> of this DBA. |
| SAWS ILA | means the Interlocal Agreement for the Installation and Adjustment of San Antonio Water System Utilities in connection with the I-35 NEX South Project, dated October 25, 2022. |
| SAWS Utilities | means all water and wastewater Utilities owned and operated by the City of San Antonio, acting through SAWS. |
| SAWS Utility Adjustments | means all Utility Adjustments performed pursuant to the SAWS ILA. |
| SAWS Utility Adjustment Work | means all efforts and costs necessary to complete the SAWS Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by SAWS. The term also includes any reimbursement of SAWS that is DB Contractor’s responsibility pursuant to Section 4.5.6 of the General Conditions. |
| Subcontractor Dispute | has the meaning set forth in <u>Exhibit 20</u> to this DBA. |
| Substantial Completion Deadline | has the meaning set forth in <u>Section 2.4.1</u> of this DBA. |
| Third Party Agreement | means any agreement or memorandum of understanding between TxDOT and a third party that governs or impacts the Work. The term “Third Party Agreement” does not include Governmental Approvals, TxDOT issued permits and approvals, agreements with municipalities in their capacity as Utility Owners, Utility Agreements, the SAWS ILA, the Advance Utility Relocation Agreements with CPS Energy, or railroad agreements. |
| Time Period A | means the period shown as “A” on <u>Exhibit 15</u> to this DBA. |
| Time Period B | means the period shown as “B” on <u>Exhibit 15</u> to this DBA. |
| Time Period C | means the period shown as “C” on <u>Exhibit 15</u> to this DBA |
| TxDOT-Directed Changes | means (a) any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work, which TxDOT has directed DB Contractor to perform as described in and subject to the limitations in Section 4.6.1.2 of the General Conditions), (b) suspensions |

of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 8.4.1 of the General Conditions, (c) any changes in the Work due to Errors in the Signed and Sealed Engineering Data, unless such Errors were known to the DB Contractor prior to the Effective Date, and (d) any material differences between the actual location of a Utility and the location of the Utility shown on a level A SUE report identified in Exhibit 3 of the DBA, unless such Error was known to DB Contractor prior to the Effective Date. Notwithstanding the foregoing, TxDOT shall not be liable for any changes in the scope of Work that result in less than \$10,000 in increased costs and such changes shall not be considered TxDOT-Directed Changes.

| | |
|--|--|
| TxDOT-Provided Approvals | means the approvals set forth in the table in <u>Section 3.1</u> of this DBA. |
| Ultimate Project Configuration | means the project as depicted on the RID titled "I-35 NEX Ultimate Schematic Design". |
| Uncured Noncompliance Points | means Noncompliance Points assessed on account of breaches for failures that remain uncured. |
| Unidentified Utilities Deductible | has the meaning set forth in Section 6.4 of this DBA. |
| Unidentified Utilities Deductible Cap | has the meaning set forth in <u>Section 6.4</u> of this DBA. |
| Utility Adjustment | means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously Abandoned Utilities as well as of newly Abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance or use of the Project; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad or any of the work described in an Advance Utility Relocation Agreement. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment. |
| Utility Agreement | means a PUAA or UAAA, as the context may require. Advance Utility Relocation Agreements are not a Utility Agreement. |

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

1.3 Contract Documents and Order of Precedence

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

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

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

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

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

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

1.3.5 Notwithstanding the order of precedence among Contract Documents set forth in Section 1.3.2, if a Contract Document contains differing provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT, in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

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

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

1.4 Reference Information Documents

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

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

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

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

SECTION 2. SCOPE OF WORK

2.1 Project Scope; Special Terms and Conditions

2.1.1 Project Scope

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

2.1.2 Special Terms and Conditions

2.1.2.1. Right of Way Use Restrictions

TxDOT has identified specific properties within the Project ROW that the DB Contractor shall not use for constructing laydown yards, batch plants, storing materials, or other materials processing operations. These use restrictions are shown on the ROW Use Restrictions Map included in the RID.

2.1.3 Special Utility Provisions

2.1.3.1. DB Contractor acknowledges that the Price includes the following cost responsibility for Utility Adjustments in accordance with Texas Transportation Code § 203.092 as determined by the project type. The Project is an interstate project. Pursuant to Texas Transportation Code § 203.092, the Utility relocations required by the Project, including the relocations of Utilities located on non-interstate roadways that intersect with the interstate roadway, are eligible for federal participation. Accordingly, DB Contractor is responsible for 100% of eligible costs of Utility Adjustments other than early Utility relocations.

2.1.3.2. As set forth in Section 14.1.3 of the DB Specifications and Section 6.4.4 of this DBA, TxDOT is responsible for managing Adjustments that are the subject of Advance Utility Relocation Agreements. Except as set forth in Section 6.4.4.3, DB Contractor is not responsible for reimbursing Utility Owners for work performed through Advance Utility Relocation Agreements.

2.1.3.3. Exhibit 23 sets forth certain amendments to the General Conditions regarding Utility Adjustments.

2.1.4 Obligations After Final Acceptance

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

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

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

2.1.5 Project-Specific Amendments to the General Conditions

2.1.5.1. Section 5.2.1.2.3 of the General Conditions is hereby amended by replacing the phrase "10 concurrent Submittals" with the phrase "20 concurrent Submittals".

2.2 DB Contractor's Proposal Commitments

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

2.3 DB Contractor's ATCs

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

2.4 Completion Deadlines

2.4.1 Deadlines for Project Completion

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

| MILESTONE | COMPLETION DEADLINE |
|---------------------------------|--|
| Milestone 1 Completion Deadline | NTP1 plus 1,440 Days |
| Milestone 2 Completion Deadline | NTP1 plus 1,580 Days |
| Substantial Completion Deadline | NTP1 plus 1,680 Days |
| Final Acceptance Deadline | Date of Substantial Completion plus 120 Days |

2.4.2 Completion of Milestones Prior to Substantial Completion and Final Acceptance

2.4.2.1 Completion of Milestones

- (a) DB Contractor has completed the Work with respect to Milestone 1 or Milestone 2, as applicable, described in Appendix 1 to Exhibit 1 to this DBA, in accordance with the Contract Documents and the Released for Construction Documents;
- (b) All lanes of traffic with respect to the Milestone Work (including elevated lanes, mainlanes, ramps, and direct connectors) set forth in the Released for Construction Documents are in their final configuration and available for public use;
- (c) The Milestone Work 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 and other items of work that do not affect the ability to safely open for such normal use by the traveling public;
- (d) All major safety features for the subject Milestone Work are installed and functional, including, but not limited to, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;
- (e) All required utility services for the subject Milestone Work are provided for signage, illumination, and ITS;
- (f) All associated drainage, signage, and illumination for the subject Milestone Work are installed and functional; and
- (g) All ITS infrastructure and equipment for the subject Milestone Work has been installed and is operational.

2.4.3 The process for determining that Milestone Completion has been achieved shall be substantially similar to the process for determining the achievement of Substantial Completion as set forth in Section 5.11.2 of the General Conditions, except that TxDOT shall deliver a certificate of Milestone Completion for the applicable Milestone to DB Contractor, rather than issue a certificate of Substantial Completion.

2.4.4 If Milestone Completion for a Milestone is achieved before the applicable Milestone Completion Deadline, DB Contractor shall include the amount of the Milestone Payment for the applicable Milestone,

as calculated in accordance with Section 4.6.2, as a distinct line item in the Draw Request for the month following the date DB Contractor achieved Milestone Completion.

2.4.5 Amendments to Completion Deadline Provisions

Exhibit 24 sets forth certain amendments to the General Conditions that address Completion Deadlines.

2.4.6 Time is of the Essence

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

2.4.7 No Time Extension

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

2.5 Job Training Plan

DB Contractor's approved Job Training Plan for the Project is set forth in Exhibit 5 to this DBA. The OJT program trainee goal for this Project is 37 for trainees described in Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions.

2.6 DBE Goals

The Parties acknowledge that the Project is (or may be) funded with federal funds and the approved DBE participation goals for the Project are established as 19.5% of the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners and 8.5% of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners.

2.7 DBE Performance Plan

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

2.8 Prevailing Wages

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

2.9 Project-Specific NTPs

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

DB Contractor may request that prior to issuance of NTP2, TxDOT authorize the performance of additional Work not previously authorized by issuance of NTP1 by issuing a limited notice to proceed (“Limited NTP2”) for such Work. DB Contractor’s request for issuance of a Limited NTP2 shall specify the proposed scope of the additional Work, schedule for such Work and portion of the Price allocable to such Work. In addition, DB Contractor shall confirm satisfaction of all of the conditions described in Section 8.1.1.4 of the General Conditions relating to the Work proposed to be performed pursuant to the Limited NTP2, including TxDOT approval of the applicable portions of the PSQMP, submittal to TxDOT of insurance certificates, obtaining and maintaining in effect the bonds described in Section 8.1.2.1(d) of the General Conditions, and receipt of TxDOT approval of that portion of the Schedule of Values identifying the Work to be performed. DB Contractor shall not be permitted to commence any other Construction Work on any portion of the Project until all the conditions to the commencement of Construction Work described in Section 8.1.2 of the General Conditions have been satisfied, including issuance of NTP2. Issuance of a Limited NTP2 shall be in TxDOT’s sole discretion. The Limited NTP2 shall describe the Work authorized by the Limited NTP2 and the corresponding portion of the Price allocable to such Work in accordance with the approved Schedule of Values. DB Contractor and TxDOT shall enter into a Change Order to revise the Maximum Payment Schedule and increase the NTP1 Payment Amount, as necessary, to account for the additional Work authorized. Notwithstanding Sections 3.4.3 and 3.4.4 of the General Conditions, upon issuance of Limited NTP2 the amount of the Payment Bond and Performance Bond shall increase automatically to the NTP2 Payment Bond Amount and NTP2 Performance Bond Amount, respectively.

SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS

3.1 TxDOT-Provided Approvals

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

| APPROVAL | DATE |
|--|--------------------|
| 2015 Finding of No Significant Impact (FONSI) | July 2, 2015 |
| 2015 Final Environmental Assessment (EA) | July 2, 2015 |
| Re-evaluation #1 of the Final EA and FONSI | September 23, 2019 |
| Re-evaluation #5 of the Final EA and FONSI | November 2, 2022 |
| Interstate Access Justification Report Approval (IAJR) | November 4, 2021 |
| Amendment #1 of the Final IAJR | November 1, 2022 |
| Amendment #2 of the Final IAJR | November 1, 2022 |
| Amendment #3 of the Final IAJR | November 1, 2022 |
| Approval of the Project Design Exceptions | November 9, 2022 |

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

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

3.2 Project Specific Third Party Agreements

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

3.2.2 There are no draft Third Party Agreements included in the RID that will be executed after the Proposal Due Date.

SECTION 4. COMPENSATION

4.1 Price

As full compensation for performance of the Work and all other obligations of DB Contractor under the Contract Documents, TxDOT shall pay DB Contractor the lump sum price of \$699,862,000.00 ("Price"), which shall be subject to adjustment in accordance with the Design-Build Contract. The Price shall be increased or decreased only by a Change Order issued in accordance with Section 4.6 of the General Conditions and Section 6 of this DBA. Payments shall be made in accordance with the terms and conditions of the General Conditions.

4.1.1 Allowances

4.1.1.1. DB Contractor acknowledges and agrees that the Price includes all Allowances (if any). Any Allowances and the amounts therefor are described in Exhibit 9 to this DBA. DB Contractor's markups for overhead and profit and all other expenses contemplated for stated Allowance items are included in the Allowance amount, unless otherwise specified in Exhibit 9.

4.1.1.2. Whenever costs are more or less than the applicable Allowance amount set forth in Exhibit 9, the Price shall be adjusted to reflect the difference between actual costs and the Allowance amount; provided, however, that DB Contractor shall not incur expenses on account of Allowance items in excess of the applicable Allowance amount without TxDOT's prior written approval.

4.2 Limitations on Payments

4.2.1 Maximum Payment Schedule

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

4.2.2 NTP1 Maximum Payment Amount

The "NTP1 Maximum Payment Amount" is \$20,000,000.

4.3 Price Adjustment Due to Delay in NTPs

4.3.1 Delay in NTP1

4.3.1.1. TxDOT anticipates that it will issue NTP1 concurrently with or shortly after execution and delivery of this DBA, but shall have the right in its sole discretion to defer issuance. If the effective date of NTP1 is more than 180 days after the Proposal Due Date, and such delay in issuing NTP1 was not caused in whole

or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, the Price will be adjusted by adding the following (which amount may not be less than zero) to the Price:

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

where:

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

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

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

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

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

4.3.1.2. Any adjustments to the Price made pursuant to this Section 4.3.1 shall be pursuant to a Change Order issued in accordance with Section 4.5.

4.3.1.3. If NTP1 has not been issued on or before 365 days after the Effective Date, the Parties may mutually agree to terms allowing an extension in time for issuance of NTP1 and adjustment of the Price. DB Contractor shall provide evidence satisfactory to TxDOT, meeting the requirements of Section 4.6.5 of the General Conditions, justifying the amount of any Price increase. If the delay in issuance of NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, and DB Contractor does not wish to negotiate an extension, or if the Parties fail to reach agreement in accordance with this Section 4.3.1.3, then DB Contractor’s sole remedy shall be to terminate this Contract in accordance with Section 8.9.9 of the General Conditions.

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

4.3.2 Delay in NTP2

4.3.2.1. If NTP2 has not been issued by the later of 270 days after the Proposal Due Date or 90 days following issuance of NTP1, and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity (including DB Contractor’s failure to satisfy any particular condition to NTP2), the Price shall be subject to adjustment, as described in this Section 4.3.2.

4.3.2.2. The Price adjustment shall apply to the period beginning on the date of issuance of NTP2.

4.3.2.3. The Price for Work performed on and after the date of issuance of NTP2 will be adjusted by adding the product of the following to the Price:

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

where:

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

“C” is the amount of the Price for Work authorized by any notices to proceed issued prior to issuance of NTP2;

“N” is the number of days in the period starting on the later of the 91st day after issuance of NTP1 and the 271st day after the Proposal Due Date and ending on the effective date of NTP2;

“A” is the ENR Construction Cost Index (CCI) value published for the effective date of NTP2;

“B” is the CCI published for the month which contains the day which is N +15 days prior to the 15th day of the month which contains the effective date of NTP2; and

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

4.4 Price Adjustments Due to Changes in CCI

4.4.1 In the event construction cost volatility occurs above or below normally expected values during the period between the Proposal Due Date and the Adjustment Date (the Adjustment Period), the Price may be subject to an upward or downward adjustment, as described in this Section 4.4. If the Price is subject to adjustment in accordance with this Section 4.4, the Maximum Payment Schedule will be revised to reflect the adjusted Price on a *pro rata* basis.

4.4.2 The Price will be increased, or decreased, subject to a cap, if the change in the ENR Construction Cost Index (CCI) during the Adjustment Period:

- (a) Increases by more than 0.04 (i.e., 4%) per annum; or
- (b) Does not increase or increases by less than 0.01 (i.e., 1%) per annum (including if CCI decreases).

4.4.3 The per annum change in CCI (“ Δ CCI”) during the Adjustment Period shall be calculated as follows:

$$\Delta\text{CCI} = [(A-B)/B] / (N/365)$$

- (a) If Δ CCI is greater than 0.04 (i.e., 4%), then the Daily Price increase (Δ Price Daily1) during the Adjustment Period shall be calculated using the following formula; provided, however, for the purposes of the following formula, Δ CCI shall not exceed 0.08 (i.e., 8%):

$$\Delta \text{ Price Daily1} = (\text{Construction Price}) * ((\Delta\text{CCI} - 0.04) / (365))$$

- (b) If Δ CCI is less than 0.01 (i.e., 1%), then the Daily Price decrease (Δ Price Daily2) during the Adjustment Period shall be calculated using the following formula; provided, however, for the purposes of the following formula, Δ CCI shall be no less than -0.01 (i.e., -1%):

$$\Delta \text{ Price Daily2} = (\text{Construction Price}) * ((0.01 - \Delta \text{CCI}) / 365)$$

(c) Price Adjustment

- (i) If ΔCCI is greater than 0.04 (i.e., 4%) the Price shall be increased by the following amount:

$$\Delta \text{ Price} = (\Delta \text{ Price Daily1}) * (N - T1 - T2 - T3)$$

- (ii) If ΔCCI is less than 0.01 (i.e., 1%) the Price shall be decreased by the following amount:

$$\Delta \text{ Price} = (\Delta \text{ Price Daily2}) * (N - T1 - T2 - T3)$$

Any adjustments in the Price for periods of delay in the issuance of NTP1 or NTP2 as described in Section 4.3 (i.e., periods T1 and T2) shall be calculated in accordance with Sections 4.3.1 or 4.3.2, respectively.

where:

“ ΔCCI ” is the per annum change in CCI during the Adjustment Period, which, for purposes of determining the Daily Price adjustment in (a) and (b) above, shall be no more than 0.08 (i.e., 8%) and no less than -0.01 (i.e., -1%);

“ $\Delta \text{ Price}$ ” is the adjustment amount to the Price;

“N” is the number of days in the Adjustment Period;

“T1” is the number of days of delay in the issuance of NTP1 governed by Section 4.3.1;

“T2” is the number of days of delay in the issuance of NTP2 governed by Section 4.3.2 that occur during the Adjustment Period;

“T3” is the number of days of delay in the issuance of NTP1 due to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity;

“Construction Price” is \$549,765,312.00;

“A” is the CCI value in effect on the Adjustment Date; and

“B” is the CCI value in effect at the time of the Proposal Due Date.

Adjustment Date means the Effective Date + 120 days

4.4.4 If issuance of NTP1 is delayed by more than 365 days after the Effective Date, the provisions set forth in Section 4.3.1.3 shall apply, and no adjustment to the Price shall be made in accordance with this Section 4.4 except as mutually agreed by the Parties.

4.5 Change Order for Price Adjustments Due to Delay in NTPs and Changes in CCI

Any Price adjustments made pursuant to Section 4.3 and Section 4.4 will be added together and combined in a single Change Order that will be issued following the end of the Adjustment Period or the end of the period of delay to NTP2

described in Section 4.3.2.1, whichever is later. Except as set forth in Section 4.3 and Section 4.4, DB Contractor shall not be entitled to any adjustment in Price for changes in CCI during the Adjustment Period.

4.6 Milestone Payments

4.6.1 As an inducement to DB Contractor to achieve, for each Milestone, completion of the Milestone prior to the Milestone Completion Deadline, TxDOT agrees to pay DB Contractor a per-day bonus (each bonus a "Milestone Payment") for achieving Milestone Completion of the Milestone before the applicable Milestone Completion Deadline. Any Milestone Payment shall be in addition to the Price and shall not be subject to the Maximum Payment Schedule.

4.6.2 If DB Contractor achieves Milestone Completion of a Milestone before the applicable Milestone Completion Deadline, DB Contractor shall be entitled to receive a Milestone Payment, which shall be calculated as follows:

4.6.2.1. \$60,000 for each day, up to a maximum of 90 days, after Milestone 1 Completion through the date of the Milestone 1 Completion Deadline.

4.6.2.2. \$33,000 for each day, up to a maximum of 110 days, after Milestone 2 Completion through the date of the Milestone 2 Completion Deadline.

SECTION 5. PERFORMANCE SECURITY

5.1 Bonds

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

5.1.1 The "NTP1 Performance Bond Amount" is \$20,000,000.

5.1.2 The "NTP1 Payment Bond Amount" is \$20,000,000.

5.1.3 The "NTP2 Performance Bond Amount" is \$516,693,390.00.

5.1.4 The "NTP2 Payment Bond Amount" is \$516,693,390.00.

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

5.2 Guaranty

5.2.1 As of the Effective Date, a Guaranty:

is not required.

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

5.2.3 The Minimum Tangible Net Worth Requirement for this DBC is \$125,000,000.

5.3 Insurance Special Provisions

Except as is otherwise specified in this Section 5.3, DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance coverage in accordance with Section 3.5 of the General Conditions, and in accordance with the insurance policies, coverage, deductibles and limits specified therein. In addition, DB Contractor shall add SAWS as an additional insured to certain insurance policies in accordance with Section 4.5.9.2 of the General Conditions, as amended by Exhibit 23.

SECTION 6. CHANGE ORDERS

6.1 Differing Site Conditions

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

The “**Differing Site Conditions Deductible**” for the Project is the first \$50,000 in additional Reimbursable Differing Site Conditions Costs.

The “**Differing Site Conditions Deductible Cap**” for the Project is an aggregate \$500,000 for all Differing Site Conditions Deductibles borne by DB Contractor.

6.2 Relief Events

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

6.3 Hazardous Materials

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

6.3.1 Reimbursable Amount

In accordance with Section 4.6.9.4.1 of the General Conditions, and subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as compensation for (a) 50% of DB Contractor’s Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed \$1,000,000 but do not exceed \$3,000,000, (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed \$3,000,000, and (c) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

6.3.2 Time Extensions

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

6.4 Utilities

6.4.1 Unidentified Utilities

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

The “**Unidentified Utilities Deductible Cap**” for the Project is an aggregate \$1,000,000 for all Unidentified Utilities Deductibles borne by DB Contractor.

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

6.4.2 Public Utility Owner Delays

The term “Public Utility Owner Delay” means a delay to a Critical Path that is directly attributable to the Public Utility Owner failing to provide a required approval, acceptance, or comment in connection with a “Design Submittal” under a SAWS ILA within the applicable time periods set forth in such SAWS ILA. If a Public Utility Owner Delay occurs, then (a) DB Contractor shall bear 100% of the risk of such Public Utility Owner Delay for the first 60 days of each occurrence of Public Utility Owner Delay; (b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for such Public Utility Owner Delay over 60 days up to 120 days for each occurrence, however DB Contractor shall not be entitled to Project Overhead for these 60 days; (c) DB Contractor and TxDOT shall share equally the risk of such Public Utility Owner Delay over 120 days up to 180 days for each occurrence (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Public Utility Owner Delays); and (d) TxDOT shall bear 100% of the risk of such Public Utility Owner Delay over 180 days per occurrence. If a Public Utility Owner Delay is concurrent with another delay that is DB Contractor’s responsibility hereunder, DB Contractor shall bear 100% of the risk of such Public Utility Owner Delay and the delay to the Critical Path shall not be considered a Public Utility Owner Delay. If a Public Utility Owner Delay is concurrent with one or more other Public Utility Owner Delays, each such day of concurrent delay shall be deemed a single day of Public Utility Owner Delay. No Change Order for delay to a Critical Path shall be allowable pursuant to this Section 6.4.2 unless the general requirements and conditions for Change Orders set forth in Section 4.6 of the General Conditions have been met and the delay is allowable under Section 4.6.6.3 of the General Conditions. For Change Orders that extend a Completion Deadline in accordance with this Section 6.4.2, DB Contractor shall be entitled to Project Overhead to the extent permitted in Section 4.6.6.2.2 of the General Conditions, provided that DB Contractor shall not be entitled to Project Overhead for any days that a Completion Deadline is extended pursuant to Section 6.4.2(b).

6.4.3 [Reserved]

6.4.4 Advance Utility Relocations

6.4.4.1. TxDOT has entered into an agreement with CPS Energy for the relocation of its Utility as described therein (“Advance Utility Relocation Agreement”). DB Contractor is not responsible for preparing or entering into any agreements with CPS Energy for the relocation of such Utility. TxDOT will cause CPS Energy to relocate the Utility as shown in the Advance Utility Relocation Agreement included in the RIDs.

6.4.4.2. Subject to the limitations and restrictions in Section 4.6 of the General Conditions, DB Contractor shall be entitled to a Change Order for certain costs and delays to the Critical Path directly attributable to the failure of CPS Energy to relocate the Utility as shown in the Advance Utility Relocation Agreement or by the deadline, if any, set forth in the Advance Utility Relocation Agreement for the completion of the Utility relocation. DB Contractor shall not be entitled to a Change Order unless such failure (a) has a material negative cost or schedule impact on DB Contractor’s obligations under the Contract Documents, and (b) was not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design that were initiated by DB Contractor. The Change Order shall be in the amount of the incremental increase in DB Contractor’s Direct

Costs resulting from the changed Utility relocation. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Except to the extent that this Section 6.4.4.2 allows compensation for Project Overhead, Change Orders under this Section 6.4.4 shall not include compensation for delay or disruption damages.

6.4.4.3. In the event the applicable Utility must be relocated in a manner that is different from that set forth in the Advance Utility Relocation Agreement due to the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design that were initiated by DB Contractor, DB Contractor shall be solely responsible for all cost impacts and schedule impacts to the Work and for all of CPS Energy's costs caused by the changes in the relocation of the Utility.

6.4.5 Amendments to General Conditions Regarding Utilities

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

(c) delays relating to Utilities, to the extent permitted by Sections 4.5.1, 4.5.5 and 4.6.9.2; and Sections 6.4.2, 6.4.3 and 6.4.4 of the Design-Build Agreement.

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

(c) certain additional costs relating to Utility Adjustment Work, as described in Section 4.5 and Section 4.6.9.2, to the extent provided therein; additional costs for Utility Adjustment Work directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 4.6.9; and certain additional costs relating to agreements with Utility Owners to the extent provided in Sections 6.4.2 and 6.4.4 of the Design-Build Agreement.

6.5 Access to Right of Way

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

6.6 Necessary Basic Configuration Changes

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

6.7 Form of Change Order

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

6.8 DB Contractor Reimbursement for Eminent Domain Assistance

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

6.9 Discovery of Karst Features

In the event Karst Features are discovered within the Project ROW or a Replacement Utility Property Interest, DB Contractor shall comply with and shall cause all Persons performing Work or Utility Adjustment Work to comply with Item 12 of the Design-Build Specifications. DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Karst Features and any right to obtain an extension of a Completion Deadline in connection with any Karst Features if TxDOT is not provided written notice of the discovery of the Karst Feature and afforded the opportunity to inspect sites containing the Karst Feature before any action is taken that would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the mitigation work required for such Karst Feature.

6.9.1 Price Increase for Karst Feature Mitigation

Subject to Section 4.6 of the General Conditions and this Section 6.9, DB Contractor shall be entitled to an increase in the Price for mitigation of a Karst Feature pursuant to DB Contractor's Karst Feature mitigation plan approved by TxDOT ("**Karst Feature Mitigation**") as follows: (a) 50% of DB Contractor's Reimbursable Karst Features Costs for Karst Feature Mitigation that exceeds \$200,000 but does not exceed \$500,000; (b) 100% of Reimbursable Karst Features Costs for Karst Feature Mitigation that exceeds \$500,000; and (c) 100% of Reimbursable Karst Features Costs for Karst Feature Mitigation for Karst Features encountered on Additional Properties acquired as a result of a TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to karsts.

6.9.2 Determination of Reimbursable Amount for Karst Feature Mitigation

The term "**Reimbursable Karst Features Costs**" shall mean the incremental reasonable, out-of-pocket Direct Costs incurred for mitigating Karst Features that require a change to the Released for Construction Documents (deducting any avoidable costs), including any re-design and construction costs for affected roadway elements, and shall not include indirect costs, including overhead and barricades; provided, however, that "Reimbursable Karst Features Costs" shall only include such costs related to any individual Karst Feature if (a) such costs exceed \$10,000 for such individual Karst Feature or (b) such costs do not exceed \$10,000 for such individual Karst Feature and DB Contractor has mitigated more than 20 individual Karst Features that did not result in Reimbursable Karst Features Costs because such \$10,000 threshold was not met. The costs of investigating and characterizing Karst Features, including costs relating to any Karst Investigation Delays, and preparing any Karst Feature mitigation plans are included in the Price, and DB Contractor shall not be entitled to additional compensation therefor. Any costs incurred by DB Contractor or a Utility Owner for mitigating Karst Features attributable to a non-reimbursable Utility Adjustment are not Reimbursable Karst Features Costs.

DB Contractor shall take all reasonable steps to minimize any Reimbursable Karst Features Costs.

6.9.3 Time Extensions for Karst Feature Mitigation

Subject to Section 4.6 of the General Conditions and this Section 6.9, DB Contractor shall be entitled to an extension of applicable Completion Deadlines for delays to a Critical Path attributable to Karst Feature Mitigation ("**Karst Mitigation Delay**"). A Karst Mitigation Delay begins on the date DB Contractor commences Karst Feature Mitigation activities following TxDOT approval of the Karst Feature mitigation plan for the applicable Karst Feature and ends when the DB Contractor completes such Karst Feature Mitigation activities in accordance with the Karst Feature mitigation

plan. The risk of Karst Mitigation Delays shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Karst Mitigation Delays). If a Karst Mitigation Delay is concurrent with another delay that is DB Contractor's responsibility under the Design-Build Contract, then DB Contractor shall bear 100% of the risk of such Karst Mitigation Delay. If a Karst Mitigation Delay at one location is concurrent with another Karst Mitigation Delay at one or more other locations, the delays at the locations shall run concurrently and each day of such concurrent delay shall be deemed a single day of Karst Mitigation Delay.

6.9.4 Limitations on Change Orders for Discovery of Karst Features

Entitlement to compensation or a time extension for the mitigation of Karst Features shall be limited to Work performed to mitigate such Karst Feature pursuant to DB Contractor's Karst Feature mitigation plan, as approved by TxDOT in writing. DB Contractor shall demonstrate to TxDOT's satisfaction that DB Contractor's Karst Feature mitigation plan represents the approach that is most beneficial to the Project and the public. DB Contractor shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for a Price increase or a time extension with respect to mitigation of a Karst Feature. Notwithstanding anything to the contrary in the Contract Documents, no compensation or time extension shall be allowed with respect to: (a) any Karst Features that could have been avoided by reasonable design modifications or construction techniques; (b) any costs that could have been avoided; or (c) Karst Features on any DB Contractor-Designated ROW. DB Contractor shall not be entitled to delay or disruption damages resulting from a Karst Mitigation Delay.

6.9.5 Time Extensions

Subject to Section 4.6 of the General Conditions and this Section 6.9, DB Contractor shall be entitled to an extension of applicable Completion Deadlines for delays to a Critical Path attributable to the performance of presence/absence surveys at a Karst Feature required by Section 12.2.5.8 of the Design-Build Specifications, and the need to work around locations subject to temporary no-work restrictions due to performance of such surveys ("**Karst Investigation Delay**"). A Karst Investigation Delay begins on the date DB Contractor notifies TxDOT, in accordance with the Section 12.2.5.8 of the Design-Build Specifications, that a Karst Feature contains suitable habitat for endangered karst invertebrates and ends upon the earlier of (a) completion of the presence/absence surveys required under Section 12.2.5.8 of the Design-Build Specifications for such Karst Feature and (b) discovery of any species listed as a Threatened or Endangered Species at the Karst Feature location. DB Contractor shall bear 100% of the risk of Karst Investigation Delays up to 30 days per individual Karst Feature and up to a cumulative total of 60 days for all Karst Feature locations. If the Karst Investigation Delay exceeds 30 days for a particular Karst Feature, then the risk of such Karst Investigation Delay in excess of 30 days for that Karst Feature shall be borne by TxDOT. If aggregate Karst Investigation Delays for which DB Contractor is 100% responsible exceed 60 days, then the risk of Karst Investigation Delays in excess of 60 days shall be borne by TxDOT. If a Karst Investigation Delay is concurrent with another delay that is DB Contractor's responsibility under the Design-Build Contract, then DB Contractor shall bear 100% of the risk of such Karst Investigation Delay and the delay to the Critical Path shall not be counted towards the 60-day aggregate cap described in this Section 6.9.5. If a Karst Investigation Delay at one location is concurrent with another Karst Investigation Delay at one or more other locations, the 30-day period of DB Contractor's responsibility for the delays at the locations shall run concurrently and only one of the concurrent Karst Investigation Delays shall apply to the 60-day cap.

The limitations on Karst Investigation Delays shall not preclude DB Contractor from obtaining a time extension with respect to an event that qualifies as an Other Relief Event under Section 4.6.9.3.2(b) of the General Conditions (that is, the discovery of any species listed as a Threatened or Endangered Species), which shall be deemed to have occurred at the time of discovery of such species.

6.9.6 Limitations on Change Orders for Karst Feature Investigations

DB Contractor shall provide TxDOT with such information, reports and certificates as may be requested by TxDOT to enable a determination regarding eligibility for a time extension with respect to a Karst Investigation Delay. DB

Contractor shall be deemed to have waived the right to a time extension for a Karst Investigation Delay if: (a) DB Contractor does not evaluate the applicable Karst Feature for the presence of suitable habitat for endangered karst invertebrates within two days of discovery of a Karst Feature; or (b) DB Contractor does not notify TxDOT within 24 hours of its determination that a Karst Feature contains suitable habitat for endangered karst invertebrates, both in accordance with Section 12.2.5.8 of the Design-Build Specifications. Furthermore, no time extension shall be allowed for a Karst Investigation Delay with respect to: (a) any Karst Features that could have been avoided by reasonable design modifications or construction techniques; or (b) any Karst Features on any DB Contractor-Designated ROW. DB Contractor shall not be entitled to any time extension for investigations, evaluations or assessments of a Karst Feature prior to a determination that the applicable Karst Feature contains suitable habitat for endangered karst invertebrates and DB Contractor's notification of such determination to TxDOT. DB Contractor shall not be entitled to delay or disruption damages resulting from a Karst Investigation Delay.

