

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM	Asbestos-containing materials
ADA	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
ANSI	American National Standards Institute
APS	Accessible Pedestrian Signal
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATP	Acceptance Test Plan
AWS	American Welding Society
BMP	Best Management Practice
CADD	Computer Aided Drafting and Design
CAP	(Environmental) Compliance Action Plan
CCI	ENR Construction Cost Index
CCTV	Closed Circuit Television
CEPP	Comprehensive Environmental Protection Program
CFR	Code of Federal Regulations
CGP	Construction General Permit
CMP	Construction Monitoring Plan
CP	Communication Plan
CPA	Texas Comptroller of Public Accounts
CPCD	Concrete Pavement Contraction Design
CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQCM	Construction Quality Control Manager
CQMP	Construction Quality Management Plan
CRCP	Continuously Reinforced Concrete Pavement
CSJ	Control Section Job
CTB	Concrete Traffic Barrier
CTE	Coefficient Thermal Expansion
CTMS	Computerized Traffic Management System
CWA	Clean Water Act
CP	Communication Plan
DB	Design-Build
DBA	Design-Build Agreement
DMS	Dynamic Message Signs

DQAF	Design Quality Assurance Firm
DQAM	Design Quality Assurance Manager
DQMP	Design Quality Management Plan
DSS	Decent, Safe and Sanitary (dwelling)
DUC	DB Contractor Utility Coordinator
EA	Environmental Assessment
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Document Management System
EMS	Environmental Management System
ENR	Engineering News Record
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits, Issues and Commitments
EPTP	Environmental Protection Training Program
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
ETCS	Electronic Toll Collection System
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FWCA	Fish and Wildlife Coordination Act
FWD	Falling Weight Deflectometer
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GEC	General Engineering Consultant
GIS	Geographical Information System
GPS	Global Positioning System
HCR	Highway Condition Report
HEC	Hydraulic Engineering Circular
HMMP	Hazardous Materials Management Plan
HSP	HUB Subcontracting Plan
HUB	Historically Underutilized Business
HVAC	Heating Ventilation and Air Conditioning
IEEE	Institute of Electrical and Electronics Engineers
IH	Interstate Highway
IRI	International Roughness Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IWP	Investigative Work Plan
LOMR	Letters of Map Revision
LPA	Local Public Agency
LRFD	Load and Resistance Factor Design
MMP	Maintenance Management Plan

MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MSDS	Material Safety Data Sheet
MSE	Mechanically Stabilized Earth
NAVD	North American Vertical Datum
NBI	National Bridge Inventory
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NSBA	National Steel Bridge Alliance
NTP	Notice to Proceed
NTCIP	National Transportation Communications for ITS Protocol
NTTA	North Texas Tollway Authority
OSHA	Occupational Safety and Health Administration
PBS	Project Baseline Schedule
PBS-1	Preliminary Project Baseline Schedule
PC	Point of Curvature
PCC	Point of Compound Curvature
PCO	Potential Change Order
PDF	Portable Document Format
PI	Plasticity Index or Point of Intersection, as appropriate
PICP	Public Information and Communication Plan
PM	Project Manager
PMP	Project Management Plan
POB	Point of Beginning
POC	Point of Commencing
PRC	Point of Reverse Curvature
PSL	Project Specific Location
PSQCM	Professional Services Quality Control Manager
PT	Point of Tangency
PUA	Possession and Use Agreement
PUAA	Project Utility Adjustment Agreement
PVC	Polyvinyl Chloride
QA	Quality Assurance
QC	Quality Control
QMP	Quality Management Plan
RDVCS	Regional Data and Video Communications System
RFI	Request For Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Document(s)
ROD	Record of Decision

ROW	Right of Way
ROWIS	Right of Way Information System
ROW AM	Right of Way Acquisition Manager
RPLS	Registered Professional Land Surveyor
RQD	Rock-Quality Designation
SBE	Small Business Enterprise
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SHSD	Standard Highway Sign Design for Texas
SI	Systems Integrator
SIR	Site Investigation Report
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAC	Texas Administrative Code
TBPLS	Texas Board of Professional Land Surveying
TCEQ	Texas Commission on Environmental Quality
TDLR	Texas Department of Licensing and Regulation
TCP	Traffic Control Plan
THC	Texas Historical Commission
TMC	Traffic Management Center
TMP	Traffic Management Plan
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TREC	Texas Real Estate Commission
TRWD	Tarrant Regional Water District
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAFM	Utility Adjustment Field Modification
UAR	TxDOT Utility Accommodation Rules
UCS	Unconfined Compressive Strength
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Agreement
UM	Utility Manager
USPAP	Uniform Standards of Professional Appraisal Practice
USACE	United States Army Corps of Engineers
USDA	United States Department of Agriculture
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standard of Professional Appraisal Practices
UTM	Universal Transverse Mercator
UTP	Unshielded Twisted Pair
VE	Value Engineering
VGA/HDMI	Video Graphics Adaptor/High Definition Multimedia Interface
WBS	Work Breakdown Structure

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

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

Acquisition Packages shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.6 of the Technical Provisions.

Acquisition Survey Document shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.1 of the Technical Provisions.

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

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

Adjust shall mean to perform a Utility Adjustment.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the DBA Documents to a Utility Owner’s “applicable Adjustment Standards” refer to those that are applicable pursuant to Section 6.8.3 of the DBA.

Aesthetics Plan shall mean the plan the DB Contractor prepares in conformance with the Project’s final aesthetic concept as more particularly described in Section 15.2.2 of the Technical Provisions.

Affected Third Parties Plan shall have the meaning set forth in Section 5.5 of the Technical Provisions.

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

Affiliate shall mean:

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

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

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

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

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

Antiquities Permit shall mean the permit(s) required under the Antiquities Code of Texas enacted in 1969, to be obtained from the Texas Historical Commission, as per Section 4.3.2 of the Technical Provisions.

Archaeologist shall mean a member of the Project Environmental Team responsible for assessment of cultural resources potentially impacted by the Work as more particularly described in the Technical Provisions.

Assembly shall mean the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment as more particularly described in Section 6.3.4.5 of the Technical Provisions.

Auditable Section means a defined section of the Project for the purpose of audit, inspection and measurement during performance of the Maintenance Services. An Auditable Section includes all travel lanes including mainlanes, ramps and frontage roads of the roadway operating in one direction over a length of 0.1 miles in length, together with all Maintenance Elements associated with such 0.1 mile length.

Authority shall mean the North Texas Tollway Authority, a regional tollway authority authorized and operating under Chapter 366 of the Code.

Authority Option(s) shall mean any or all of the options set forth in Section 1.2.2.4 of the Technical Provisions.

Authorized Representative shall have the meaning set forth in Section 24.8.1 of the DBA.

Base Scope shall have the meaning set forth in Section 1.2.1 of the Technical Provisions.

Base Scope Schematic shall mean the base scope schematic plans for the Project included in the RID.

Basic Configuration shall mean the following elements defining the Project as set forth in the Base Scope Schematic or Option Work Exhibits, as applicable:

- (a) the Schematic ROW and control of access;
- (b) the number of lanes;
- (c) the approximate location of ramps;
- (d) approximate turn lane storage lengths;
- (e) the approximate location of interchanges and the type of interchanges;
- (f) the operational characteristics of the interchanges; and
- (g) the geometric characteristics, including general conformance to line and grade.

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

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

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement(s); in all other cases, "Betterment" shall

mean any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) any upgrading which is required by the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner's written "standards" meeting the requirements described in Section 6.1.2.2 of the Technical Provisions; or
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

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

Broker has the meaning set forth in Section 6.4.2.1 of the DBA.

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

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

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

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

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

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by

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

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

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

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

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

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

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

Communications Plan (CP) shall mean the TxDOT-DB Contractor Communications Plan as described in Section 3.2.1 of the Technical Provisions.

Completion Deadline(s) shall mean the Substantial Completion Deadline, Final Acceptance Deadline set forth in Sections 4.2.1.1 and 4.2.2 of the DBA and/or the deadline for completion of the Toll Zone Work set forth in Section 20.1.2, as the case may be.

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

Comprehensive Maintenance Agreement (COMA) shall mean that certain Comprehensive Maintenance Agreement executed by TxDOT and Maintenance Contractor for Maintenance Contractor to perform certain maintenance for the Project.

COMA Documents or Maintenance Agreement Documents shall mean the documents identified in Sections 1.2.1 and 1.2.2 of the Comprehensive Maintenance Agreement.

Condemnation Package means the series of documents and information for the condemnation of parcels for the Project ROW described in Section 7.4.4 of the Technical Provisions.

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

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

Construction Manager shall mean the senior staff member designated by DB Contractor responsible for ensuring that the Project is constructed in accordance with the Project requirements. The Construction Manager shall be assigned to the Project full time and co-located at the Site until Substantial Completion. The Construction Manager shall be responsible for managing the DB Contractor construction personnel, scheduling the construction quality assurance personnel, and administering all construction requirements of the DBA Documents.

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

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

Construction Quality Acceptance Manager (CQAM) shall mean the person appointed by the CQAF who is responsible for management and quality acceptance functions, as more particularly described in Section 2.2.6.1.3 of the Technical Provisions.

Construction Quality Control Manager (CQCM) shall mean the person assigned by DB Contractor who is responsible for management of the quality control aspect of the CQMP, as more particularly described in Section 2.2.6.1.1 of the Technical Provisions.

Construction Quality Management Plan (CQMP) shall mean the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2.2.6 of the Technical Provisions.

Construction Term shall mean the period from the Effective Date up to the date of Substantial Completion.

Construction Violation Event shall mean the events set forth in Table 19-2 of the Technical Provisions for which the DB Contractor may be assessed liquidated damages pursuant to Section 17 and Exhibit 21.

Construction Violation Classification shall mean the failure to meet the minimum performance requirements set forth in Table 19-2 of the Technical Provisions within the applicable cure period. The Construction Violation Classification values correspond to the damages amounts identified in Exhibit 21.

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

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

Cost and Schedule Proposal shall mean DB Contractor's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 13.2.1.3 of the DBA.

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

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

Customer Groups has the meaning set forth in Section 3.2.4 of the Technical Provisions.

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

DBA Documents or Contract Documents has the meaning set forth in Section 1.2 of the Design-Build Agreement.

DB Contractor shall mean Lane-Abrams Joint Venture, a Texas joint venture composed of The Lane Construction Corporation, a Connecticut Corporation, and J.D. Abrams, L.P., a Texas limited partnership, together with its successors and assigns.

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

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

DB Contractor-Initiated VE has the meaning set forth in Section 22.1 of the DBA.

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

DB Contractor Release(s) of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of

applicable Law or contract by any DB Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DB Contractor-Related Entity; regardless of cause; or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any DB Contractor-Related Entity in violation of the requirements of the DBA Documents or any applicable Law or Governmental Approval.

DB Contractor Utility Strip Map shall have the meaning set forth in Section 6.3.1 of the Technical Provisions.

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

Defect shall mean a deficiency in the asset caused by either the design, construction, materials, repair, rehabilitation, reconstruction, operation, damage or wear, affecting its condition, use, functionality or operation.

Defect Hazard Category Event shall mean any of the events set forth in Table 19-1 of the Technical Provisions for which the DB Contractor may be assessed damages pursuant to Section 17 and Exhibit 21 to the DBA.