6.9.7 Amendments to General Conditions Regarding Karst Relief

6.9.7.1. Section 4.4.2.4 of the General Conditions is hereby amended, provided the underlined text is hereby added to Section 4.4.2.4 of the General Conditions:

4.4.2.4 DB Contractor shall not be entitled to any increase in the Price or any time extension as a result of (a) Site conditions associated with any DB Contractor-Designated ROW (including those relating to Hazardous Materials, Differing Site Conditions, Karst Features or Utilities) and (b) any delay, inability or cost associated with the acquisition of any DB Contractor-Designated ROW, including DB Contractor-Designated ROW required to implement any ATCs.

6.9.7.2. A new subsection (k) is added to Section 4.6.3.1.1 of the General Conditions as follows:

(k) Karst Mitigation Delays and Karst Investigation Delays to the extent permitted in Section 6.9 of the DBA.

6.9.7.3. Section 4.6.3.1.2(b) of the General Conditions is hereby amended, provided the underlined text is hereby added to Section 4.6.3.1.2(b) of the General Conditions:

(b) certain additional costs relating to Differing Site Conditions, Hazardous Materials, and Relief Events, to the extent provided in Section 4.6.9 and certain additional costs relating to Karst Feature Mitigation to the extent permitted in Section 6.9 of the DBA.

6.10 Railroad Agreements

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

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

6.10.1 Compliance with Railroad Documents

The following agreement between TxDOT and the railroad (“Railroad Documents”) was included in a folder labeled “Railroad Documents” in the Reference Information Documents prior to the Proposal Due Date: Drainage Encroachment Joint Use Agreement and I35NEX_South_UPRR_Drainage_Channel_Exhibit. If a railroad changes the material terms and conditions of the Railroad Documents, and such change by the railroad (a) increases DB Contractor’s Direct Costs by more than \$10,000 or results in a delay to the Critical Path, and (b) were not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design or the Railroad Documents that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order increasing the Price for certain costs and extending applicable Completion Deadlines for delays to the Critical Path directly attributable to the railroad’s failure to comply with the Railroad Document to the extent permitted by this Section 6.10.1. The Change Order shall be in the amount of the incremental increase in DB Contractor’s Direct Costs to comply with the changed conditions or requirements. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Sections 4.6.6.2.3 and 4.6.6.3.

6.10.2 Railroad Submittal Review Delay

6.10.2.1. DB Contractor shall be responsible for coordinating elements of the Work with the railroad and obtaining all railroad agreements necessary for the Project as set forth in Item 22 of the DB Specifications. DB Contractor shall provide Submittals as are required by the railroad and as described in Section 22.2 of the DB Specifications, including Submittals required for the Work related to the bridge elements adjacent to the railroad ROW. DB Contractor shall be responsible for cooperating and coordinating with TxDOT, including by providing any schematics, plans or other information within 14 days of a request by TxDOT or the railroad for such schematics, plans or other information. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor shall be responsible for obtaining any approvals from railroads or agreements with railroads, including construction and maintenance agreements or modifications thereto, that are necessary to implement an ATC included in Appendix 2 to Exhibit 2 or modifications to the Schematic Design. DB Contractor shall be entitled to a time extension extending affected Completion Deadlines for delays to the Critical Path and increasing the Price for certain additional costs incurred directly attributable to a Railroad Submittal Review Delay as described in this Section 6.10.2.1. The term “Railroad Submittal Review Delay” means a delay to a Critical Path that is directly attributable to the failure of a railroad to review and approve or review and comment, as applicable, a DB Contractor Submittal required for the Work related to the bridge elements adjacent to the railroad ROW for which railroad approval or comment is required, within 60 days from TxDOT’s receipt of such Submittal.

For Change Orders extending a Completion Deadline in accordance with this Section 6.10.2.1, DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2 of the General Conditions. Except to the extent that this Section 6.10.2.1 allows compensation for Project Overhead, Change Orders under this Section 6.10.2.1 shall not include compensation for delay or disruption damages.

6.10.2.2. DB Contractor shall not be entitled to any relief for Railroad Submittal Review Delays unless the delays and the effects of such delays are beyond the control of the DB Contractor-Related Entities and are not due to (i) changes in the DB Contractor’s design from design Submittals previously approved by the railroad, (ii) failure by DB Contractor to timely provide information requested by TxDOT or the railroad, or (iii) any other act, omission, negligence, recklessness or intentional misconduct of or breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities.

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

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

- (b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that DB Contractor took advantage of Float time available early in the Project Schedule with respect to the affected railroad;
- (c) DB Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct the applicable work; and
- (d) no other circumstance exists that would delay the affected railroad related work even if the railroad had timely provided the approval or comment to the Submittal, as applicable.

6.11 Delay Deductible Aggregate Cap

The "**Delay Deductible Aggregate Cap**" for the Project is 269 days for all Delay Deductibles borne by DB Contractor.

SECTION 7. FEES; LIQUIDATED DAMAGES

7.1 Reserved

7.2 Liquidated Damages and Fees Respecting Delays

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

- (a) \$30,000 for each day after the Milestone 1 Completion Deadline and through the date of Milestone 1 Completion, but not to exceed 180 days;
- (b) \$80,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days;
- (c) \$18,000 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

- (a) \$40,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 269 days (the number of days in the Delay Deductible Aggregate Cap);
- (b) \$9,000 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

7.3 Liquidated Damages for Lane Closures and Lane Rental Charges

The Liquidated Damages for Lane Closures and Lane Rental Charges for which DB Contractor may be liable pursuant to Section 8.7.2 of the General Conditions shall be as set forth in Exhibit 15 to this DBA. DB Contractor acknowledges

and agrees that such Liquidated Damages for Lane Closures and Lane Rental Charges are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures.

7.4 Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages

7.4.1 Key Personnel Change Fees

As deemed compensation to TxDOT for Losses described in Section 8.3.1.4 of the General Conditions, DB Contractor agrees to pay to TxDOT the following Key Personnel Change Fee amounts in accordance with such section for changes in Key Personnel during the applicable period set forth in the table below:

| POSITION | KEY PERSONNEL CHANGE FEES 0% to 40% PROGRESS | KEY PERSONNEL CHANGE FEES 40% to 80% PROGRESS | KEY PERSONNEL CHANGE FEES 80% to 100% PROGRESS |
|---|---|--|---|
| Project Manager | \$190,000 | \$190,000 | \$90,000 |
| Construction Manager | \$150,000 | \$150,000 | \$70,000 |
| Design Manager | \$80,000 | \$40,000 | \$20,000 |
| Lead Structural Engineer | \$70,000 | \$30,000 | \$10,000 |
| Lead Maintenance of Traffic (MOT) Design Engineer | \$70,000 | \$30,000 | \$10,000 |
| Independent Quality Firm Manager | \$120,000 | \$120,000 | \$60,000 |
| Professional Services Quality Assurance Manager | \$80,000 | \$40,000 | \$20,000 |
| Lead MOT Implementation Manager | \$80,000 | \$80,000 | \$40,000 |
| Utility Manager | \$70,000 | \$70,000 | \$10,000 |
| Safety Manager | \$70,000 | \$70,000 | \$30,000 |

For purposes of calculating the Key Personnel Change Fees, the percentage of "Progress" will be determined by dividing DB Contractor's earned-to-date amount, set forth in DB Contractor's most recently approved Draw Request, by the Price.

If at any time an individual filling more than one Key Personnel role has been replaced in more than one Key Personnel role, the higher of the applicable Key Personnel Change Fee amounts shall be deemed as compensation to TxDOT for Losses described in Section 8.3.1.4 of the General Conditions.

7.4.2 Key Personnel Unavailability Liquidated Damages

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

| POSITION | KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day) FROM NTP1 to COMMENCEMENT of CONSTRUCTION | KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day) FROM COMMENCEMENT of CONSTRUCTION to FINAL ACCEPTANCE |
|---|--|--|
| Project Manager | \$17,000 | \$17,000 |
| Construction Manager | \$14,000 | \$14,000 |
| Design Manager | \$8,000 | \$4,000 |
| Lead Structural Engineer | \$7,000 | \$3,000 |
| Lead Maintenance of Traffic (MOT) Design Engineer | \$7,000 | \$3,000 |
| Independent Quality Firm Manager | \$6,000 | \$12,000 |
| Professional Services Quality Assurance Manager | \$8,000 | \$4,000 |
| Lead MOT Implementation Manager | \$4,000 | \$8,000 |
| Utility Manager | \$7,000 | \$7,000 |
| Safety Manager | \$3,000 | \$7,000 |

If at any time an individual filling more than one Key Personnel role has not been replaced in more than one Key Personnel role, the higher of the applicable Key Personnel Unavailability Liquidated Damages amounts shall be deemed as compensation to TxDOT for Losses described in Section 8.3.1.5 of the General Conditions.

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

DB Contractor further agrees and acknowledges that:

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

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

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

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

7.6 Noncompliance Points

The performance of the Work will be subject to Noncompliance Points provisions set forth in Exhibit 16 to this DBA.

SECTION 8. IDENTIFIED SUBCONTRACTORS AND KEY PERSONNEL

8.1 Identified Subcontractors

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

8.2 Key Personnel

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

SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES

9.1 Notices and Communications

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

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

Lone Star Constructors, NEX
8122 Whisper Oak
San Antonio, Texas 78266
Attention: Pike Riegert
Telephone: 808-321-9860
E-mail: pike.riegert@fluor.com

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

Fluor Enterprises, Inc.
One Fluor Daniel Dr.
Sugar Land, Texas 77478
Attention: Michelle Copeland

Telephone: 281-263-1000
E-mail: michelle.copeland@fluor.com
legal-notices-infra@fluor.com

and

Austin Bridge & Road, LP
1199 Belt Line Road, Unit 110
Coppell, Texas 75019
Attention: Richard Watts
Telephone: 281-475-2690
E-mail: rwatts@austin-ind.com

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

Texas Department of Transportation
San Antonio District Office
4615 NW Loop 410
San Antonio, Texas 78229-0928
Attention: Gina Gallegos, P.E.
Telephone: (210) 615-1110
E-mail: Gina.Gallegos@txdot.gov

With a copy to:

Texas Department of Transportation
Alternative Delivery Division
125 East 11th Street
Austin, Texas 78701
Attention: Mr. Greg Snider
Telephone: (512) 463-8611
E-mail: Greg.Snider@txdot.gov

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

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

9.2 Designation of Representatives

9.2.1 TxDOT and DB Contractor shall each designate Authorized Representative(s) who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Exhibit 19 hereto

provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 9.1.

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

SECTION 10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties

DB Contractor represents and warrants that:

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

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

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

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

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

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

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

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

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

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

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

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

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

Documents, and each such Guarantor has all requisite power and authority to carry on its present and proposed obligations under the Contract Documents.

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

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

10.2 Survival of Representations and Warranties

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

SECTION 11. MISCELLANEOUS PROVISIONS

11.1 Dispute Resolution Procedures

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

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

11.2 Electronic Signatures and Transactions

TxDOT and DB Contractor agree to accept electronic signatures for the execution of this DBA, and further agree to conduct transactions related to or arising out of this DBA by electronic means to the extent possible.

11.3 Entire Agreement

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

11.4 Severability

If any clause, provision, section or part of the Contract Documents is ruled invalid under Section 11.1 hereof and Sections 4.9 and 4.10 of the General Conditions, or otherwise by a court having proper jurisdiction, then the Parties shall (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall

not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

11.5 Survival

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

11.6 Counterparts

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

11.7 Joint and Several Liability

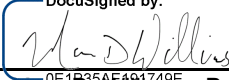
Each of Fluor Enterprises, Inc., a California corporation, and Austin Bridge & Road, LP, a Delaware limited partnership, agree that it is jointly and severally liable for the performance of DB Contractor's liabilities and obligations under the Contract Documents; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of Design-Build Contractor. If any other Party or replacement Party to this DBA is or becomes a joint venture or a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under the Contract Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.

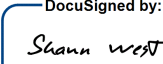
IN WITNESS WHEREOF, this DBA has been executed as of the date first set forth above.

DB CONTRACTOR:
LONE STAR CONSTRUCTORS, NEX, a joint venture

TEXAS DEPARTMENT OF TRANSPORTATION

By: Fluor Enterprises, Inc.,
a California corporation,
joint venture member

DocuSigned by:

By: _____
Name: Marc D. Williams, P.E.
Title: Executive Director
Date: 8/16/2023

DocuSigned by:

By: _____
Name: Shawn R. West
Title: Business Line President, Infrastructure
Date: 7/29/2023

By: Austin Bridge & Road, LP,
a Delaware limited partnership,
joint venture member


DocuSigned by:

By: _____
Name: Richard Mills
Title: President
Date: 8/1/2023

EXHIBIT 1

PROJECT SCOPE

1. Project Description

The Project is generally described to consist of approximately 4 miles of non-tolled improvements along I-35 from the I-35/I-410 South interchange to I-35/I-410 North interchange, including a portion of I-35 elevated lanes south and the I-35/I-410 South interchange. The Schematic Design portrays the Project in more detail. The Project is located in the city of San Antonio, in Bexar County.

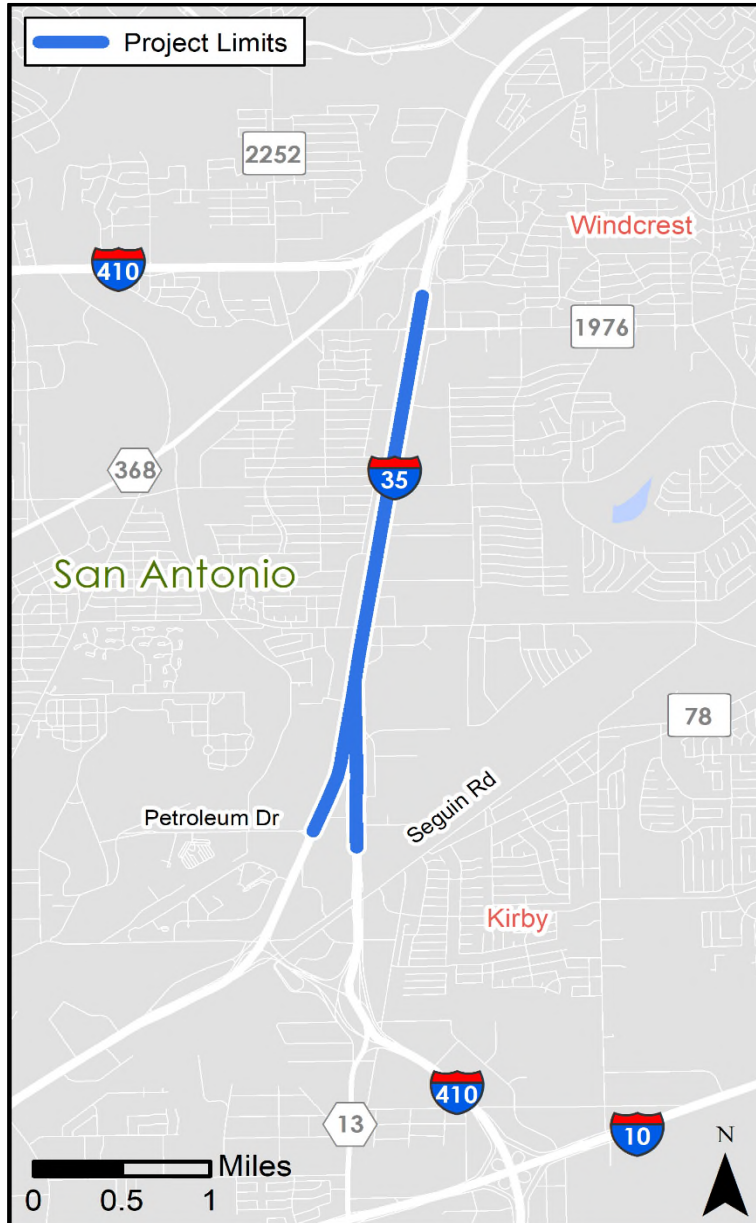


Figure 1-1: Project Map

2. Project Scope

DB Contractor shall be responsible for all Work required to design and construct all areas included within the scope of the Project. The Work shall conform to the Basic Configuration. DB Contractor shall design and construct the elements of the Work described below.

2.1. Basic Configuration

“Basic Configuration” shall mean the following elements of the Project as set forth in this Exhibit 1 and depicted on the Schematic Design:

- (a) the Schematic ROW;
- (b) the number of lanes;
- (c) the approximate location of ramps (including all right exits and entrances); and
- (d) the approximate location of interchanges and the type of interchanges.

As set forth in Section 4.1.2.3.1 of the General Conditions, any material change to the Basic Configuration must be approved by TxDOT and authorized by a Change Order.

2.2. Elements of the Work

Elements of the Work include (i) the construction of two general purpose and one high-occupancy (HOV) elevated lanes in each direction from the I-35/I-410 South interchange to I-35/I-410 North interchange along I-35, with HOV lane drops in the vicinity of I-35/I-410 South interchange and I-35/I-410 North interchange to allow entering and exiting the HOV lane, include two lane extension of the elevated lanes south of the I-35/I-410 South interchange to accommodate future southern extension of the elevated lanes, and two-lane direct connectors in two directions along I-410 at the I-35/I-410 South interchange, and (ii) operational improvements, including the construction of ramps connecting mainlanes to elevated lanes and reconfiguration of mainlane ramps, reconstruction of approximately 1,400 feet of mainlanes along I-410 South and reconstruction of the I-35 mainlanes inside shoulder, as described below.

2.2.1. Elevated Lanes

DB Contractor shall design and construct the elevated lanes consistent with the Schematic Design and as set forth below:

- The I-35EL NB structure shall:
 - o Include a two-lane stub-out at approx. Sta. 1278+50 to accommodate, in plan and profile, the future southern extension of the elevated lanes
 - o Include an 80-foot-wide crossover between the NB and SB elevated lanes, at approx. Sta. 1416+45
 - o Include a two-lane tie-in to the I-35 NEX Central NB elevated lanes and a two-lane tie-in to the I-35 NEX Central ELNB-N410 direct connector, as depicted in the Reference Information Document entitled, “I-35 NEX Central NB Elevated Lanes Connection”
 - o DB Contractor shall place portable concrete traffic barrier across the stub-outs on the I-35EL NB at approx. Sta. 1314+30 prior to opening the S410-ELNB direct connector to traffic
- The I-35EL SB structure shall:
 - o Include a two-lane stub-out at approx. Sta. 2277+45 to accommodate, in plan and profile, the future southern extension of the elevated lanes
 - o Include an 80-foot-wide crossover between the NB and SB elevated lanes, at approx. Sta. 2414+61

- o Include a two-lane tie-in to the I-35 NEX Central Project N410-ELSB direct connector and a two-lane tie-in to the I-35 NEX Central Project SB elevated lanes, as depicted in the Reference Information Document entitled, "I-35 NEX Central SB Elevated Lanes Connection"
- o DB Contractor shall place portable concrete traffic barrier across the stub-outs on the I-35EL SB at approx. Sta. 2314+75 prior to opening the ELSB-GB and the ELSB-S410 direct connectors to traffic.

2.2.2. Mainlanes

2.2.2.1 New Pavement Areas

DB Contractor shall design and construct the mainlanes consistent with the Schematic Design and as set forth below (New Pavement):

- I-410 northbound: Approx. Sta. 146+00 to approx. Sta. 160+00
- I-410 southbound: Approx. Sta. 146+75 to approx. Sta. 160+00

2.2.2.2 Resurfaced Pavement and Base Repair

DB Contractor shall design and construct mill and overlay and base repair on existing pavement areas with approximate limits depicted in the Reference Information Document entitled, "Resurfaced Pavement and Base Repair Areas".

2.2.2.3 Inside Shoulder Reconstruction

DB Contractor shall reconstruct the mainlanes inside shoulder, consistent with the Schematic Design and as set forth below:

- I-35 ML northbound: Approx. Sta. 3278+30 to approx. Sta. 3295+46
- I-35 ML northbound: Approx. Sta. 3335+38 to approx. Sta. 3346+85
- I-35 ML northbound: Approx. Sta. 3348+87 to approx. Sta. 3392+88
- I-35 ML northbound: Approx. Sta. 3394+90 to approx. Sta. 3431+74
- I-35 ML southbound: Approx. Sta. 3278+30 to approx. Sta. 3288+80
- I-35 ML southbound: Approx. Sta. 3343+00 to approx. Sta. 3346+85
- I-35 ML southbound: Approx. Sta. 3348+87 to approx. Sta. 3392+88
- I-35 ML southbound: Approx. Sta. 3394+90 to approx. Sta. 3431+77

2.2.3. Bridge

DB Contractor shall design and construct bridge spans to accommodate future cross street improvements as depicted in the Reference Information Document entitled, "I-35 NEX Cross Street Exhibit".

2.2.4. Direct Connectors

DB Contractor shall design and construct direct connectors consistent with the Schematic Design and as set forth below:

- S410-ELNB: Northbound I-410 mainlanes to northbound I-35 elevated lanes
- ELSB-S410: Southbound I-35 elevated lanes to southbound I-410 mainlanes
- ELSB-GB: Southbound I-35 elevated lanes to southbound I-35 frontage road between Eisenhower Ln. and Petroleum Dr.

2.2.5. Ramps

DB Contractor shall design and construct ramps consistent with the Schematic Design and as set forth below:

- I-410 mainlanes: Design and reconstruction of exit ramp 410S-EXNB-RIT between Binz-Engleman Rd. and Macro St.
- I-35 mainlanes: Design and reconstruction of entrance ramp ENRPSBRT-35 between Eisenhower Ln. and Petroleum Dr.

2.2.6. Sidewalks

DB Contractor shall design and construct new concrete sidewalks or remove and replace existing concrete sidewalks consistent with the Schematic Design and shall meet requirements set forth in Design-Build Specifications Item 28.

2.2.7. Railroad Drainage Channel

DB Contractor shall design and construct repairs to the drainage channel located in the UPRR ROW as described in the Reference Information Document entitled, "I35NEX_South_UPRR_Drainage_Channel_Exhibit". Requirements related to work near railroads are set forth in Item 22 of the Design-Build Specifications.

2.3. Ultimate Project Configuration

The Work shall accommodate and be consistent with the improvements associated with the Ultimate Project Configuration. DB Contractor shall ensure that any Utilities that require relocation or adjustment to accommodate the Work shall also accommodate the Ultimate Project Configuration to the greatest extent possible within Schematic ROW. The design documents furnished by DB Contractor shall be consistent and compatible with the improvements associated with the Ultimate Project Configuration and provide for a smooth transition from the Work to the Ultimate Project Configuration. The Work shall minimize "throwaway" costs associated with the Project and shall provide for minimal disruption to traffic during the construction of the Ultimate Project Configuration. Additionally, the Project shall be designed and constructed to minimize the cost associated with the Ultimate Project Configuration to the extent that DB Contractor costs to construct the Work are not unreasonably increased. DB Contractor shall design and construct the Project to allow for future construction of the cross street ultimate configurations as described in Item 19, Table 19-2.

APPENDIX 1 TO EXHIBIT 1

MILESTONE DESCRIPTIONS

Milestone 1

DB Contractor shall design and construct the Milestone 1 work items set forth below consistent with the Schematic Design:

- I-35 northbound elevated lanes from connection to the southern extension of the elevated lanes at approx. Sta. 1278+50 to the connection to the I-35 NEX Central Project at approx. Sta. 1448+37, as depicted in the Reference Information Document entitled, "I-35 NEX Central NB Elevated Lanes Connection"
- S410-ELNB direct connector

Milestone 2

DB Contractor shall design and construct the Milestone 2 work items set forth below consistent with the Schematic Design:

- I-35 southbound elevated lanes from connection to the southern extension of the elevated lanes at approx. Sta. 2277+45 to connection to the I-35 NEX Central Project at approx. Sta. 2457+03, as depicted in the Reference Information Document entitled, "I-35 NEX Central SB Elevated Lanes Connection"
- ELSB-GB direct connector
- ELSB-S410 direct connector
- Elevated crossover bridge 1 at approx. Sta. 2414+61

EXHIBIT 2

- Appendix 1: DB Contractor's Proposal Commitments
- Appendix 2: ATCs

APPENDIX 1 TO EXHIBIT 2**DB CONTRACTOR'S PROPOSAL COMMITMENTS**

The following Proposal Commitments are in addition to the requirements set forth elsewhere in the Contract Documents and are therefore express requirements of the Design-Build Agreement.

| No. | Proposal Location | Proposal Commitment |
|-----|--|--|
| 1. | Technical Proposal A. Executive Summary, Approach to Satisfying DBE Requirements, Page 3 (PDF Page 13) | DB Contractor will provide a DBE Coordinator specialized in coordination of community programs on large-scale projects and will form a DBE task force with Project and TxDOT representatives. |
| 2. | Technical Proposal C. Technical Solutions, Project Management, Project Administration VARs, Page 1 (PDF Page 286) | DB Contractor will provide a Technology Manager with relevant experience on similar, large, complex DB projects. The Technology Manager will coordinate with TxDOT's TransGuide staff, and will manage, implement, and train the DB Contractor Quality and TxDOT teams on PlanGrid or equal software. |
| 3. | Technical Proposal C. Technical Solutions, Project Management, Project Administration VARs, Page 1 (PDF Page 286) | DB Contractor will assign a "DB Coordinator" as a senior-level manager to manage Technical Work Groups (TWGs), oversee design activities, and coordinate with construction superintendents, Subcontractors, and Suppliers to support the constructability of the design and maintain the Project schedule. The DB Coordinator will track the design progress and maintain compliance with the requirements of the DBC. |
| 4. | Technical Proposal C. Technical Solutions, Project Management, Project Administration VARs, Page 1 (PDF Page 286) | DB Contractor will provide to TxDOT 40 total iPads, including the 12 required by the Contract Documents, with data plans, pre-loaded with PlanGrid or equal software. DB Contractor will provide training to TxDOT on the applicable software and ensure that all software users have access to DB Contractor's dedicated document control system and technical support. |
| 5. | Technical Proposal C. Technical Solutions, Project Management, Project Administration VARs, Page 1 (PDF Page 286) | Subcontractors will have a DB Contractor manager assigned as the main point of contact. The manager will provide safety, quality, and schedule guidance. |
| 6. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 1 (PDF Page 286) | DB Contractor will provide Project hotline contact cards to all Project personnel to ensure workers are prepared in the event of public or media inquiries on the job site. Each card will contain contact information directing communication to a DB Contractor liaison. |
| 7. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 1 (PDF Page 286) | DB Contractor will provide monthly drone aerial photos to TxDOT to illustrate the Project's progress. |

| No. | Proposal Location | Proposal Commitment |
|-----|---|--|
| 8. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 1 (PDF Page 286) | DB Contractor will provide a quarterly informational e-newsletter that the public can subscribe to from the Project website. The e-newsletter will provide progress information and upcoming scheduled activities for the Project. |
| 9. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 1 (PDF Page 286) | DB Contractor will provide a newsletter to elected officials with detailed information about the Project to share with their constituents and stakeholders, including answers to frequently asked questions. The newsletter will be provided prior to any major traffic phase switches, or at a minimum, every six months. |
| 10. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 1 (PDF Page 286) | DB Contractor will develop content, images, and videos and provide ongoing content updates for a Section 508-compliant Project website for users with visual impairments. This includes the use of audio aids and graphical considerations for those who have color vision deficiency (CVD). |
| 11. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 2 (PDF Page 287) | 14-21 days before the implementation of closures, detours, and traffic shifts on the Project, DB Contractor will provide user-friendly graphics to TxDOT that will focus on safety and make the traveling public aware of traffic pattern changes. |
| 12. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 2 (PDF Page 287) | DB Contractor will create and maintain Facebook, Twitter, and other social media pages to share Project information, including construction photos, detour maps, construction progress infographics, and drone and other videos, with prior approval from TxDOT. |
| 13. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 2 (PDF Page 287) | DB Contractor will hold English and Spanish outreach meetings with the community twice per year, virtually and/or in person, based on TxDOT's preference. At these meetings, DB Contractor will provide updates and visualizations, build relationships with the community, and address community concerns, which may include MOT, schedule, key traffic milestones, safety, and construction progress. DB Contractor will ensure that Spanish language materials and/or translators will be available for these meetings. |
| 14. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 2 (PDF Page 287) | Each year during construction, DB Contractor will attend at least two community events, per neighborhood/organization, held by neighborhoods/organizations within one mile of the Project corridor. |
| 15. | Technical Proposal C. Technical Solutions, Project Management, Public Information | DB Contractor will participate in JBSA-Fort Sam Houston community events twice per year to communicate with and inform military families who will be traveling through the Project corridor. |

| No. | Proposal Location | Proposal Commitment |
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| | and Communications Plan VARs, Page 2 (PDF Page 287) | |
| 16. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 2 (PDF Page 287) | DB Contractor will lead Environmental Justice and Limited English Proficiency outreach in communities near the Project area, such as Park Village and Camelot. DB Contractor staff will be available for off-hour meetings and specific one-on-one meetings for those who are not able to attend planned community meetings. DB Contractor will invite local elected leaders and other community organizations to participate in the Project outreach meetings and provide input. |
| 17. | Technical Proposal C. Technical Solutions, Project Management, Public Information and Communications Plan VARs, Page 2 (PDF Page 287) | DB Contractor will establish membership in the San Antonio Chamber of Commerce and will participate in events supporting the local community. DB Contractor will have direct communication with business owners to discuss the Project and upcoming changes. |
| 18. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will use QR codes to track Employee Safety Certifications. The QR code will be connected to an employee's certification and will be able to be scanned by DB Contractor, the IQF, and TxDOT to quickly verify certification status. |
| 19. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will use Arrowsight to identify potential safety concerns in real time. DB Contractor will use this information to train and mentor employees. DB Contractor will place cameras strategically around the workplace and will analyze video feeds from those cameras to detect unsafe practices, such as the improper use of machinery, disregard for safety protocols, or failure to wear appropriate safety gear. This technology will also track and analyze employee movements to identify potential ergonomic concerns. |
| 20. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | The DB Contractor's on-site safety team will be OSHA-30 certified. |
| 21. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | All Project management personnel, including superintendents, foremen, and engineers of the construction team, will complete OSHA-10 training. |
| 22. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will (i) establish an on-site training center focused on construction and Project-specific safety risks and (ii) require all Project employees to attend this training as part of the Project's orientation process. The training will be made available to TxDOT personnel. Training content will include Project risks, tool training, fall protection, excavation, safety topics, environmental best practice and hazardous waste management. DB Contractor will require Project staff to take refresher courses every two years throughout the Term. |

| No. | Proposal Location | Proposal Commitment |
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| 23. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will add advanced warning flashers on the NB and SB elevated lanes before the safety turnarounds. DB Contractor will activate the flashers when the ACS gate opens in emergency situations. |
| 24. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will empower all Project personnel, including Subcontractors, with Stop Work Authority if there is an actual or potential unsafe act identified. Personnel have the responsibility to stop work to maintain safety without the fear of repercussions. |
| 25. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will develop a set of Safety Life Critical Rules to highlight the top Project safety risks that will be included in the Safety and Health Plan. Example rules include excavation, maintenance of traffic, working near traffic, confined space, lifting and rigging, cranes, critical lifts, working from above, fall protection, access, human equipment interface, active railroad exposure, and formwork. |
| 26. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor's staff will perform inspections at a set frequency per week as defined in the Safety and Health Plan, dependent on their role, and will identify any safety concerns, type of work, and preventive or corrective action. Based on these inspections, DB Contractor will develop data trends to better understand the scopes of work and specific items of concern and will help formulate Project training prior to a potential unsafe act. |
| 27. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 3 (PDF Page 288) | DB Contractor will develop and implement the Adopt a Crew (AAC) program. The program engages all Project staff to participate in craft operations and offer job hazard analysis and work planning discussions. DB Contractor staff will be required to perform one AAC per week. |
| 28. | Technical Proposal C. Technical Solutions, Project Management, Safety and Health Plan VARs, Page 4 (PDF Page 289) | DB Contractor will post TxDOT's work zone safety message on at least one billboard in the Project corridor, for a period of three months, minimum. |
| 29. | Technical Proposal C. Technical Solutions, Project Management, Comprehensive Environmental Protection Plan VARs, Page 4 (PDF Page 289) | DB Contractor will sponsor an annual clean up event along Salado Greenway and will invite the community to participate. DB Contractor will provide Personal Protective Equipment to participants and will follow TxDOT safety protocols. |
| 30. | Technical Proposal C. Technical Solutions, Project Management, TxDOT-DB Contractor Communications Plan VARs, Page 4 (PDF Page 289) | DB Contractor will meet with the TxDOT project management team monthly during the Term to foster partnering activities. DB Contractor will send to TxDOT Quarterly Partnering Surveys to gauge internal team satisfaction. |
| 31. | Technical Proposal C. Technical Solutions, Project Management, TxDOT-DB | DB Contractor will perform annual satisfaction surveys to solicit feedback from third parties, businesses, and other Project stakeholders that receive regular communications from the Project |

| No. | Proposal Location | Proposal Commitment |
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| | Contractor Communications Plan VARs, Page 4 (PDF Page 289) | team. DB Contractor will provide responses and address actionable survey feedback within 48 hours. |
| 32. | Technical Proposal C. Technical Solutions, Project Management, Affected Third Parties Plan VARs, Page 4 (PDF Page 289) | DB Contractor will proactively coordinate with TxDOT and will take an active role to facilitate TxDOT's coordination among adjacent projects. DB Contractor will host a formal quarterly coordination meeting to align schedules, priorities, and milestones between each of the contractors and projects. TxDOT will be encouraged to attend and participate in these meetings. |
| 33. | Technical Proposal C. Technical Solutions, Project Management, Affected Third Parties Plan VARs, Page 4 (PDF Page 289) | DB Contractor will hold a kick-off meeting, followed by virtual or in-person quarterly meetings throughout construction between DB Contractor and military stakeholders. |
| 34. | Technical Proposal C. Technical Solutions, Project Management, Affected Third Parties Plan VARs, Page 4 (PDF Page 289) | DB Contractor will create a trucking/distribution center stakeholder list and will invite H-E-B and other impacted distribution centers to quarterly trucking task force meetings, before and during major construction. At the meetings, DB Contractor will provide details on upcoming traffic modifications, access impacts, and safety information relevant to distribution. |
| 35. | Technical Proposal C. Technical Solutions, Project Management, Risk Management Plan VARs, Page 5 (PDF Page 290) | DB Contractor will meet with area first responders and local agencies, such as VIA Transit, quarterly and before major traffic switches. At the meetings, DB Contractor will inform police, fire, EMS, and transportation providers serving San Antonio and unincorporated Bexar County neighborhoods, including Kirby and Windcrest, of traffic diversions and work zones that could affect traffic times or access to service areas. |
| 36. | Technical Proposal C. Technical Solutions, Project Management, Risk Management Plan VARs, Page 5 (PDF Page 290) | DB Contractor will update the Risk Management Plan on a quarterly basis, or more frequently if circumstances dictate, throughout the Term. |
| 37. | Technical Proposal C. Technical Solutions, Project Management, Utility Management Plan VARs, Page 5 (PDF Page 290) | DB Contractor will use Smartsheet or equivalent tool, for real-time collaboration and management of the tabular Utility Tracking Report. |
| 38. | Technical Proposal C. Technical Solutions, Project Management, Traffic Management Plan VARs, Page 5 (PDF Page 290) | DB Contractor will provide an eblast each Friday that details lane closures and detour information for the following week of construction. Public audiences will be able to subscribe to this e-blast through the Project website. The e-blast will also share locations of major disruptive activities that may cause noise or dust. |
| 39. | Technical Proposal C. Technical Solutions, Project Management, DBE Good Faith Efforts VARs, Page 5 (PDF Page 290) | DB Contractor will implement an educational workshop program to empower local DBEs to contribute to the Project. DB Contractor will work with TxDOT's Civil Rights Division and organizations to identify and target DBEs that need training in topics such as contracts, insurance, bonding, design-build methods, quantity take-offs, estimating, construction law, safety, taxes, and payroll. DB |

| No. | Proposal Location | Proposal Commitment |
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| | | Contractor's contracts staff will attend and assist eligible DBEs to get on the Project bidder's list. |
| 40. | Technical Proposal C. Technical Solutions, Project Management, DBE Good Faith Efforts VARs, Page 5 (PDF Page 290) | DB Contractor will hold quarterly DBE/On-the-Job training (OJT) task force meetings with TxDOT's representatives and minority contracting associations to discuss current and upcoming DBE programs and outreach events. DB Contractor will invite San Antonio District DBE Coordinators and statewide TxDOT Civil Rights and OJT program staff to quarterly meetings. At these meetings, DB Contractor will provide updates on DBE participation and goals, brainstorm strategies to engage DBE contractors and OJT participants, and coordinate outreach efforts. |
| 41. | Technical Proposal C. Technical Solutions, Project Management, DBE Good Faith Efforts VARs, Page 5 (PDF Page 290) | DB Contractor will work with TxDOT's OJT division and Texas Construction Career Academy (TCCA) leaders to provide safety training sites for future San Antonio classes. |
| 42. | Technical Proposal C. Technical Solutions, Quality Management, General Requirements VARs, Page 1 (PDF Page 292) | DB Contractor will share a comprehensive daily schedule with the Project team, including TxDOT, the Owner Verification Firm (OVF), GEC, QC, and IQ, to communicate among entities, transparently demonstrate guide schedule compliance, and help OVF personnel to better manage the required minimum sampling/testing frequencies. |
| 43. | Technical Proposal C. Technical Solutions, Quality Management, DB Contractor's Senior Management Reviews VARs, Page 1 (PDF Page 292) | <p>DB Contractor will send a Client Satisfaction Survey to TxDOT quarterly, throughout the Project Term, to encourage feedback and promote continuous improvement. Survey questions will focus on:</p> <ul style="list-style-type: none"> • Performance of quality, safety and health, environmental, commercial (schedule and cost), management of change, timeliness and effectiveness of NCR and CDR, and emergency preparedness and response. • Compliance with contract conditions, technical specifications drawings, and legal/statutory requirements. • Management team skills; experience; leadership; motivation; integrity; understanding of technical issues and client requirements, priorities, and objectives; and responsiveness to customer's complaints. • Management systems related to planning, quality management, safety and health management, environmental management, technical support, commercial management (schedule and cost), risk management, and reporting. • Overall rating. <p>DB Contractor will track ratings and identify trends for each category to identify areas of improvement and achievement.</p> |
| 44. | Technical Proposal C. Technical Solutions, Quality Management, DB Contractor's Senior Management Reviews VARs, Page 2 (PDF Page 293) | DB Contractor management team will define and document roles, responsibilities, and levels of authority for members of the Project team in the PSQMP, CQMP, and Environmental Plan procedures. |

| No. | Proposal Location | Proposal Commitment |
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| 45. | Technical Proposal C. Technical Solutions, Quality Management, Professional Services Quality Management Plan VARs, Page 2 (PDF Page 293) | DB Contractor will ensure that each of the PSQAF's Discipline Leads performing design quality reviews will have a Texas PE license. |
| 46. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 2 (PDF Page 293) | DB Contractor will provide Project-specific environmental and safety training to IQF personnel during orientation. IQF personnel will be required to attend annual refresher courses during the Term. DB Contractor will provide this training for TxDOT Project-specific personnel, as requested by TxDOT. |
| 47. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 2 (PDF Page 293) | DB Contractor will implement the Quality Designate Program, which will require every crew working on the Project, including employees and Subcontractors, to have a designated QC employee as part of its craft personnel. DB Contractor will provide extra training on QC procedures, including checklist reporting, to these designated QC employees. |
| 48. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 2 (PDF Page 293) | DB Contractor will provide ACI certified QC inspectors for structural concrete elements. |
| 49. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 2 (PDF Page 293) | The QC laboratory will confirm that materials meet the minimum quality standards before being presented as "final" to the IQF laboratory for acceptance testing. |
| 50. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 2 (PDF Page 293) | DB Contractor will utilize the IQF Guide Schedule (GS) compliance tool to parse material into additional elements to accurately track daily quantities and testing. The IQF GS tool will present installed concrete quantities by mix design, in addition to class, and the associated application, based on criteria agreed upon by DB Contractor and TxDOT. |
| 51. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 3 (PDF Page 294) | IQF personnel will share their test equipment list with TxDOT personnel early in the Project set-up phase and prior to ordering. IQF personnel will work with the OV firm to keep the concrete curing methods of design cylinders as similar as possible |
| 52. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 3 (PDF Page 294) | The IQF will participate in final concrete trial batches and ensure that ACI-certified technicians will cast their own strength samples to demonstrate independent strength performance. |
| 53. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 3 (PDF Page 294) | DB Contractor will provide the IQF/OVF the opportunity to review mix designs before Final Design Submittal. DB Contractor will provide approved mix designs to all IQF/OVF inspectors prior to each placement to verify approval status and batch ticket materials. |

| No. | Proposal Location | Proposal Commitment |
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| 54. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 3 (PDF Page 294) | The IQF will provide a monthly log with certifications and expiration dates for certifications of IQF staff to verify that the IQF staff has the necessary, updated certifications throughout the Term. The HCSS system will be used to track certifications and will send notifications in advance of expiration dates to maintain active status. DB Contractor will provide all personnel with visible badges that have QR codes linked to certification status. |
| 55. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 3 (PDF Page 294) | The IQF will perform hold point inspections, identified in the work pre-activity meeting, beyond the DB-QAP minimum requirements on lift thickness elevations to minimize differential settlement issues. |
| 56. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 3 (PDF Page 294) | The IQF will monitor the percentage of failed test results, including those that are Accepted as an Engineer Judgement, included in a Non-Conformance Report (NCR), or Removed/Replaced, and will present a monthly summary to the Project quality team staff and TxDOT. |
| 57. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | DB Contractor will use the Construction Deficiency Incident Tracker to identify and address an item of work, condition, or service not in conformance with the requirements of the RFC or Contract Documents. The tracker will identify nonconforming items that can be reworked to conform with the requirements. This tracker will be used as a tool to document, correct, and advance work without having to escalate the issue to the level of an NCR. The DB Contractor, the IQF, and TxDOT will discuss and mutually agree on which issues can be addressed by the Construction Deficiency Incident, in conjunction with mitigation and repair procedures that have been pre-approved by TxDOT. |
| 58. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | The IQF will include an NCR process for items identified as a deviation from the plans and specifications. The IQF will preemptively monitor and escalate all NCRs to submit resolution for TxDOT approval within two weeks of issuance of the NCR. NCR initiation and disposition dates will be tracked on the NCR log and will be submitted to TxDOT in accordance with Section 3.6.3.4 of the QAP. |
| 59. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | DB Contractor will meet weekly to identify and control nonconforming work to prevent unintended use or delivery and will timely resolve outstanding NCRs. The IQF, construction team, TxDOT, and DB Contractor's senior management will be involved to improve efficiency and quality, in accordance with the Contract Documents. DB Contractor will prepare meeting minutes that will be documented and made available to TxDOT, upon request. |
| 60. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | The IQF will use the same calibration company as the OVF to achieve consistent test results on density gauges and to preemptively identify potential non-validation by removing variables. |

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| 61. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | The IQF will provide a monthly equipment calibration and maintenance log listing all IQF equipment. The IQF will maintain additional equipment at satellite offices, if needed for the Project. |
| 62. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | DB Contractor's survey crews will use an RF-MI scanner with a mobile robot to provide high precision layout for pavement markings. |
| 63. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | DB Contractor will monitor the quantities of materials routinely placed and tested on the Project and will use IQF's software to provide weekly material quantities tracking updates to TxDOT. |
| 64. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | IQF personnel will review the Material Producer List (MPL) annually to confirm use of approved materials and suppliers. IQF personnel will take the necessary steps to replace materials that are no longer approved. A documentation requirement checklist will be created for every element on the Project to track all Buy America documents that are collected upon delivery and maintained. |
| 65. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 4 (PDF Page 295) | The IQF will maintain control charts of concrete strength performance, which will be shared with the entire Project team and the concrete plant/supplier, to identify poorly trending mix designs and mitigate repetitive negative impacts to Project elements. |
| 66. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 5 (PDF Page 296) | DB Contractor will perform an early preliminary design Submittal package review prior to submittal of the official Preliminary Design Submittal package. The early review will confirm design is progressing according to plan and allow DB Contractor to make any necessary corrections. DB Contractor will make these early plans available to TxDOT for a courtesy review. |
| 67. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 5 (PDF Page 296) | The IQF will independently meet weekly with TxDOT and the OVF, without the DB Contractor present, to discuss quality-related topics, such as hold points, NCR statuses, CDR statuses, and quality reports. The IQF will provide TxDOT with weekly updates about the Project, in tandem with material and quantity reporting, to prepare for quarterly reports. |
| 68. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 5 (PDF Page 296) | DB Contractor will hold an Approved for Construction Close-Out (AFC) meeting to review the AFC plan sets and confirm that all TxDOT's review comments have been addressed and closed out prior to issuing a Released for Construction (RFC) plan set. Comments and concerns will be incorporated into the design before it is formally submitted. |
| 69. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, | DB Contractor's MOT Implementation Manager, Deputy Project Manager, and the IQF Manager will fully audit the MOT executions, long term closures, and traffic control devices against DB Contractor's Traffic Control Plan (TCP) before the Lead MOT Implementation |

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| | Page 5 (PDF Page 296) | Manager's monthly meeting with TxDOT to review the TCP. This monthly inspection and correction will supplement TxDOT's Quarterly Traffic Audit. |
| 70. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 5 (PDF Page 296) | DB Contractor will conduct or perform a pre-traffic switch punch list walkthrough with TxDOT, the IQF, the OVF, and appropriate superintendents prior to any traffic shift. DB Contractor will address critical punch list items before the traffic shift occurs. |
| 71. | Technical Proposal C. Technical Solutions, Quality Management, Construction Quality Management Plan VARs, Page 5 (PDF Page 296) | DB Contractor's Dispatcher will serve as a single point of contact to communicate the status of items of inspection, such as concrete, Cement-Treated Base, and asphalt activities. The Dispatcher will communicate and share information with TxDOT, IQF, and OVF personnel about the work being performed, including work locations, assigned crews, theoretical quantities, mix design, anticipated inspections, and other changes to activities. |
| 72. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Maintenance of Traffic, Page 3 (PDF Page 300) | DB Contractor will construct the necessary number of temporary exit and entrance ramps along the I-35 NB and SB mainlanes to allow for construction of the substructure and superstructure in the original location, without having to close the ramp. |
| 73. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Lane Closures, Page 7 (PDF Page 304) | When there is a closure on one of the cross streets, Rittiman, Eisenhower, or Walzem, DB Contractor will maintain the other two cross streets open. |
| 74. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Smart Work Zone (SWZ), Page 8 (PDF Page 305) | DB Contractor's Smart Work Zone (SWZ) systems will use compatible communication software to integrate with the TxDOT Traffic Management Center at TransGuide. DB Contractor will verify that the SWZ is compatible with functions supplied in the base Automated Traffic Management System and will make the communication feed available to TxDOT. |
| 75. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Impacts to Stakeholders and Communities, Page 8 (PDF Page 305) | DB Contractor's public information, construction, and design teams, in coordination with Project stakeholders, will develop a Site-Specific Access Plan (SSAP) to confirm that mutual needs of crucial logistics parties, Brooks Army Hospital and the H-E-B Distribution Center, are met. TxDOT will have final approval of the SSAP and will be encouraged to provide input. |
| 76. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Public Information, Page 9 (PDF Page 306) | DB Contractor's MOT Implementation Manager, upon TxDOT approval and availability, will present the MOT plans to the H-E-B Distribution Center and all other interested property owners. The MOT Implementation Manager will preside over property owner walks to confirm plans and maintain positive relationships. |
| 77. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Public Information, Page 9 (PDF Page 306) | DB Contractor will mitigate construction noise through incorporation of white noise back up alarms on equipment. Noise dampening materials will be used to reduce metal-on-metal contact and equipment may be modified to make secure connections to diminish vibration and rattling. |

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| 78. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Public Information, Page 9 (PDF Page 306) | DB Contractor will cushion heavy equipment's impact on the roadway by using mats when a crane lift occurs on pavement. DB Contractor will line excavator tracks with padding. |
| 79. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Timely Deliverables, Page 18 (PDF Page 315) | DB Contractor will provide a weekly Project update sheet to the TxDOT team during the Term, which will provide an overview of the Project status, including present schedule, prioritized items, financial updates, potential risks, and existing or upcoming field concerns. |
| 80. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Managing Resources and Activities, Page 19 (PDF Page 316) | DB Contractor will generate, and provide to TxDOT, a monthly detailed breakdown of the remaining design and construction man-hours required to achieve Substantial Completion on time. |
| 81. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Project Feasibility, Page 24 (PDF Page 321) | DB Contractor will build the median work one direction at a time. In areas of limited access, DB Contractor will transport employees from a central parking location to work areas to reduce congestion in work zones. |
| 82. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Project Feasibility, Page 24 (PDF Page 321) | DB Contractor will hold coordination meetings to maintain Project milestones related to utilities. DB Contractor will prioritize long-lead relocations, such as gas and transmission lines. |
| 83. | Technical Proposal C. Technical Solutions, Design, Construction & Maintenance Plan, Project Feasibility, Page 24 (PDF Page 321) | DB Contractor will set up precast yards and will have a dedicated concrete batch plant. DB Contractor will prioritize pre-tie and prefabricated structural elements to be delivered during off-peak hours. |

APPENDIX 2 TO EXHIBIT 2**ATCs**

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

| ATC No. | ATC Description | Section(s) of the Contract Documents from which Deviations are Permitted | Date of Approval Letter |
|----------------|---|--|--------------------------------|
| 1. | Install a steel soldier pile retaining wall system with precast concrete panels as an alternate wall type. The ATC will be implemented along the edge of the existing I-35 SB mainlanes near the Rittiman Rd and Eisenhower Rd overpass approaches. | Section 21.2.8 of the DB Specifications, Deviation from requirement that (i) allows DB Contractor to use only the type of retaining walls that have been pre-approved by TxDOT and (ii) does not allow the use of metal walls, including bin walls and sheet pile walls. | February 7, 2023 |
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EXHIBIT 3

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

- The Design-Build Contract references the following RIDs for purposes of granting a Price increase or extension of a Completion Deadline to DB Contractor:
 - The documents under the folder titled "Utility Strip Map" in the RIDs to the extent set forth in Section 4.5.1 of the General Conditions and Section 4.6.9.2 of the General Conditions;
 - the portions of the Schematic Design that define "Basic Configuration" for purposes of a Change Order for Necessary Basic Configuration Changes or for TxDOT's failure to make available a portion of the Schematic ROW, to the extent set forth in Section 4.6.9.6 of the General Conditions and Section 6.5 of this DBA, respectively.
- The following documents located in the RIDs constitute the Signed and Sealed Engineering Data for the Project for purposes of a TxDOT-Directed Change:
 - I-35_NEX_Geotechnical_Data_Report_Boring_Logs_20200717.pdf and
 - DE19-226_IH-35_NEX_FinalBridgeBoringLogs_20200812.pdf
- The following level A subsurface utility engineering (SUE) documents are included in the RIDs:
 - I-35NEX_SUE-QL-A.dgn
 - I-35NEX_SUE-QL-A_THs.pdf
 - IH35 NEX - Test Hole Summary Sheet - 20200320.pdf
 - Level_A_SUE_Box_Culverts_IH410_Interchange.zip

EXHIBIT 4**CMC AMENDMENTS**

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

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

4.6.5.6 Change Order Affecting Capital Maintenance Agreement

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

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

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

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

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

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

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

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

9.4.3 Withholding for Maintenance Security

TxDOT shall retain from the Final Payment, and if it reasonably appears there will be insufficient funds at Final Payment, from progress payments, an amount equal to the initial penal sum of the Maintenance Performance Bond (regardless of whether DB Contractor intends to secure its maintenance obligations with letters of credit or bonds), calculated as of the date of Substantial Completion and in accordance with Section 3.2.3.2 of the CMA General Conditions (the "Retained Security Amount"), as security for the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions. DB Contractor shall have the option at any time to deliver an irrevocable letter of credit equal to the Retained Security Amount in lieu of the retained sums in a form and on terms acceptable to TxDOT in its sole discretion. TxDOT shall release the Retained Security Amount or letter of credit, as applicable, to DB Contractor upon the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions, which shall be no later than 14 days prior to the Initial Maintenance Term Commencement Date. In the event TxDOT does not receive the Maintenance Security required under Section 3.2 of the CMA General Conditions by the deadline set forth therein, DB Contractor shall forfeit as liquidated damages and not as a penalty such sums, or if a letter of credit is provided in lieu of retained amounts, TxDOT shall have the right to draw on the letter of credit.

EXHIBIT 5

JOB TRAINING PLAN

I-35 NEX South Project

Lone Star Constructors, NEX

Prepared By: Pike Riegert, Project Manager

Date: July 13, 2023

Revision: 0

| Revision No. | Description | Revised By | Revision Date |
|---------------------|--------------------|-------------------|----------------------|
| 0 | Initial Version | Pike Riegert | July 13, 2023 |

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1. JOB TRAINING & OPPORTUNITY PLAN OVERVIEW

Lone Star Constructors, NEX (LSC) is committed to achieving Texas Department of Transportation's (TxDOT) On-the-Job Training (OJT) goals for the Project in compliance with Code 23 U.S.C. 140(a) governing nondiscrimination and whereby committing to provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. Each trainee must complete a minimum number of OJT hours exclusively on the Project in the same trade or work classification. A maximum number of hours will be designated for OJT training. Trainees will not be kept in the training program past the maximum number of hours listed. We value learning as an essential part of everyone's success and are committed to make training, coaching, mentoring, and advancement through our OJT Program part of our project culture.

LSC is an equal opportunity DB Contractor that recognizes the value of a diverse workforce. All qualified individuals will receive consideration for the program without regard to race, color, age, sex, sexual orientation, gender identity, religion, national origin, disability, veteran status, genetic information, or any other criteria protected by federal, state, or local law.

2. COMMITMENT

LSC is committed to providing an OJT Program designed to meet the goals set forth for this Project. If the OJT Goal, as stated in the Special Provisions, is not met, LSC will provide acceptable evidence of good faith efforts to meet the OJT Goal. LSC's OJT plan is in full compliance with FHWA 1273 Required Contract Provisions Federal Aid Construction Contracts and Exhibit 9 to Attachment 3-1 of the General Conditions.

3. PROGRAM GOALS

Based upon the table shown in Exhibit 9 to Attachment 3-1 of the General Conditions, the OJT Program trainee goal for this project is 28 trainees. It is the intention of LSC that training is to be provided in construction crafts. Additionally, training opportunities will be available in entry-level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. LSC's Program is designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker or entry-level management in his/her respective skilled trade classification. The number of trainees shall be distributed among the work classifications on the basis of DB Contractor's needs and the availability of journey worker in the various classifications.

4. SUBCONTRACTOR PARTICIPATION

The OJT Special Provision in Exhibit 9 to Attachment 3-1 of the General Conditions and associated requirements will be physically included within each construction subcontract agreement. LSC will work with subcontractors and provide support in identifying participants, trainee enrollment, tracking progress, and coordinating efforts.

The number of trainees assigned to each subcontractor will be dependent on the subcontractor's overall financial contract value and scope of work.

5. RECRUITING

LSC will actively recruit within the existing workforce and provide opportunities for OJT enrollment as a part of the overall hiring process. LSC will conduct an organized outreach to include systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within the San Antonio area. Potential candidates will be identified for enrollment after any required probationary or monitoring periods have expired. Additionally, outreach efforts will include

advertisements to recruit workers to the industry as well as coordination and utilization of established recruiting sources who host events. Potential sources include:

- TxDOT/Texas Construction Career Academy (TCCA)
- Construction Education Foundation (CEF)
- Associated General Contractors of Texas (AGC)
- Regional Hispanic Contractors Association (RHCA)
- Regional Black Contractors Association (RBCA)
- Asian American Contractors Association of Texas (AACATX)

No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. LSC may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, LSC's records should document the findings in each case.

The plan shall specify how LSC intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

6. ADMINISTRATION AND REPORTING

The OJT Program will be managed by an OJT Program Administrator who will work as the liaison between the trainees, LSC supervision and management, and TxDOT's Civil Rights Division (CIV). The administrator will enter the data into the Department's Diversity Management System (DMS).

- LSC will submit the Contractor Training Plan by the assigned due date in DMS, to indicate the anticipated training classifications and approximate start dates for trainee enrollments.
- LSC will submit all proposed apprentices and trainees to DMS for approval and registration before any training. The CIV must approve all proposed apprentices and trainees before training begins and must approve the enrollment in order for training to be counted toward the Project goal and be eligible for reimbursement.
- LSC will submit proposed trainee enrollment data into DMS, uploading a completed copy of the (2784) Trainee Signature form.
- LSC will complete the required Federal OJT Monthly report for the program on a monthly basis. The reports will be submitted into DMS.
- LSC shall maintain records and submit monthly reports documenting program performance by the tenth of each month.
- LSC will provide each trainee with a copy of the training program he or she will follow.
- If a trainee is terminated, LSC will make a good faith effort to replace the trainee within 30 calendar days of the termination.

- LSC will provide each trainee with a certification showing the type and length of training satisfactorily completed.

EXHIBIT 6

DBE PERFORMANCE PLAN

I-35 NEX South Project

Lone Star Constructors, NEX

Prepared By: Pike Riegert, Project Manager

Date: July 17, 2023

Revision: 0

| Revision No. | Description | Revised By | Revision Date |
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DBE Performance Plan & Subcontracting Plan

Lone Star Constructors, NEX (LSC) shall update the DBE Performance Plan quarterly or more frequently as requested by the Department.

1. Definitions

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

2. Policy Statement

LSC will carry out the DBE program requirements codified at 49 CFR Part 26 and Department's DBE Program. The DB Contractor will solicit the participation of DBEs in an effort to afford DBEs an opportunity to participate in the Design-Build Contract (DBC).

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

The requirements of the Department's Design-Build DBE Special Provision (General Conditions Attachment 3-2) must be physically included in any subcontract or purchase orders including all tiers of subcontracts.

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

3. Disadvantaged Business Enterprises (DBE) Commitment

Lone Star Constructors, NEX is committed to fully integrating DBE participation into our team for this TxDOT I-35 Northeast Expansion (NEX) South Project (Project) through outreach, DBE commitment agreement, technical assistance/supportive services, compliance monitoring and reporting. Lone Star Constructors, NEX proposes to accomplish maximum DBE participation through an organized outreach, solicitation, and subcontracting plan.

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

The DBE participation goals for the Project are established as 19.5% of the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners, and 8.5% of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners. Lone Star Constructors, NEX commits to:

- Submitting commitments on DBE design firms within 60 days of NTP1 (contract execution) and further commitments will be submitted as new commitments are identified; and
- Submitting commitments on DBE construction firms prior to the commencement of construction. Further commitments will be submitted as new commitments are identified. Should an existing DBE firm receive additional work, LSC will submit a revised DBE commitment form for the firm to

the Department.

Lone Star Constructors, NEX is committed to implementing the Project's DBE program in accordance with the federal guidelines found in 49 CFR Part 26 and the Department's DBE program. The Lone Star Constructors, NEX team is aware of its obligations as stated in 26 CFR 26.53(e) and Department's DBE Special Provision (Attachment 3-2). Lone Star Constructors, NEX is committed to complying with all DBE program regulations.

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

4. Anticipated Areas of Consulting & Contracting Opportunities

| | | | |
|---|---------|---------------------------------------|---------|
| Aggregates | Q3-2024 | Furnish/Install Reinforcing Steel | Q3-2024 |
| Asphalt Milling | Q3-2024 | Guardrail/Attenuators | Q1-2025 |
| Asphalt Paving | Q2-2024 | ITS and Signal | Q1-2025 |
| Bridge Construction | Q3-2024 | Large/Small Signs | Q2-2024 |
| CIP Concrete Barrier and Rails | Q1-2025 | Liquid Asphalt Supply | Q3-2024 |
| Clearing | Q2-2024 | MSE Walls | Q3-2024 |
| Concrete Flatwork | Q1-2025 | Material Hauling | Q3-2024 |
| Concrete Painting | Q4-2026 | Pavement Markings & Striping | Q3-2024 |
| Concrete Ready-Mix Supply | Q1-2025 | Potholing/Hydro Excavation | Q3-2023 |
| Concrete Sawing/Demo | Q4-2024 | Post-Tensioning | Q1-2025 |
| Drainage Installation and Material Supply | Q4-2024 | Professional Services | Q3-2023 |
| Drilled Shafts | Q3-2024 | Soil Nail | Q3-2024 |
| Electrical/Illumination | Q2-2025 | Supplier Services | Q1-2024 |
| Erosion Control | Q2-2024 | Sweeping Services | Q2-2024 |
| Excavation | Q3-2024 | Traffic Control Services | Q3-2023 |
| Fencing | Q3-2023 | Trucking | Q2-2024 |
| Fuel Supply | Q4-2023 | Video Inspection and Cleaning of Pipe | Q3-2023 |

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

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

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

<https://txdot.txdotcms.com>

5. Outreach

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

- DBE/Vendor Outreach Events held February 7th and 8th, 2023.

- Holding DBE project informational meetings.
- Incorporation of opportunities in project website.
- Project and contracting advertisements in local and minority publications.
- Collaboration with other organizations to present/advertise project opportunities.
- Collaboration with TxDOT's Programs for DBEs, the local Texas Unified Certified Program (TUCP) and the Cooperative inclusion Program (CIP).
- Participation at DBE-related events and conferences.
- Provision of project plans at plan rooms maintained by minority and women business organizations.
- Project Marketing Collateral.
- One-on-one Meeting with interested firms.
- Project Presentations.
- DBE education workshop program to empower local DBEs to contribute to NEX South and future projects.
- Targeted community outreach and partnering to broaden outreach for DBE bid opportunities.
- DBE task force meetings will be held with the TxDOT's representatives to facilitate timely collaboration with current and upcoming DBE programs and outreach events.

6. Professional Services Procurement

a. General

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

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

LSC will use our SharePoint site to allow access to and share information on the project as well as discipline specific information related to the project as a whole. Bid packages will be delivered to the DBE Subcontractor/Vendor via email when appropriate or hard copies as needed to convey the appropriate and complete information. Bid submissions will be sent to a dedicated email at Bid@lsci35nex.com or if needed delivered directly to the project field office Procurement Manager. LSC will keep a list of DBE firm's names along with the associated email addresses. Bid packages will be work specific to DBEs that have the NAICS codes to perform the type of work in the bid submission.

b. Proposal Phase Solicitations

The procurement of professional services firms was primarily accomplished during the proposal phase. Additional firms will be procured to expand the design team as design is advanced from the proposal phase. LSC has secured teaming agreements with multiple DBE professional services firms and contract negotiations are underway. Once the agreements are finalized, the commitments will be entered in the Department's Diversity Management System (DMS). As the design and procurement move forward, additional commitments will be entered in DMS in accordance with established timelines.

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

- JB Pinnacle Group
- Coronado Roadway Construction, LLC
- Serna's Trucking LLC
- J.H. Painting
- DC Civil Construction LLC
- Texas Environmental Management - San Antonio, Inc
- Tex-Braska, LLC
- Royal Rebar Inc

Copies of each of the above DBE firms' certifications in the DBE directory at the time of the applicable proposal teaming agreement will be kept on file.

c. Execution Phase Solicitations

(1) The solicitation of additional professional services to meet the DBE requirement may become necessary during the execution of the Project for a variety of reasons such as:

- (a) Added scope to the Project;
- (b) Scope that was not fully defined during the Proposal preparation;
- (c) Additional assistance or resources were determined to be necessary to support the Project schedule; and
- (d) The inability to successfully negotiate a scope of service or fee with a previously selected firm.

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

(2) A new solicitation will be issued for the services needed. The proposals submitted must be responsive to the solicitation. The following section outlines procedures for the selection process.

(3) Solicitations for proposals will be made based on need determinations discussed in the previous sections. Various resources will be used to target the subcontracting community such as but not limited to:

- (a) Use our corporate vendor list;
- (b) Contacts developed from outreach events;
- (c) Use of the Texas Unified Certification Program (TUCP) directory;

- (d) Coordination with other subcontractor advocacy groups; and
 - (e) Local DBE organizations.
- (4) Any DBE firm selected must have their certification verified through the TUCP directory at the time of commitment and at subcontract execution.
- (5) Professional Services consultants will notify Lone Star Constructors, NEX before they enter into a subconsultant agreement with a DBE firm.

d. Proposal Evaluation & Negotiation

- (1) The following criteria will be used for all professional services procurement:
- (a) Ability to provide the number of qualified personnel to complete the required tasks within the necessary timeframe of the Project;
 - (b) Possess the requisite licenses for both the firm and personnel to authorize participation;
 - (c) Documentation of design project completion on time and within budget during previous 5 years;
 - (d) Quality of previous project work completed, including references from past project owners (clients) within previous 5 years;
 - (e) Ability to start when required, and in concurrence with the LSC scheduling team the most current TxDOT approved schedule will be provided to the DBE firm; and
 - (f) Consideration of the DBE goals for the Project.
- (2) Attempt to negotiate scope, schedule of values, terms, conditions, and price with the selected proposer.
- (3) If the prospective provider is non-responsive to negotiations for 3 business days or negotiations fail, repeat the process.