Defect Hazard Mitigation Classification shall mean the failure to respond to an event as detailed in Table 19-1 of the Technical Provisions with the necessary resources and equipment to provide a temporary mitigation to the Defect Hazard Category Event. The Defect Hazard Mitigation Classification values correspond to the damages amounts identified in Exhibit 21.

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

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

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

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

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

Design Manager shall mean the Registered Professional Engineer responsible for ensuring that the overall Project design is completed and design criteria requirements are met. Responsible for managing the DB Contractor's design personnel and administering all design requirements of the DBA.

Design Quality Management Plan (DQMP) shall mean the plan prepared by DB Contractor setting forth the internal quality control and quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Section 2.2.5 of the Technical Provisions.

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

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

Design Work means all Work of design, engineering or architecture for the Project, Project ROW acquisition or Utility Adjustments.

Deviations shall mean: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the DBA Documents issued under Section 13 of the DBA. "**Deviation**" includes a Design Exception.

Differing Site Condition shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents listed in Exhibit 22, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the DBA. The term shall specifically exclude all such conditions which (1) were otherwise known to DB Contractor prior to the Proposal Due Date and (2) were not otherwise known by DB Contractor prior to the Proposal Due Date but could have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; and (vi) any conditions which constitute or are caused by a Force Majeure Event.

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

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 19.3, 19.4 and 19.5 of the DBA and the applicable portions of Section 201.112 of the Code and the dispute resolution procedures established

thereunder as described in Title 43 of the Texas Administrative Code, Section 9.2, as the same may be amended from time to time.

Drainage Design Report shall mean the report documenting all components of the Project's drainage system as more particularly described in Section 12.4 of the Technical Provisions.

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

Early Start of Construction shall mean the initiation of construction before the Final Design Plans have been approved by TxDOT, as more particularly described in Section 2.2.5.8 of the Technical Provisions.

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

Electronic Toll Collection System (ETCS) shall mean the toll collection system to be provided by the Systems Integrator, in connection with which DB Contractor provides support and coordination, as more particularly described in Section 21 of the Technical Provisions.

Electronic Data Management System (EDMS) shall mean the secure data management system provided by DB Contractor containing all of the data DB Contractor is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in Section 2.1.2.1 of the Technical Provisions.

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

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

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

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

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

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including New Environmental Approvals, approvals and permits required under NEPA and those approvals identified in Section 4 of the Technical Provisions.

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

Environmental Compliance and Mitigation Plan (ECMP) shall mean the DB Contractor's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in Section 4.3.2 of the Technical Provisions.

Environmental Compliance Inspectors (ECIs) shall mean the person(s) retained or employed by DB Contractor who provide on-site monitoring of the Project and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4.3 of the Technical Provisions.

Environmental Compliance Manager (ECM) shall mean the person retained or employed by DB Contractor who has the authority and responsibility for monitoring, documenting, and reporting environmental compliance for the Work as more particularly described in Section 4.4.1 of the Technical Provisions.

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

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

- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

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

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505

- (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
 - (xxi) The Texas Water Code;
 - (xxii) The Texas Parks and Wildlife Code;
 - (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
 - (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
 - (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

Environmental Management System shall mean the system and program that the Environmental Compliance Manager supervises. The system and program includes monitoring field activities for environmental compliance by environmental inspectors, producing weekly reports, providing an environmental training program including a training staff, and developing an environmental team as more particularly described in Section 4.3.1 of the Technical Provisions.

Environmental Monitoring Report shall mean the method by which DB Contractor documents compliance with the CMP as described in Section 4.3.7 of the Technical Provisions.

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

Environmental Team (ET) shall mean the personnel team appointed by DB Contractor, and led by the ECM, to ensure compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.4 of the Technical Provisions.

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

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

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

Event shall mean the occurrences listed under the column entitled "Event" in Tables 19-1 and 19-2 of the Technical Provisions for which the DB Contractor shall be required to respond to in order to meet the minimum Performance Requirements.

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

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

Existing Utility Property Interest shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain. This interest includes all rights affected by the Project, whether the property interest is occupied or not. This also may include rights purchased by a Utility Owner for a future installation.

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

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

Federally-listed Species – Any species, subspecies, or distinct vertebrate population segment that has been added to the Federal Lists of Endangered and Threatened Wildlife and Plants, as they appear in Sections 17.11 and 17.12 of Title 50 of the Code of Federal Regulations. This definition shall also include candidate species as defined by the February 28, 1996, Federal Register Vol. 61 No. 40, page 7597.

Final Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the DBA, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

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

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

Final Design Documents shall mean the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and Submittals necessary or related to the construction of the Project and any Utility Adjustments, and satisfying the requirements presented in Section 2.2.5.5 of the Technical Provisions.

Final Design Submittal shall mean the Submittal by DB Contractor for review and comment by TxDOT of Design Documents certified by the PSQCM demonstrating compliance with the DBA Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.5.3.2 of the Technical Provisions.

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

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

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

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

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

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (1) causes direct physical damage to the Project and (2) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction;
- (b) Any epidemic in the Dallas-Fort Worth Metropolitan Statistical Area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;

- (e) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;
- (f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires DB Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in DB Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (4) specifically targets the Project or DB Contractor;
- (g) Any Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials which: (1) occurs after the Proposal Due Date (and for Third Party Releases, also after the date TxDOT makes the parcel available to DB Contractor for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;
- (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
- (i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB Contractor-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and the term "**Force Majeure Event**" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:
 - (i) any fire or other physical destruction or damage, or delays to the Project which (A) occurs by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above or (B) is caused by third parties, except as specified in clause (c) or (g) above;
 - (ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
 - (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;

- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), or (i) above;
- (v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (i) above;
- (vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents, as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any Change in Law which has the effect of modifying a Utility Owner's required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by DB Contractor (or reimbursed by DB Contractor), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and
- (viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (i) above.

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

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

Geotechnical Engineering Reports shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.2.1 of the Technical Provisions.

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

Governmental Approval shall mean any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, or provided by TxDOT in its capacity as a regulatory agency for issuing state regulatory permits or approvals, which

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

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

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

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

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

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

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

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

Hazardous Materials Delay has the meaning set forth in Section 13.8.4.2 of the DBA.

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

Hazardous Materials Management Plan (HMMP) shall mean the plan prepared by DB Contractor for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.3.5 of the Technical Provisions.

Hazardous Materials Manager shall mean the person designated by the Environmental Compliance Manager to provide expertise in the safe handling of Hazardous Materials, as more particularly described in Section 4.4.4 of the Technical Provisions.

Historian shall mean a member of the project Environmental Team responsible for assessment of historic resources potentially impacted by the Work as more particularly described in the Technical Provisions.

Historically Underutilized Business or HUB shall have the meaning set forth in 43 TAC §9.352.

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

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership or correct utility type (e.g., gas, water, communication, electric) is shown). Differences in material, e.g. clay vs. plastic shall not be considered a difference in type.
- (b) The Utility is an overhead Utility existing as of the Proposal Due Date or which commenced installation prior to the Proposal Due Date.

- (c) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).
- (d) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

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

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on public right of way, and it is in fact located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

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

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

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

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

Instructions to Proposers (ITP) shall mean the Instructions to Proposers issued by TxDOT on September 8, 2014, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral

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

Intelligent Transportation System (ITS) shall mean the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in Section 17 of the Technical Provisions.

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

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

Key Personnel shall mean the following positions: (1) Project Manager; (2) Construction Manager; (3) Design Manager; (4) Lead Quality Manager; (5) Safety Manager; and (6) Environmental Compliance Manager.

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

Key Subcontractor shall mean the Subcontractors identified on Exhibit 19 to the DBA.

Lane Rental Charges shall have the meaning set forth in Section 17.2 of the DBA.

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

Lead Design Firm shall mean AECOM Technical Services, Inc., a California corporation.

Lead Quality Manager shall mean the senior staff member designated by DB Contractor to be responsible for (i) the overall design, construction and life cycle quality of the Project, (ii) implementing quality planning and training, and (iii) managing the team's quality management processes. The Lead Quality Manager must have no less than 10 years of experience in quality management, including preparation and implementation of quality plans and procedures in both design and construction. The Lead Quality Manager must be a Registered Professional Engineer in the State of Texas or become one by NTP1 and must be an ASQ-certified quality manager or become certified within 6 months of NTP1. The Lead Quality Manager must be independent of direct scheduling and production activities and shall have the authority to stop work. The Lead Quality Manager shall report directly to the Design-Build Contractor's management team and shall be co-located and on-site until final acceptance.

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

Liquidated Damages shall mean Key Personnel Liquidated Damages, and the liquidated damages specified in Section 17.1 of the DBA.

Losses shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the DBA)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Lowest Volume Times shall mean the period from 10:30 p.m. to 6:00 a.m. (Monday to Friday) and all hours Sunday, except in each case for the specific hours of restrictions during Major Events and Major Holidays as described in Section 18.3.2 of the Technical Provisions.

Maintenance Contractor shall mean Lane-Abrams Joint Venture, a , Texas joint venture composed of The Lane Construction Corporation, a Connecticut Corporation and J.D. Abrams, L.P., a Texas limited partnership, together with its successors and assigns.

Maintenance Management Plan shall mean the plan prepared by DB Contractor and which defines the process and procedures for the maintenance of the Project for the Term of DBA as more particularly described in Section 19.1.2 of the Technical Provisions.

Maintenance NTP1 shall have the meaning set forth in Exhibit 1 of the Comprehensive Maintenance Agreement.

Maintenance Services shall have the meaning set forth in Exhibit 1 of the Comprehensive Maintenance Agreement.

Major Culvert shall mean Major Culvert as defined in Section 12.3.5.1 of the Technical Provisions.

Major Subcontracts shall mean a Subcontract in excess of \$3,000,000.

Major Subcontractor shall mean a Subcontractor who has entered into a Major Subcontract with DB Contractor.

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

Maximum Payment Schedule shall mean the curve described in Section 4.3.3 of the DBA which constitutes a cap on the aggregate amount of payments which may be made to DB Contractor hereunder at any specified time.

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

Municipal Separate Storm Sewer System (MS4) shall mean the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in Section 4.3.7 of the Technical Provisions.

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

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

Necessary Basic Configuration Change shall mean a material change in the Basic Configuration that (a) is necessary to meet the requirements of the DBA Documents as a direct result of an Error in the Base Scope Schematic (with the understanding that a change shall be deemed “necessary” only if the Error causes DB Contractor to be unable to meet the requirements of the DBA Documents without a material change in the Basic Configuration); (b) necessitates the acquisition of real property falling within clause (c)(ii) of the definition of Additional Properties; (c) could not be avoided by the exercise of caution, due diligence or reasonable effort by DB Contractor, such as the construction of retaining walls or other reasonable mitigation efforts; and (d) could not be avoided through the granting of a waiver or Deviation from the requirements of the DBA Documents by TxDOT.

New Environmental Approval shall mean: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval, including any such approval, revision, modification, or amendment required for the drainage easements described in Section 6.2.3 of the DBA.

New Utility shall mean 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.