7. Construction Subcontractor Procurement

a. General

LSC commits to not self-perform work of a committed DBE who can no longer complete that item of work unless TxDOT, by written approval, allows such self-performance.

It is prevalent practice in the design-build procurement process for the design-builder to solicit pricing from the subcontracting community based on 30% (or less) plans. LSC will initiate conversations with DBE subcontractors at 30% design, and will further the conversations at 60% and 90% design. This will mitigate risks to DBE subcontractors by engaging them early in the design. LSC will note plan stages on all RFP's, include all relevant information per 7.b. and will limit solicitations for pricing to only what is necessary to ensure reasonable progress until 90% plans have been produced.

b. Bid Package Development

Bid packages will be developed in a manner that ensures the best success for the project as well as

the DBE Subcontractor or Vendor. Evaluations will be performed on each DBE Sub/Vendor to ensure they are adding value and not outside of their normal course of work. Training and assistance will be offered to those participants that are expanding their presence in a specific market. The following support will be provided by LSC to help ensure success:

- (1) Facilitate providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract
- (2) Ensure that DBEs are not rejected as unqualified without a thorough investigation and sound reasoning
- (3) Make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as may be required
- (4) Make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Bid packages may be divided into smaller portions for a DBE that may not have the requisite capacity.
- (5) Request DBEs complete a LSC Prequalification Form that will include the following information:
 - (a) Quality of trade, supplies, and service
 - (b) Pricing structure
 - (c) Delivery schedule
 - (d) Financial stability
 - (e) Safety record
 - (f) Insurance/bonding information
 - (g) Experience
 - (h) Personnel
 - (i) Equipment
- (6) Maintain a log of all potential bidders who receive a formal invitation to bid via web-based platforms. The log will include or be supplemented with documentation of initial and follow-up meetings and explanations for why additional agreements were not met, including dates and times follow up was conducted, methods of contact, and contact person.
- (7) Participate in pre-bid openings and post-bid interviews to assist with any questions or issues regarding the status of DBEs included on bids.

c. DBE Identification & Solicitations

- (1) Solicitations will contain the following information regarding the requested price proposal:
 - (a) Project information
 - (b) Scope or items of work
 - (c) Date proposal is due
 - (d) Where to view plans and specs
 - (e) Where and how to submit price proposal

- (f) To whom the proposal should be directed
 - (g) To whom all questions should be directed
 - (h) A CPM schedule illustrating when the work is to be performed
 - (i) Environmental, Permits, Issues & Commitment (EPIC) Sheets associated with the work to be performed
- (2) The following are steps that the DBE Liaison Officer will take to assist in the increasing of opportunities for DBE firms:
- (a) Assist in identifying all required trades, supplies and services needed for the project
 - (b) Conduct market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work. This may include attendance at pre-bid and business matchmaking meetings and events, advertising or written notices, posting of Notices of Sources Sought or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the Project or those that are willing to travel to the work from within the state of Texas.
 - (c) Work with the Project team to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This may include breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when LSC might otherwise prefer to self-perform these work items. This may also include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
 - (d) Communicate and advertise bid opportunities to the general DBE community via various sources, including:
 - i. Texas Unified Certified Program (TUCP) Directory
 - ii. DBE Databases and Directories
 - Owner (TxDOT)-provided DBE subcontractor database, Diversity Management System (DMS)
 - LSC internal database
 - iii. Publications
 - The Blue Book of Building and Construction
 - *Small Business Resource Guide*
 - Local newspapers and trade publications
 - iv. Trade and Professional Organizations
 - Conference of Minority Transportation Officials (COMTO)
 - National Association of Minority Contractors (NAMC)
 - USDOT Small Business Transportation Resource Center
 - Women's Transportation Seminar (WTS)

- v. Local Minority Chambers and Contractor Associations
 - American Indian Chamber of Commerce
 - Asian Contractors Association
 - Regional Black Contractors Association
 - San Antonio Black Chamber of Commerce
 - San Antonio Hispanic Chamber of Commerce
 - San Antonio Metropolitan Black Chamber of Commerce
 - Greater San Antonio Asian American Chamber of Commerce
 - Greater San Antonio Hispanic Chamber of Commerce
 - Greater San Antonio Indo-American Chamber of Commerce
 - Regional Hispanic Contractors Association
 - U.S. Pan Asian American Chamber of Commerce – Southwest
 - Women’s Business Council – Southwest
 - Texas Association of Mexican American Chambers of Commerce (TAMACC)
- vi. Facilitate providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract
- vii. Ensure that DBEs are not rejected as unqualified without a thorough investigation and sound reasoning
- viii. Make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as may be required
- ix. Make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services
- x. Maintain a log of all potential bidders who receive a formal invitation to bid via web-based platforms. The log will include or be supplemented with documentation of initial and follow-up meetings and explanations for why additional agreements were not met.
- xi. Participate in pre-bid openings and post-bid interviews to assist with any questions or issues regarding the status of DBEs included on bids.
- xii. Every effort will be made to allow two weeks to respond to any price proposal solicitation however this cannot be guaranteed. Exceptions may be granted on a case basis for non-critical items at the option of LSC.
- xiii. Responsiveness – LSC will attempt to contact any subcontractor that did not respond to the solicitation. The reason for not quoting, if provided, will be documented.

d. Proposal Evaluation

- (1) The following criteria will be used for evaluation of, and subsequent negotiation with, the DBE Subcontractor and Vendor:

- (a) Ability to provide the number of qualified personnel to complete the required tasks per project schedule;
 - (b) Possess the requisite licenses for both the firm and personnel to authorize participation;
 - (c) Verification of the scope of work and timely project completion within budget during previous 5 years;
 - (d) Quality of previous project work completed, including references from past project owners (clients);
 - (e) Ability to start when required; Verification of Commercially useful function: and
 - (f) Consideration of the DBE goals for the Project.
- (2) Attempt to negotiate scope, schedule of values, terms, conditions, and price with the selected proposer.
 - (3) If the negotiations stall or fail, repeat the process. If the prospective provider is non-responsive to negotiations for 3 business days or negotiations fail, repeat the process. If negotiations cannot be completed when the scope of work becomes critical, or as mutually agreed between the parties to stop negotiations, LSC will solicit new DBE Subcontractors.

8. Subcontract Agreement

- a. Subcontract agreements (Subcontract) shall identify, define, and include those specific services, items, terms, and conditions that are consistent with the Contract and the scope of work including anticipated duration. The Department will monitor and ensure a commercially useful function (CUF) review is performed. LSC will provide advance notice that the DBE has commenced Work to the Department so the Department can conduct CUF reviews of LSC's DBEs. These reviews are for the purpose of ensuring that the DBE is performing, managing and supervising the work in compliance with 49 CFR 26.55.
- b. The Subcontract will be prepared and submitted with all required conditions and attachments for execution.
- c. The following items are clearly defined and included in all professional services subcontracts:
 - (1) Identification of parties;
 - (2) Definition of work (scope, methods, end results);
 - (3) Definition of Client's responsibility;
 - (4) Provisions for contract changes;
 - (5) DBE Special Provision;
 - (6) Compensation;
 - (7) Method of payment; and
 - (8) Federally required provisions.
- d. The following terms and items are included in all construction subcontracts:
 - (1) Parties to the contract;

- (2) Contract start and end dates;
 - (3) Scope of Work, including deliverables;
 - (4) DBE Special Provision;
 - (5) Schedule of Values;
 - (6) Payment due dates;
 - (7) Terms and conditions relating to premature contract termination;
 - (8) Terms and conditions relative to undue delays;
 - (9) Means to resolve claims and disputes as defined in subcontract;
 - (10) Indemnification terms and conditions; and
 - (11) Federally required provisions.
- e. Any exceptions taken by the Subcontractor with regards to any of the business terms and conditions of the subcontract document will be negotiated (that is in the purview to negotiate).
- f. Upon complete execution of the document, a copy will be provided to the Department.

9. Execution of the Work

a. DBE Responsibilities

- (1) Subcontracted work will be executed in a professional manner.
- (2) The subcontractor will be an independent business and employer under the laws of Texas and will assume all the rights and responsibilities accordingly.
- (3) The subcontractor will be required to diligently and faithfully execute the work covered by its agreement.
- (4) The subcontractor will comply with all of the requirements of its subcontract and the Contract.
- (5) The subcontractor will be required to provide monthly progress in the Department's Compliance Monitoring and Tracking System.
- (6) DB Contractor must ensure that the DBE does not subcontract any work without prior approval of the DB Contractor to avoid loss of DBE goal credit.

b. Administration

- (1) The subcontractor will report monthly, in the Department's Compliance Monitoring and Tracking System, at an agreed upon recurring monthly date, their progress quantities for the previous pay period for verification by and concurrence of the Project Manager, Deputy Project Manager, or the Construction Manager.
- (2) The subcontractor will be required to carry the requisite insurance outlined in the Contract. Good Faith Efforts (GFE) in accordance with 49 CFR Part 26, Appendix A, Item F must be followed prior to rejecting a DBE proposal for failure to provide insurance as outlined in the Contract.

- (3) The subcontractor will comply with administrative obligations imposed by federal requirements.
- (4) The subcontractor will be required to submit any applicable reports, in the applicable Department's Compliance Monitoring and Tracking System (ie – ADOREplus/SharePoint or other electronic content management system as required by TxDOT), such as but not limited to:
 - (a) Monthly progress quantities;
 - (b) Daily quality control reports;
 - (c) Certified payrolls; and
 - (d) DBE participation reports.

c. Direction and Management

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

d. Quality

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

e. Environment

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

f. Safety

- (1) The subcontractor is required to have its own safety program or model one after the contractor's.
- (2) The subcontractor will ensure their safety program is no less stringent than the Project Safety & Health Plan.
- (3) The subcontractor will comply with the Project Safety & Health Plan.
- (4) The subcontractor will participate in project safety briefings.
- (5) The subcontractor shall be responsible for the safety of its employees.
- (6) The subcontractor shall comply with all local, state, and federal safety requirements and regulations.

g. Commercially Useful Function (CUF)

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

h. Assistance to DBEs

- (1) Lone Star Constructors, NEX shall not provide any assistance to the DBE in the general performance of its work. LSC shall refer to 49, CFR Part 26, Appendix A related to assistance to DBEs.:
 - (a) Labor, equipment, or materials;
 - (b) Supervision;

- (c) Ordering materials for the DBE from their suppliers;
 - (d) Fuel; and
 - (e) Any other item one would reasonably expect a viable subcontractor to provide for themselves.
- (2) Exceptions permitted by specification and allowed by Lone Star Constructors, NEX include as appropriate making use of GFE allowances in 49 CFR Part 26 Appendix A with prior Departmental approval, and under emergency conditions where:
- (a) The safety of workers and the public is at risk;
 - (b) The work in progress is subject to a total loss (i.e. lose a concrete pour); and
 - (c) The traveling public will be seriously impacted, and excessive travel delays incurred.
- (3) In the event of any emergencies as defined by Section 9.h (2), the Project Manager or Project Manager's designated representative is required to call in a report to Compliance Manager outlining the circumstances and the assistance rendered. The Department will be notified in writing within 24 hours of the emergency. A DBE EMERGENCY ASSISTANCE – CALL IN LOG will be completed. The DBE Liaison Officer will assess the value of the assistance. The value of the assistance will be deducted from the Project DBE monthly progress report and reported in the Department's CMTS.
- (4) Lone Star Constructors, NEX serves as an advocate for all its subcontractors (DBE and non- DBE) with the Department in the event of changes, change orders, and payment.
- (5) Joint Checks for DBEs
- (a) The request for a joint check request must emanate from the DBE and/or their supplier. The request must be on the DBE's letterhead or equivalent. If no joint check agreement is provided to Lone Star Constructors, the Subcontractor will utilize the Contractor's version. If a joint check agreement is provided by the DBE and/or their vendor, the Chief Financial Officer (CFO) must review and edit as necessary to maintain compliance with the DBE special provision and provide sound legal protection for LSC.
 - (b) Prior to any joint check being issued, its use must be approved by the Department. LSC CFO will prepare a request using the Department's Form 2804 Request to Use Joint Checks (For Federally-Assisted Projects) signed by the DBE Liaison Officer. The form will be submitted to the Department through the Project Electronic Management System (EDMS). Copies of the DBE's request, the joint check agreement and the associated Department Form 2804 will remain on file for audit purposes.
 - (c) CFO prepares the joint check in the amounts acceptable to the DBE and their supplier. The check will be sent to the DBE in a manner requested by the DBE (i.e., US Mail, Fed-Ex, etc.) All requirements shown on Department Form 2804 will be followed as well as those outlined in governing laws, rules, and regulations. Under no circumstances will the check be mailed directly to the supplier or will the DBE be required to endorse the check on our premises for Lone Star Constructors, NEX direct mailing to the supplier.

10. Payment

a. Monthly Progress Payments

- (1) Monthly progress payments will be made by the 10th day, as defined in the CFR, following payment received by Lone Star Constructors, NEX for the items of work performed by the subcontractor. Payment to each DBE subcontractor will be recorded in the Department's Compliance Monitoring and Tracking System. All DBE subcontractors are required to pay their subcontractors within 10 days, as defined in the CFR, following payment received by LSC.
- (2) A number of instances can impact payment time that are outside the control of LSC or higher tier Consultant:
 - (a) The failure of the subcontractor to provide an invoice in a timely manner;
 - (b) Quality issues with the subcontractor's work;
 - (c) Apparent prompt pay or violations of other federally required provisions;
 - (d) Failure to pay vendors for materials purchased and used in the project;
 - (e) The Department's failure to provide copies of pay estimates in a timely manner; and
 - (f) Delays by the Department in payments to LSC.

b. Withholding Progress Payments

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

11. Reporting

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

a. DBE Commitment Schedule

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

Progress of commitments towards goal attainment will be monitored as required in Attachment 3-2. A schedule for submission of DBE commitment agreements based on the DB Contractor's initial Project schedule and any subsequent revised Project schedule will be included.

b. Monthly Reporting Schedule

DBE monthly progress will be reported via the Department's Compliance Monitoring and Tracking System within 15-days after the end of a calendar month. All DBE subcontractors shall confirm prompt payment in the Department's CMTS.

c. Quarterly DBE Progress Tracking

A quarterly report will be generated which will track commitments, progress, and projected outcomes for DBE participation. The report will track areas available for participation to guide solicitations when construction packages are ready for distribution. The LSC's DBE Liaison Officer will meet, either monthly or quarterly, with the Department's District DBE Coordinator if any issues arise. Meeting notes will be recorded and kept on file.

d. Final DBE Report Schedule

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

e. DBE Truckers

If a DBE trucking company is to be used towards the Project goals, the appropriate commitment form, ADP-4901-T, shall be submitted to ensure the relevant information is available to count the DBE credit properly.

Lone Star Constructors, NEX shall update the DBE Performance Plan quarterly or more frequently as requested by the Department. If the Project's Preliminary Baseline Schedule is updated impacting the DBE firm schedule, Lone Star Constructors, NEX will issue a new schedule to the DBE firm. All updates to the DBE Performance Plan will be submitted to the District with a memorandum or other format required by the District that specifies which portions of the DBE Performance Plan have been updated and the changes that were made to the Plan.

12. Good Faith Efforts Documentation

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

- DBE/Vendor Outreach Events held February 6th and 9th, 2023,
- Collaboration with other organizations to present/advertise project opportunities,
- One-on-one Meeting with interested firms.

13. Termination

- a. Termination for convenience of a DBE subcontractor is NOT allowed unless the prime contract is terminated for convenience by the Owner.
- b. Termination may occur due to the direction of the Department.
- c. Termination for breach of contract may be for any action(s) include but are not limited to:
 - (1) Safety/OSHA violations;
 - (2) Environmental violations;
 - (3) Illegal or illicit conduct (misappropriation, etc.);
 - (4) Failure to perform work according to the Department’s specifications;
 - (5) Violation of DBE rules and regulations (i.e. commercially useful function, etc.);
 - (6) Nonpayment of employees or bills (materials);
 - (7) Non-responsive to the project schedule;
 - (8) Failure to provide adequate resources;
 - (9) Unprofessional conduct; and
 - (10) A subcontractor removal request by the Department.
- d. Any actions that could lead to termination for a DBE subcontractor must be documented and forwarded to the Department through the Project Electronic Management System (EDMS) for concurrence, using the Form “DBE Program Termination Request. DB Contractor must adhere to the requirements set forth in Attachment 3-2 – DBE Special Provision.
- e. Adequate opportunities must be afforded to the DBE to remedy deficiencies in accordance with the terms of the subcontract.
- f. Consultation with and approval by the Department must occur prior to taking any termination action for a DBE subcontractor.

14. Replacement

If the DBE is part of a Project goal and the DBE quits and/or is terminated, Lone Star Constructors, NEX should solicit new quotations for the remaining work from other DBEs or solicit quotations for other work available for DBEs. Lone Star Constructors, NEX will document the termination/substitution requests in the Department’s Compliance Monitoring and Tracking System and submitted through the Project Electronic Management System (EDMS).

Submit to the Department for approval following the “Contract Award” procedures.

If no DBEs can be found to fulfill the goal, document and submit “Good Faith Efforts” to the Department using Form 2603 (See Sections 6, 7, and 12 for procedures), or most current applicable form.

15. DBE Program Oversight

a. DB Contractor

- (1) DBE Liaison Officer – TBD
- (2) Program Administration – TBD
- (3) DBE Programs Manager – Vance Daniels
- (4) Project Manager – Pike Riegert
- (5) Deputy Project Manager – TBD
- (6) Construction Manager – Mark MacDonald
- (7) Procurement/Contracts Manager – Lauren Rudd
- (8) Document Manager – TBD

b. The Department

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

APPENDIX 1 TO EXHIBIT 6

STANDARD PROFESSIONAL SERVICES AGREEMENT

[To be added by DB Contractor after Contract Execution]

APPENDIX 2 TO EXHIBIT 6

STANDARD SUBCONTRACT AGREEMENT

[To be added by DB Contractor after Contract Execution]

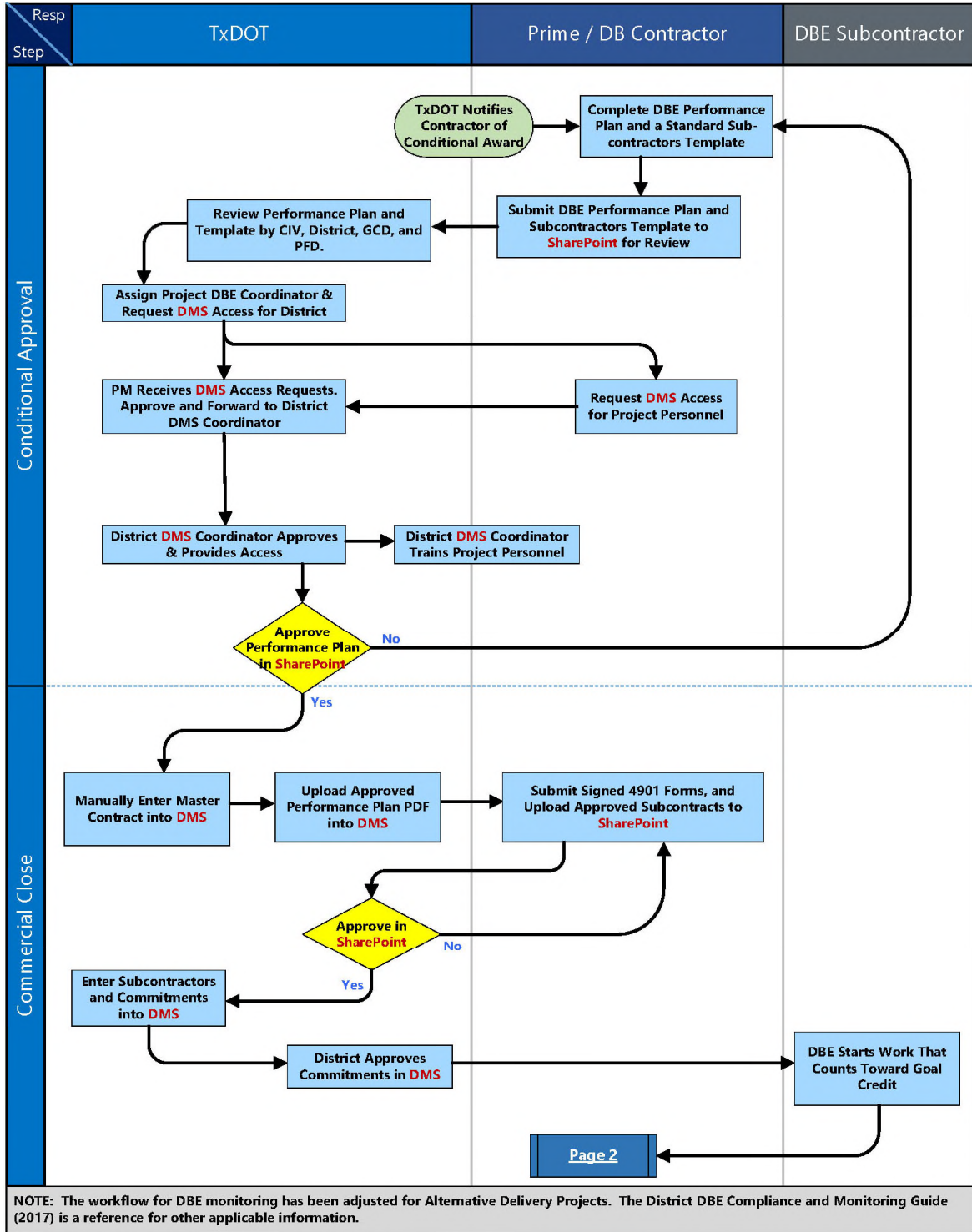
APPENDIX 3 TO EXHIBIT 6

FEDERALLY REQUIRED PROVISIONS

[Included in DBA General Conditions]

APPENDIX 4 TO EXHIBIT 6

DBE COMPLIANCE AND MONITORING PROCESS WORKFLOW



APPENDIX 4, Cont'd.

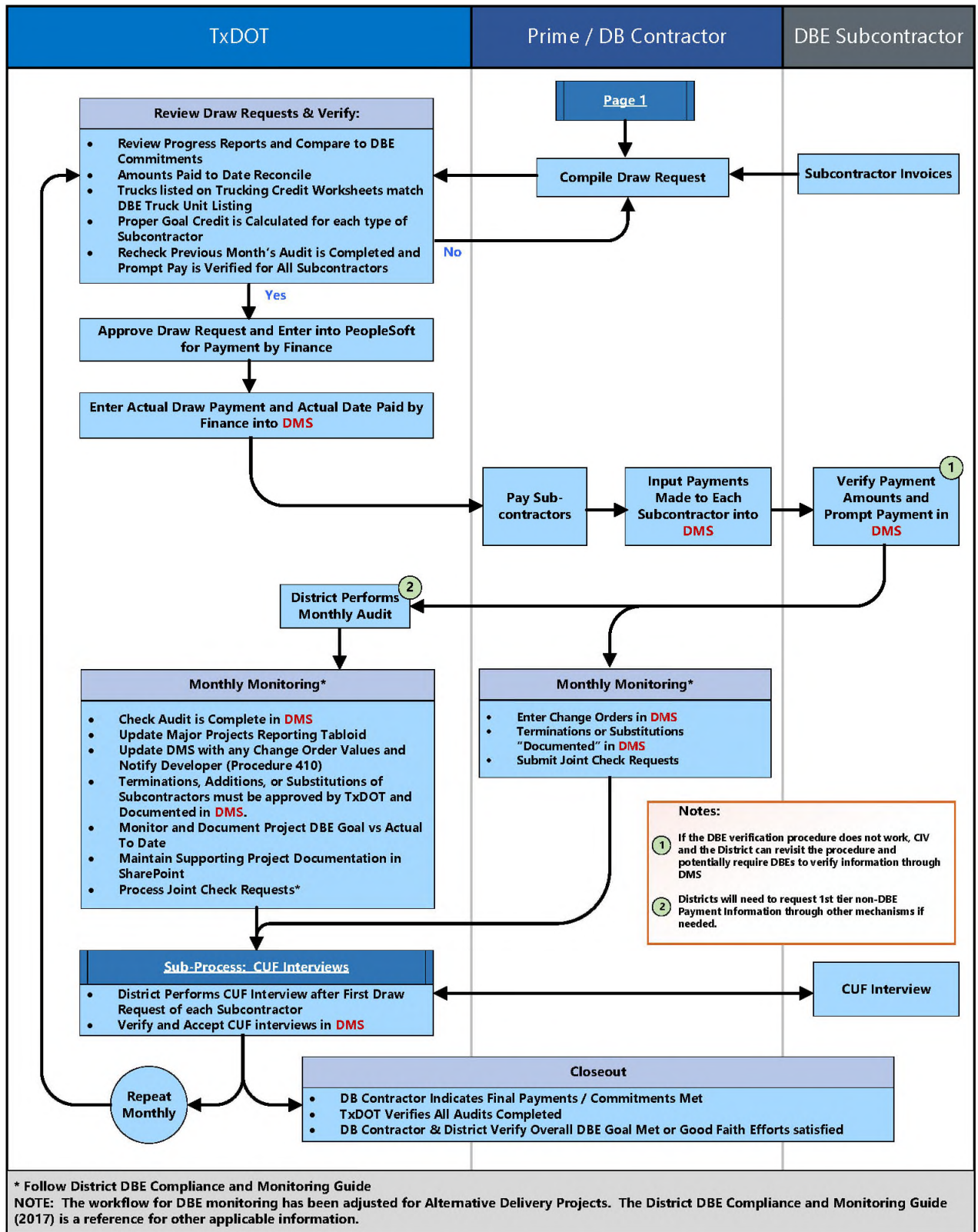


EXHIBIT 7
PREVAILING WAGE RATES

The wage rates listed herein are those predetermined by the Secretary of Labor and State Statute and listed in the United States Department of Labor's (USDOL) General Decisions dated 01-06-2023 and are the minimum wages to be paid accordingly for each specified classification. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed herein and not in the USDOL's general decision, must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS: only the controlling wage rate zone applies to the contract. Effective 01-06-2023.

| CLASS. # | CLASSIFICATION DESCRIPTION | ZONE TX08 *(TX20230002) | ZONE TX03 *(TX20230003) | ZONE TX04 *(TX20230004) | ZONE TX05 *(TX20230005) | ZONE TX06 *(TX20230006) | ZONE TX07 *(TX20230007) | ZONE TX06 *(TX20230006) | ZONE TX04 *(TX20230004) | ZONE TX05 *(TX20230005) | ZONE TX07 *(TX20230007) | ZONE TX06 *(TX20230006) | ZONE TX09 *(TX20230009) | ZONE TX09 *(TX20230009) | ZONE TX30 *(TX20230030) | ZONE TX37 *(TX20230037) | ZONE TX38 *(TX20230038) | ZONE TX45 *(TX20230045) |
|----------|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| 1428 | Agricultural Tractor Operator | | | | | | \$12.69 | | | | | | | | | \$11.75 | | |
| 1300 | Asphalt Distributor Operator | \$14.87 | \$13.48 | \$13.88 | \$15.72 | \$15.58 | \$15.72 | \$13.28 | \$15.32 | \$15.62 | \$14.36 | \$14.25 | \$14.03 | \$13.75 | \$14.06 | \$14.06 | \$14.40 | \$14.40 |
| 1303 | Asphalt Paving Machine Operator | \$13.40 | \$12.25 | \$12.35 | \$13.87 | \$14.05 | \$14.38 | \$14.20 | \$13.26 | \$13.99 | \$14.68 | \$12.92 | \$13.44 | \$12.53 | \$14.00 | \$14.32 | \$12.99 | \$12.99 |
| 1106 | Asphalt Raker | \$12.28 | \$10.61 | \$12.02 | \$14.21 | \$11.65 | \$12.12 | \$11.64 | \$11.44 | \$12.69 | \$12.05 | \$11.34 | \$11.67 | \$11.40 | \$12.59 | \$12.36 | \$11.78 | \$11.78 |
| 1112 | Batching Plant Operator, Asphalt | | | | | | | | | | | | | | | | | |
| 1115 | Batching Plant Operator, Concrete | | | | | | | | | | | | | | | | | |
| 1214 | Blaster | | | | | | | | | | | | | | | | | |
| 1615 | Boom Truck Operator | | | | | | \$18.36 | | | | | | | | | | | |
| 1444 | Boring Machine Operator | | | | | | | | | | | | | | | | | |
| 1305 | Broom or Sweeper Operator | \$11.21 | \$10.33 | \$10.08 | \$11.99 | | \$11.04 | \$11.62 | | \$11.74 | \$11.41 | \$10.30 | | \$10.23 | \$10.60 | \$12.68 | \$11.05 | \$11.05 |
| 1144 | Communications Cable Installer | | | | | | | | | | | | | | | | | |
| 1124 | Concrete Finisher, Paving and Structures | \$13.55 | \$12.46 | \$13.16 | \$12.85 | \$12.64 | \$12.56 | \$12.77 | \$12.44 | \$14.12 | \$13.04 | \$13.38 | \$12.64 | \$12.80 | \$12.79 | \$12.98 | \$13.32 | \$13.32 |
| 1318 | Concrete Pavement Finishing Machine Operator | | | | \$16.05 | | \$15.48 | | | \$16.05 | | \$19.31 | | | | | \$13.07 | \$13.07 |
| 1315 | Concrete Paving, Curing, Float, Texturing Machine Operator | | | | | | | | | | | \$16.34 | | | | | \$11.71 | \$11.71 |
| 1333 | Concrete Saw Operator | | | | \$14.67 | | | | | \$14.48 | \$17.33 | | | | | | \$13.99 | \$13.99 |
| 1399 | Concrete/Gunite Pump Operator | | | | | | | | | | | | | | | | | |
| 1344 | Crane Operator, Hydraulic 10 tons or less | | | | \$18.22 | | \$18.36 | | | \$18.12 | \$18.04 | \$20.21 | | | \$18.63 | \$13.96 | \$13.96 | \$13.96 |
| 1345 | Crane Operator, Lattice Boom 50 Tons or Less | \$16.82 | \$14.39 | \$13.85 | \$17.27 | | \$15.87 | | | \$17.27 | | \$14.67 | | | \$16.42 | \$14.97 | \$13.87 | \$13.87 |
| 1343 | Crane Operator, Lattice Boom Over 90 Tons | | | | \$20.52 | | \$19.38 | | | \$20.52 | | \$17.48 | | | \$25.13 | \$15.80 | \$15.80 | \$15.80 |
| 1306 | Crawler Tractor Operator | \$13.96 | \$16.63 | \$13.62 | \$14.26 | | \$15.67 | | | \$14.07 | \$13.15 | \$13.38 | | | \$14.60 | \$13.68 | \$13.50 | \$13.50 |
| 1351 | Crusher or Screen Plant Operator | | | | | | | | | | | | | | | | | |
| 1446 | Directional Drilling Locator | | | | | | \$11.67 | | | | | | | | | | | |
| 1445 | Directional Drilling Operator | | | | \$20.32 | | \$17.24 | | | | | | | | | | | |
| 1139 | Electrician | \$20.96 | | \$19.87 | \$19.90 | | \$26.35 | | \$20.27 | \$19.80 | | \$20.92 | | | | \$27.11 | \$19.87 | \$19.87 |
| 1347 | Excavator Operator, 50,000 pounds or less | \$13.46 | \$12.56 | \$13.67 | \$17.19 | | \$12.88 | \$14.38 | \$13.49 | \$17.19 | | \$13.88 | | | \$14.09 | \$12.71 | \$14.42 | \$14.42 |
| 1348 | Excavator Operator, Over 50,000 pounds | | \$15.23 | \$13.52 | \$17.04 | | \$17.71 | | | \$16.99 | \$18.80 | \$16.22 | | | | \$14.53 | \$13.52 | \$13.52 |
| 1150 | Flagger | \$9.30 | \$9.10 | \$9.50 | \$10.28 | \$8.81 | \$9.45 | \$8.70 | | \$10.06 | \$9.71 | \$9.03 | \$8.81 | \$9.08 | \$9.90 | \$10.33 | \$8.10 | \$8.10 |
| 1151 | Form Builder/Setter, Structures | \$13.52 | \$12.30 | \$13.38 | \$12.91 | \$12.71 | \$12.87 | \$12.38 | \$12.26 | \$13.84 | \$12.98 | \$13.07 | \$13.61 | \$12.82 | \$14.73 | \$12.23 | \$12.25 | \$12.25 |
| 1160 | Form Setter, Paving & Curb | \$12.36 | \$12.16 | \$13.93 | \$11.83 | \$10.71 | \$12.94 | | | \$13.16 | \$12.54 | \$11.33 | \$10.69 | | \$13.93 | \$12.94 | \$13.93 | \$13.93 |
| 1360 | Foundation Drill Operator, Crawler Mounted | | | | \$17.99 | | \$17.99 | | | \$17.99 | | | | | | \$17.43 | \$17.43 | \$17.43 |
| 1363 | Foundation Drill Operator, Truck Mounted | | \$16.86 | \$22.05 | \$21.51 | | \$16.93 | | | \$21.07 | \$20.20 | \$20.76 | | \$17.54 | \$21.39 | \$15.89 | \$22.05 | \$22.05 |
| 1369 | Front End Loader Operator, 3 CY or Less | \$12.29 | \$13.49 | \$13.40 | \$13.85 | | \$13.04 | \$13.15 | \$13.29 | \$13.69 | \$12.64 | \$12.89 | | | \$13.51 | \$13.32 | \$12.17 | \$12.17 |
| 1372 | Front End Loader Operator, Over 3 CY | \$12.77 | \$13.69 | \$12.33 | \$14.98 | | \$13.21 | \$12.86 | \$13.57 | \$14.72 | \$13.75 | \$12.32 | | | \$13.19 | \$13.17 | \$13.02 | \$13.02 |
| 1329 | Joint Sealer | | | | | | | | | | | | | | | | | |
| 1172 | Laborer, Common | \$10.30 | \$9.86 | \$10.08 | \$10.51 | \$10.71 | \$10.50 | \$10.24 | \$10.58 | \$10.72 | \$10.45 | \$10.30 | \$10.25 | \$10.03 | \$10.54 | \$11.02 | \$10.15 | \$10.15 |
| 1175 | Laborer, Utility | \$11.80 | \$11.53 | \$12.70 | \$12.17 | \$11.81 | \$12.27 | \$12.11 | \$11.33 | \$12.32 | \$11.80 | \$11.53 | \$11.23 | \$11.50 | \$11.95 | \$11.73 | \$12.37 | \$12.37 |
| 1346 | Loader/Backhoe Operator | \$14.18 | \$12.77 | \$12.97 | \$15.68 | | \$14.12 | | | \$15.18 | \$13.58 | \$12.87 | | | \$13.21 | \$14.13 | \$14.29 | \$12.90 |
| 1187 | Mechanic | \$20.14 | \$15.47 | \$17.47 | \$17.74 | \$17.00 | \$17.10 | | | \$17.69 | \$19.94 | \$15.59 | \$17.00 | \$16.61 | \$18.46 | \$16.96 | \$17.47 | \$17.47 |
| 1350 | Milling Machine Operator | \$15.54 | \$14.64 | \$12.22 | \$14.29 | | \$14.18 | | | \$14.32 | \$14.35 | \$12.85 | | | \$14.75 | \$13.53 | \$12.80 | \$12.80 |

| CLASS. # | CLASSIFICATION DESCRIPTION | ZONE TX02 *(TX20230002) | ZONE TX03 *(TX20230003) | ZONE TX04 *(TX20230004) | ZONE TX05 *(TX20230005) | ZONE TX06 *(TX20230006) | ZONE TX07 *(TX20230007) | ZONE TX08 *(TX20230008) | ZONE TX24 *(TX20230024) | ZONE TX25 *(TX20230025) | ZONE TX27 *(TX20230027) | ZONE TX26 *(TX20230026) | ZONE TX29 *(TX20230029) | ZONE TX30 *(TX20230030) | ZONE TX37 *(TX20230037) | ZONE TX36 *(TX20230036) | ZONE TX42 *(TX20230042) |
|----------|---|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| 1390 | Motor Grader Operator, Fine Grade | \$17.49 | \$16.52 | \$16.58 | \$17.12 | \$18.37 | \$18.51 | \$16.69 | \$16.13 | \$17.19 | \$18.35 | \$17.07 | \$17.74 | \$17.47 | \$17.06 | \$15.69 | \$20.01 |
| 1393 | Motor Grader Operator, Rough | \$16.15 | \$14.62 | \$15.53 | \$16.20 | \$17.07 | \$14.63 | \$18.50 | | \$16.02 | \$16.44 | \$15.12 | \$16.85 | \$14.47 | \$17.39 | \$14.23 | \$15.53 |
| 1413 | Off Road Hauler | | | \$10.08 | \$12.26 | | \$11.88 | | | \$12.25 | | \$12.23 | | \$13.00 | | \$14.60 | |
| 1196 | Painter, Structures | | | | | \$21.29 | \$18.34 | | | | | | \$21.29 | | | \$18.62 | |
| 1396 | Asphalt Marking Machine Operator | \$16.42 | | \$13.10 | \$13.55 | | \$19.17 | \$12.01 | | \$13.63 | \$14.60 | \$13.17 | | \$16.65 | \$10.54 | \$11.18 | \$13.10 |
| 1443 | Percussion or Rotary Drill Operator | | | | | | | | | | | | | | | | |
| 1202 | Piledriver | | | | | | | | | | | | | | | \$14.95 | |
| 1206 | Pipelayer | | \$11.07 | \$14.64 | \$13.17 | \$11.17 | \$12.79 | | \$11.37 | \$13.24 | \$12.66 | \$13.24 | \$11.17 | \$11.67 | | \$12.12 | \$14.64 |
| 1384 | Reclaimer/Pulverizer Operator | \$12.05 | | | \$11.90 | | \$12.88 | | | \$11.01 | | \$10.46 | | | | | |
| 1500 | Reinforcing Steel Worker | \$13.50 | \$14.07 | \$17.53 | \$16.17 | | \$14.00 | | | \$16.18 | \$12.74 | \$15.83 | | \$17.10 | | \$15.15 | \$17.72 |
| 1402 | Roller Operator, Asphalt | \$10.95 | | \$11.96 | \$13.29 | | \$12.78 | \$11.61 | | \$13.08 | \$12.36 | \$11.68 | | | \$11.71 | \$11.95 | \$11.50 |
| 1406 | Roller Operator, Other | \$10.36 | | \$10.44 | \$11.62 | | \$10.50 | \$11.64 | | \$11.51 | \$10.59 | \$10.30 | | \$12.04 | \$12.85 | \$11.57 | \$10.66 |
| 1411 | Scraper Operator | \$10.61 | \$11.07 | \$10.85 | \$12.88 | | \$12.27 | | \$11.12 | \$12.96 | \$11.88 | \$12.43 | | \$11.22 | \$13.95 | \$13.47 | \$10.89 |
| 1417 | Self-Propelled Hammer Operator | | | | | | | | | | | | | | | | |
| 1194 | Service | \$13.98 | \$12.34 | \$14.11 | \$14.74 | | \$14.51 | \$15.56 | \$13.44 | \$14.58 | \$14.31 | \$13.83 | | \$12.43 | \$13.72 | \$13.97 | \$14.11 |
| 1513 | Sign Erector | | | | | | | | | | | | | | | | |
| 1708 | Slurry Seal or Micro-Surfacing Machine Operator | | | | | | | | | | | | | | | | |
| 1341 | Small Slipform Machine Operator | | | | | | | | | \$15.96 | | | | | | | |
| 1515 | Spreader Box Operator | \$12.60 | | \$13.12 | \$14.71 | | \$14.04 | | | \$14.73 | \$13.84 | \$13.68 | | \$13.45 | \$11.83 | \$13.59 | \$14.05 |
| 1705 | Structural Steel Welder | | | | | | | | | | | | | | | \$12.85 | |
| 1509 | Structural Steel Worker | | | | | | \$19.29 | | | | | | | | | \$14.39 | |
| 1339 | Subgrade Trimmer | | | | | | | | | | | | | | | | |
| 1143 | Telecommunication Technician | | | | | | | | | | | | | | | | |
| 1146 | Traffic Signal/Light Pole Worker | | | | | | \$16.00 | | | | | | | | | | |
| 1440 | Trenching Machine Operator, Heavy | | | | | | \$18.48 | | | | | | | | | | |
| 1437 | Trenching Machine Operator, Light | | | | | | | | | | | | | | | | |
| 1609 | Truck Driver Lowboy/Flat | \$14.46 | \$13.63 | \$13.41 | \$15.00 | \$15.88 | \$15.66 | | | \$16.24 | \$16.39 | \$14.30 | \$16.62 | \$15.63 | \$14.26 | \$16.03 | \$13.41 |
| 1612 | Truck Driver Transil-Mix | | | | \$14.14 | | | | | \$14.14 | | | | | | | |
| 1600 | Truck Driver, Single-Axis | \$12.74 | \$10.82 | \$10.75 | \$13.04 | \$11.61 | \$11.79 | \$13.53 | \$13.16 | \$12.31 | \$13.40 | \$10.30 | \$11.61 | | \$11.97 | \$11.46 | \$10.75 |
| 1606 | Truck Driver, Single or Tandem Axle Dump Truck | \$11.33 | \$14.53 | \$11.95 | \$12.95 | \$11.68 | \$11.68 | | \$14.06 | \$12.62 | \$11.45 | \$12.28 | | \$13.08 | \$11.66 | \$11.48 | \$11.10 |
| 1607 | Truck Driver, Tandem Axle Tractor with Semi-Trailer | \$12.49 | \$12.12 | \$12.50 | \$13.42 | \$12.81 | \$13.16 | | | \$12.86 | \$16.22 | \$12.50 | | | \$13.80 | \$12.27 | \$12.50 |
| 1441 | Tunneling Machine Operator, Heavy | | | | | | | | | | | | | | | | |
| 1442 | Tunneling Machine Operator, Light | | | | | | | | | | | | | | | | |
| 1706 | Welder | | \$14.02 | | \$14.66 | | \$15.97 | | \$13.74 | \$14.84 | | | | | \$13.78 | | |
| 1520 | Work Zone Barricade Servicer | \$10.30 | \$12.88 | \$11.46 | \$11.70 | \$11.57 | \$11.85 | \$10.77 | | \$11.68 | \$12.20 | \$11.22 | \$11.51 | \$12.96 | \$10.54 | \$11.67 | \$11.76 |

Notes:

*Represents the USDOL wage decision.

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

For reference, the titles and descriptions for the classifications listed here are detailed further in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas* posted on the AGC's Web site for any contractor.

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

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

01/06/2023

EXHIBIT 8

DB CONTRACTOR OBLIGATIONS RELATED TO PROJECT-SPECIFIC THIRD PARTY AGREEMENTS

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

The parties acknowledge and agree that no draft Third Party Agreements are included in the RID.

EXHIBIT 9
ALLOWANCES

The Price includes the allowances specified in the table below (each an "Allowance"). Refer to the corresponding section of the Design-Build Specifications for a description of the Work that is included in the Allowance.

| Allowance Name | Allowance Amount | Reference |
|------------------------------------|-------------------------|--|
| Core Office Furniture Allowance | \$15,000 | Design-Build Specifications Section 10.1.1.5 |
| Field Office Furniture Allowance | \$15,000 | Design-Build Specifications Section 10.1.2.5 |
| Project Milestone Events Allowance | \$50,000 | Design-Build Specifications Section 11.11 |
| Safety Allowance | \$50,000 | Design-Build Specifications Section 26.3.1.2 |

EXHIBIT 10**MAXIMUM PAYMENT SCHEDULE**

| Months after NTP 1 | Cumulative Draw |
|---------------------------|------------------------|
| 1. | \$6,018,813.00 |
| 2. | \$6,858,647.00 |
| 3. | \$13,787,280.00 |
| 4. | \$19,036,245.00 |
| 5. | \$67,606,667.00 |
| 6. | \$84,963,246.00 |
| 7. | \$127,094,938.00 |
| 8. | \$136,543,075.00 |
| 9. | \$146,551,102.00 |
| 10. | \$156,629,115.00 |
| 11. | \$166,497,169.00 |
| 12. | \$180,354,437.00 |
| 13. | \$193,511,843.00 |
| 14. | \$206,109,359.00 |
| 15. | \$223,535,923.00 |
| 16. | \$255,659,589.00 |
| 17. | \$267,627,229.00 |
| 18. | \$284,423,917.00 |
| 19. | \$301,360,577.00 |
| 20. | \$316,827,527.00 |
| 21. | \$332,924,353.00 |
| 22. | \$349,651,055.00 |
| 23. | \$365,887,853.00 |
| 24. | \$378,275,410.00 |
| 25. | \$388,493,395.00 |
| 26. | \$396,471,822.00 |
| 27. | \$410,888,979.00 |
| 28. | \$421,946,799.00 |
| 29. | \$439,513,335.00 |
| 30. | \$460,579,181.00 |
| 31. | \$480,455,262.00 |
| 32. | \$499,281,550.00 |
| 33. | \$518,807,700.00 |
| 34. | \$534,134,678.00 |
| 35. | \$547,362,070.00 |
| 36. | \$561,569,269.00 |
| 37. | \$574,446,730.00 |

| Months after NTP 1 | Cumulative Draw |
|---------------------------|------------------------|
| 38. | \$585,574,536.00 |
| 39. | \$598,312,024.00 |
| 40. | \$609,019,913.00 |
| 41. | \$621,477,457.00 |
| 42. | \$632,465,290.00 |
| 43. | \$640,793,648.00 |
| 44. | \$650,661,702.00 |
| 45. | \$658,500,156.00 |
| 46. | \$665,918,693.00 |
| 47. | \$675,226,858.00 |
| 48. | \$683,065,312.00 |
| 49. | \$687,754,387.00 |
| 50. | \$691,043,738.00 |
| 51. | \$693,563,241.00 |
| 52. | \$694,892,979.00 |
| 53. | \$696,222,717.00 |
| 54. | \$697,202,524.00 |
| 55. | \$698,042,358.00 |
| 56. | \$698,882,192.00 |
| 57. | \$699,092,151.00 |
| 58. | \$699,302,110.00 |
| 59. | \$699,512,069.00 |
| 60. | \$699,862,000.00 |

TOTAL PRICE (MAXIMUM PAYMENT): \$699,862,000.00

TOTAL MOBILIZATION PAYMENT ACTIVITY AMOUNT: \$69,985,421.00¹

¹The Mobilization Payment Activity Amount is included in the total Price.

EXHIBIT 11

**MAXIMUM REIMBURSEMENT AMOUNTS FOR
EMINENT DOMAIN ASSISTANCE**

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

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

EXHIBIT 12

FORMS OF BONDS

- Appendix 1: Form of Performance Bond
- Appendix 2: Form of Payment Bond

APPENDIX 1 TO EXHIBIT 12

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

I-35 NEX SOUTH PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Lone Star Constructors, NEX, a Texas joint venture consisting of Fluor Enterprises, Inc., a California corporation, and Austin Bridge & Road, LP, a Delaware limited partnership, (“Principal”), a Design-Build Contract for the I-35 NEX South Project, duly executed and delivered as of August 16, 2023 (the “DBC”) on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and Liberty Mutual Insurance Company; Travelers Casualty and Surety Company; Zurich American Insurance Company; Fidelity and Deposit Company of Maryland; Federal Insurance Company; Berkshire Hathaway Specialty Insurance Company; Hartford Fire Insurance Company and Western Surety Company corporations (as indicated on the attached page) respectively, (“Co-Sureties”), all admitted surety insurers in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$20,000,000, which amount shall increase automatically to the amount of \$516,693,390.00, effective upon issuance by the Obligee of the earlier of Limited NTP2 or NTP2 under the DBC (the “Bonded Sum”), for payment of which sum Principal and each Co-Surety jointly and severally firmly bind themselves and their successors and assigns. Each of the Co-Sureties and Principal hereby consent to the automatic increase of the Bonded Sum as set forth in the prior sentence and waive notice related to such increase.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

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

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

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

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

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

- a. arrange for the Principal to perform and complete the DBC; or
- b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through their agents or through independent contractors; or
- c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBC, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or
- d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

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

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

- a. the responsibilities of the Principal for correction of defective work and completion of the Work;
- b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Co-Sureties under Paragraph 4 of this Bond; and
- c. Liquidated Damages, Qualifying Delay Late Fees, Noncompliance Charges, Key Personnel Change Fees and Lane Rental Charges under the DBC.

7. Co-Sureties agree that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the Contract Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any of the Contract Documents, or any rescission or attempted rescission of the DBC, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of Co-Sureties on this Bond, and Co-Sureties hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications. Co-Sureties agree that payments made to contractors and suppliers to satisfy claims on the Payment Bond do not reduce Co-Sureties' legal obligations

under this Bond. Payments made to contractors or suppliers under any agreement where Co-Sureties have arranged for completion of the work to satisfy this Bond will not be considered Payment Bond claims.

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

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

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

[Signature page follows]

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this Bond to be executed and delivered as of _____, 2023.

Principal: Lone Star Constructors NEX,
an unincorporated joint venture
Comprised of:

Fluor Enterprises, Inc.

By: _____
Its: _____
(Seal)

Austin Bridge & Road, LP

By: _____
Its: _____
(Seal)

Co-Surety Liberty Mutual Insurance Company

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety Travelers Casualty and Surety Company

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety Zurich American Insurance Company

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety Fidelity and Deposit Company of Maryland

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety Federal Insurance Company

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety Berkshire Hathaway Specialty Insurance Company

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety Hartford Fire Insurance Company

By: _____
Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

Co-Surety

Western Surety Company

By: _____

Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

or secretary attest

**CO-SURETIES: Liberty Mutual Insurance Company,
Travelers Casualty and Surety Company, Zurich
American Insurance Company, Fidelity and Deposit
Company of Maryland, Federal Insurance Company,
Berkshire Hathaway Specialty Insurance Company,
Hartford Fire Insurance Company, Western Surety
Company**

By: _____

Name: Kathy R. Mair

Title: Attorney-in-Fact

Address:

CO-SURETIES

| <u>SURETY NAME</u> | <u>SURETY ADDRESS</u> | <u>INCORPORATED IN</u> |
|---|---|------------------------|
| Liberty Mutual Insurance Company AM Best Rating: A XV | 175 Berkeley Street Boston, MA 02116-5066 | State of Massachusetts |
| Travelers Casualty and Surety Company AM Best Rating: A++ XV | One Tower Square Hartford, CT 06183 | State of Connecticut |
| Zurich American Insurance Company AM Best Rating: A+ XV | 1299 Zurich Way, 5th Floor Schaumburg, IL 60196-1056 | State of New York |
| Fidelity and Deposit Company of Maryland AM Best Rating: A+ XV | 1299 Zurich Way 5th Floor Schaumburg, IL 60196-1056 | State of Illinois |
| Federal Insurance Company AM Best Rating: A++ XV | 202B Halls Mill Road Whitehouse Station, NJ 08889-1650 | State of Indiana |
| Berkshire Hathaway Specialty Insurance Company AM Best Rating: A++ XV | 1314 Douglas Street, Suite 1400 Omaha, NE 68102-1944 | State of Nebraska |
| Hartford Fire Insurance Company AM Best Rating: A+ XV | One Hartford Plaza Hartford, CT 06155-0001 | State of Connecticut |
| Western Surety Company AM Best Rating: A XIV | 151 N. Franklin Street Chicago, IL 60606-1915 | State of South Dakota |

APPENDIX 2 TO EXHIBIT 12

FORM OF PAYMENT BOND

[To be replaced by actual Payment Bond]

I-35 NEX SOUTH PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Lone Star Constructors, NEX, a Texas joint venture consisting of Fluor Enterprises, Inc., a California corporation, and Austin Bridge & Road, LP, a Delaware limited partnership, (“Principal”), a Design-Build Contract for of the I-35 NEX South Project, duly executed and delivered as of August 16, 2023 (the “DBC”) on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and Liberty Mutual Insurance Company; Travelers Casualty and Surety Company; Zurich American Insurance Company; Fidelity and Deposit Company of Maryland; Federal Insurance Company; Berkshire Hathaway Specialty Insurance Company; Hartford Fire Insurance Company and Western Surety Company corporations (as indicated on the attached page), respectively, (“Co-Sureties”), all admitted surety insurers in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$20,000,000, which amount shall increase automatically to the amount of \$516,693,390.00, effective upon issuance by Obligee of the earlier of Limited NTP2 or NTP2 under the DBC (the “Bonded Sum”), for payment of which sum Principal and each Co-Surety jointly and severally firmly bind themselves and their successors and assigns. Each of Co-Sureties and Principal hereby consents to the automatic increase of the Bonded Sum as set forth in the prior sentence and waive notice related to such increase.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Co-Sureties shall pay for the same in an amount not to exceed the Bonded Sum.

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

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

2. Co-Sureties agree that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the Contract Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any of the Contract Documents, or any rescission or attempted rescission of the DBC, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of Co-Sureties on this Bond, and Co-Sureties hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications. Co-Sureties agree that payments made under the Performance Bond do not reduce Co-Sureties' legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where Surety has arranged for completion of the work to satisfy the Performance Bond will not be considered claims on this Bond.

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

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

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

[Signature page follows]

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this Bond to be executed and delivered as of _____, 2023.

Principal: Lone Star Constructors NEX,
an unincorporated joint venture
Comprised of:
Fluor Enterprises, Inc.

By: _____
Its: _____
(Seal)

Austin Bridge & Road, LP

By: _____
Its: _____
(Seal)

Co-Surety Liberty Mutual Insurance Company
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety Travelers Casualty and Surety Company
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety Zurich American Insurance Company
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety Fidelity and Deposit Company of Maryland
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety Federal Insurance Company
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety Berkshire Hathaway Specialty Insurance Company
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety Hartford Fire Insurance Company
By: _____
Its: Kathy R. Mair, Attorney-in-Fact
(Seal)

Co-Surety

Western Surety Company

By: _____

Its: Kathy R. Mair, Attorney-in-Fact

(Seal)

or secretary attest

CO-SURETIES: Liberty Mutual Insurance Company, Travelers Casualty and Surety Company, Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Federal Insurance Company, Berkshire Hathaway Specialty Insurance Company, Hartford Fire Insurance Company, Western Surety Company

By: _____

Name: Kathy R. Mair

Title: Attorney-in-Fact

Address:

CO-SURETIES

| <u>SURETY NAME</u> | <u>SURETY ADDRESS</u> | <u>INCORPORATED IN</u> |
|--|---|------------------------|
| Liberty Mutual Insurance Company AM Best Rating: A XV | 175 Berkeley Street Boston, MA 02116-5066 | State of Massachusetts |
| Travelers Casualty and Surety Company AM Best Rating: A++ XV | One Tower Square Hartford, CT 06183 | State of Connecticut |
| Zurich American Insurance Company AM Best Rating: A+ XV | 1299 Zurich Way, 5th Floor Schaumburg, IL 60196-1056 | State of New York |
| Fidelity and Deposit Company of Maryland AM Best Rating: A+ XV | 1299 Zurich Way 5th Floor Schaumburg, IL 60196-1056 | State of Illinois |
| Federal Insurance Company AM Best Rating: A++ XV | 202B Halls Mill Road Whitehouse Station, NJ 08889-1650 | State of Indiana |
| Berkshire Hathaway Specialty Insurance Company AM Best Rating: A++ XV | 1314 Douglas Street, Suite 1400 Omaha, NE 68102-1944 | State of Nebraska |
| Hartford Fire Insurance Company AM Best Rating: A+ XV | One Hartford Plaza Hartford, CT 06155-0001 | State of Connecticut |
| Western Surety Company AM Best Rating: A XIV | 151 N. Franklin Street Chicago, IL 60606-1915 | State of South Dakota |

EXHIBIT 13

FORM OF GUARANTY

GUARANTY

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Liability of Guarantor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to TxDOT:

Texas Department of Transportation
San Antonio District Office
4615 NW Loop 410
San Antonio, Texas 78229-0928
Attention: Gina Gallegos, P.E.
Telephone: (210) 615-1110
Email: Gina.Gallegos@txdot.gov

With copies to:

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

If to Guarantor:

Attention: _____
Telephone: _____
Facsimile: _____

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

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

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

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

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

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

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

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy,

insolvency, receivership, reorganization, liquidation or arrangement of DB Contractor or by any defense that DB Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if DB Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

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

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

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

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

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

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT 14

CHANGE ORDER AND DELAY DEDUCTIBLE DETERMINATION FORMS

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

APPENDIX 1 TO EXHIBIT 14

FORM OF REQUEST FOR CHANGE ORDER

REQUEST FOR CHANGE ORDER NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: Lone Star Constructors, NEX

DESCRIPTION:

SCOPE:

REASON FOR REQUEST FOR CHANGE ORDER:

SECTION II

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

This Request for Change Order is for (check all that apply):

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

This Request for Change Order considers "Federal Participation" (check one box) Yes ____ No ____:

Section IIA¹

Lump sum price is \$ _____

Section IIB²

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

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

Section IIC³

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

- A. DB Contractor Labor (construction)
- 1. Wages (unburdened) \$ _____
 - 2. Insurance and taxes⁴ (45% of A.1) \$ _____
- B. DB Contractor and Subcontractor Labor (professional services)
- 1. Wages (unburdened) \$ _____
 - 2. Labor surcharge (145% of B.1, which includes overhead and profit) \$ _____
- C. Materials (with taxes, freight and discounts) \$ _____

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

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

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

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

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

SECTION III

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

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

SECTION IV⁷

The status of the Substantial Completion Deadline is as follows:

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

The status of the Final Acceptance Deadline is as follows:

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

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

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

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

⁷ Revise list of Completion Deadlines if applicable to the Project

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

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

Change order required under CMC? Yes_____/No_____

If yes, state reason:

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

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

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

DB Contractor Authorized Representative

Date: _____

SECTION V **(Reviewed/Approved by TxDOT District Engineer)**

TxDOT District Engineer

Date: _____

Comments:

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

FHWA Project Representative

Date: _____

Comments:

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

TxDOT Chief Engineer

Date: _____

Comments:

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

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

TxDOT Chief Financial Officer

Date: _____

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

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

Comments:

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

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

TxDOT Executive Director

Date: _____

Comments:

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

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

APPENDIX 2 TO EXHIBIT 14

FORM OF CHANGE ORDER

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

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION:

SCOPE:

REASON FOR CHANGE ORDER:

SECTION II

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

This Change Order is for (check all that apply):

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

This Change Order considers "Federal Participation" (check one box) Yes ___ No ___:

Section IIA¹

Lump sum price is \$ _____

Section IIB²

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

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

Section IIC³

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

- A. DB Contractor Labor (construction)
1. Wages (unburdened) \$ _____
 2. Insurance and taxes⁴ (45% of A.1) \$ _____
- B. DB Contractor and Subcontractor Labor (professional services)
1. Wages (unburdened) \$ _____
 2. Labor surcharge (145% of B.1, which includes overhead and profit) \$ _____

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

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

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

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

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

SECTION III

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

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

SECTION IV⁷

The status of the Substantial Completion Deadline is as follows:

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

The status of the Final Acceptance Deadline is as follows:

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

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

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

⁷ Revise list of Completion Deadlines if applicable to the Project

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

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

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

Justification for Change Order with reference to the Contract Documents:

Change order required under Capital Maintenance Contract? Yes _____/No _____

If yes, state reason:

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

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

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

DB Contractor Authorized Representative

Date: _____

SECTION V **(Reviewed by TxDOT District Engineer)**

TxDOT District Engineer

Date: _____

Comments:

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

FHWA Project Representative

Date: _____

Comments:

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

TxDOT Chief Engineer

Date: _____

Comments:

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

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

TxDOT Chief Financial Officer

Date: _____

Comments:

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

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

TxDOT Executive Director

Date _____

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

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

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

Comments:

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

APPENDIX 3 TO EXHIBIT 14

FORM OF REQUEST FOR DELAY DEDUCTIBLE DETERMINATION

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION OF QUALIFYING DELAY:

IMPACT TO CRITICAL PATH:

REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:

SECTION II

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

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

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

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

(a) the above represents a true and complete summary of all aspects of this Request for a Delay Deductible Determination;

(b) the total delay the Critical Path resulting from the Qualifying Delay is entirely within the Delay Deductible, and DB Contractor is not seeking an extension of a Completion Deadline or increase in Price on account of the delay to the Critical Path;

(c) the requested credit toward the Delay Deductible Aggregate Cap is justified; and

(d) the Time Impact Analysis and supporting documentation form the basis for the Request for Delay Deductible Determination is complete, accurate and current.

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

DB Contractor Authorized Representative

Date: _____

SECTION III (Reviewed by TxDOT District Engineer)

TxDOT District Engineer

Date: _____

Comments:

SECTION IV (Reviewed by FHWA Project Representative, if applicable)¹

FHWA Project Representative

Date: _____

Comments:

SECTION V (Reviewed by TxDOT Chief Engineer, if applicable)²

TxDOT Chief Engineer

Date: _____

Comments:

SECTION VI (Reviewed by Chief Financial Officer, if applicable)³

TxDOT Chief Financial Officer

Date: _____

Comments:

SECTION VII (Reviewed by TxDOT Executive Director, if applicable)⁴

TxDOT Executive Director

Date: _____

¹ If not required, insert "NOT APPLICABLE" in signature line.

² If not required, insert "NOT APPLICABLE" in signature line.

³ If not required, insert "NOT APPLICABLE" in signature line.

⁴ If not required, insert "NOT APPLICABLE" in signature line.

Comments:

APPENDIX 4 TO EXHIBIT 14

FORM OF DELAY DEDUCTIBLE DETERMINATION

DELAY DEDUCTIBLE DETERMINATION NO. _____

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• DB Contractor Name: _____

DESCRIPTION OF QUALIFYING DELAY:

IMPACT TO CRITICAL PATH:

REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:

SECTION II

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

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

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

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

SECTION III (Approved by TxDOT District Engineer)

TxDOT District Engineer

Date: _____

Comments:

SECTION IV (Reviewed by FHWA Project Representative, if applicable)¹

FHWA Project Representative

Date: _____

Comments:

SECTION V (Reviewed by TxDOT Chief Engineer, if applicable)²

TxDOT Chief Engineer

Date: _____

Comments:

SECTION VI (Reviewed by Chief Financial Officer, if applicable)³

¹ If not required, insert "NOT APPLICABLE" in signature line.

² If not required, insert "NOT APPLICABLE" in signature line.

³ If not required, insert "NOT APPLICABLE" in signature line.

TxDOT Chief Financial Officer

Date: _____

Comments:

SECTION VII (Reviewed by TxDOT Executive Director, if applicable)⁴

TxDOT Executive Director

Date: _____

Comments:

⁴ If not required, insert "NOT APPLICABLE" in signature line.

EXHIBIT 15

LANE RENTAL CHARGES AND LIQUIDATED DAMAGES FOR LANE CLOSURES

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

A. Non-Chargeable Lane Closures and Chargeable Lane Closures

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

B. General Requirements for Lane Closures

1. Except for Lane Closures required due to Incidents or Emergencies, advance written notice of any Lane Closure (a "Lane Closure Notice" or "LCN") must be provided to TxDOT no fewer than fourteen days before the placement of any traffic control devices associated with the Lane Closure, if the Lane Closure is expected to exceed 24 hours in duration. If the Lane Closure is expected to be 24 hours or less, the LCN must be provided to TxDOT no later than seven days before the placement of any traffic control devices associated with the Lane Closure. The LCN shall provide information as to the location and duration of the Lane Closure, and shall contain such other information as requested by TxDOT.
2. Except for Lane Closures required due to Incidents or Emergencies and Full Roadway Closures, all Lane Closures shall be pursuant to a TCP submitted to TxDOT for approval a minimum of fourteen days in advance of the Lane Closure. This requirement is increased to 21 days for Full Roadway Closures as described in Item 26 of the Design-Build Specifications. For purposes of this Exhibit 15, a "Full Roadway Closure" means a Lane Closure of the elevated lanes, mainlanes, frontage roads, mainlane ramps, connector ramps or cross streets such that the applicable facility has no lanes or shoulders available to traffic in one direction of travel. Lane Closures that result in no lanes being available to traffic in both directions shall be considered two separate Full Roadway Closures. Approval of the TCP shall be in TxDOT's good faith discretion. TxDOT and DB Contractor may agree on a standard TCP which can be used on a recurring basis for Lane Closures that come within the parameters of the TCP.
3. Lane Closures shall comply with the approved Traffic Management Plan and an approved TCP. No Lane Closure will be permitted unless DB Contractor can demonstrate that the Lane Closure will provide clear benefit to the progress of the Work. Lane Closures must be coordinated with adjacent projects. When simultaneous requests for traffic control are received from DB Contractor, adjacent projects, and/or Governmental Entities, TxDOT will give priority to the closure request submitted first. For Lane Closures on a non-TxDOT controlled facility, DB Contractor shall obtain approval from the applicable Governmental Entity in addition to approval from TxDOT. DB Contractor shall coordinate Lane Closures that may affect crossing TxDOT facilities with appropriate TxDOT Project staff, as needed, to ensure that no conflicts occur. In addition to obtaining applicable Governmental Entity and TxDOT advance approval, DB Contractor shall inform the PIO no less than five days in advance of all Lane Closures so the PIO can inform the public, emergency services, schools, etc. as needed.