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

Notice of Intent (NOI) shall mean the notice of intent prepared and submitted by DB Contractor to the TCEQ under the Construction General Permit for storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

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

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

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

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

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

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

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

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

Off-Peak Times shall mean the period from 9:00 A.M. to 3:30 P.M. and 7:00 P.M. to 10:30 P.M. (Monday to Friday) and all hours Saturday, except in each case for the specific hours of restrictions during Major Events and Major Holidays as described in Section 18.3.2 of the Technical Provisions.

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

Option(s) shall mean any or all of Options 1 through 3I and Authority Options.

Option 1 shall have the meaning set forth in Section 1.2.2.1 of the Technical Provisions.

Option 2 shall have the meaning set forth in Section 1.2.2.2 of the Technical Provisions.

Option 3A shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3B shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3C shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3D shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3E shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3F shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3G shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3H shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option 3I shall have the meaning set forth in Section 1.2.2.3 of the Technical Provisions.

Option Notice(s) to Proceed shall mean a notice to proceed with any of the Option 3 Work, pursuant to Section 4.1.6 of the DBA.

Option Price shall mean the individual prices associated with any or all of Options 3A through 3I as identified in the applicable Option Notice to Proceed, including any associated Authority Options, as set forth in Section 12.1.7 of the DBA.

Option Work means the optional work corresponding to any or all of (i) Options 1 through 3I and (ii) the associated Authority Options, described in Section 1.2.2 of the Technical Provisions.

Option 3 Work means the optional work corresponding to any or all of (i) Options 3A through 3I and (ii) the Authority Options for Option 3, described in Section 1.2.2 of the Technical Provisions, which TxDOT may include in the Work by issuance of written notice to DB Contractor in accordance with Section 4.1.6 of the DBA.

Option Work Exhibits shall mean the Option Work exhibits depicting the Option 1, Option 2 and Option 3 work included in the RID and described in Section 1.2.2 of the Technical Provisions.

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

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

Payment Activity means all of the work associated with a Schedule Activity that has been cost-loaded in accordance with Section 2.1.1.2 of the Technical Provisions.

Payment Bond shall mean the NTP1 Payment Bond and/or the NTP2 Payment Bond, as applicable.

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

Peak Times shall mean (a) the period from 6:00 A.M. to 9:00 A.M. and from 3:30 P.M. to 7:00 P.M., Monday through Friday and (b) the specific hours of restrictions during Major Events and Major Holidays as described in Section 18.3.2 of the Technical provisions.

Performance Assessment Charges shall have the meaning set forth in Section 17.3 of the DBA.

Performance Bond shall mean the NTP1 Performance Bond and/or the NTP2 Performance Bond, as applicable.

Permanent Remedy means to correct the damaged condition to address and make safe an immediate or imminent hazard, immediate or imminent structural deterioration, an immediate or imminent risk of damage to a third party's property or equipment, or an immediate or imminent risk of damage to the environment.

Permanent Repair means to restore the element to like new condition to meet or exceed the minimum performance criteria.

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

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

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

PMP Elements shall have the meaning set forth in Section 2 of the Technical Provisions.

Preliminary Design Submittal shall mean the Submittal by DB Contractor for review and comment by TxDOT of horizontal and vertical geometrics, bridge clearances and limits of Work as required under the Technical Provisions.

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

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

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

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

Professional Services Quality Control Manager (PSQCM) shall mean the person assigned by DB Contractor with responsibility for the management of the quality control program and who shall cause the methods and procedures contained in the approved DQMP to be implemented and followed by DB Contractor's design staff in the performance of the Work, as more particularly described in Section 2.2.5.2.1 of the Technical Provisions.

Program Manager shall mean Brown & Gay Engineers, Inc. or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

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

Progress Report shall mean the monthly report that DB Contractor must prepare and submit to TxDOT as more particularly described in Section 2.1.1.2.4 of the Technical Provisions.

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

Project Baseline Schedule (PBS) shall mean the schedule consistent with the Completion Deadlines, submitted by DB Contractor for approval as a condition of NTP2 setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section 2.1.1.2.1 of the Technical Provisions.

Project Management Plan (PMP) shall mean the TxDOT-approved component parts, plans and documentation described in Section 2 of the Technical Provisions describing how DB Contractor will effectively manage, prosecute and ensure the quality of the Work in conformance with the DBA Documents.

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

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

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

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

Project Status Schedule Update shall mean the update of the Project Schedule to reflect the current status of the Project, as more particularly described in Section 2.1.1.2.2 of the Technical Provisions.

Project Utility Adjustment Agreement (PUAA) shall mean an agreement between DB Contractor and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in Section 6.1.3.1 of the Technical Provisions. A document is a "**Project Utility Adjustment Agreement**" if it meets the foregoing definition, without regard to the title of the document.

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

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

Proposal Due Date shall mean January 13, 2015, the deadline for submission of the Proposal to TxDOT under the RFP.

Proposer shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on March 10, 2014, as amended.

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

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

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

Public Information and Communication Plan (PICP) shall mean the plan setting forth procedures by which DB Contractor works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 3.2 of the Technical Provisions.

Public Information Coordinator shall mean the person assigned by DB Contractor responsible for public involvement activities for the Project as more particularly set forth in Section 3.2.2 of the Technical Provisions.

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

Quality Management Plan (QMP) shall mean the set of TxDOT-approved plans for quality management and control of the Work in compliance with ISO 9001:2008, as described in Section 2.2 of the Technical Provisions.

Quitclaim Deed shall mean a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in Section 6.2.4.4 of the Technical Provisions.

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

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

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

Reference Information Documents (RID) shall mean those documents listed in Exhibit 22 to the DBA. Except as expressly provided in the DBA Documents, the Reference Information Documents are not considered DBA Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.

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

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

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

Related Transportation Facility(ies) shall mean all existing and future highways, streets and roads and related infrastructure, including upgrades and expansions thereof, that are or will be adjacent to, connecting with or crossing under or over the Project.

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

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

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

Replacement Utility Property Interest shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

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

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

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

Request for Proposals (RFP) shall have the meaning set forth in Recital E of the DBA. **Retainage Bond** shall mean the bond required in accordance with Section 8.1.5 of the DBA.

RFP Documents shall mean all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the DBA Documents, the COMA Documents, and the Reference Information Documents and any addenda issued in connection therewith.

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

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

Right of Way (ROW) Acquisition Plan shall mean DB Contractor's plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for any acquisition of real property for the Project.

ROW Administrator shall mean TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

ROW Acquisition Manager shall mean DB Contractor's representative responsible for the preparation and quality review oversight of the internal quality control and assurance of all documents required for any acquisition of Project ROW in accordance with Section 7 of the Technical Provisions, as more particularly described in Section 7.2.7 of the Technical Provisions.

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

Safety and Health Plan shall mean the plan describing DB Contractor's policies, plans and controls to ensure the health and safety of personnel and the general public affected by the Project, as more particularly described in Section 2.4 of the Technical Provisions.

Safety Manager shall mean the individual responsible for carrying out the DB Contractor's safety plan and all safety-related activities, including training and enforcement of safety operations, as more particularly described in Section 2.4(a) of the Technical Provisions.

SBE Performance Plan shall mean DB Contractor's TxDOT-approved plan for meeting the SBE participation goals set forth in Section 7.1 of the DBA.

SBE Special Provisions shall mean TxDOT's special provisions for the TxDOT Small Business Enterprise Program, which are set forth in Exhibit 7A to the DBA.

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

Schedule of Values shall mean a listing of all Payment Activities by which DB Contractor will be paid for the Work as described in Section 2.1.1.2.3 of the Technical Provisions.

Schematic ROW shall mean any real property (which term is inclusive of all estates and interests in real property), as well as improvements and fixtures, within the proposed ROW lines established on the (i) Base Scope Schematic and (ii) Option Work Exhibits for which a corresponding Option Notice to Proceed has been issued, as such limits may be adjusted from time to time in accordance with the DBA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

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

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

Site Investigative Report (SIR) shall mean the report summarizing the DB Contractor's Hazardous Materials investigative work as required by Section 4.3.5.1 of the Technical Provisions.

Small Business Enterprise or **SBE** shall have the meaning set forth in Exhibit 7A to the DBA.

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

State shall mean the State of Texas.

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

State-listed Species – means a species of wildlife listed as threatened in 31 TAC §65.175, or as endangered in 31 TAC §65.176, or a plant species listed as threatened or endangered in 31 TAC §69.8. This definition shall also include Species of Greatest Conservation Need as identified in the Texas Conservation Action Plan.

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

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

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

Submittal shall mean any document, work product or other written or electronic end product or item required under the DBA Documents to be delivered or submitted to TxDOT, except any submitted to TxDOT in connection with applying for, processing or obtaining a Governmental Approval from TxDOT.

Substantial Completion shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1.2 of the DBA, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

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

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

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

Surety shall mean each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any payment bond, performance bond, retainage bond or other bond required to be issued under the DBA, including the Payment Bond, Performance Bond, Retainage Bond and Warranty Bond.

Systems Integrator (SI) shall mean the Authority or its designee, which shall be responsible for designing, constructing, supplying, installing, testing, and commissioning the ETCS for the Project.

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

Technical Provisions (TP) means the Project-specific technical provisions entitled "Technical Provisions for the State Highway 360 Project" and all exhibits and attachments thereto, as such documents may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms of this DBA.

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

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

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

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

Third Party Release(s) of Hazardous Material shall mean any and all spills of Hazardous Material on the Schematic ROW by a third party who is not acting in a capacity of a DB Contractor-Related Entity.

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

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

Toll Lanes shall mean all travel lanes and shoulders shown and labeled in the Base Scope Schematic and Option Work Exhibits as "Mainlanes."

Toll Zone shall mean the zone within which a toll transaction takes place for one direction of traffic at a single geographic location, in connection with which DB Contractor shall provide coordination services with the Authority and TxDOT.

Toll Zone Work shall mean all general roadway Work through each Toll Zone, including but not limited to grading, special paving, striping, duct banks, electrical service, communications fiber, and conduit required for the Systems Integrator's systems as more particularly set forth in Section 21 of the Technical Provisions.

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

Traffic Management Plan (TMP) shall mean the plan prepared by DB Contractor for the management of traffic during construction, as more particularly described in Section 18.2.1 of the Technical Provisions.

TREC shall mean the Texas Real Estate Commission, and any entity succeeding to the powers, authorities and responsibilities of the TREC.

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

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

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

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make available within the time period set forth in Section 6.5.3 of the DBA, and subject to the risk allocation contained therein, Schematic ROW or any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change or Necessary Basic Configuration Change, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs DB Contractor to acquire for the Project;
- (c) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the DBA Documents as an express prerequisite to DB Contractor's right to proceed or act (which, for the avoidance of doubt, does not include Submittals and matters governed by Section 3.1.5 of the DBA), within the time periods (if any) indicated in the DBA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter, following delivery of written notice from DB Contractor requesting such action in accordance with the terms and requirements of the DBA Documents;
- (d) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the DBA, if such Work exposed or examined is in conformance with the requirements of the DBA Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT; and
- (e) Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (h) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct DB Contractor to suspend the Work.

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

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

TxDOT-Initiated VE has the meaning set forth in Section 22.1 of the DBA.

TxDOT's Project Manager shall mean the person identified in Section 24.13.3 of the DBA.

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

TxDOT's Recoverable Costs means:

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

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

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

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

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

Ultimate Project shall mean the project as defined in the EA and FONSI included in the RID.