4. DB Contractor shall consider the safety of workers and the traveling public as the primary factor when determining the appropriate time to implement a Lane Closure.
5. The following TxDOT standards, specifications, procedure manuals, and references apply to all Lane Closures:
 - Texas Manual of Uniform Traffic Control Devices (TMUTCD);
 - TxDOT Traffic Control Plan (TCP) standards;
 - TxDOT Barricade and Construction (BC) standards; and
 - TxDOT Standard Specifications Item 502 (Barricades Signs and Traffic Handling).

C. Liquidated Damages for Lane Closures and Lane Rental Charges

No Lane Rental Charges and no Liquidated Damages shall be assessed for a Non-Chargeable Lane Closure. Notwithstanding the foregoing, TxDOT may assess Non-Compliance Points for any Lane Closure which occurs without DB Contractor following the requirements of the DBC for Lane Closures, including, but not limited to, this Exhibit 15.

If a Noncompliance Event referred to in items 34 and 35 in the Noncompliance Events Table set forth in Exhibit 16 to this DBA occurs (i.e., a failure to properly identify and timely address the hazard mitigation for a Category 1 Defect), then notwithstanding that the affected travel lane(s) remain open to traffic, TxDOT shall have the right to assess a Lane Rental Charge for a Lane Closure for the relevant travel lane in addition to the applicable Noncompliance Points until the hazard to Users has been mitigated and the Noncompliance Event has been cured.

Either Liquidated Damages or Lane Rental Charges shall be assessed for Chargeable Lane Closures, as provided in more detail below.

1. Liquidated Damages for Lane Closures. Liquidated Damages for Lane Closures shall be assessed for Lane Closures that result in less than the minimum number of lanes that must be maintained as described in Section D and that occur during (i) a Holiday or a Special Event, (ii) Time Period A, or (iii) shoulder closures that constitute a Lane Closure, as described in Section 26.2.1.2 of the Design-Build Specifications. DB Contractor shall be liable for Liquidated Damages for Lane Closures for such Lane Closures pursuant to Section 8.7.2 of the General Conditions and Section 7.3 and Exhibit 15 of this DBA. The Liquidated Damages for Lane Closures are set forth below in Table 15-1 for the applicable number of lanes that are closed below the minimum number of lanes set forth in Section D.
2. Lane Rental Charges. Lane Rental Charges shall be assessed for any Chargeable Lane Closure, other than (i) a Lane Closure that occurs during a Holiday or a Special Event, or (ii) a Lane Closure during Time Period A. DB Contractor shall be liable for Lane Rental Charges for such Lane Closures pursuant to Section 8.7.2 of the General Conditions and Section 7.3 and Exhibit 15 of this DBA. The Lane Rental Charges are set forth below in Table 15-1 for the applicable number of lanes that are closed below the minimum number of lanes set forth in Section D.
3. Lane Rental Bank. The Lane Rental Bank amount for the Project shall be \$32 million. DB Contractor shall use the Lane Rental Bank amount during the term of the DBC to pay for Lane Rental Charges assessed for Lane Closures during Time Periods B and C in accordance with Table 15-1. Lane Closures during Time Period A and Holidays/Special Events are not eligible for the Lane Rental Bank provisions. Any Lane Rental Charges in excess of the Lane Rental Bank amount will be deducted from DB Contractor's monthly Draw Request or Final Payment.

Table 15-1: Liquidated Damages for Lane Closures and Lane Rental Charges

| I-35 NEX SOUTH | Time Period A and Holidays / Special Events Liquidated Damages Per Hour | Time Period B Lane Rental Charges Per Hour | Time Period C Lane Rental Charges Per Hour |
|---|--|---|---|
| ELEVATED LANES (See Note 1) | | | |
| I-35 (2 LANE CONNECTORS) | | | |
| One Lane Closed | \$10,000 | \$2,500 | \$500 |
| Two Lanes Closed (Full Roadway Closure) | \$15,000 | \$5,000 | \$1,000 |
| I-35 (3 LANES) | | | |
| One Lane Closed | \$10,000 | \$3,000 | \$500 |
| Two Lanes Closed | \$35,000 | \$10,000 | \$2,000 |
| Three Lanes Closed (Full Roadway Closure) | \$45,000 | \$15,000 | \$3,000 |
| MAINLANES (See Note 2) | | | |
| I-35 (3 LANES) | | | |
| One Lane Closed | \$15,000 | \$2,000 | \$0 |
| Two Lanes Closed | \$40,000 | \$5,000 | \$100 |
| Three Lanes Closed (Full Roadway Closure) | \$55,000 | \$15,000 | \$3,500 |
| I-35 (4 LANES) | | | |
| One Lane Closed | \$15,000 | \$2,000 | \$0 |
| Two Lanes Closed | \$30,000 | \$5,000 | \$100 |
| Three Lanes Closed | \$80,000 | \$10,000 | \$1,500 |
| Four Lanes Closed (Full Roadway Closure) | \$100,000 | \$25,000 | \$5,000 |
| I-35 (5 LANES) | | | |
| One Lane Closed | \$15,000 | \$2,500 | \$0 |
| Two Lanes Closed | \$30,000 | \$5,000 | \$100 |
| Three Lanes Closed | \$50,000 | \$10,000 | \$500 |
| Four Lanes Closed | \$80,000 | \$15,000 | \$1,000 |
| Five Lanes Closed (Full Roadway Closure) | \$100,000 | \$25,000 | \$5,000 |
| I-410 SOUTH (2 LANES) | | | |
| One Lane Closed | \$40,000 | \$5,000 | \$100 |

| I-35 NEX SOUTH | Time Period A and Holidays / Special Events Liquidated Damages Per Hour | Time Period B Lane Rental Charges Per Hour | Time Period C Lane Rental Charges Per Hour |
|---|--|---|---|
| Two Lanes Closed (Full Roadway Closure) | \$50,000 | \$15,000 | \$3,000 |
| I-410 SOUTH (3 LANES) | | | |
| One Lane Closed | \$10,000 | \$2,000 | \$0 |
| Two Lanes Closed | \$40,000 | \$5,000 | \$100 |
| Three Lanes Closed (Full Roadway Closure) | \$50,000 | \$15,000 | \$3,000 |
| MAINLANE RAMPS | | | |
| I-35 (1 LANE) | | | |
| I-35 (Full Roadway Closures) | \$15,000 | \$4,000 | \$1,000 |
| I-35 (2 LANES) | | | |
| One Lane Closed | \$15,000 | \$2,500 | \$0 |
| I-35 (Full Roadway Closures) | \$15,000 | \$4,000 | \$1,000 |
| EXISTING CONNECTOR RAMPS | | | |
| I-410 (1 LANE) | | | |
| I-410 (Full Roadway Closure) | \$10,000 | \$1,000 | \$50 |
| I-410 (2 LANES) | | | |
| One Lane Closed | \$10,000 | \$1,000 | \$50 |
| Two Lane Closed (Full Roadway Closure) | \$13,000 | \$3,000 | \$500 |
| FRONTAGE ROADS (See Note 3) | | | |
| I-35 (2 LANES) | | | |
| One Lane Closed | \$20,000 | \$2,000 | \$50 |
| Two Lanes Closed (Full Roadway Closure) | \$30,000 | \$7,000 | \$2,000 |
| I-35 (3 LANES) | | | |
| One Lane Closed | \$7,000 | \$1,000 | \$0 |
| Two Lanes Closed | \$25,000 | \$3,000 | \$100 |
| Three Lanes Closed (Full Roadway Closure) | \$30,000 | \$7,000 | \$2,000 |
| I-410 SOUTH (2 LANES) | | | |

| I-35 NEX SOUTH | Time Period A and Holidays / Special Events Liquidated Damages Per Hour | Time Period B Lane Rental Charges Per Hour | Time Period C Lane Rental Charges Per Hour |
|---|--|---|---|
| One Lane Closed | \$10,000 | \$1,000 | \$50 |
| Two Lanes Closed (Full Roadway Closure) | \$13,000 | \$3,000 | \$500 |
| CROSS STREETS (See Note 4) | | | |
| One Lane Closed | \$12,000 | \$3,000 | \$0 |
| Two Lanes Closed (Full Roadway Closure) | \$24,000 | \$6,000 | \$1,500 |

Notes:

1. DB Contractor shall be subject to Liquidated Damages and Lane Rental Charges for Lane Closures of the elevated lanes after the date DB Contractor achieves "Milestone 1 Completion" and "Milestone 2 Completion" for the applicable lanes.
2. Auxiliary lanes shall be considered mainlanes for the purpose of assessing Liquidated Damages and Lane Rental Charges.
3. Lane Closures of acceleration lanes on frontage roads from cross streets shall be subject to Liquidated Damages or Lane Rental Charges, as applicable, in an amount equal to the amount charged for a single Lane Closure on 3-lane frontage roads, unless DB Contractor identifies the applicable Lane Closure in a TCP and the Lane Closure is allowed with TxDOT approval of the TCP.
4. During Time Period C, single Lane Closures of Cross Streets are not subject to Lane Rental Charges provided DB Contractor maintains one lane of traffic in each direction.

The above amounts will be prorated for each quarter hour, or any part thereof, that a Lane Closure occurs if such Lane Closure results in less than the minimum number of lanes that is required to be maintained in accordance with Section D. A Lane Closure of 30 minutes or shorter spanning two clock hours shall be measured as occupying only one clock hour (that clock hour having the higher Lane Rental Charges amount).

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

The minimum number of lanes and movements to be maintained after issuance of NTP2 are listed below.

All Lane Closures that do not meet the minimum number of lanes requirements or allowable Lane Closure requirements specified in this Section D, are subject to Liquidated Damages during Time Period A and Holidays/Special Events, and Lane Rental Charges during Time Periods B and C, except for Lane Closures for Incidents or Emergencies.

The allowable Lane Closures defined in Sections D.1 - D.6 are allowable for specific durations at specific locations and are not subject to Liquidated Damages or Lane Rental Charges, as applicable, pursuant to an approved TCP. The allowable Lane Closures shall have the maximum allowable durations shown in Tables 15-2.1 to 15-2.3. Such durations shall exclude the time periods for Holidays/Special Events and for Incidents and Emergencies listed in Sections F, G and H, respectively. If Work extends beyond the allowable durations for such operations, then Liquidated Damages and/or Lane Rental Charges will be assessed, as applicable.

Time Period A Lane Closures are not eligible for the Lane Rental Bank provisions. Provision for Liquidated Damages for Lane Closures and allowable Lane Closures during Time Period A do not imply TxDOT's consent to allow Lane Closures during Time Period A, except to the extent such Lane Closures are otherwise identified as allowable under this Section D.

D.1 Mainlanes

DB Contractor shall maintain the same number of mainlanes as the current number of mainlanes in each direction, except as permitted by the minimum number of lanes requirements and allowable Lane Closure requirements specified in this Section D.1. Lane Closures that comply with the minimum number of lanes requirements and the allowable Lane Closure requirements specified in this Section D.1 are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP.

- During Time Period C, a single mainlane Lane Closure is allowed for mainlanes with 3 lanes or more in one direction.
- During Time Period C, and only after opening of the elevated lanes, the closure of two mainlanes is allowed adjacent to the segment of elevated lanes open to traffic.
- During Time Period C, and only for the purpose of performing base repairs, DB Contractor is allowed to close two adjacent mainlanes where there are 3 or more lanes in one direction.
- During Time Period B and Time Period C, and only for the purpose of performing base repairs, a single mainlane Lane Closure is allowed for mainlanes.

D.2 Ramps

DB Contractor shall maintain the same number of mainlane ramp lanes as the current number of mainlane ramp lanes in each direction, except as permitted by the allowable Lane Closure requirements specified in this Section D.2, which are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP.

The approved TCP for any full ramp closure must provide alternate access for the duration of the closure either by means of an adjacent existing ramp or temporary ramp that maintains access to/from the cross street served by the closed ramp, otherwise the closure shall be subject to Liquidated Damages or Lane Rental Charges, as applicable. If an existing ramp is closed and is replaced with either an adjacent existing ramp or temporary ramp, then the Lane Closure resulting from the relocation of the existing ramp shall not be subject to Liquidated Damages or Lane Rental Charges.

If a portion of a roadway servicing a ramp is closed, preventing access to the ramp, and such portion of the roadway is subject to either Liquidated Damages or Lane Rental Charges, then Liquidated Damages or Lane Rental Charges, as applicable, shall only be assessed for the greater of (i) the assessment amount for the ramp closure and (ii) the assessment amount of the closed portion of the roadway servicing the ramp.

All the frontage road lanes between the closed and alternate ramp must remain open for the duration of the closure.

Table 15-2.1 – Allowable Ramp Lane Closures

| No. | Centerline Station | Closure Type | Closure Description | Allowable Duration (Days) |
|-----|--------------------|--------------|------------------------------------|---------------------------|
| 1 | 3355+00 (I35 CL) | Ramp | I35 NB to Eisenhower Rd. Exit Ramp | 30 |

Notes:

1. The allowable ramp Lane Closure in Table 15-2.1 is for a single lane closure.

D.3 Direct Connectors

DB Contractor shall maintain the same number of connector ramp lanes as the current number of connector ramp lanes in each direction.

D.4 Frontage Roads

DB Contractor shall maintain the same number of frontage road lanes as the current number of frontage road lanes in each direction, except as permitted by the minimum number of lanes requirements and allowable Lane Closure requirements specified in this Section D.4. At locations where there are more frontage road lanes in the existing frontage road configuration than in the final frontage road configuration, DB Contractor may maintain the final configuration number of frontage road lanes during construction.

Lane Closures that comply with the minimum number of lanes requirements and the allowable Lane Closure requirements specified in this Section D.4 are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP. No ramp closures are permitted adjacent to, and in the same direction as, the allowable frontage road Lane Closures specified in Table 15-2.2 during Time Period A for the duration of such frontage road closures, unless the temporary or adjacent ramp access provided for the ramp closure under Section D.2 allows frontage road traffic to enter or exit the highway without passing through an intersection that traffic would not pass through if there was no ramp closure. In addition, if a mainlane exit ramp is closed, DB Contractor may close the frontage road lane serviced by the ramp provided that at least two frontage road lanes are open to traffic.

- During Time Period C and on Sundays, and only in locations where there are three frontage road lanes, single lane frontage road closures are allowed.
- During Time Period B and Time Period C, and only for the purpose of performing base repairs and pavement resurfacing operations, DB Contractor is allowed to reduce frontage roads to a single lane, excluding auxiliary lanes.

Table 15-2.2 – Allowable Frontage Road Lane Closures

| No. | Alignment and Station Limits | Closure Type | Closure Description | Allowable Duration (Days) |
|-----|--------------------------------|------------------|------------------------------|---------------------------|
| 1 | I-35EL NB 1292+47 to 1298+2020 | NB Frontage Road | 1 Lane Frontage Road Closure | 98 |

| No. | Alignment and Station Limits | Closure Type | Closure Description | Allowable Duration (Days) |
|-----|------------------------------|------------------|------------------------------|---------------------------|
| 2 | I-35EL NB 1314+00 to 1322+00 | NB Frontage Road | 1 Lane Frontage Road Closure | 98 |
| 3 | I-35EL NB 1322+92 to 1327+42 | NB Frontage Road | 1 Lane Frontage Road Closure | 90 |
| 4 | I-35EL NB 1360+00 to 1384+00 | NB Frontage Road | 1 Lane Frontage Road Closure | 238 |
| 5 | I-35EL NB 1424+00 to 1427+00 | NB Frontage Road | 1 Lane Frontage Road Closure | 28 |
| 6 | I-35EL SB 2287+00 to 2301+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 154 |
| 7 | I-35EL SB 2324+00 to 2327+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 80 |
| 8 | I-35EL SB 2331+00 to 2339+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 130 |
| 9 | I-35EL SB 2349+46 to 2353+96 | SB Frontage Road | 1 Lane Frontage Road Closure | 14 |
| 10 | I-35EL SB 2358+00 to 2372+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 168 |
| 11 | I-35EL SB 2378+00 to 2384+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 70 |
| 12 | I-35EL SB 2394+00 to 2398+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 42 |
| 13 | I-35EL SB 2404+00 to 2427+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 238 |
| 14 | I-35EL SB 2439+00 to 2458+00 | SB Frontage Road | 1 Lane Frontage Road Closure | 170 |

Notes:

1. No Full Roadway Closures of the mainlanes or ramps will be allowed during the allowable frontage road Lane Closures listed in Table 15-2.2. This requirement applies during all time periods.
2. The station ranges listed in Table 15-2.2 include Lane Closure tapers.

D.5 Cross Streets

DB Contractor shall maintain the same number of cross street lanes as the current number of cross street lanes in each direction, except as permitted by the minimum number of lanes requirements specified in this Section D.5. Lane Closures that comply with the minimum number of lanes requirements specified in this Section D.5 are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP.

- During Time Period C, single Lane Closures are allowed on cross streets provided DB Contractor maintains one lane of traffic in each direction.
- Right-turn lane closures from the frontage roads to cross streets are allowed subject to an approved TCP.

D.6 Turnarounds

DB Contractor shall maintain turnaround access during construction, except as permitted by the allowable Lane Closure requirements specified in this Section D.6, which are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP.

- During Time Period C, turnaround Lane Closures are allowed.
- A turnaround Lane Closure occurs when either the turnaround entrance, turnaround exit, or both are inaccessible to the public.
- Allowable durations for turnaround Lane Closures are per turnaround and the maximum allowable duration of Lane Closure for the same turnaround shall not occur consecutively.

Table 15-2.3 – Allowable Turnaround Lane Closures

| No. | Centerline Station | Closure Type | Closure Description | Allowable Duration (Days) |
|-----|--------------------|--------------|---------------------------|---------------------------|
| 1 | 3347+15 | Turn-Arounds | NB-SB T/A @ Rittman Rd | 21 |
| 2 | 3348+62 | Turn-Arounds | SB-NB T/A @ Rittman Rd | 21 |
| 3 | 3393+15 | Turn-Arounds | NB-SB T/A @ Eisenhower Rd | 21 |
| 4 | 3394+70 | Turn-Arounds | SB-NB T/A @ Eisenhower Rd | 21 |
| 5 | 3444+00 | Turn-Arounds | NB-SB T/A @ Walzem Rd | 21 |
| 6 | 3345+52 | Turn-Arounds | SB-NB T/A @ Walzem Rd | 21 |

E. Other Lane Closure Restrictions

- Any Lane Closure of the same facility in the same direction, with the beginning of one Lane Closure separated from the end of another adjacent Lane Closure by more than one mile, shall be considered two separate Lane Closures.
- DB Contractor shall not close two consecutive entrance or two consecutive exit ramps at the same time.
- DB Contractor shall not close two consecutive signalized frontage road intersections at the same time during construction.
- DB Contractor is not permitted to schedule a Full Roadway Closure of the mainlanes simultaneous with a frontage road Lane Closure within the same proximity that might further impact traffic operations.
- DB Contractor is not permitted to schedule more than one rolling lane closure on mainlanes, frontage roads or elevated lanes at a time per day, unless otherwise approved by TxDOT.
- Liquidated Damages shall be assessed as a Full Roadway Closure in accordance with Table 15-1 for rolling lane closures that occur during a Holiday, a Special Event, or Time Period A. DB Contractor shall not be assessed Lane Rental Charges where rolling lane closures are implemented if the rolling lane closure is less

than 15 minutes in duration during Time Periods B and C and provided that the queued traffic can be dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the rolling lane closure. The determination of whether the queued traffic can be dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the rolling lane closure shall be based on an assessment and joint decision by the IQF and TxDOT. If the traffic queue resulting from rolling lane closure cannot be dispersed within 10 minutes, then Lane Rental Charges shall be assessed. Lane Rental Charges shall also be assessed if any rolling lane closure is greater than 15 minutes in duration.

F. Holidays

The following are “Holidays” for the purpose of this Exhibit 15. TxDOT has the right, without liability, to lengthen, shorten, or otherwise modify these Holidays as actual, or expected, traffic conditions may warrant.

- New Year’s Eve and New Year’s Day (12:00pm on December 31 through 10:00pm on January 1)
- Easter Holiday Weekend (12:00pm on Friday through 10:00pm on Sunday)
- Memorial Day Weekend (12:00pm on Friday through 10:00pm on Tuesday)
- Independence Day (12:00pm on July 3 through 12:00pm on July 5)
- Labor Day Weekend (12:00pm on Friday through 10:00pm on Tuesday)
- Thanksgiving Holiday (12:00pm on Wednesday through 10:00pm on Sunday)
- Christmas Holiday (12:00pm on December 23 through 10:00pm on December 26)

G. Special Events

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

- Tax-free shopping weekend (Saturday and Sunday during Time Period B)

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

H. Incidents and Emergencies

DB Contractor shall not be liable for Liquidated Damages for Lane Closures and Lane Rental Charges for Lane Closures required due to Incidents or Emergencies that are not attributable to, could not have been avoided by or are not exacerbated by the actions of a DB Contractor-Related Entity, but only to the extent necessary to remediate the Incident or Emergency. For the avoidance of doubt, DB Contractor shall not be relieved of liability for Liquidated Damages for Lane Closures and Lane Rental Charges for Lane Closures for extended Lane Closures beyond the approved window due to conditions resulting from DB Contractor’s Work on the Site, or the acts or omissions of any DB Contractor-Related Entity, including failure to complete the Work within the planned window of an approved Lane Closure.

I. Time Periods

Table 15-3 shows the Time Periods for each of the hours of the day for mainlanes. These periods are used to determine Lane Rental Charges and Liquidated Damages for Lane Closures.

Table 15-3 Period Per Hour of the Day

| Hour/Day | Sunday | Monday-Thursday | Friday | Saturday |
|----------|--------|-----------------|--------|----------|
| 0:00 | C | C | C | C |
| 1:00 | C | C | C | C |
| 2:00 | C | C | C | C |
| 3:00 | C | C | C | C |
| 4:00 | C | C | C | C |
| 5:00 | C | A | A | C |
| 6:00 | C | A | A | C |
| 7:00 | C | A | A | B |
| 8:00 | B | A | A | B |
| 9:00 | B | A | A | B |
| 10:00 | B | A | A | B |
| 11:00 | B | A | A | B |
| 12:00 | B | A | A | B |
| 13:00 | B | A | A | B |
| 14:00 | B | A | A | B |
| 15:00 | B | A | A | B |
| 16:00 | B | A | A | B |
| 17:00 | B | A | A | B |
| 18:00 | B | A | A | B |
| 19:00 | B | A | A | B |

| Hour/Day | Sunday | Monday-Thursday | Friday | Saturday |
|----------|--------|-----------------|--------|----------|
| 20:00 | B | A | A | B |
| 21:00 | C | C | B | C |
| 22:00 | C | C | B | C |
| 23:00 | C | C | C | C |

Liquidated Damages for Lane Closures and Lane Rental Charges will be assessed for all Lane Closures based upon the time periods shown in the above table and corresponding amounts listed in Section C of this Exhibit 15.

EXHIBIT 16**NONCOMPLIANCE POINTS PROVISIONS****1. Noncompliance Points System**

1.1 Certain of DB Contractor's failures to perform and breaches of its contractual obligations under the Contract Documents constitute Noncompliance Events (NCEs) that may result in the assessment of Noncompliance Points. The Noncompliance Events Table set forth in Attachment 1 to this Exhibit 16 identifies each Noncompliance Event, the points assessed per event and the "NCE Cure Period" (if any) available to DB Contractor for each Noncompliance Event (the "**Noncompliance Events Table**"). Noncompliance Points are a system to measure DB Contractor performance and trigger the remedies set forth or referenced in this Exhibit 16.

1.2 The persistent accumulation of Noncompliance Points may also result in a Persistent DB Contractor Noncompliance calculated in accordance with Section 4.

1.3 The inclusion in the Noncompliance Events Table of a breach or failure to perform bears no implication as to whether such breach or failure to perform constitutes a material breach.

2. Assessment Notification and Cure Process**2.1 Electronic Database and Notification Initiated by DB Contractor**

2.1.1 DB Contractor will provide an electronic database, which DB Contractor shall utilize, and shall cause the PSQAF and IQF to utilize for the application and performance of the Noncompliance Points system under this Exhibit 16 and the Contract Documents. Upon the occurrence of any Noncompliance Event specified in the Noncompliance Events Table, DB Contractor, the PSQAF or IQF shall enter such Noncompliance Event into the electronic database in real time upon discovery but no later than 12:00 noon the next business day if the occurrence takes place after normal business hours. The format and design of the electronic database provides DB Contractor, the PSQAF, IQF, and TxDOT the ability to make full or partial entries and edits to any existing entry. At a minimum, each electronic database entry by DB Contractor, PSQAF or IQF shall:

(a) Include a description of the Noncompliance Event in reasonable detail, including the number of Noncompliance Points assigned thereto as set forth in the Noncompliance Events Table;

(b) Identify the party entering the Noncompliance Event, whether DB Contractor, the PSQAF or IQF;

(c) Identify the reference number and headings and sub-headings assigned to the Noncompliance Event in the Noncompliance Events Table;

(d) Identify the Project location (if applicable);

(e) Identify the date and exact time of occurrence;

(f) Identify the applicable response date and time, if any;

(g) Indicate the applicable NCE Cure Period, if any, as set forth in the Noncompliance Events Table;

- (h) Indicate status of cure, whether the item is open, cured (by DB Contractor), verified and closed (by the PSQAF or IQF), rejected by TxDOT, or disputed by DB Contractor;
- (i) Indicate the date and exact time of cure (if any);
- (j) Provide either as an attachment or as a cite, documentation otherwise submitted to TxDOT of the cure (if any); and
- (k) Provide such other information as may be required by the electronic database.

2.1.2 In cases of dispute of entries, TxDOT may edit or enter comments to DB Contractor entries at any time. If DB Contractor disagrees with TxDOT entries, the changes or entries inserted by TxDOT must remain in place, subject to the provisions regarding Dispute resolution in Section 11.1 of the Design-Build Agreement.

2.1.3 TxDOT may provide to DB Contractor a “**Notice of Determination**” via the electronic database or in writing. A Notice of Determination may: (a) make a determination of occurrence of a Noncompliance Event; (b) make a determination of whether a Noncompliance Event was cured during the applicable NCE Cure Period (if any); (c) reject or dispute an entry in the electronic database by DB Contractor, PSQAF or IQF; or (d) make a determination of the number Noncompliance Points to be assessed.

2.1.4 TxDOT reserves the right at any time to: modify the format and design of the electronic database, require DB Contractor to adopt a different system, or require DB Contractor to provide the notifications and responses required by this Exhibit 16 in writing rather than by entry into the electronic database.

2.1.5 Each Project Schedule Update required to be submitted to TxDOT pursuant to Section 8.5.4 of the General Conditions shall include a report of all Noncompliance Events occurring during the preceding month and on the Project to date. The Project Schedule Update shall (a) include all information required to be entered in the electronic database as described in Section 2.1.1, (b) identify whether each Noncompliance Event was initiated by DB Contractor, the PSQAF IQF, or TxDOT, (c) identify for each Noncompliance Event for which a cure is available, whether the cure has occurred, whether the PSQAF or IQF has certified acceptance of cure, and (d) if any Noncompliance Event is in dispute, identify the anticipated date of its resolution.

2.2 Notification Initiated by TxDOT

If TxDOT believes there has occurred any Noncompliance Event specified in the Noncompliance Events Table, TxDOT may deliver to DB Contractor a Notice of Determination setting forth one or more of the following: the Noncompliance Event, the applicable NCE Cure Period (if any), TxDOT’s determination whether the Noncompliance Event was cured during the applicable NCE Cure Period (if any), and the Noncompliance Points to be assessed with respect thereto. TxDOT may deliver the Notice of Determination via the electronic database or in writing, and delivery shall be deemed given upon proper entry of the information into the electronic database or receipt by DB Contractor of the written notice, whichever is sooner. DB Contractor acknowledges that it is responsible for the notification to TxDOT of all Noncompliance Events and that a notification of a Noncompliance Event initiated by TxDOT after the time for DB Contractor to report such Noncompliance Event to TxDOT under Section 2.1 has expired constitutes a Noncompliance Event as further described in Section 3(e) of this Exhibit 16.

2.3 NCE Cure Periods

2.3.1 DB Contractor shall cure each Noncompliance Event by the end of the NCE Cure Period (if any) for each such Noncompliance Event set forth in the Noncompliance Events Table. The start of the NCE Cure Period shall be determined according to the “Assessment Category” shown in the Noncompliance Events Table.

2.3.2 The NCE Cure Periods set forth in the Noncompliance Events Table shall be the only cure period for DB Contractor applicable to the Noncompliance Events. If any NCE Cure Period set forth in the Noncompliance Events Table differs from a cure period set forth in Section 8.8.1.2 of the General Conditions that might otherwise apply to the Noncompliance Event, such NCE Cure Period set forth in the Noncompliance Events Table shall control for purposes of the assessment of Noncompliance Points under this Exhibit 16.

2.3.3 For each “Category A” Noncompliance Event, the NCE Cure Period shall start not later than the date and time of delivery by TxDOT of a Notice of Determination to DB Contractor (which may be via the Noncompliance Events database).

2.3.4 For each “Category B” Noncompliance Event, the NCE Cure Period shall start upon the earlier of (i) the date and time DB Contractor first obtained knowledge of, or first reasonably should have known of, the Noncompliance Event or (ii) the date and time DB Contractor received notice thereof by any third party. For this purpose, if the notice of the Noncompliance Event is initiated by TxDOT and the DB Contractor had no actual knowledge or could not have reasonably known of the Noncompliance Event, DB Contractor shall be deemed to first obtain knowledge of the Noncompliance Event no later than the date and time of delivery of the initial notice to DB Contractor as described in Section 2.2.

2.3.5 For each “Category C” Noncompliance Event, no NCE Cure Period is applicable.

2.4 Notification of Cure

2.4.1 When DB Contractor determines that it has completed cure of any Noncompliance Event, DB Contractor shall enter in the electronic database a record that it has completed the cure, a brief description of the cure, and any modifications to the Project Management Plan to protect against future similar Noncompliance Events.

2.4.2 Upon DB Contractor’s determination that it has completed the cure, the PSQAF or IQF, as applicable, shall verify that the Noncompliance Event has been cured and shall certify its satisfaction via the electronic database. This shall serve as DB Contractor’s notice of cure to TxDOT.

2.4.3 Thereafter, TxDOT shall have the right, but not the obligation, to inspect to verify completion of the cure. If satisfied that the Noncompliance Event is fully cured, TxDOT shall deliver to DB Contractor a Notice of Determination with its acceptance or rejection of the cure either by entry into the electronic database or in a separate writing within a reasonable time after DB Contractor’s notice of cure. If TxDOT has not provided a Notice of Determination within seven days after TxDOT’s receipt of DB Contractor’s notice of cure, DB Contractor shall enter into the electronic database that the item is pending TxDOT action. If TxDOT has not provided such notice of acceptance or rejection within a further seven days, DB Contractor shall not be assessed any further Noncompliance Points for the Noncompliance Event, but the cure shall not be deemed accepted or rejected until TxDOT provides the Notice of Determination. If TxDOT issues a Notice of Determination with its acceptance of a cure, the cure is effective as of the date of DB Contractor’s notice of cure described in Section 2.4.2.

2.4.4 Subject to the time restrictions in this Section 2, TxDOT may reject DB Contractor’s notice of cure if TxDOT determines that DB Contractor has not fully cured the Noncompliance Event or if TxDOT cannot determine if DB Contractor has fully cured the Noncompliance Event. Upon making this determination, TxDOT shall deliver a Notice of Determination to DB Contractor rejecting the cure either by entry into the electronic database or in a separate writing. Any Dispute regarding rejection of cure shall be resolved according to the dispute resolution procedures set forth in this Design-Build Contract.

2.4.5 Should DB Contractor prevent, frustrate, or impede TxDOT’s ability to make a determination regarding the cure of a Noncompliance Event, then such action shall be considered as covering work and shall be

subject to Section 5.10.1.3 of the General Conditions, and DB Contractor shall not be entitled to any increase in the Price or to any time extension for delays due to uncovering the Work.

3. Assessment of Noncompliance Points

If TxDOT is notified as required by Section 2 or otherwise becomes aware of a Noncompliance Event, or if TxDOT serves a Notice of Determination under Section 2.2, TxDOT may assess Noncompliance Points in accordance with the Noncompliance Events Table, subject to the following:

(a) For each Noncompliance Event for which an NCE Cure Period is identified in the Noncompliance Events Table (Category A or B), that is not a late, incomplete or defective Submittal, provided that the Noncompliance Event is not cured, Noncompliance Points shall first be assessed at the end of the first NCE Cure Period.

(b) For each Noncompliance Event for which a NCE Cure Period is identified in the Noncompliance Events Table (Category A or B) that is a late, incomplete, or defective Submittal, Noncompliance Points shall first be assessed at the date of expiration of the time period or milestone event required by the Contract Documents for the Submittal.

(c) For each Noncompliance Event for which there is no NCE Cure Period identified in the Noncompliance Events Table (Category C), Noncompliance Points shall be assessed on the date on which the breach or failure occurred. Each subsequent instance of a breach or failure assessed against the same line item in the Noncompliance Events Table will be treated as a separate Noncompliance Event.

(d) If a Noncompliance Event for which an NCE Cure Period is provided in the Noncompliance Events Table (Category A or B) is not fully cured and verified by the PSQAF or IQF, as applicable, within the applicable NCE Cure Period then continuation of such Noncompliance Event beyond such NCE Cure Period shall be treated as a new and separate Noncompliance Event, without necessity for further notice, for the purpose of assessing Noncompliance Points. Additionally, without further notice, (i) a new cure period equal to the NCE Cure Period set forth in the Noncompliance Events Table shall apply upon expiration of the NCE Cure Period, and (ii) if applicable, additional Noncompliance Charges shall be assessed against DB Contractor in accordance with Section 7 of this Exhibit 16 and deducted from the applicable periodic payment by TxDOT in accordance with Section 9.4.1 of the General Conditions.

(e) For the purpose of assessing Noncompliance Points, a failure by DB Contractor to report to TxDOT and to keep an accurate record of a Noncompliance Event as and when required under Section 2.1 of this Exhibit 16 constitutes a distinct failure to perform separate from and in addition to the subject Noncompliance Event itself.

(f) TxDOT may, but is not obligated to, assess fewer than the maximum number of Noncompliance Points for any particular Noncompliance Event.

(g) TxDOT shall not be entitled to assess Noncompliance Points under more than one category for any particular event or circumstance that is a breach or failure. Except as provided in clause (e), where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Noncompliance Points, and the highest amount of Noncompliance Points under the relevant breaches or failures shall apply.

4. Trigger Points for Persistent DB Contractor Noncompliance

4.1 A “Persistent DB Contractor Noncompliance”, entitling TxDOT to require submittal of DB Contractor’s remedial plan under Section 8 of this Exhibit 16, shall exist any time prior to Substantial Completion when: 50 or more Noncompliance Points have been assessed in any consecutive six month period. For the purpose of this determination all assessed Noncompliance Points shall be included, regardless of whether the breaches or failures giving rise to the Noncompliance Event were cured.

4.2 The number of cured Noncompliance Points that would otherwise then be counted under Section 4.1 is subject to reduction in accordance with Section 8 of this Exhibit 16.

5. Special Provisions for Certain Noncompliance Events

5.1 The provisions of this Section 5 apply to a Noncompliance Event identified in the Noncompliance Events Table that is directly attributable to a Force Majeure Event.

5.2 If any such Noncompliance Event occurs, then:

(a) The applicable NCE Cure Period for any such Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable of being cured within the applicable NCE Cure Period solely due to the occurrence of such Force Majeure Event. The extension shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the Force Majeure Event on DB Contractor’s ability to cure, availability of temporary remedial measures, and the need for rapid action due to impact of the Noncompliance Event on safety or traffic movement; and

(b) Regardless of which Party initiates notice of such Noncompliance Event, no Noncompliance Points shall be assessed, counted toward a Persistent DB Contractor Noncompliance for purposes of Section 4, nor result in Noncompliance Charges under Section 7; provided, however, that the Noncompliance Event is cured within the applicable NCE Cure Period, as it may be extended pursuant to Section 5.2(a);

5.3 For the avoidance of doubt, for any Noncompliance Event directly attributable to a Force Majeure Event where DB Contractor is unable to comply with a requirement of the Contract Documents due to an ongoing Force Majeure Event, then solely during the period that such Force Majeure Event prevents compliance with such requirement, no Noncompliance Points or Noncompliance Charges will be assessed for such Noncompliance Event and DB Contractor shall be excused from performance of the underlying requirement.

6. Provisions Regarding Dispute Resolution

6.1 DB Contractor may object to the assessment of Noncompliance Points or the starting point for or duration of the NCE Cure Period respecting any Noncompliance Event by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its Notice of Determination.

6.2 DB Contractor may object to TxDOT’s rejection of any certification of completion of a cure given pursuant to Section 2.4.4 by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its notice of rejection.

6.3 If for any reason DB Contractor fails to deliver its notice of objection within the applicable time period, DB Contractor shall be conclusively deemed to have accepted the matters set forth in the applicable notice, and shall be forever barred from challenging them.

6.4 If DB Contractor gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to

the procedures for resolving Disputes in the DBC, including the Disputes Review Panel Process, Informal Resolution Procedures and Dispute Resolution Procedures.

6.5 For the purpose of determining whether TxDOT may declare an “Event of Default” upon the occurrence of a Persistent DB Contractor Noncompliance for failure to timely submit or comply with the remedial plan, the Noncompliance Points in Dispute:

(a) Shall not be counted pending resolution of the Dispute if DB Contractor initiates the dispute resolution procedures as set forth in Section 6.4 and diligently pursues such procedures; or

(b) Shall be counted if DB Contractor for any reason does not (i) initiate the dispute resolution procedures set forth in Section 6.4 or (ii) diligently pursue such procedures to conclusion. In either case, DB Contractor shall be deemed to have waived the Dispute.

7. Noncompliance Charges

7.1 Upon assessment of the tenth Noncompliance Point pursuant to Section 3, and upon assessment of each subsequent tenth Noncompliance Point pursuant to Section 3, TxDOT shall be entitled to immediate and automatic Noncompliance Charges from DB Contractor in an amount equal to \$60,000 (such amount calculated at a rate of \$6,000 per Noncompliance Point).

7.2 Notwithstanding the above, upon achievement of Substantial Completion and until Final Acceptance, any remaining or newly assessed Noncompliance Points shall be deducted from payments, in accordance with Item 9 of the General Conditions at a rate of \$6,000 per Noncompliance Point regardless of the 10 Noncompliance Point threshold.

7.3 DB Contractor acknowledges that the Noncompliance Charges assessed in accordance with the Contract Documents are reasonable liquidated amounts in order to compensate TxDOT for damages it will incur by reason of DB Contractor’s failure to comply with the availability and performance standards. The damages addressed by the Noncompliance Charges include: (a) TxDOT’s increased costs of administering this DBC, including the increased costs of engineering, legal, accounting, monitoring, oversight and overhead, and could also include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction for violation of applicable Governmental Approvals or for their increased costs of monitoring and enforcing DB Contractor’s compliance with applicable Governmental Approvals; (b) potential harm and future costs to TxDOT from premature reduction in the condition of the facilities; (c) potential harm to the credibility and reputation of TxDOT with other Governmental Entities, with policy makers and with the general public who depend on and expect timely and quality delivery and availability of service; (d) potential harm and detriment to Users, which may include loss of use, enjoyment and benefit of the facilities, additional wear and tear on vehicles, and increased costs of congestion, travel time and accidents; and (e) TxDOT’s increased costs of addressing potential harm to the environment, including increased harm to air quality caused by congestion, and harm to water quality, soils conditions, historic structures and other environmental resources caused by Noncompliance Events.

7.4 DB Contractor further acknowledges that these damages would be difficult and impracticable to measure and prove, because, among other things: (a) the Project is of a unique nature and no substitute for it is available; (b) the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify; (c) the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and (d) the variety of factors that influence use of and demand for the Project make it difficult to sort out causation of the matters that will trigger these liquidated damages and to quantify actual damages.

8. Remedial Plan Delivery and Implementation upon Persistent DB Contractor Noncompliance

8.1 DB Contractor recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events, whether such Noncompliance Events are cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under this DBC and will have a material, cumulative adverse impact on the value of this DBC to TxDOT. DB Contractor acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent DB Contractor Noncompliance are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

8.2 Upon the occurrence of a Persistent DB Contractor Noncompliance (refer to the trigger points in Section 4.1), DB Contractor shall, within 45 days after notice of the Persistent DB Contractor Noncompliance, prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by DB Contractor to improve its performance and reduce (a) DB Contractor's cumulative number of Noncompliance Points assessed under Section 4 to the point that such Persistent DB Contractor Noncompliance is cured and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent. TxDOT may require that such actions include improving DB Contractor's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of Subcontractors, and delivering security to TxDOT. For the avoidance of doubt, the achievement by DB Contractor of the requirements set forth above shall not relieve DB Contractor from the obligation to submit and act upon a remedial plan.

8.3 If (a) DB Contractor complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan; (b) as a result thereof DB Contractor achieves the requirements set forth in Section 8.2(a) and (b); and (c) as of the date it achieves such requirements there exist no other uncured DB Contractor Defaults for which a notice was given, then TxDOT shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent DB Contractor Noncompliance by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent DB Contractor Noncompliance.

8.4 DB Contractor's failure to deliver to TxDOT the required remedial plan within such 45-day period shall constitute a material DB Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material DB Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a 30-day cure period. If either of the events remains uncured within the period specified in this Section 8.4, TxDOT may declare that an Event of Default has occurred in accordance with Section 8.8.1 of the General Conditions.

9. General Conditions Amendments

The General Conditions are hereby amended as follows: the underlined text is hereby added to the General Conditions.

9.1 A new subsection (t) is hereby added to Section 8.8.1.1 of the General Conditions as follows:

(t) There occurs any Persistent DB Contractor Noncompliance, TxDOT delivers to DB Contractor written notice of the Persistent DB Contractor Noncompliance, and either (i) DB Contractor fails to deliver to TxDOT, within 45 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 8 of Exhibit 16 to the DBA or (ii) DB Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan.

9.2 New subsections (g) and (h) are hereby added to Section 8.8.1.2 of the General Conditions:

(g) Respecting a DB Contractor Default under clause (t)(i) of Section 8.8.1.1. a period of five days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default;

(h) Respecting a DB Contractor Default under clause (t)(ii) of Section 8.8.1.1. a period of 30 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default.

9.3 Section 8.8.1.3 of the General Conditions is hereby amended as set forth below:

8.8.1.3 If any event or condition described in Section 8.8.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 8.8.1.2, or if the circumstances described in Section 8.4 of Exhibit 16 to the DBA exist, 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.

ATTACHMENT 1 TO EXHIBIT 16

| Noncompliance Events Table | | | | | | |
|-----------------------------------|---------------------|---|---|-------------------------|----------------------------|------------------------|
| Ref No. | Main Heading | Sub-heading | Failure to: | Number of Points | Assessment Category | NCE Cure Period |
| 1 | General | Records and Documents | Make all books, records and documents available for inspection and audit by TxDOT or its Authorized Representatives as required by the Contract Documents, including Section 5.13 of the General Conditions. | 1 | A | 1 Day |
| 2 | General | Insurance Coverage | Provide TxDOT with a copy of any insurance certificate or evidence of payment of any premium all in accordance with Section 3.5.1.4 of the General Conditions and Section 5.3 of the DBA. | 2 | B | 7 Days |
| 3 | General | Implement Directive Letter | Implement the requirements of a Directive Letter in accordance with Section 4.6.1.2 of the General Conditions. | 3 | A | 7 Days |
| 4 | [Not Used] | [Not Used] | | | | |
| 5 | General | Noncompliance Events | Notify TxDOT of the occurrence of any Noncompliance Event specified in this the Noncompliance Events Table and as required by the Contract Documents, including this Exhibit 16 to the DBA. | 1 | B | 3 Days |
| 6 | General | Maintain a Noncompliance Event Database | Maintain a fully functional and up to date Noncompliance Events database accessible to TxDOT in accordance with this Exhibit 16 to the DBA. | 2 | A | 7 Days |
| 7 | General | TxDOT Review of Governmental Approval | Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity, as required by the Contract Documents, including Section 5.2.6 of the General Conditions and Section 3 of the DBA. | 1 | A | 7 Days |
| 8 | General | Provide Safe and Unrestricted Access to the Project | Provide TxDOT or its Authorized Representatives with safe and unrestricted access to the Project in accordance with Section 5.10.1.2.5 of the General Conditions. | 1 | B | 1 Day |
| 9 | General | Inspections | Provide proper notice to TxDOT before proceeding with the Work, or failure to follow a requirement relating to a DB Contractor hold point as required by the Contract Documents, including Attachment 4-2 of the General Conditions and in accordance with the QMP. | 1 | C | None |

| Noncompliance Events Table | | | | | | |
|-----------------------------------|---------------------|-------------------------------|---|-------------------------|----------------------------|------------------------|
| Ref No. | Main Heading | Sub-heading | Failure to: | Number of Points | Assessment Category | NCE Cure Period |
| 10 | General | Inspections | Comply with the requirements of the Quality Management Plan as regards the timing, quantities represented or frequency of testing as required by the Contract Documents, including Section 4.3 of the General Conditions. | 2 | B | 2 Days |
| 11 | General | Submittals | Prepare, implement, maintain, update or timely deliver, or otherwise be compliant with any Submittal requirement within the Contract Documents. This Noncompliance Event shall not apply to failure to timely deliver a Submittal described more specifically in another line item in this Exhibit 16 (for which Noncompliance Points shall be assessed in accordance with the particular line item). | 1 | B | 7 Days |
| 12 | General | Submittals | Resolve TxDOT Submittal comments or objections by modifying a Submittal, or failure to provide a written justification as to why modifications to a Submittal based on a comment or objection by TxDOT are not required, as required by the Contract Documents including Section 5.2 of the General Conditions. | 4 | B | 1 Day |
| 13 | General | Submittals | Maintain an accurate and complete daily log of all inspections performed, or failure to submit a daily IQ inspection, test results, QC inspection report, process control material sampling/test results, or control chart, as required by the Contract Documents, including Section 4.3.1 of the General Conditions and Attachment 4-2 to the General Conditions. | 1 | A | 1 Day |
| 14 | General | Submittals – Project Schedule | Timely submit any Project Schedule Revisions, Recovery Schedules, or Change Order Revisions, with all required information as required by the Contract Documents, including Sections 8.5.5 through 8.5.7 of the General Conditions. | 2 | A | 7 Days |
| 15 | Project Management | Project Management Plan | Have the relevant part of the Project Management Plan approved by TxDOT prior to commencement of any Work governed by that portion of the Project Management Plan, or failure to comply, or cause a Subcontractor to comply, with a requirement, process, or procedure in the Project Management Plan, as required by the Contract Documents including Section 4.2 of the General Conditions. | 2 | B | 7 Days |

| Noncompliance Events Table | | | | | | |
|-----------------------------------|---------------------------------|--|--|-------------------------|----------------------------|------------------------|
| Ref No. | Main Heading | Sub-heading | Failure to: | Number of Points | Assessment Category | NCE Cure Period |
| 16 | Project Management | Document Management System | Establish and maintain a document management system as required by and in accordance with the Contract Documents, including Section 4.2.1.2 of the General Conditions. | 2 | A | 7 Days |
| 17 | Project Management | Submit or Revise PMP when Required | Develop and submit a part of, or change or addition or revision to, the PMP at the time required all in accordance to Section 4.2 of the General Conditions. | 1 | B | 7 Days |
| 18 | Project Management | Audit PMP when Required | Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Attachments 4-1 and 4-2 to the General Conditions. | 1 | B | 7 Days |
| 19 | Project Management | Safety and Health Plan | Observe a requirement of the Safety and Health Plan, or to carry out any Work in contravention of (or in absence of) the Safety and Health Plan or in a manner that represents a hazard to Project workers or the general public, as required by the Contract Documents, including Section 4.2.3 of the General Conditions. | 3 | C | None |
| 20 | Project Management | Comply with Progress Meetings | Comply with the requirements for any Project meeting, including for meeting attendance, proper issuance of an agenda, draft or final meeting minutes, or to accurately integrate TxDOT comments with the meeting minutes as required and in accordance with the Contract Documents, including Section 11.2 of the Design-Build Specifications. | 1 | A | 3 Days |
| 21 | Contracting and Labor Practices | and Adopt Policies of Ethical Standards | Implement written policies for ethical standards of conduct within 90 days after the Effective Date in accordance with Section 8.2.5 of the General Conditions. | 2 | B | 14 Days |
| 22 | Contracting and Labor Practices | and Comply with DBE Reporting Requirements | Comply with the reporting requirements or any requirement of the DBE Performance Plan in accordance with Section 3 of the General Conditions and Exhibit 6 to the DBA. | 2 | B | 14 Days |
| 23 | Reporting | Federal Reporting Requirements | Report compliance with, or to comply with the reporting requirements of, any of the Federal Requirements, as required by the Contract Documents, including Sections 3.1 through 3.3 of the General Conditions. | 2 | B | 30 Days |

| Noncompliance Events Table | | | | | | |
|-----------------------------------|-------------------------------|--|--|-------------------------|----------------------------|------------------------|
| Ref No. | Main Heading | Sub-heading | Failure to: | Number of Points | Assessment Category | NCE Cure Period |
| 24 | Reporting | DB Contractor Reporting Requirements | Comply with any of the reporting, recording keeping, or documentation requirements, including quality reporting requirements, monthly and annual reporting, or any Subcontractor reporting requirements, as required by and in accordance with the Contract Documents, including Section 5.13 of the General Conditions. | 1 | B | 14 Days |
| 25 | Invoicing | Invoicing and Draw Request | Submit a Draw Request, with all required information as required by the Contract Documents, including Section 9.3 of the General Conditions. | 2 | A | 7 Days |
| 26 | Change Orders | Cost and Schedule Proposal | Submit a timely and sufficient cost and schedule proposal in response to a Request for Change Proposal, as required by the Contract Documents including Section 4.6.2.1.2 of the General Conditions, or as otherwise agreed to by TxDOT in writing. | 2 | A | 7 Days |
| 27 | Environmental Compliance | Comply with Dust Control Requirements | Take measures to minimize or mitigate the effects of dust in accordance with Section 12.2.5.3 of the Design-Build Specifications. | 1 | B | 4 Hours |
| 28 | Environmental Compliance | Maintain and Update CEPP | Maintain and update the complete Comprehensive Environmental Protection Plan (CEPP) as required by Item 12 of the Design-Build Specifications and Section 4.2.4 of the General Conditions. | 2 | A | 7 Days |
| 29 | Environmental Compliance | Notify TxDOT of Hazardous Materials | Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 4.8.1.1 of the General Conditions. | 2 | B | 1 Day |
| 30 | Utility Adjustments | Maintain Utility Service | Maintain fully operational utility service in accordance with Section 14.4.9 of the Design-Build Specifications. | 3 | A | 14 Days |
| 31 | Utility Adjustments | Maintain Records for Utility Adjustments | Maintain a complete set of records for each Utility Adjustment in accordance with Section 14.1.5 of the Design-Build Specifications. | 1 | B | 14 Days |
| 32 | Maintenance Management System | Maintenance Management System | Establish, use and maintain or provide information updates to the Maintenance Management System in accordance with the Contract Documents, including Section 27.6 of the Design-Build Specifications. | 1 | A | 2 Days |
| 33 | Maintenance Services | Ensure Timely Hazard Mitigation of Category 1 Defect | Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications. | 3 | B | Defect Repair Period |

| Noncompliance Events Table | | | | | | |
|-----------------------------------|----------------------|---|---|-------------------------|----------------------------|------------------------|
| Ref No. | Main Heading | Sub-heading | Failure to: | Number of Points | Assessment Category | NCE Cure Period |
| 34 | Maintenance Services | Ensure Timely Hazard Repair of Category 1 Defect | Perform a permanent repair to a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications. | 3 | B | Defect Repair Period |
| 35 | Maintenance Services | Ensure Timely Permanent Repair of non-Category 1 Defect | Address a Defect other than a Defect classified as Category 1 such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications. | 1 | B | Defect Repair Period |
| 36 | Maintenance Services | Prevent a Defect from Deteriorating | Prevent a Defect other than a Defect classified as Category 1 from deteriorating to become a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications. | 2 | B | 2 Days |
| 37 | Maintenance Services | Comply with Incident Management Plan | Comply with a requirement in respect of the Incident and Emergency Management Plan (IEMP) as required by and in accordance with the Contract Documents, including Section 27.7.1 of the Design-Build Specifications. | 4 | B | 7 Days |
| 38 | Maintenance Services | Inspections | Conduct any scheduled inspections, or failure to perform general inspections at the required frequency, as required by and in accordance with the Contract Documents, including Section 27.5 of the Design-Build Specifications. | 2 | B | 3 Days |
| 39 | Maintenance Services | Maintenance Records | Create a Maintenance Record as required by and in accordance with the Contract Documents, including Item 27 of the Design-Build Specifications. | 1 | A | 2 Days |
| 40 | Traffic Management | Submit and Update a Traffic Management Plan | Prepare and submit to TxDOT for its approval or keep updated a Traffic Management Plan in accordance to Section 4.2.10 of the General Conditions. | 4 | B | 7 Days |
| 41 | Traffic Management | Lane Closure | Provide a Lane Closure Notice to TxDOT, together with its duration and any applicable Lane Rental Charges, no later than the specified period prior to implementation as required by the Contract Documents, and Exhibit 15 of the DBA. | 2 | B | 1 Day |

| Noncompliance Events Table | | | | | | |
|-----------------------------------|---------------------|---|---|-------------------------|----------------------------|------------------------|
| Ref No. | Main Heading | Sub-heading | Failure to: | Number of Points | Assessment Category | NCE Cure Period |
| 42 | Traffic Management | Traffic Control Construction Requirements | Implement, a traffic control measure in accordance with the Traffic Control Plan and as required by the Contract Documents, including Section 26.2 of the Design-Build Specifications; or to comply with any specific traffic control construction requirements for local access, detours, local approvals, markings and signing, utility cuts, hauling equipment, final clean up and stockpiles, as required by the Contract Documents, including Section 26.3 of the Design-Build Specifications. | 2 | B | 4 Hours |
| 43 | Traffic Management | Traffic Control Plans | Submit a Traffic Control Plan to TxDOT no later than the specified period prior to implementation, as required by and in accordance with the Contract Documents, including Section 26.2 of the Design-Build Specifications. | 2 | B | 1 Day |

EXHIBIT 17

IDENTIFIED SUBCONTRACTORS

Lead Engineering Firm: AECOM Technical Services, Inc.

Independent Quality Firm: Atlas Technical Consultants LLC

Design Subconsultant (Lead Geotech): HVJ South Central Texas

Design Subconsultant (Drainage Design Support): Maestas & Associates, LLC

Environmental: ACI Group, LLC

Utilities (Utility Coordination, Engineering, ROW Acquisition): Cobb, Fendley & Associates, Inc.

Design Subconsultant (Bridge Design Support): Aguirre & Fields, LP

Design Subconsultant (Civil Design Support): Rios Engineering, LLC

Design Subconsultant (Roadway Design Support / Signage and Striping): SE3, LLC

Design Subconsultant (Pavement Design): The Transtec Group, Inc.

EXHIBIT 18**KEY PERSONNEL**

| POSITIONS | INDIVIDUAL |
|--|----------------------------|
| Project Manager | Pike Riegert |
| Construction Manager | Mark MacDonald, PE |
| Design Manager | Matthew Anderson, PE, DBIA |
| Lead Structural Engineer | Patrick Hays, PE |
| Lead Maintenance of Traffic (MOT) Implementation Manager | Jason Ochoa |
| Lead MOT Design Engineer | Kelsey Sconiers, PE |
| Independent Quality Firm Manager | Dan Pyle, PE |
| Professional Services Quality Assurance Manager | Barry Brown, PE |
| Utility Manager | Sandee Khoury, PE |
| Safety Manager | Bruno Ponce |

EXHIBIT 19

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representatives:

TxDOT's Executive Director, the San Antonio District Engineer and their designees

DB Contractor's Authorized Representatives:

DB Contractor's Project Manager, Pike Riegert, and his designees

EXHIBIT 20

DISPUTES RESOLUTION REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

4. Subsequent Proceedings.

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

b. **Admissibility of Disputes Resolution Proceedings.** The Disputes Review Panel Process and Informal Resolution Procedures process, including all notices, submissions, testimony, working documents, reports and recommendations in connection therewith, are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in any administrative or judicial proceeding subsequent to such dispute resolution process.

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

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

7. Interest.

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

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

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

EXHIBIT 21

OPERATING PROCEDURES

1. GENERAL

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

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

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

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

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

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

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

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

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

2. FREQUENCY OF MEETINGS

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

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

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

3. AGENDA FOR MEETINGS

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

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

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

The Panel may conduct certain meetings via video conference in accordance with Section 4.9.3.2 of the General Conditions. At the conclusion of each meeting held at or near the Project site, the Panel will conduct a field observation of active sections of the Work accompanied by representatives of both the DB Contractor and TxDOT. The Parties will point out all areas of the Project that are subject to a potential issue.

4. MINUTES OF MEETINGS

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

5. PROCEDURES FOR DISPUTE HEARINGS

5.1 Procedure to Take a Dispute to the Panel

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

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

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

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

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

1. Statement of Dispute and Stipulated Facts

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

2. Common Reference Document (CRD)

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

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

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

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

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

5.2 List of Representatives

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

5.3 Presentation of Dispute

The hearing will be informal. The Panel will conduct the proceedings. The referring Party will make an initial presentation of its case, followed by the respondent. Then, one or more rebuttals to any assertion by the other Party may be presented until the Panel determines that all aspects of the Dispute have been adequately covered. The Panel members may ask questions, request clarification, or ask for additional data. In large or complex cases, the hearing may be continued as necessary in order to consider and fully understand all the evidence presented by both Parties.

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

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

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

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

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

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

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

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

5.4 Redundant Evidence and Oral Statements

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

5.5 Disputes Involving Subcontractors

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

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

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

5.6 Panel Deliberations

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

5.7 Recommendation

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

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

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

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

6. OTHER

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

EXHIBIT 22**DISPUTES REVIEW PANEL AGREEMENT**

THIS DISPUTES REVIEW PANEL AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2023, among: the Texas Department of Transportation, hereinafter referred to as “TxDOT”, Lone Star Constructors, NEX, a Texas joint venture consisting of Fluor Enterprises, Inc., a California corporation, and Austin Bridge & Road, LP, a Delaware limited partnership, hereinafter referred to as “DB Contractor”, and _____, hereinafter referred to as “Panel Member”. Panel Member is a member of the Disputes Review Panel, hereinafter referred to as the “Panel” for the I-35 NEX South Project (“Project”). TxDOT, DB Contractor, and Panel Member may be referred to individually herein as a “Party” or collectively as the “Parties”. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated _____, 2023 between TxDOT and DB Contractor (the “DBC”).

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

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

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

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

**I.
DESCRIPTION OF WORK**

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

**II.
SCOPE OF SERVICES**

The scope of services of the Panel includes the following.

A. Adopting Operating Procedures:

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

B. Conducting Regular Progress Meetings:

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

C. Advisory Opinions:

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

D. Conducting Hearings on Disputes:

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

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

III. PANEL RESPONSIBILITIES

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

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

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

(a) Has been provided with a copy of the DBC and other Contract Documents and has taken the time necessary to become familiar with and understand Section 4.9 of the General Conditions;

(b) Satisfies the requirements for Panel membership set forth in Section 4.9 of the General Conditions;

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

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

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

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

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

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

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

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

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

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

IV. DB CONTRACTOR RESPONSIBILITIES

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

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

**V.
TxDOT'S RESPONSIBILITIES**

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

TxDOT shall furnish the following:

A. Contract Documents and Other Documents

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

B. Coordination

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

C. Services

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

**VI.
TIME FOR BEGINNING AND COMPLETION**

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

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

**VII.
PAYMENT**

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

A. Payment for Services and Expenses

Panel Member shall be entitled to be paid at the hourly rate of \$ _____ [\$200 – 450 depending on qualifications] prorated for each quarter-hour for actual time spent (a) at regular Panel meetings at the Project site, including site visits, or by video conference; (b) at hearings conducted by the Parties; (c) choosing the Panel Chairperson, if applicable; and (d) if approved in advance by TxDOT, actual time spent on pre-meeting and pre-hearing review of information and documents provided to the Panel, consultation and discussion with other members of the Panel,

telephonic meetings and discussions with the Panel and parties to a Dispute, post-hearing deliberations with the other members of the Panel, drafting Panel Recommendations, and reconsideration and modifications of Panel Recommendations when appropriate. Panel Member shall not be entitled to compensation for travel time.

Reasonable and necessary direct expenses will be reimbursed without markup to Panel Member. These expenses may include, but are not limited to, travel expenses from the Panel Member's point-of-departure to the initial point-of-arrival in accordance with the State travel expenditure guidelines, printing, long distance telephone, postage and courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. All expenses shall be subject to TxDOT standard requirements.

B. Payments

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

C. Inspection of Cost Records

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

VIII. ASSIGNMENT

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

IX. TERMINATION OF AGREEMENT

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

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

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

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

X. LEGAL RELATIONS

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

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

**XI.
MISCELLANEOUS**

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

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

PANEL MEMBER

By: _____

Printed Name: _____

DB CONTRACTOR:
Lone Star Constructors, NEX, a joint venture

TEXAS DEPARTMENT OF TRANSPORTATION

By: Fluor Enterprises, Inc.,
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: Austin Bridge & Road, LP,
a Delaware limited partnership

By: _____

Name: _____

Title: _____

EXHIBIT 23**AMENDMENTS TO UTILITY PROVISIONS**

As contemplated in Section 2.1.3.2 of the DBA, the General Conditions are amended as shown below.

1. Section 4.5 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 4.5 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.5 of the General Conditions:

4.5 Utilities

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

The SAWS Utility Adjustment Work to be performed by DB Contractor is included in the Work. Subject to DB Contractor's rights with respect to Change Orders in accordance with this Design-Build Contract, the Price includes all costs associated with the performance of the SAWS Utility Adjustment Work to be performed by DB Contractor, including DB Contractor's coordination and permitting costs associated with such Work.

DB Contractor shall not be required to enter into a PUAA with SAWS. DB Contractor shall comply with the requirements set forth in the SAWS ILA with respect to the SAWS Utility Adjustment Work without any right to any additional increase in Price or extension of any Completion Deadline, except as explicitly provided for in the Design-Build Contract. If SAWS elects not to use DB Contractor to perform the SAWS Utility Adjustments, TxDOT and DB Contractor will enter into a reductive Change Order, removing such SAWS Utility Adjustments from the Work and decreasing the Price.

4.5.1 New Utilities and Unidentified Utilities

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

4.5.2 Utility Enhancements

DB Contractor shall be responsible for addressing any requests by Utility Owners that DB Contractor design or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancements"), except as otherwise set forth in this Section 4.5.2.

4.5.2.1 If a Utility Owner (other than SAWS) requests that DB Contractor design or construct a Betterment, then subject to Section 4.5.3.4, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to DB Contractor. Any such agreement shall be set forth in the applicable Utility Agreement. Any such Betterment shall be deemed added to the scope of the Work only upon execution by the Utility Owner and DB Contractor and approval by TxDOT of a Utility Agreement identifying and providing for performance of such Betterment. Any change in the scope of the Work pursuant to this Section 4.5.2.1 shall not be treated as a TxDOT-Directed Change or extend the Completion Deadlines. If SAWS requests that DB Contractor design or construct any Betterments under the SAWS ILA, SAWS, TxDOT and, if requested by TxDOT, DB Contractor, will negotiate the terms for incorporation of such Betterments into the scope of work under the SAWS ILA. In the event such Betterments are incorporated into the scope of work under the SAWS ILA, DB Contractor shall be entitled to a Change Order to increase the Price by the amount SAWS pays TxDOT for performance of such Betterments under Section 3.A.3 of the SAWS ILA. Notwithstanding any other provisions of this Design-Build Contract, DB Contractor shall not be entitled to any increase in the Price for performing additional Betterments pursuant to the SAWS ILA that exceeds the amount paid by SAWS to TxDOT for the performance of such Betterments.

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

4.5.2.3 If a Utility Owner (other than SAWS) requests that DB Contractor design or construct a Utility Owner Project, then subject to Section 4.5.3.4, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to DB Contractor. Any such agreement shall be a separate contract between DB Contractor and the Utility Owner; and any such Utility Owner Project shall be performed outside of this Design-Build Contract and the Work, without any impact on the Price and the Completion Deadlines and shall be subject to Section 4.5.8. The compensation payable by the Utility Owner to DB Contractor for a Utility Owner Project shall be determined in a manner acceptable to both DB Contractor and the Utility Owner. Any Utility Owner Projects for SAWS Utilities shall be incorporated into the SAWS ILA or another interlocal agreement between TxDOT and SAWS and such SAWS Utility Owner Projects shall be incorporated into the Work as a TxDOT-Directed Change.