Ultimate Schematic shall mean the schematic plans incorporated into the EA and the TxDOT-Provided Approval for the Project and included in the RID.

Unidentified Utility(ies) shall mean any Utility impacted by the Project (other than a Service Line) which is neither an Identified Utility nor a New Utility, including any Utility which would be a New Utility but for the fact that it is an extension of an Identified Utility.

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

Update of an Appraisal shall have the meaning set forth in Section 7.3.5.1 of the Technical Provisions.

User(s) means the traveling public and any others who use the Project, whether by motorized or non-motorized vehicles or on foot.

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

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

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

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

Utility Adjustment Field Modifications has the meaning set forth in Section 6.4.8 of the Technical Provisions.

Utility Adjustment Concept Plan shall mean a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and DB Contractor's recommendation for all of the Adjusted locations, of each Utility impacted by the Project, as more particularly described in Section 6.3.3 of the Technical Provisions.

Utility Adjustment Plans shall mean the set of plans, specifications, and cost estimates prepared by DB Contractor and approved by the corresponding Utility Owner in connection with the design work for any Utility Adjustment, as more particularly described in Section 6.3.4 of the Technical Provisions.

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

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is DB Contractor's responsibility pursuant to Section 6.8 of the DBA.

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

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

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

Utility Assembly Checklist shall mean a checklist listing the required components of a Utility Assembly, as referenced in Section 6 of the Technical Provisions.

Utility Assembly Number or **Assembly Tracking Number** shall mean the unique number given by the DB Contractor to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0001 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement (PUAA, UAA and UAAA).

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

Utility Design Coordinator (UDC) shall mean the Registered Professional Engineer (PE) designated by the DB Contractor to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the planning, design and construction phases of the Work, as more particularly described in Section 6 of the Technical Provisions.

Utility Enhancement shall mean a Betterment or a Utility Owner Project, as set forth in Section 6.8.2 of the DBA.

Utility Information means the information regarding Utilities included in the Reference Information Documents, together with any other information TxDOT provided to DB Contractor 30 days prior to the Proposal Date with regard to identification of Utilities. The Utility Information includes survey information regarding existing Utilities; Utility maps included as an overlay on the survey; maps depicting existing Utilities potentially impacted by the Project, and other as-built maps for existing Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility Installation Request, Form 1082 shall mean a request by the Utility Owner to install a Utility within the Project ROW that is not located within an Existing Utility Property Interest owned by the Utility Owner.

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

Utility Manager (UM) shall mean the senior staff utility administrator designated by DB Contractor to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions. The Utility Manager shall perform all of DB Contractor's obligations with respect to Utility Adjustments and shall be authorized by DB Contractor to approve all financial and technical modifications associated with Utility Adjustments, and modifications to Utility Agreements

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

Utility Owner Delay shall have the meaning set forth in Section 6 of the DBA.

Utility Owner Project shall mean the design and construction by or at the direction of a Utility Owner (or by DB Contractor pursuant to Section 6.8.2 of the DBA) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility

Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

Utility Strip Map shall mean the map, any SUE information, any other documents, and exhibits depicting any existing Utilities identified by TxDOT which are included in the RID.

Utility Tracking Report shall mean the report prepared by DB Contractor and which lists all Utilities located within the Project ROW or otherwise potentially affecting the Project as more particularly described in Section 6.5.2 of the Technical Provisions.

Value Engineering (VEs) shall have the meaning set forth in Section 22 of the DBA.

Warranty(ies) shall have the meaning set forth in Section 11.1.1 of the DBA.

Warranty Bond shall have the meaning set forth in Section 8.1.7 of the DBA.

Warranty Term shall have the meaning set forth in Section 11.1.2 of the DBA.

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

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

Work Breakdown Structure or WBS means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain elements of Design Work and Construction Work. There shall be clearly identifiable linkage between the WBS and Schedule Activities. The WBS numbering convention shall be compatible with Project Schedule coding and should be compatible with document control coding.

[END OF DEFINITIONS]

EXHIBIT 2

**DB CONTRACTOR'S PROPOSAL COMMITMENTS,
ATCs AND PROPOSAL SCHEMATICS**

Appendix 1: **Proposal Commitments**

Appendix 2: **ATCs**

Appendix 3: **Schematics**

APPENDIX 1 TO EXHIBIT 2

PROPOSAL COMMITMENTS

SUBSTANTIAL COMPLETION DEADLINE(S)

Description	Substantial Completion Date
Proposal Commitment Date for Substantial Completion of the Base Scope, Option 1 and Option 2	NTP1 plus 810 calendar days

I. KEY SUBCONTRACTORS

Developer commits to providing the following Key Subcontractors to serve in their respective identified roles

Subcontractor	Status
Project Management: Lane-Abrams, J.V., The Lane Construction Company and JD Abrams, L.P.	
Lead Design Firm: AECOM Technical Services, Inc.	1 st Tier
Design Quality Management: AECOM Technical Services, Inc.	1 st Tier
Construction Quality Acceptance Management: Rodriguez Engineering Laboratories, LLC	1 st Tier
Key Task Leader – Geotechnical: Fugro Consultants, Inc.	2 nd Tier
Key Task Leader – Hydraulics and Hydrology: Hayden Consultants, Inc.	2 nd Tier
Key Task Leader – Structural: Michael Baker, Jr., Inc.	2 nd Tier
Key Task Leader – Environmental: Blanton & Associates, Inc.	1 st Tier
Key Task Leader – Utilities: CSJ Utility Coordinators, LLC	1 st Tier
Key Task Leader – Right of Way: Pinnacle Consulting Group, Inc	1 st Tier

II. KEY PERSONNEL

Developer commits to providing the following individuals to serve as Key Personnel:

Name	Key Personnel Position	Firm
Kier Ouderkirk	Project Manager	The Lane Construction Corporation
Mark Freeman, PE	Construction Manager	J.D. Abrams, L.P.
G. Keith Wetzig, PE	Design Manager	AECOM

Adam Goode, PE	Lead Quality Manager	J.D. Abrams, L.P.
Michael Green	Environmental Compliance Manager	Blanton & Associates
Steve Ford	Safety Manager	The Lane Construction Corporation

III. OTHER PERSONNEL

Developer commits to providing the following other personnel:

Name	Personnel Position	Firm
Lee Cossyphas, PE	Lead Roadway Design Engineer	AECOM
Suresh Vinnakota, PE	Lead Drainage Engineer	AECOM
Don Harris, PE	Lead Bridge Design Engineer	Michael Baker
Laura Weis, PE	Professional Services Quality Control Manager / Design Quality Manager	AECOM
Marcus Boyd	Right of Way Manager/ROW Acquisition Manager	Pinnacle Consulting Management Group
John Schulte	Utility Manager	CSJ Utility Coordinators
Jose Melendez, PE	Construction Quality Acceptance Manager	Rodriguez Engineering Laboratories
Troy Routledge	Construction Quality Control Manager	Lane-Abrams JV
Katrina Keyes or other TxDOT-approved PIC	Public Information Coordinator	K Strategies

IV. ADDITIONAL 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 Agreement

No.	Proposal Location	Proposal Commitment
1.	Executive Summary, pg 3	DB Contractor will construct cross streets using a detour concept to keep traffic conditions at or above existing levels of service. DB Contractor will determine the level of service for the cross streets and for the detours and submit to TxDOT for review and approval prior to diverting traffic from cross streets to their respective detour.
2.	Section D, 4.1.1.1 a), pg 3	DB Contractor will construct mainlane improvements without impeding traffic flow on the existing SH 360 lanes.
3.	Section D, 4.1.1.1 b), pg 3	DB Contractor will construct temporary detours for eastbound (EB) and westbound (WB) traffic to allow for cross-street bridges to be built in a single phase.

No.	Proposal Location	Proposal Commitment
4.	Section D, 4.1.1.2 a), pg 4	DB Contractor will construct parallel, single span bridges at Low Branch instead of extensions to existing culverts unless a better solution that provides equal or better benefits is identified through the design-build process, subject to agreement by DB Contractor and TxDOT.
5.	Section D, 4.1.1.2 d), pg 5	DB Contractor will construct cross-street bridges in a single phase.
6.	Section D, 4.1.1.3 e), pg 6	DB Contractor will use rigid concrete pavement (CRCP) on SH 360 mainlanes, frontage roads, ramps, and cross streets.
7.	Section D, 4.1.1.4 a), pg 7	DB Contractor will achieve mitigation at Heritage Parkway through culvert construction and not through construction of detention ponds unless a better solution that provides equal or better benefits is identified through the design-build process, subject to agreement by DB Contractor and TxDOT.
8.	Section D, 4.1.2 b), pg 9	DB Contractor will upload the Utility Tracking Report to the SH 360 SharePoint site and will update it for distribution to affected parties on a monthly basis throughout the Project's duration.
9.	Section D, 4.2.1 a), pg 13	The DB Contractor team will meet weekly with TxDOT and each discipline [lead] to identify outstanding action items and identify solutions.
10.	Section D, 4.2.1 a), pg 13	DB Contractor will document and archive results and minutes of all meetings in the DB Contractor document management system and will make such results and minutes available at the Project Office.
11.	Section D, 4.2.1 b) (ii), pg 13	DB Contractor will assign each Major Subcontractor a DB Contractor Construction Engineer that will monitor performance and prepare a monthly evaluation report.
12.	Section D, 4.2.1.1 a), pg 16	The DB Contractor Project Administration Team, consisting of a DB Contractor construction engineer, scheduler, and cost engineer, will use weekly team meetings with 5-week look-ahead reviews for each design and construction discipline and schedule reviews to monitor and quickly resolve potential delays.
13.	Section D, 4.2.1.3, pg 18	DB Contractor will develop and use SharePoint as an EDMS to store documents and will customize it to be compatible with TxDOT's EDMS, allowing for the immediate electronic submission of project deliverables.
14.	Section D, 4.2.1.3, pg 20	DB Contractor will provide training for TxDOT personnel on the EDMS system within 30 days of NTP1.
15.	Section D, 4.2.1.4 c), pg 20	DB Contractor will use TxDOT approved AGC On the Job (OJT) Manual and Special Provision 000-1676 as a guideline for providing development opportunities for minorities, including women, African-American, and Hispanics.
16.	Section D, 4.2.1.4 c), pg 21	DB Contractor will host a quarterly workshops aimed at HUB/SBEs that are seeking to improve or grow their operations.
17.	Section D, 4.2.2 a), pg 21	DB Contractor will develop and maintain a safety recognition and awards program. DB Contractor will provide safety education will be provided including safety training, weekly tool box safety meetings, and safety topics for staff meetings for all Project personnel.

No.	Proposal Location	Proposal Commitment
18.	Section D, 4.2.2 b), (ii), pg 13	DB contractor will co-locate key subconsultants at the Project office.
19.	Section D, 4.2.2 b), (iii), pg 13	DB contractor will provide ample space for consultants, NTTA and local agency representatives at the Project office in addition to the required space for TxDOT personnel.
20.	Section D, 4.2.2 b), (iv), pg 13	DB Contractor's Key Personnel will be committed to the Project 100% of their time; provided that the Design Manager will be committed to the Project, at a minimum, 100% of the time during the design phase.
21.	Section D, 4.2.2 c), pg 22	DB Contractor will perform Job Hazard Analysis (JHA) for planning safety into the work.
22.	Section D, 4.2.2 d), pg 22	DB Contractor will develop an Incident Response Manual for the Project and coordinate any response with police, fire, rescue squads, and emergency responders.
23.	Section D, 4.2.3 b), pg 23	DB Contractor's Public Information and Communication team, led by Katrina Keyes of K Strategies, will coordinate all outreach and engagement efforts.
24.	Section D, 4.2.3 c), pg 23	DB Contractor will use multiple forms of communication, including Public Information Office, Dynamic Project Website, Mobile App and Text Alert, Digital and Social Media, media, telephone and email hotline, multi-lingual collateral, tabletop exercises, milestone events, and public meetings, to relay Project information to stakeholder client groups.
25.	Section D, 4.2.4 a), pg 24	DB Contractor will construct one way detours to minimize the construction phasing and reduce the impact on traffic flow for construction of the crossover streets between the existing SH 360 Frontage Roads. The DB Contractor will not begin the construction of the permanent crossover street approaches (outside the existing SH 360 Frontage Roads) until the crossover streets between the existing SH 360 Frontage Roads are complete and open to traffic. DB Contractor will determine the level of service for the cross streets and for the detours and submit to TxDOT for review and approval prior to diverting traffic from cross streets to their respective detour.
26.	Section D, 4.2.4 b), pg 24	DB Contractor will strategically select the location of the proposed staging areas to avoid environmentally-sensitive areas.
27.	Section D, 4.2.4 c), pg 25	DB Contractor will mitigate and minimize noise, vibration, light, dust, and erosion run-off throughout construction.
28.	Section D, 4.2.4 c), pg 25	DB Contractor will maintain all-weather surfaces on construction access roads and will maximize the use of reclaimed water if available to mitigate dust from construction activity.
29.	Section D, 4.2.4 c), pg 25	DB Contractor will shield light plants at night so residences, open businesses, and traffic are not adversely impacted.
30.	Section D, 4.2.6 c), pg 31	After design is complete, a small post-design team comprising an Engineering Services During Construction Manager, senior structural engineer, senior roadway/drainage engineer, CADD technician, and document control employee will report to the Project Office to provide support to DB Contractor during construction.
31.	Section D, 4.2.8 a), pg 32	DB Contractor will hold quarterly meetings with each discipline lead to present risks that may affect their scope of work.

No.	Proposal Location	Proposal Commitment
32.	Section D, 4.3.1 a), pg 35	DB Contractor will hold integrated and immersive 3-D design review meetings throughout the design review process as agreed upon by DB Contractor and TxDOT.
33.	Section D, 4.3.1 a), pg 36	DB Contractor will manage logs of the procedural reports documenting any change within the central DB Contractor SharePoint EDMS and will publish a summary report weekly so that the team is aware of the changes and [to ensure] that non-conformances are tracked and resolved.
34.	Section D, 4.3.1 a), pg 37	DB Contractor's Audit Regime will include audits by AASHTO, Reference Laboratory and Cement and Concrete Reference Laboratory (CCRL) as part of the AASHTO R-18; and affords oversight of all aspects of DB Contractor's quality system to TxDOT and federal partners.
35.	Section D, 4.3.1 c), pg 38	DB Contractor will provide a 5-week look-ahead schedule to TxDOT on a weekly basis.
36.	Section D, 4.3.2 a), pg 40	DB Contractor's PSQCM will report directly to TxDOT on quality assurance, in addition to the CQAM.

APPENDIX 2 TO EXHIBIT 2

DB CONTRACTOR'S ATCs

The following table lists DB Contractor's Alternative Technical Concepts (ATCs), which are described in further detail in the ATC submittals, that DB Contractor may incorporate into the Project. The Deviations set forth in the ATC submittals are approved by TxDOT subject to satisfaction of any conditions set forth in the letters from TxDOT to DB Contractor. Such Deviations, subject to satisfaction of any listed "conditions," expressly supersede any conflicting provisions in the Technical Provisions, as provided in Section 1.2.2 of the DBA. DB Contractor is responsible for and bears the schedule and cost risk associated with (a) any ATC that would require further environmental evaluation of the Project, (b) obtaining any third party approvals (including Governmental Approvals) required to implement the ATC, and (c) the acquisition of any additional right of way, and obtaining any necessary Environmental Approvals 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 (i.e., 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 Technical Provisions.

ATC No.	Brief Description	Date ATC Initially Submitted to TxDOT	Date of Final ATC Determination Letter
ATC-3	Minimize sidewalk width to 5ft at new sidewalk installation.	10/07/2014	10/31/2014
ATC-8	Maximize prestressed concrete girder spacing at all bridge structures to optimize spacing efficiency.	10/07/2014	10/31/2014
ATC-9	Structures conflicts with future rail corridor – Retained fill where mainlanes are over cross streets – Base Scope: New York Ave and Lone Star Rd; Option 1: Matlock Rd.	10/07/2014	10/31/2014
ATC-10	Structures conflicts with future rail corridor - Bridge reductions when cross streets are placed over mainlanes – Base Scope:	10/07/2014	10/31/2014

ATC No.	Brief Description	Date ATC Initially Submitted to TxDOT	Date of Final ATC Determination Letter
	Camp Wisdom Rd / Sublett Rd, Lynn Creek Pkwy, Debbie Ln /Ragland Rd, Holland Rd, Broad St, and Heritage Pkwy.		
ATC-15	Optimize northbound mainlane pavement width between STA 877+33.55 and STA 891+15 so the northbound exit ramp to New York Ave serves as the lane drop.	11/13/2014	12/08/2014
ATC-21	Optimize rigid ramp pavement design with minimum thickness equal to the frontage road section and no less than 9-inch CRCP at toll gantry locations.	11/13/2014	12/19/2014
ATC-22	Optimize SH 360 bridge structures at Matlock Rd so that width is reduced from 48ft wide each way to a 28ft wide northbound bridge, and 36ft wide southbound bridge in Option 1.	11/13/2014	12/08/2014
ATC-23	Stone Matrix Asphalt (SMA) surface course layer reduction in thickness to 1.5 inches for new flexible pavement construction on US 287 in Option 2.	11/13/2014	12/08/2014
ATC-24	Prime coat underseal in lieu of a one course surface treatment consisting of a sprayed-application primecoat directly on top of any untreated or treated base layer.	11/13/2014	12/08/2014

ATC No.	Brief Description	Date ATC Initially Submitted to TxDOT	Date of Final ATC Determination Letter
ATC-25	Revise profile of the SH 360 mainlanes and construction limits at the northbound frontage road and Broad St. to improve its overall constructibility and to increase reuse of existing pavement.	11/13/2014	12/08/2014

APPENDIX 3 TO EXHIBIT 2
PROPOSAL SCHEMATICS

(Attached.)

EXHIBIT 3
FEDERAL REQUIREMENTS

<u>Exhibit Description</u>	<u>No. of Pages</u>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	23
Attachment 3 – Wage Determination of the Secretary of Labor	1
Attachment 4 – Equal Employment Opportunity	6
Attachment 5 – Affirmative Action	5
Attachment 6 – Lobbying Certification	2
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1

ATTACHMENT 1 TO EXHIBIT 3

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — Regardless of whether the Work herein proposed will be financed in whole or in part with Federal funds, all of the statutes, rules and regulations promulgated by the Federal Government that would be applicable to work financed in whole or in part with Federal funds will apply to such work. The “Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273,” are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

(a) “contracting officer” or “authorized representative”, such references shall be construed to mean TxDOT or its Authorized Representative;

(b) “contractor”, “prime contractor”, “bidder”, “Federal-aid construction contractor”, “prospective first tier participant” or “First Tier Participant”, such references shall be construed to mean DB Contractor or its authorized representative;

(c) “contract”, “prime contract”, “Federal-aid construction contract” or “design-build contract”, such references shall be construed to mean the Design-Build Agreement (“DBA”) between DB Contractor and TxDOT for the Project;

(d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant”, “lower tier prospective participant”, “Lower Tier Participant” or “lower tier subcontractor”, such references shall be construed to mean any Subcontractor or Supplier; and

(e) “department”, “agency”, “department or agency with which this transaction originated” or “contracting agency”, such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, “Nondiscrimination,” and Section VI, “Subletting or Assigning the Contract,” of the Form 1273 required contract provisions, DB Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the DBA and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), DB Contractor and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of DB Contractor and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), DB Contractor and its subcontractors shall retain all such books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. DB Contractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

ATTACHMENT 2 TO EXHIBIT 3
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273
Revised May 1, 2012

- I. General**
- II. Nondiscrimination**
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I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor,

either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b): (Not Applicable)

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of

paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and

so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of

hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no

deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above,

shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage

rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and

the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any

subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

“Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the

construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both.”

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification

set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in

covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 3 TO EXHIBIT 3

FEDERAL PREVAILING WAGE RATE

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. Any wage rate that is not listed must be submitted to the Engineer for approval. **IMPORTANT NOTICE FOR STATE PROJECTS;** only the controlling wage rate zone applies to the contract. Effective 1-3-2014.

Classification Number	Classification Description	Zone TX35
1300	Asphalt Distributor Operator	\$15.32
1303	Asphalt Paving Machine Operator	\$13.99
1106	Asphalt Raker	\$12.69
1305	Broom or Sweeper Operator	\$11.74
1124	Concrete Finisher, Paving and Structures	\$14.12
1318	Concrete Pavement Finishing Machine Operator	\$16.05
1333	Concrete Saw Operator	\$14.48
1344	Crane Operator, Hydraulic 80 Tons or Less	\$18.12
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$17.27
1343	Crane Operator, Lattice Boom Over 80 Tons	\$20.52
1306	Crawler Tractor Operator	\$14.07
1139	Electrician	\$19.80
1347	Excavator Operator, 50,000 pounds or less	\$17.19
1348	Excavator Operator, Over 50,000 pounds	\$16.99
1150	Flagger	\$10.06
1151	Form Builder/Setter, Structures	\$13.84
1160	Form Setter, Paving & Curb	\$13.16
1363	Foundation Drill Operator, Truck Mounted	\$21.07
1360	Foundation Drill Operator, Crawler Mounted	\$17.99
1369	Front End Loader Operator, 3 CY or Less	\$13.69
1372	Front End Loader Operator Over 3 CY	\$14.72
1172	Laborer, Common	\$10.72
1175	Laborer, Utility	\$12.32
1346	Loader/Backhoe Operator	\$15.18
1187	Mechanic	\$17.68
1380	Milling Machine Operator	\$14.32
1390	Motor Grader Operator, Fine Grade	\$17.19
1393	Motor Grader Operator, Rough	\$16.02
1396	Pavement Marking Machine Operator	\$13.63
1205	Pipelayer	\$13.24
1384	Reclaimer/Pulverizer Operator	\$11.01
1500	Reinforcing Steel Worker	\$16.18
1402	Roller Operator, Asphalt	\$13.08

Classification Number	Classification Description	Zone TX35
1405	Roller Operator, Other	\$11.51
1411	Scraper Operator	\$12.96
1194	Servicer	\$14.58
1341	Small Slipform Machine	\$15.96
1515	Spreader Box Operator	\$14.73
1609	Truck Driver Lowboy-Float	\$16.24
1612	Truck Driver, Off Road Hauler	\$12.25
1600	Truck Driver, Single Axel	\$12.31
1606	Truck Driver, Single or Tandem Axel Dump Truck	\$12.62
1607	Truck Driver, Tandem Axel Tractor with Semi Trailer	\$12.86
1612	Truck Driver, Transit-Mix	\$14.14
1706	Welder	\$14.84
1520	Work Zone Barricade Servicer	\$11.68

ATTACHMENT 4 TO EXHIBIT 3

EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION

000---006

**Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
 - a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
 - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results

from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards

accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of

complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

ATTACHMENT 5 TO EXHIBIT 3

AFFIRMATIVE ACTION

**SPECIAL PROVISION
000--004**

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.
2. **Goals.**
 - a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
 - b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (percent)	Goals for female participation in each trade (percent)
See Table 1	6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of

the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1

County	Goals for Minority Participation	County	Goals for Minority Participation
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

ATTACHMENT 6 TO EXHIBIT 3

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the DBA or Subcontract, each prospective DB Contractor and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective DB Contractor/subcontractor certifies, to the best of its knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed DBA or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. DB Contractor/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the

undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

ATTACHMENT 7 TO EXHIBIT 3

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

DB Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the DBA.