4.5.2.4 DB Contractor is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that DB Contractor design or construct Utility Enhancements, except as otherwise provided in this Section 4.5.2. Any Betterment performed as part of a Utility Adjustment, whether by DB Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement or the SAWS ILA. Under no circumstances shall DB Contractor proceed with any Utility Enhancement that is incompatible with the Project or that cannot be performed within the other constraints of applicable Law, the Governmental

Approvals and the Contract Documents, including the Completion Deadlines. Under no circumstances Except as otherwise provided for SAWS Utility Enhancements, will DB Contractor will not be entitled to any Price increase or time extension hereunder as the result of any Utility Enhancement, whether performed by DB Contractor or by the Utility Owner. DB Contractor may, but is not obligated to, design and construct Utility Enhancements, except that DB Contractor is obligated to perform SAWS Utility Enhancements that are incorporated into the Work. DB Contractor shall promptly notify TxDOT of any requests by Utility Owners that DB Contractor considers to be Betterments, and shall keep TxDOT informed as to the status of negotiations with Utility Owners concerning such requests. DB Contractor shall provide TxDOT with such information, analyses, and certificates as may be requested by TxDOT in order to determine compliance with this Section 4.5.2.

4.5.3 Utility Agreements

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

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

4.5.3.3 If a conflict occurs between the terms of a Utility Agreement or the SAWS ILA, as applicable, and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between DB Contractor and TxDOT.

4.5.3.4 DB Contractor shall comply with and timely perform all obligations imposed on DB Contractor by any Utility Agreement. DB Contractor shall also comply with all obligations that are either assigned to DB Contractor under the SAWS ILA or that TxDOT is required to impose on DB Contractor pursuant to the terms of the SAWS ILA.

4.5.3.5 Each Utility Adjustment (whether performed by DB Contractor or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreements. DB Contractor is solely responsible for negotiating any terms and conditions of its Utility Agreements that might limit a Utility Owner's amendments and additions to its Adjustment Standards after the Proposal Due

Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreements or SAWS ILA, and all other requirements specified in the Contract Documents.

4.5.4 Failure of Utility Owners to Cooperate

4.5.4.1 DB Contractor shall use best efforts to obtain the cooperation of the applicable Utility Owner as necessary for each Utility Adjustment. DB Contractor's Project Manager and TxDOT's Project Manager will meet weekly to discuss the progress of each Utility Adjustment. DB Contractor shall notify TxDOT immediately if (a) DB Contractor is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) DB Contractor reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (c) DB Contractor becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between DB Contractor and a Utility Owner with respect to the Project, despite DB Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that TxDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. DB Contractor shall provide TxDOT with such information as TxDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to TxDOT any notice or request for assistance, DB Contractor shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

4.5.4.2 If DB Contractor requests TxDOT's assistance pursuant to Section 4.5.4.1, DB Contractor shall provide evidence reasonably satisfactory to TxDOT that (a) the Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (d) the Utility Owner is not cooperating (the foregoing items (a) through (d) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by DB Contractor to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, that TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its sole discretion. If TxDOT holds contractual rights, excluding its rights under the SAWS ILA, that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its sole discretion not to exercise those rights, then TxDOT shall assign those rights to DB Contractor upon DB Contractor's request; provided, however, that such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. DB Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to DB Contractor. Any assistance provided by TxDOT shall not relieve DB Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 4.5.4.

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

determines, based on evidence DB Contractor presents, that the conditions to assistance have been satisfied. DB Contractor shall have the right to submit the question of the reasonableness of TxDOT's determination through the dispute resolution process described in Section 4.9, Section 4.10 and DBA Exhibit 20.

4.5.5 Delays by Utility Owners

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

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

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

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

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

4.5.5.2.2 The following risk sharing thresholds apply to Utility Owner Delays:

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

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

- (a) the general requirements and conditions for Change Orders set forth in Section 4.6 have been met;
- (b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that (i) DB Contractor took advantage of Float time available early in the Project Schedule for coordination activities with respect to the affected Utility and (ii) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation but has been unable to obtain such cooperation;
- (c) if applicable, DB Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner;
- (d) DB Contractor or the Utility Owner has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct such Utility Adjustment;
- (e) no other circumstance exists that would delay the affected Utility Adjustment even if the Utility Owner were cooperative; and
- (f) the delay is allowable under Section 4.6.6.3.

4.5.5.4 Except as set forth in Section 4.5.5.1 and Section 4.5.5.2 and Sections 6.4.2 and 6.4.4 of the Design-Build Agreement, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs (other than for Project Overhead) which it may incur as a result of any delays caused by a Utility Owner, except as provided in Sections 6.4.2 and 6.4.4 of the Design-Build Agreement, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 4.5.5.1 or Section 4.5.5.2. Any action or inaction by TxDOT as described in Section 4.5.4.2 or Section 4.5.5.2 shall have no bearing on the restriction set forth in this Section 4.5.5.4.

4.5.6 Utility Adjustment Costs

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

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

4.5.6.3 Except as otherwise provided for under the SAWS ILA, For for each Utility Adjustment involving the Adjustment of a Utility that is within an Existing Utility Property Interest, DB Contractor shall (a) compensate the Utility Owner for the market value of each Existing Utility Property Interest relinquished pursuant to Section 14.2.4 of the Design-Build Specifications, to the extent TxDOT would be required to do so by applicable Law and provided that TxDOT has approved the Utility Owner's claim or (b) reimburse the Utility Owner's reasonable acquisition costs for a Replacement Utility Property Interest. Except as otherwise provided under the SAWS ILA, The the applicable Utility Owner will determine which method of compensation is satisfactory. As provided for under Section 5 of the SAWS ILA, certain SAWS Existing Utility Property Interests may remain within the Project ROW, provided SAWS executes a UJUA. DB Contractor shall pay any compensation due to the Utility Owner pursuant to this Section 4.5.6.3 and all costs and expenses associated therewith (including any incurred by TxDOT on DB Contractor's behalf for eminent domain proceedings or otherwise) in accordance with Section 4.4.2, except that reimbursement of SAWS's reimbursable costs of property interest acquisition under the SAWS ILA shall be paid in accordance with Section 4.5.6.1. DB Contractor shall be responsible for all eligible costs of right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting and related services for either compensating the Utility Owner for or replacing each Existing Utility Property Interest (except those Existing Utility Property Interests for which a UJUA is executed pursuant to the SAWS ILA), including all costs and expenses associated with negotiation and condemnation action. DB Contractor shall also carry out the duties in Section 14.2.4.2 of the Design-Build Specifications.

4.5.6.4 If for any reason DB Contractor is unable to collect any amounts owed to DB Contractor by any Utility Owner, then (a) TxDOT shall have no liability for such amounts; (b) DB Contractor shall have no right to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owing to DB Contractor from TxDOT; and (c) DB Contractor shall have no right to stop work or to exercise any other remedies against TxDOT on account of such Utility Owner's failure to pay DB Contractor.

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

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

4.5.7 FHWA Utility Requirements

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

4.5.7.2 The Project will be subject to the Build America, Buy America Act (BABA Act), 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and 23 CFR Section 635.410 (Buy America) and FHWA associated policies. DB Contractor shall comply (and shall require the Utility Owners to comply) with the Build America, Buy America Act (BABA Act), 23 U.S.C. 313 and 23 CFR Part 645 Subpart A and 23 CFR Section 635.410.

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

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

4.5.7.5 TxDOT will forward the approved list to DB Contractor.

4.5.8 Applications for Utility Permits

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

4.5.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, DB Contractor shall furnish the most recent Project design information or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities.

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

4.5.9 Security for Utility Adjustment Costs; Insurance

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

4.5.9.2 DB Contractor may satisfy a Utility Owner's requirement that DB Contractor provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by DB Contractor or any Subcontractor pursuant to Section 3.5. DB Contractor shall fulfill the insurance obligations set forth in the SAWS ILA, including the obligation to add SAWS as an additional insured for certain policies.

4.5.10 Additional Restrictions on Change Orders for Utility Adjustments

4.5.10.1 In addition to all of the other requirements and limitations contained in this Section 4.5 and in Section 4.6 the entitlement of DB Contractor to any Change Order under this Section 4.5 or Section 4.6.9.2 or Sections 6.4.2 or 6.4.4 of the Design-Build Agreement shall be subject to the restrictions and limitations set forth in this Section 4.5.10.

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

4.5.10.3 As part of the Work, DB Contractor is responsible for causing all Utility Adjustment Work and Incidental Utility Adjustment Work to occur, for reimbursing the Utility Owners for their reimbursable costs of performing or furnishing Utility Adjustment Work and Incidental Utility Adjustment Work or SAWS Utility Adjustment Work, if applicable, and, subject to Sections 4.5.5.1 and 4.5.5.2 and Section 6.4.2 of the Design-Build Agreement, for scheduling all Utility Adjustment Work, and Incidental Utility Adjustment Work and SAWS Utility Adjustment Work (whether performed by DB Contractor or the affected Utility Owner) so as to meet the Completion Deadlines herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by DB Contractor, or if DB Contractor performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting time extension and no resulting change in the Price, except as otherwise provided under Section 4.5. The foregoing shall not affect TxDOT's right to any credit that may be owing under Section 4.6.

4.5.10.4 DB Contractor shall not be entitled to a Change Order for any costs or delays that are attributable to (a) any failure of a design furnished by any Utility Owner to comply with the requirements of Section 14.3 of the Design-Build Specifications or (b) any failure of construction performed by a Utility Owner to comply with the requirements of Section 14.4 of the Design-Build Specifications.

4.5.10.5 DB Contractor shall not be entitled to a Change Order for any costs or delays resulting from the performance of Incidental Utility Adjustment Work by DB Contractor.

4.5.10.6 Any Change Order increasing the Price pursuant to this Section 4.5 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.

4.5.10.7 DB Contractor shall not be entitled to any increase in the Price for any costs of coordinating with Utility Owners (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 4.6.9.2).

4.5.10.8 Except to the extent set forth in Section 4.6.9.2.3 with respect to Level A SUE, any information with respect to Utilities provided in the Reference Information Documents is for DB Contractor's reference only, has not been verified, and shall not be relied upon by DB Contractor. Without limiting the generality of the foregoing, DB Contractor acknowledges that such information does not identify most of the Service Lines that may be impacted by the Project and that there may be other facilities impacted by the Project that are not identified in such information. DB Contractor shall verify all information with respect to Utilities included in the Reference Information Documents and shall perform its own investigations as provided in Sections 14.3.1 and 14.4.2 of the Design-Build Specifications. Accordingly, there shall be no changes in the Price and no time extensions on account of any inaccuracies in the Reference Information Documents with respect to any Utilities. Except as provided in Section 4.6.9.2 ~~4.9.6.2~~ and Section 6.4.4 of the Design-Build Agreement, DB Contractor shall not be entitled to any increase in the Price or time extension as a result of any of the following:

- (a) any increase in the extent or change in the character of the Utility Adjustment Work necessary to Adjust any Utility from that anticipated by DB Contractor;
- (b) any difference in the cost to Adjust a Utility from that anticipated by DB Contractor;
- (c) any inaccuracy in the information included in the Reference Information Documents as to the existence, location, ownership, type, or any other characteristic of any Utility;
- (d) any inaccuracy in the Reference Information Documents as to whether any Utility is located within privately owned property or public right of way; or
- (e) any inaccuracy in the Reference Information Documents as to the existence or nature of any rights or interest relating to the occupancy of any real property by any Utility.

4.5.10.9 Inasmuch as DB Contractor is both furnishing the design of and constructing the Project, DB Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering each such opportunity, DB Contractor shall consider the impact of design changes on Utility Adjustments to the extent practical. Accordingly, except as otherwise provided in Section 4.6 with respect to TxDOT-Directed Changes and Section 4.5.2.1 with respect to SAWS Betterments, the following provisions shall apply with respect to any increase or decrease in the cost of the Work and any delay associated with design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature or extent of anticipated Utility Adjustments:

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

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

4.5.10.11 Except as specified in this Section 4.5 or in Section 4.6 or Section 6.4 of the Design-Build Agreement, DB Contractor shall not be entitled to any Change Order with respect to any Utility Adjustments, including any act or omission of any Utility Owner that may result in a delay to the Project Schedule or in DB Contractor's incurring costs not included in the Price.

2. Section 3.8.1 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 3.8.1 of the General Conditions:

3.8.1 Warranty

DB Contractor warrants that (a) all Work furnished pursuant to the Contract Documents shall conform to Good Industry Practice, (b) all Construction Work shall be free of defects, (c) all Design Work shall meet the standard of care for engineering and architectural services set forth in Section 4.1.2.2.1, (d) the Project shall be fit for use for the intended function, (e) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (f) the Work shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties"). DB Contractor agrees that the Warranty for the adjustment of SAWS Utilities shall extend to both TxDOT and SAWS and that SAWS shall be a third-party beneficiary under this Design-Build Contract for purposes of enforcing such Warranty, subject to Section 3.8.1.2. DB Contractor agrees to take any further action required to evidence that the Warranty for the adjustment of SAWS Utilities extends to SAWS, including the execution of the DB Contractor Warranty Acknowledgment included in the SAWS ILA.

3.8.1.1 Warranty Term

Subject to extension under Section 3.8.2, the Warranty Term shall commence upon Substantial Completion and remain in effect until one year after Final Acceptance of the Project. The Warranty Term for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons (which, for SAWS Utilities, shall be the date that SAWS delivers a "Certificate of Final Acceptance" for the applicable Utilities pursuant to the SAWS ILA) and shall end one year thereafter. If TxDOT (or SAWS with respect to the SAWS Utility Adjustment Work) determines that any of the Work has not met the standards set forth in this Section 3.8.1 at any time within the applicable Warranty Term, then DB Contractor shall correct such Work as specified in this Section 3.8, even if the

performance of such corrective Work extends beyond the applicable Warranty Term. TxDOT and DB Contractor shall conduct a walk-through of the Site prior to expiration of the applicable Warranty Term and shall produce a punch list of those items requiring corrective Work.

3.8.1.2 Remedy

Within seven days of receipt by DB Contractor of notice from TxDOT specifying a failure of any of the Work to satisfy the Warranties, or of the failure of any Subcontractor representation, warranty, guarantee or obligation that DB Contractor is responsible for enforcing, DB Contractor and TxDOT shall mutually agree when and how DB Contractor shall remedy such failure, except that in case of an Emergency requiring immediate curative action or a situation that poses a significant safety risk, DB Contractor shall implement such action as it deems necessary and shall notify TxDOT in writing of the urgency of a decision. DB Contractor and TxDOT shall promptly meet in order to agree on a remedy. If DB Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should DB Contractor and TxDOT fail to reach such an agreement within such seven-day period (or immediately in the case of Emergency conditions), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by DB Contractor. Reimbursement therefor must be paid to TxDOT by DB Contractor within 10 days after DB Contractor's receipt of an invoice therefor. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.3.2.

With respect to the Warranty for the adjustment of SAWS Utilities, SAWS shall be entitled to exercise the rights granted to TxDOT under this Section 3.8.1.2 in the same manner as such rights may be exercised by TxDOT, except that SAWS shall not have the right to deduct costs and expenses from sums owed by TxDOT to DB Contractor nor any rights under Section 5.3.2 with respect to Nonconforming Work.

3.8.1.3 Permits and Costs

DB Contractor shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with the performance of Work addressed under this Section 3.8.1. DB Contractor shall bear all costs of such Work, including additional testing and inspections, and DB Contractor shall reimburse TxDOT or pay TxDOT's expenses made necessary thereby including any costs incurred by TxDOT for independent quality assurance or quality control with respect to such Work within 10 days after DB Contractor's receipt of invoices therefor (including, subject to the limitations in Section 8.7.4, any Liquidated Damages for Lane Closures or Lane Rental Charges arising from or relating to such Work). Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract.

With respect to the Warranty for the adjustment of SAWS Utilities under the SAWS ILA, DB Contractor's obligation to bear all costs for Warranty Work shall include the obligation to reimburse SAWS for its costs made necessary by such Warranty Work. DB Contractor shall pay any such costs within 10 days of DB Contractor's receipt of any invoice therefor.

3. Section 3.8.2 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 3.8.2 of the General Conditions:

3.8.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of this Design-Build Contract. Following acceptance by TxDOT or SAWS, if applicable, of re-done, repaired, corrected or replaced Work, the Warranties as to each re-done, repaired, corrected or replaced element of

the Work shall extend beyond the original Warranty Term in order that each element of the Project shall have at least a one-year warranty period (but not to exceed two years from Final Acceptance of the Project).

4. Section 3.8.4 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 3.8.4 of the General Conditions and (ii) stricken text is hereby deleted from Section 3.8.4 of the General Conditions:

3.8.4 Effect of TxDOT or DB Contractor Activities on Warranties

DB Contractor acknowledges and agrees that TxDOT, ~~and DB Contractor~~ and SAWS, if applicable, and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and agrees that the Warranties shall apply notwithstanding such activities; provided, however, that DB Contractor does not hereby waive any rights, claims or remedies to which it may be entitled as a result of such activities.

5. Section 4.2.8 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.2.8 of the General Conditions:

4.2.8 Utility Management Plan

DB Contractor shall prepare and submit to TxDOT no later than 30 days after NTP1, a Utility Management Plan in accordance with the requirements of this Section 4.2.8. TxDOT approval of the Utility Management Plan shall be a condition to the commencement of Design Work. The Utility Management Plan shall include the following:

- DB Contractor's organization structure including names, contact details, titles, job roles and qualifications of Utility Key Personnel and other Utility personnel;
- Procedures for coordination with Utility Owners to obtain Utility Assemblies and establishing procedures for Utility Adjustment Concept Plans, Utility Adjustment Field Modifications, Utility strip map, inspection of Utility Owner construction, quality control/quality assurance, emergency procedures with respect to Utility Adjustment Work and close out procedures;
- Integration of the Utility Adjustment Work and SAW Utility Adjustment Work in the Project Baseline Schedule; and
- Procedures to address a Utility Adjustment Field Modification (UAFM) as described in Section 14.4.7 of the Design-Build Specifications.

6. Section 4.6.8.5 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 4.6.8.5 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.6.8.5 of the General Conditions:

4.6.8.5 Work Performed by Utility Owners

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Utility Owners entitled to receive reimbursement for their costs from DB Contractor, the Change Order shall provide for compensation to DB Contractor equal to: (a) the actual and reasonable amount paid by DB Contractor to the Utility Owner for such work (but not greater than the amount allowed pursuant to the SAWS ILA or applicable ~~Utility Agreements, as applicable~~), plus (b) 5% of such allowed actual amount, less any amounts that may be deducted pursuant to Section 4.5. Back-up documentation supporting each cost item

for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

7. Section 4.6.9.2 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.6.9.2 of the General Conditions:

4.6.9.2 Utilities

DB Contractor shall be entitled to a Change Order with respect to certain additional costs and delays relating to Utility Adjustments, as specified in this Section 4.6.9.2 and Section 4.5.2.1 and Section 6.4 of the Design-Build Agreement and subject to the restrictions and limitations set forth in Sections 4.5.1, 4.5.10 and 4.6, including this Section 4.6.9.2 and Section 6.4 of the Design-Build Agreement. DB Contractor shall be entitled to certain additional costs and delays relating to delays by Utility Owners to the extent permitted by Sections 4.5.5.1 and 4.5.5.2 and Sections 6.4.2 and 6.4.4 of the Design-Build Agreement. 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.

8. A new Section 4.6.9.2.5 is hereby added to Section 4.6.9.2 of the General Conditions as follows:

4.6.9.2.5 In the event that SAWS Cost Work described in Section 3.B.2 or Section 3.B.5 of the SAWS ILA is incorporated into the scope of work under the SAWS ILA, DB Contractor shall be entitled to a Change Order to increase the Price by the amount SAWS pays TxDOT for the performance of such work under Section 3.A.3 of the SAWS ILA. Notwithstanding any other provisions of this Design-Build Contract, DB Contractor shall not be entitled to any increase in the Price for performing SAWS Cost Work that exceeds the amount paid by SAWS to TxDOT for the performance of such Work.

9. Section 4.6.9.4 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.6.9.4 of the General Conditions:

4.6.9.4 Hazardous Materials Management

If compensation is payable to DB Contractor pursuant to this Section 4.6.9 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 Management Costs for the work in question, subject to the limitations set forth in this Section 4.6.9.4, including the cost sharing provisions set forth in Section 4.6.9.4.1. DB Contractor shall not be entitled to any Change Order under this Section 4.6.9.4 for Hazardous Materials Management performed by DB Contractor that constitutes SAWS Cost Work under the SAWS ILA and any costs incurred pursuant to the performance of such Work shall not constitute Reimbursable Hazardous Materials Management Costs.

10. Section 4.8.1.1 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.8.1.1 of the General Conditions:

4.8.1.1 Subject to Section 4.8.1.3 and 4.8.1.4, DB Contractor shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents. If during the course of the Work, DB Contractor encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person

or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the Contract Documents, DB Contractor shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify Governmental Entities under applicable Law and notify such Governmental Entities as required under applicable Law and (b) take reasonable steps, including design modifications or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. Additionally, DB Contractor shall promptly notify SAWS, in accordance with the SAWS ILA, if DB Contractor encounters soil or groundwater contamination potentially caused by SAWS Utilities when performing SAWS Utility Adjustment Work. If during the performance of the Work TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, TxDOT shall promptly notify DB Contractor in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, DB Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Wherever feasible and consistent with the Contract Documents, applicable Law and Good Industry Practice, contaminated soil and groundwater shall not be disposed off-site.

11. Section 4.8.1.2 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.8.1.2 of the General Conditions:

4.8.1.2 Except where DB Contractor is required to take immediate action under the Contract Documents or applicable Law, DB Contractor shall afford TxDOT the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions before any action is taken that would inhibit TxDOT's ability to ascertain the nature and extent of the contamination. In addition, with respect to SAWS Cost Work to remedy Hazardous Materials or a Recognized Environmental Condition, DB Contractor shall afford both TxDOT and SAWS the opportunity to inspect the relevant sites for purposes of reaching agreement as to the terms for the incorporation of such work under the SAWS ILA. DB Contractor shall not perform any SAWS Cost Work with respect to Hazardous Materials or Recognized Environmental Conditions before such work is incorporated into the scope of the SAWS ILA, except as allowed under Sections 3.A and 3.B of the SAWS ILA.

12. A new Section 4.8.1.4 is hereby added to Section 4.8.1 of the General Conditions as follows:

4.8.1.4 If SAWS elects to perform assessment, remediation or other corrective action with respect to Hazardous Materials and Recognized Environmental Conditions pursuant to Section 3.B.5 of the SAWS ILA, then, as of the date of SAWS commences such actions, DB Contractor shall have no obligation to manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of any such Hazardous Materials or Recognized Environmental Conditions or to prepare any investigative work plans or SIR with respect to such Hazardous Materials or Recognized Environmental Conditions.

13. The first paragraph of Section 4.2.4.4.1 is hereby amended as follows, provided (i) underlined text is hereby added to Section 4.2.4.4.1 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.2.4.4.1 of the General Conditions:

Subject to Section 4.8.1.4, ~~if~~ if Hazardous Materials are encountered within any of the Project ROW or Additional Properties used as DB Contractor's staging area, Project office site, plant sites, borrow site, or stockpile location, DB Contractor shall prepare an investigative work plan that addresses the methods, techniques, and analytical testing requirements to adequately characterize the extent of the contaminated media (soil and/or groundwater) potentially impacting the Project. DB Contractor shall locate and assess the likely source of contamination.

14. Section 7.12.1.1(i) of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 7.12.1.1(i) of the General Conditions:

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

EXHIBIT 24**AMENDMENTS TO COMPLETION DEADLINE PROVISIONS**

- A. The General Conditions are amended as follows: (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.
1. Section 4.1.1.1 of the General Conditions is hereby amended as follows:

4.1.1.1 Furnish all design and other Professional Services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents expressly specify will be undertaken by TxDOT or other Persons) to administer, design and construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents so as to achieve Milestone Completion, Substantial Completion and Final Acceptance by the applicable Completion Deadlines.
 2. Section 4.1.2.1.1 of the General Conditions is hereby amended as follows:

4.1.2.1.1 The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the Schematic Design and otherwise complying with the requirements of the Contract Documents, except as otherwise approved in writing by TxDOT. All materials, services and efforts necessary to achieve Milestone Completion, Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be DB Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. DB Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly impacted by the Work. Subject to the terms of Section 4.6, the costs of all Work, including all necessary materials, services and efforts, are included in the Price.
 3. Section 4.6.6.2.3(b) of the General Conditions is hereby amended as follows:

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work that impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to complete the Work necessary to achieve Milestone Completion, Substantial Completion or Final Acceptance beyond the applicable Completion Deadline); and
 4. Section 4.6.6.3 of the General Conditions is hereby amended as follows:

4.6.6.3 Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it: (a) did not impact a Critical Path, (b) was due to the fault or negligence, or act or failure to act of any DB Contractor-Related Entity, or (c) could reasonably have been avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the time extension is pursuant to Section 4.6.9.1 or 4.6.9.5, Section 6.10 of the Design-Build Agreement or for a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension unless TxDOT shall have agreed, if requested to do so, to reimburse DB Contractor for its costs incurred, if any, in re-sequencing, reallocating or redeploying its forces). In addition, any extension of a Completion Deadline allowed under this Design-Build Contract other than ~~pursuant to Section 6.10.2.1(b) of the Design-Build Agreement~~ or for a TxDOT-Caused Delay, shall exclude any delay to the extent it is concurrent with any other unrelated delay to a Critical Path for which DB Contractor is responsible hereunder. In the event a delay for which the DB Contractor is responsible is concurrent with a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension for

the TxDOT-Caused Delay but not to any increase in the Price due to the delay, including any delay or disruption damages. If a delay for which DB Contractor is entitled to a time extension is concurrent with another delay for which DB Contractor is also entitled to a time extension (or which otherwise counts towards a cap on DB Contractor's responsibility for such delay), only one of the delays shall be considered for purposes of the Change Order provisions in the Design-Build Contract. If the concurrent delays provide for different relief (i.e. one day of relief for one day of delay versus one day of relief for two days of delay), the delay providing the greater relief to DB Contractor shall apply. In no event shall DB Contractor receive a time extension or credit towards a time extension for more than one delay on a particular day. DB Contractor shall be required to demonstrate to TxDOT's satisfaction that the change in the Work or other event or situation that is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work that has impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve Milestone Completion, Substantial Completion or Final Acceptance beyond the applicable Completion Deadline).

5. Section 5.2.1.8.1 Of the General Conditions is hereby amended as follows:

5.2.1.8.1 No review, comment on, objection, rejection, approval, disapproval, acceptance, certification (including any certificates of Milestone Completion, Substantial Completion and Final Acceptance), concurrence monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of TxDOT, and no lack thereof by TxDOT, shall constitute either (i) acceptance of materials or Work that fails to comply with the Contract Documents, or (ii) waiver of any legal or equitable right under the Contract Documents, at law, or in equity. TxDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work that must be done to bring the Work and Project into compliance with requirements of the Contract Documents, regardless of whether previous review, comment on, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by TxDOT. In the event TxDOT expressly accepts Nonconforming Work in accordance with Section 5.3.2, the Warranties shall continue to apply to such Work, however, DB Contractor shall not be required to correct the specific defect or nonconformity that is expressly accepted. Regardless of any such activity or failure to conduct any such activity by TxDOT, DB Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. DB Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by TxDOT:

- (a) Is solely for the benefit and protection of TxDOT;
- (b) Does not relieve DB Contractor of its responsibility for the selection and the competent performance of all DB Contractor-Related Entities;
- (c) Does not create or impose upon TxDOT any duty or obligation toward DB Contractor to cause it to fulfill the requirements of the Contract Documents;
- (d) Shall not be deemed or construed as any kind of warranty, express or implied, by TxDOT;
- (e) May not be relied upon by DB Contractor or used as evidence in determining whether DB Contractor has fulfilled the requirements of the Contract Documents; and
- (f) May not be asserted by DB Contractor against TxDOT as a defense, legal or equitable, to, or as a waiver of or relief from, DB Contractor's obligation to fulfill the requirements of the Contract Documents.

6. Section 8.1.3.3 of the General Conditions is hereby amended as follows:

8.1.3.3 No Time Extensions

Except as otherwise specifically provided in Section 4.6, TxDOT shall have no obligation to extend a Completion Deadline and DB Contractor shall not be relieved of its obligation to comply with the Project Schedule and to achieve Milestone Completion, Substantial Completion and Final Acceptance by the applicable Completion Deadlines for any reason.

7. Section 8.7.1.1 of the General Conditions is hereby amended as follows:

8.7.1.1 Except for any delays to completion of the Project resulting directly from a Qualifying Delay and for which Qualifying Delay Late Fees are paid, DB Contractor shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Milestone Completion, Substantial Completion and Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this Design-Build Contract ("Liquidated Damages for Delay"). The Liquidated Damages for Delay shall be in the amounts set forth in Section 7.2.1 of the Design-Build Agreement.

8.7.1.2 DB Contractor shall be liable for and pay to TxDOT, a Qualifying Delay Late Fee for each day of delay to the achievement of Milestone Completion, Substantial Completion or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this Design-Build Contract, if such day of delay is within the Delay Deductible for a Qualifying Delay as determined through an approved Change Order or a Delay Deductible Determination issued in accordance with Section 4.6.3.2.4. The Qualifying Delay Late Fees shall be in the amounts set forth in Section 7.2.2 of the Design-Build Agreement.

8.7.1.3 DB Contractor acknowledges that the liquidated damages and fees described in this Section 8.7.1 are reasonable in order to compensate TxDOT for damages it will incur as a result of late completion of portions thereof as set forth in this Section 8.7.1. Such damages include (a) loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, (b) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the respective Substantial Completion Deadline (other than the Final Acceptance Deadline), which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities, and (c) additional costs of administering this Design-Build Contract (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

8. Section 8.7.3 of the General Conditions is hereby amended as follows:

8.7.3.1 In the event that DB Contractor fails to achieve Milestone Completion, Substantial Completion or Final Acceptance by the applicable Completion Deadline, or in the event of impermissible Lane Closures or Key Personnel Changes TxDOT will incur substantial damages.

8.7.3.2 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Section 8.7.1.3, Section 8.7.2 and Section 8.3.1, as applicable.

8.7.3.3 As of the Effective Date, the amounts of Liquidated Damages, Qualifying Delay Late Fees, charges and fees represent good faith estimates and evaluations by the Parties as to the actual potential damages that TxDOT would incur as a result of late Milestone Completion, Substantial Completion, late Final Acceptance or impermissible Lane Closures or Key Personnel changes, and do not constitute a penalty.

8.7.3.4 The Parties have agreed to such Liquidated Damages, Qualifying Delay Late Fees, charges and fees 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.

8.7.3.5 Such sums are reasonable in light of the anticipated or actual harm caused by delayed Milestone Completion, Substantial Completion, delayed Final Acceptance or impermissible Lane Closures or Key Personnel changes, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

8.7.3.6 Such Liquidated Damages, Qualifying Delay Late Fees, charges and fees are not intended to, and do not, liquidate DB Contractor's liability under the indemnification provisions of Section 7.12, 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, charges or fees.

9. Section 8.8.3.1 of the General Conditions is hereby amended as follows:

8.8.3.1 If an Event of Default consists solely of DB Contractor's failure to achieve Milestone Completion, 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 and Qualifying Delay Late Fees, as applicable, provided that (a) such Event of Default does not delay Substantial Completion beyond 365 days after the Substantial Completion Deadline or Final Acceptance beyond 180 days after the Final Acceptance Deadline, as applicable, exclusive of any days during which Qualifying Delay Late Fees are assessed and paid, and (b) DB Contractor continues to diligently perform the Work despite such Event of Default.

9. Section 9.4.1(b) of the General Conditions is hereby amended as follows:

(b) Any (i) Liquidated Damages, including any Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, (ii) Qualifying Delay Late Fees, (iii) Key Personnel Change Fees, or (iv) Lane Rental Charges, that have accrued as of the date of the application for payment or that are anticipated to accrue based on the Milestone Completion, Substantial Completion and Final Acceptance dates shown in the current Project Schedule;

B. Section 8.5.3.2(a) of the General Conditions is hereby amended by replacing the phrase "the Critical Path" with the phrase "each Critical Path".

C. References in Sections 4.4.6, 4.6.9.4.2 and 8.5.5.2 of the General Conditions to "the Critical Path" shall be deemed references to "a Critical Path".