Concurrently with execution of the DBA, DB Contractor has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, DB Contractor is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the DBA.

BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. DB Contractor shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.
- C. At DB Contractor’s request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

DEVELOPER	Lane-Abrams, a Texas Joint Venture
By: J.D. ABRAMS, L.P., a joint venture member	
SIGNATURE	
NAME (printed or typed)	Brad L. Everett
TITLE	President
DATE	May 15, 2015
By: The Lane Construction Corporation, a joint venture member	
SIGNATURE	
NAME (printed or typed)	George A. Hassfurter
TITLE	District Manager
DATE	May 15, 2015

ATTACHMENT 8 TO EXHIBIT 3

CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT

2004 Specifications

SPECIAL PROVISION

000---009

Certification of Nondiscrimination in Employment

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

EXHIBIT 4

TXDOT-PROVIDED APPROVALS

1. Finding of No Significant Impact (FONSI) issued by the Federal Highway Administration for the Project on January 16, 2014.

EXHIBIT 5

MAXIMUM PAYMENT SCHEDULE

Months After NTP	Anticipated Draw (A)	DB Contractor's Cumulative Draw (B)
1	\$7,000,000.00	\$7,000,000.00
2	\$5,000,000.00	\$12,000,000.00
3	\$3,000,002.00	\$15,000,002.00
4	\$14,300,000.00	\$29,300,002.00
5	\$21,800,000.00	\$51,100,002.00
6	\$6,000,000.00	\$57,100,002.00
7	\$5,000,000.00	\$62,100,002.00
8	\$5,211,500.00	\$67,311,502.00
9	\$7,211,500.00	\$74,523,002.00
10	\$16,111,500.00	\$90,634,502.00
11	\$10,211,500.00	\$100,846,002.00
12	\$10,211,500.00	\$111,057,502.00
13	\$12,211,500.00	\$123,269,002.00
14	\$13,941,500.00	\$137,210,502.00
15	\$13,941,500.00	\$151,152,002.00
16	\$13,941,500.00	\$165,093,502.00
17	\$12,941,500.00	\$178,035,002.00
18	\$10,941,500.00	\$188,976,502.00
19	\$6,941,500.00	\$195,918,002.00
20	\$6,941,500.00	\$202,859,502.00

Months After NTP	Anticipated Draw (A)	DB Contractor's Cumulative Draw (B)
21	\$7,941,500.00	\$210,801,002.00
22	\$8,941,500.00	\$219,742,502.00
23	\$8,941,500.00	\$228,684,002.00
24	\$6,941,500.00	\$235,625,502.00
25	\$5,941,500.00	\$241,567,002.00
26	\$3,941,500.00	\$245,508,502.00
27	\$2,225,500.00	\$247,734,002.00
28	\$3,439,000.00	\$251,173,002.00
29	\$2,000,000.00	\$253,173,002.00
30	\$0.00	\$0.00
31	\$0.00	\$0.00
32	\$0.00	\$0.00
33	\$0.00	\$0.00
34	\$0.00	\$0.00
35	\$0.00	\$0.00
36	\$0.00	\$0.00
37	\$0.00	\$0.00
38	\$0.00	\$0.00
TOTAL	\$253,173,002.00	

EXHIBIT 5.1

**OPTION PRICES FOR OPTION 3 WORK (INCLUDING ASSOCIATED
AUTHORITY OPTIONS)**

Option 3	Price
Option 3A: Camp Wisdom Road/Sublett Road	\$4,981,454.43
Option 3B: Webb Lynn/Lynn Creek Parkway	\$1,963,002.22
Option 3C: New York Avenue	\$1,184,153.61
Option 3D: Debbie Lane/Ragland Road	\$4,180,197.36
Option 3E: Holland Road	\$4,494,539.06
Option 3F: Broad Street	\$4,071,248.59
Option 3G: Heritage Parkway	\$4,298,980.47
Option 3H: Lone Star Road	\$1,343,315.28
Option 3I: Matlock Road	\$3,644,109.00
TOTAL	\$30,161,000

EXHIBIT 6A

HUB REQUIREMENTS

1. Introduction

TxDOT is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. TxDOT encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means.

Pursuant to [Texas Government Code §2161.181 and §2161.182](#), and TxDOT's HUB policy and rules, TxDOT is required to make a good faith effort to increase HUB participation in its contracts. TxDOT may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

2. Texas Administrative Code

TxDOT's HUB rules are located in [Title 43, Chapter 9, Subchapter L](#) of the Texas Administrative Code, and the CPA rules are located in [Title 34, Part 1, Chapter 20, Subchapter B](#). Proposers are required to comply with TxDOT's HUB rules and the applicable requirements set forth in 34 TAC, Part 1, Chapter 20, Subchapter B, §20.14. If there are any discrepancies between TxDOT's administrative rules and this RFP, the rules shall take priority.

3. HUB Participation Goal

The CPA has established statewide HUB participation goals for different categories of contracts in [34 T.A.C. §20.13](#). TxDOT has assigned the statewide HUB Annual Procurement Utilization Goal of 23.7% per fiscal year to the professional services portion of the Work performed pursuant to the Design-Build Agreement. In order to meet or exceed the HUB participation goals, TxDOT encourages outreach to certified HUBs. Proposers shall make a good faith effort to include certified HUBs in the procurement process. Moreover, DB Contractor has an on-going obligation during the Term to continue to identify subcontracting opportunities for HUBs. If DB Contractor enters into any subcontracts after award of the DBA, DB Contractor shall exercise good faith efforts to subcontract with HUBs, utilizing the procedures outlined in Section 6 below.

4. Required HUB Subcontracting Plan

TxDOT has determined that subcontracting opportunities are probable for this RFP. As a result, each Proposer must submit an HUB Subcontracting Plan

(HSP) with its Proposal. The HSP is required whether a Proposer intends to subcontract or not.

In the HSP, a Proposer must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a Proposer from completing the HSP requirement.

5. CPA Centralized Master Bidder's List

Proposers/DB Contractor may search for HUB subcontractors in the CPA's Centralized Master Bidders List (CMBL) HUB Directory, which is located on the CPA's website at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>. For this procurement, TxDOT has identified the following class and item codes for potential subcontracting opportunities:

NIGP Class/Item Code:

- ***906-57: Development and Planning, Land (Architectural)***
- ***925-61: Development and Planning, Land (Engineering)***
- ***926-72: Environmental Planning and Advisory Services***
- ***961-44: Planning and Development, Industrial***
- ***925-86: Professional Land Surveying Services***
- ***992-26: Biological Testing Services***
- ***918-10: Air Pollution Consulting***
- ***906-64: State Urban Planning (Architectural)***
- ***918-92: Urban Planning Consulting***
- ***958-16: Planning Services, Soil and Land***

Proposers are/DB Contractor is not required to use, nor are they limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

TxDOT does not endorse, recommend or attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so Proposers are encouraged to refer to the CMBL often to find the most current listing of HUBs.

6. HUB Subcontracting Procedures – If a Proposer/DB Contractor Intends to Subcontract

Except as specifically provided in Exhibit 6B, an HSP must demonstrate that the Proposer/DB Contractor, as applicable, made a good faith effort to comply with TxDOT's HUB policies and procedures. The following subparts outline the items that TxDOT will review in determining whether an HSP meets the good faith effort standard. A Proposer/DB Contractor that intends to subcontract must

complete or amend, as applicable, the HSP to document its good faith efforts.

a. Identify Subcontracting Areas and Divide Them into Reasonable Lots

A Proposer/DB Contractor should first identify each area of the Work it intends to subcontract. Then, to maximize HUB participation, it should divide the Work into reasonable lots or portions, to the extent consistent with prudent industry practices.

b. Notify Potential HUB Subcontractors

The HSP must demonstrate that the Proposer/DB Contractor made a good faith effort to subcontract with HUBs. The Proposer's/DB Contractor's good faith efforts shall be shown through utilization of all methods in conformance with the HSP and by complying with the following steps:

i. Divide the Work into reasonable lots or portions to the extent consistent with prudent industry practices. The Proposer/DB Contractor must determine which portions of Work, including goods and services, will be subcontracted.

ii. Use the appropriate method(s) to demonstrate good faith effort. The Proposer/DB Contractor can use either method(s) 1, 2, 3, or 4:

c. Method 1: Proposer/DB Contractor Intends to Subcontract with only HUBs:

The Proposer/DB Contractor must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms **100%** of all available subcontracting opportunities will be performed by one or more HUBs; **or**,

d. Method 2: Proposer/DB Contractor Intends to Subcontract with HUB Protégé(s):

The Proposer/DB Contractor must identify in the HSP the HUB protégé(s) that will be utilized and should:

- Include a fully executed copy of the Mentor Protégé Agreement, which must be registered with the CPA prior to submission to TxDOT, and
- Identify areas of the HSP that will be performed by the protégé.

TxDOT will accept a Mentor Protégé Agreement that has been entered into by a Proposer/DB Contractor (mentor) and a certified HUB (protégé)

in accordance with [Texas Government Code §2161.065](#). When a Proposer/DB Contractor proposes to subcontract with a protégé(s), it does not need to provide notice to three (3) HUB vendors for that subcontracted area.

Participation in the Mentor Protégé Program, along with the submission of a protégé as a subcontractor in an HSP, constitutes a good faith effort for the particular area subcontracted to the protégé; **or**,

- e. Method 3: Proposer/DB Contractor Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):

The Proposer/DB Contractor must identify in the HSP and submit written documentation that one or more HUB subcontractors will be utilized; and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in the HSP. When utilizing this method, only HUB subcontractors that have existing contracts with the Proposer/DB Contractor for five years or less may be used to comply with the good faith effort requirements.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in the HSP, Proposers/DB Contractor may also use non-HUB subcontractors; **or**,

- f. Method 4: Proposer/DB Contractor Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):

The Proposer/DB Contractor must identify in the HSP and submit documentation regarding both of the following requirements:

- written notification to minority or women trade organizations or development centers to assist in identifying potential HUBs of the subcontracting opportunities the Proposer/DB Contractor intends to subcontract.

Proposers/DB Contractor must give minority or women trade organizations or development centers at least seven (7) working days prior to submission of the Proposer's/DB Contractor's response for dissemination of the subcontracting opportunities to their members. A list of minority and women trade organizations is located on the CPA's website under the [Minority and Women Organization link](#).

- written notification to at least three (3) HUB businesses of the subcontracting opportunities that the Proposer/DB Contractor intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:

- a description of the scope of work to be subcontracted,
- information regarding the location to review project plans or specifications,
- information about bonding and insurance requirements,
- required qualifications and other contract requirements, and
- a description of how the subcontractor can contact the Proposer/DB Contractor.

Proposers/DB Contractor must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the Proposer's/DB Contractor's response unless circumstances require a different time period, which is determined by the agency and documented in the contract file;

Proposers/DB Contractor must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Proposers/DB Contractor may rely on the services of contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in identifying qualified applicants for the HUB program.

g. Written Justification of the Selection Process:

TxDOT will make a determination if a good faith effort was made by the Proposer/DB Contractor in the implementation of the required HSP. One or more of the methods identified in the previous sections may be applicable to the Proposer's/DB Contractor's good faith efforts in implementing the HSP. TxDOT may require the Proposer/DB Contractor to submit additional documentation explaining how the Proposer made a good faith effort in accordance with its HSP.

A Proposer/DB Contractor must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the Proposer/DB Contractor negotiated in good faith with qualified HUB bidders, and did not reject qualified HUBs who were the best value responsive bidders.

7. Method 5: Proposer/DB Contractor Does Not Intend to Subcontract

When the Proposer/DB Contractor plans to complete all DBA requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The Proposer/DB Contractor must complete the "Self Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods

or services, including the class and item codes identified in Section 5. In addition, the Proposer/DB Contractor must provide a statement explaining how it will complete the Work using its own resources. The Proposer/DB Contractor must agree to comply with the following if requested by TxDOT:

- provide evidence of sufficient Proposer/DB Contractor staffing to meet the DBA requirements,
- provide monthly payroll records showing the Proposer/DB Contractor staff fully dedicated to the DBA,
- allow TxDOT to conduct an onsite review of company headquarters or work site where services are to be performed, and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Work.

8. Pre-award and Post-award HSP Requirements

The HSP shall be reviewed and evaluated prior to conditional award of the DBA and, if accepted, the finalized HSP will become part of the DBA with the selected Proposer.

Within 10 days of conditional award of the DBA, the selected Proposer shall send notification to all selected subcontractors as identified in the accepted HSP and provide a copy of such notification to TxDOT's representative set forth in Section 2.2.1 of the Instructions to Proposers and HUB Program Office.

Within 30 days of conditional award of the DBA, and as a condition of final DBA award, for all HUB subcontractors identified in the HSP submitted with the Proposal, the selected Proposer shall submit to TxDOT's representative set forth in Section 2.2.1 of the Instructions to Proposers a HUB commitment agreement that meets the requirements of 43 TAC Section 9.360, in the form set forth in Attachment 1 to this Exhibit 6A.

After DBA award, TxDOT will coordinate a post-award meeting with the successful Proposer to discuss HSP reporting requirements.

During the Term of the DBA, the DB Contractor must maintain business records documenting compliance with the HSP, and must submit monthly subcontract reports to TxDOT by completing the HUB "[Prime Contractor Progress Assessment Report](#)." This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors. The report must identify each subcontractor, regardless of whether the subcontractor is a HUB, by name and VID and must indicate the amount paid to each subcontractor. The report must be submitted even if no payments were made during the period being reported. If required by TxDOT, the DB Contractor must attach proof of payment including copies of cancelled checks. The DB

Contractor must also submit a final report showing the total amount paid to each subcontractor, in the form set forth in Attachment 2 to this Exhibit 6A.

During the Term of the DBA, if the parties amend the DBA to include a change to the scope of work or add additional funding, TxDOT will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the DB Contractor must submit an HSP change request for TxDOT's review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the DB Contractor will obtain prior written approval from TxDOT before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of an HSP.

If the DB Contractor decides to subcontract any part of the Work after DBA award, it must follow the good faith effort procedures outlined in Section 6 above (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, or participate in the Mentor Protégé Program).

For this reason, TxDOT encourages Proposers to identify, as part of their HSP, multiple subcontractors who are able to perform the Work in each area the Proposer plans to subcontract. Selecting additional subcontractors may help the DB Contractor make changes to its original HSP, when needed, and will allow TxDOT to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of the DBA, and the DB Contractor will be subject to remedial actions. TxDOT may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program ([see 34 T.A.C. §20.108 relating to Debarment](#)) and ([see 34 T.A.C. §20.105 relating to Procedures for Investigations and Debarment](#)).

ATTACHMENT 1 TO EXHIBIT 6A
Texas Department of Transportation
Subcontractor Monitoring System Commitment Agreement

Complete this Form for each HUB Subcontractor

This commitment agreement is subject to the award and receipt of a signed contract from the Texas Department of Transportation (TxDOT).

Contract #: _____ Assigned Goal: _____ % DB Contractor: _____

Description of Work <i>(List by category of work. Attach additional pages, if necessary.)</i>	Dollar Amount <i>(For each category of work.)</i>
Total Commitment Amount <i>(Including all additional pages.)</i>	\$

IMPORTANT: The signatures of the DB Contractor and the HUB and the intervening subcontractor(s), if any, and the total commitment amount must always be on the same page.

Contractor Name: Address: Phone #:	Name: _____ <i>(Please Print)</i> Title: _____ <div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Signature Date </div>
HUB Sub Contractor Subcontractor Name: VID Number: Address: Phone #:	Name: _____ <i>(Please Print)</i> Title: _____ <div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Signature Date </div>
Intervening Sub Contractor Subcontractor Name: VID Number: Address: Phone #:	Name: _____ <i>(Please Print)</i> Title: _____ <div style="display: flex; justify-content: space-between;"> _____ _____ </div> <div style="display: flex; justify-content: space-between;"> Signature Date </div>

VID Number is the Vendor Identification Number issued by the Comptroller. If a firm does not have a VID Number, please enter the owner's Social Security or their Federal Employee Identification Number (if incorporated).

9/97 DBE-H2.ATT

ATTACHMENT 2 TO EXHIBIT 6A

Texas Department of Transportation Subcontractor Monitoring System Final Report

The Final Report Form should be filled out by the DB Contractor and submitted to the _____ and the _____ (Construction Division) for review upon completion of the contract. The report should reflect **all subcontract activity** on the project. The report will aid in expediting the final estimate for payment. If the HUB goal requirements were not met, documentation supporting good faith efforts must be submitted.

HUB Goal: ____ %

Total Contract Amount: \$_____

Total Contract Amount: \$_____

Contract Number: _____

Vendor ID #	Subcontractor	Total \$ Amt Paid to Date
TOTAL		

This is to certify that _____% of the work was completed by the HUB subcontractors as stated above.

By: DB Contractor

Per: Signature

Subscribed and sworn to before me, this _____ day of _____, 20__

_____ Notary Public _____ County

My Commission expires: _____

EXHIBIT 6B

DB CONTRACTOR'S HUB SUBCONTRACTING PLAN

(Attached.)



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

"Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - **Agency Special Instructions/Additional Requirements** - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

For this procurement, TxDOT has identified the following class and item codes for potential subcontracting opportunities:

NIGP Class/Item Code:

- 906-57: Development and Planning, Land (Architectural)
- 925-61: Development and Planning, Land (Engineering)
- 926-72: Environmental Planning and Advisory Services
- 961-44: Planning and Development, Industrial
- 925-86: Professional Land Surveying Services
- 992-26: Biological Testing Services
- 918-10: Air Pollution Consulting
- 906-64: State Urban Planning (Architectural)
- 918-92: Urban Planning Consulting
- 958-16: Planning Services, Soil and Land

Proposers are not required to use, nor are they limited to using, the class and item codes identified above, and may identify other areas for subcontracting. TxDOT does not endorse, recommend or attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so Proposers are encouraged to refer to the CMBL often to find the most current listing of HUBs.

SECTION 1: RESPONDENT AND REQUISITION INFORM

- a. Respondent (Company) Name: Lane - Abrams Joint Venture (POC: Richard A Bean) State of Texas VID #: 1210
 Point of Contact: Richard A. Bean Phone #: 817-632-3800
 E-mail Address: rabean@laneconstruct.com Fax #: 817-632-3777
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: SH 360 Project through a Design-Build Contract Bid Open Date: 02-26-2015
(mm/dd/yyyy)

Enter your company's name here: Lane - Abrams Joint VentureRequisition #: SH 360 Project**SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b. of this SECTION and continue to Item c of this SECTION.)
 - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>five (5) years or less</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Engineering Services Professional	23.8 %	%	76.2 %
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		23.8 %	%	76.2 %

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - **No** (If **No**, continue to Item d. of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the Agency Special Instructions/Additional Requirements.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
 - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Lane - Abrams Joint Venture Requisition #: SH 360 Project

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

HSP – SECTION 2
(Continuation Sheet)

Enter your company's name here: Lane - Abrams Joint Venture Requisition #: SH 360 Project

SECTION-3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION-4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

	Richard A. Bean	Authorized Representative /TV Principal-in-Charge	01/09/2015
Signature	Printed Name	Title	Date (mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

Rev. 10/14

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs **at least seven (7) working days** to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.state.tx.us/casscmblsearch/index.jsp>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the **three (3)** Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers **at least seven (7) working days** prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

- d. List **two (2)** trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 12/14

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID Number <small>(Required if Texas certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

Rev. 10/14

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____
 Point-of-Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
 Point-of-Contact: _____ Phone #: _____
 Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than Select on
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: - Not Applicable

4. Bonding/Insurance Requirements: - Not Applicable

5. Location to review plans/specifications: - Not Applicable

EXHIBIT 7A

SPECIAL PROVISIONS

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Small Business Enterprise in State Funded Projects

The purpose of this Special Provision is to carry out the Texas Department of Transportation's policy of ensuring that Small Business Enterprise (SBE) has an opportunity to participate in the performance of contracts. If the SBE goal is greater than zero, Article A of this Special Provision shall apply to this Agreement; otherwise, Article B of this Special Provision applies. The percentage goal for SBE participation in the work to be performed under this Agreement will be shown in the Proposal and is set forth in the Agreement.

Definitions.

Small Business Enterprise (SBE) is a firm (including affiliates) certified by the Department whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for 3 consecutive years. Firms certified as Historically Underutilized Businesses (HUBs) by the Texas Comptroller of Public Accounts and as Disadvantaged Business Enterprises (DBEs) by the Texas Uniform Certification Program automatically qualify as SBEs.

Article A - SBE Goal is Greater than Zero.

1. **Policy.** The Department is committed to providing contracting opportunities for small businesses. In this regard, it is the Department's policy to develop and maintain a program in order to facilitate contracting opportunities for small businesses. Consequently, the requirements of the Department's Small Business Enterprise Program apply to this Agreement as follows:
 - a. The DB Contractor must meet the SBE goal set out in the Agreement by obtaining commitments from eligible SBEs or DB Contractor must show acceptable evidence of good faith efforts to meet the SBE goal for this Agreement.
 - b. The DB Contractor shall solicit SBEs through reasonable and available means.
 - c. DB Contractor and any Subcontractors shall not discriminate on the basis of race, color, national origin, age, disability or sex in the award and performance of this Agreement. These nondiscrimination requirements shall be incorporated into any subcontract and purchase order. Failure by DB Contractor to carry out these requirements is a material breach of this Agreement, that may result in the termination of this Agreement or such

other remedy as the Department deems appropriate in accordance with the terms of the Agreement and applicable Law.

- d. DB Contractor will include this Special Provision in all Contracts entered into by DB Contractor. DB Contractor will also require any Subcontractor to include this Special Provision in any Contract that the Subcontractor enters into under this Agreement.
- e. By signing this Agreement, DB Contractor certifies that the SBE goal as stated in the Agreement will be met by obtaining commitments from eligible SBEs or that DB Contractor will provide acceptable evidence of good faith effort to meet the commitment within the time frame set out below.

The DB Contractor's performance, during the construction period of the Agreement in meeting the SBE goal, will be monitored by the Department.

2. **Contractor's Responsibilities.** These requirements must be satisfied by the DB Contractor. Failure of DB Contractor to meet these requirements may result in the issuance of sanctions by the Department.

- a. DB Contractor shall, in consultation with the Department, develop and submit an SBE Performance Plan describing the methods to be employed for achieving TxDOT's SBE participation goals for the Agreement, including DB Contractor's exercise of good faith efforts. Each SBE Performance Plan must at a minimum include the following: specific categories of services and work anticipated for SBE participation on the project; schedule for submission of SBE Commitment Agreement Forms based on DB Contractor's initial project schedule; good faith efforts performed to date; good faith efforts that will be exercised by DB Contractor following execution of the Agreement to achieve the SBE participation goal for the project; and the name, title, qualifications, responsibilities and contact information, including e-mail address and telephone number, for the SBE contact person required under Section 2.(g) of these Special Provisions. The SBE Performance Plan must be submitted to the Department's representative set forth in Section 24.13.3 of the DBA and the Department's Office of Civil Rights (OCR) in Austin, Texas not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of the Agreement. The SBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement. Along with the SBE Performance Plan, DB Contractor shall submit a completed SBE Commitment Agreement Form for each SBE it intends to use to satisfy the SBE goal, to the extent known at the date of submission of the SBE Performance Plan. SBE Commitment Agreement Forms may be found on the Department's website at <http://www.txdot.gov/inside-txdot/forms-publications/doing-business/sbe-forms.html>.

- b. A DB Contractor who cannot meet the Agreement goal, in whole or in part, shall document the good faith efforts taken to meet the SBE goal. The Department will consider as good faith efforts all documented explanations that are submitted and that describe a DB Contractor's failure to meet a SBE goal or obtain SBE participation, including:
 - i. Advertising in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities,
 - ii. Providing written notice to at least five qualified SBEs allowing sufficient time for SBEs to participate effectively;
 - iii. Dividing the contract work into reasonable portions in accordance with standard industry practices,
 - iv. Documenting reasons for rejection or meeting with the rejected SBE to discuss the rejection,
 - v. Providing qualified SBEs with adequate information about bonding, insurance, plans, specifications, scope of work, and the requirements of the contract,
 - vi. Negotiating in good faith with qualified SBEs, not rejecting qualified SBEs who are also the lowest responsive bidder, and;
 - vii. Using the services of available minorities and women, community organizations, contractor groups, local, state and federal business assistance offices, and other organizations that provide support services to SBEs.

DB Contractor to whom the Agreement is conditionally awarded refuse, neglect or fail to submit an acceptable SBE Performance Plan, the proposal bond filed with the proposal shall become the property of the State, not as a penalty, but as liquidated damages to the Department.

- c. DB Contractor must not terminate a SBE subcontractor submitted on a Commitment Agreement for a contract with an assigned goal without the prior written consent of the Department. DB Contractor must comply with 43 TAC §9.324, prior to terminating or substituting a SBE. This includes providing written notification to the SBE and the Department (to the Department's representative set forth in Section 24.13.3 of the DBA and the Department's Office of Civil Rights) and providing the SBE five days in which to respond to DB Contractor's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if DB Contractor cannot demonstrate that the provisions of 43 TAC §9.324 have been followed. Terminating an SBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

- d. If the Department approves the termination of the SBE Contractor, DB Contractor shall make a good faith effort to replace the terminated SBE Contractor with another SBE, to the extent needed to meet the Agreement goal. DB Contractor shall submit completed SBE Commitment Agreement Form(s) for the substitute SBE firm(s). DB Contractor may not be allowed to count work on those items being substituted toward the SBE goal prior to approval of the substitution from the Department.
- e. The Contractor shall designate an SBE contact person who will administer the Contractor's SBE program and who will be responsible for submitting reports, maintaining records, and documenting good faith efforts to use SBEs.

3. Eligibility of SBEs.

- a. The Department certifies the eligibility of SBEs.
- b. The Department maintains and makes available to interested parties a directory of certified SBEs. The SBE directory may be found on the Department's website at <http://www.dot.state.tx.us/apps-cg/sbe/sbeinfo.htm>.
- c. Only firms certified at the time the commitments are submitted are eligible to be used in the information furnished by the Contractor required under Section 2.(a) above.
- d. Certified HUBs and DBEs are eligible as SBEs.
- e. Small Business Size Regulations and Eligibility is referenced on e-CFR (Code of Federal Regulations), Title 13 – Business Credit and Assistance, Chapter 1 – Small Business Administration, Part 121 – Small Business Size Regulations, Subpart A – Size Eligibility Provisions and Standards.

4. Determination of SBE Participation. SBE participation shall be counted toward meeting the SBE goal in this Agreement in accordance with the following:

- a. A DB Contractor will receive credit for all payments actually made to an SBE for work performed and costs incurred in accordance with the Agreement, including all subcontracted work. DB Contractor may not withhold or reduce payments to an SBE firm without a reason that is accepted as standard industry practice. DB Contractor shall notify the Department's representative set forth in Section 24.13.3 of the DBA if DB Contractor withholds or reduces payment to any SBE Contractor. DB Contractor shall submit an affidavit detailing the SBE Contract payments prior to receiving final payment for this Agreement.
- b. An SBE Contractor or Subcontractor may not subcontract more than 75% of a contract. The SBE shall perform not less than 25% of the value of the

contract work with (i) employees paid directly by the SBE; (ii) individuals whose services are obtained from a licensed employee leasing company; and (iii) equipment owned, rented or leased directly by the SBE.

- c. An SBE may lease equipment consistent with standard industry practice. An SBE may lease equipment from the DB Contractor if a rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is approved by the Department prior to the SBE starting the work in accordance with the following:
 - i. If the equipment is of a specialized nature, the lease may include the operator. If the practice is generally acceptable with the industry, the operator may remain on the lessor's payroll. The operator of the equipment shall be subject to the full control of the SBE, for a short term, and involve a specialized piece of heavy equipment readily available at the job site.
 - ii. For equipment that is not specialized, the SBE shall provide the operator and be responsible for all payroll and labor compliance requirements.

5. **Records and Reports.**

- a. DB Contractor shall submit monthly reports, after work begins, on SBE payments, (including payments to HUBs and DBEs). The monthly reports are to be sent to the Department's representative set forth in Section 24.13.3 of the DBA. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all SBE subcontracting or supply activity is completed. The "SBE Progress Report" is to be used for monthly reporting.
- b. SBE subcontractors and/or suppliers should be identified on the monthly report by SBE certification number, name, vendor number, and the amount of actual payment made to each during the monthly period. These reports are required regardless of whether or not SBE activity has occurred in the monthly reporting period. The Department may verify the amounts being reported as paid to SBEs by requesting, on a random basis, copies of invoices and cancelled checks paid to SBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.
- c. Upon completion of the Agreement and prior to receiving the final payment, DB Contractor shall submit the "SBE Final Report" to the Department's representative set forth in Section 24.13.3 of the DBA and the Department's Office of Civil Rights and a copy to the . DB Contractor will not receive final payment until this SBE Final Report has been received and approved by the Department. If the SBE goal requirement is

not met, documentation supporting good faith efforts, as outlined in Section 2.(b) of this Special Provision, must be submitted with the Final Report. These forms may be found on the Department's website at <http://www.txdot.gov/inside-txdot/forms-publications/doing-business/sbe-forms.html>.

- d. DB Contractor shall provide copies of Contracts or agreements and other documentation upon request.
 - e. DB Contractor shall maintain a copy of all reports submitted to the Department and all supporting records and documentation for a period of 3 years following the later of:
 - i. the date that final payment is made under the Agreement or
 - ii. the latest date of completion of any investigation, audit, examination, or other review that began during the Term of the Agreement or within three years of the date described by paragraph (1) of this clause (e). DB Contractor shall make the records available at reasonable times and places for inspection by authorized representatives of the Department.
6. **Compliance of DB Contractor.** To ensure that SBE requirements of this Agreement are complied with, the Department will monitor the DB Contractor's efforts to involve SBEs during the performance of this Agreement. This will be accomplished by a review of monthly reports submitted by the DB Contractor indicating its progress in achieving the SBE contract goal and by compliance reviews and/or on-site visits conducted by the Department.

A DB Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or employ other remedies as the Department deems appropriate in accordance with the terms of the Agreement and applicable Law.

Article B - No SBE Goal.

- 1. **Policy.** It is the policy of the Department that SBEs shall have an opportunity to participate in the performance of contracts. Consequently, the requirements of the Department's Small Business Enterprise Program apply to this contract as specified in Section 2-5 of this Article.
- 2. **Contractor's Responsibilities.** If there is no SBE goal, DB Contractor will offer SBEs an opportunity to participate in the performance of contracts and subcontracts.
- 3. **Prohibit Discrimination.** DB Contractor and any subcontractor shall not discriminate on the basis of race, color, national origin, religion, age, disability or

sex in the award and performance of contracts. These nondiscrimination requirements shall be incorporated into any subcontract and purchase order.

4. Records and Reports.

- a. DB Contractor shall submit reports on SBE (including HUB and DBE) payments. The reports are to be sent to the Department's Authorized Representative. These reports will be due annually by the 31st of August or at project completion, whichever comes first. These reports will be required until all SBE subcontracting or supply activity is completed. The "SBE Progress Report" is to be used for reporting. Upon completion of the contract and prior to receiving the final payment, the Contractor shall submit the "SBE Final Report" to the Department's representative set forth in Section 24.13.3 of the DBA and the Department's Office of Civil Rights. These forms may be found on the Department's website at <http://www.txdot.gov/inside-txdot/forms-publications/doing-business/sbe-forms.html>. The Department may verify the amounts being reported as paid to SBEs by requesting copies of invoices and cancelled checks paid to SBEs on a random basis.
- b. SBE subcontractors and/or suppliers should be identified on the report by SBE Certification Number, name and the amount of actual payment made.
- c. All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

EXHIBIT 7B

DB CONTRACTOR'S SBE PERFORMANCE PLAN

• SBE PLAN

The following is submitted as an individual Small Business Enterprise (SBE) Plan to address the applicable requirements in TxDOT's Small Business Enterprise (SBE) Program adopted pursuant to Texas Administrative Code Title 43 part 1 Chapter 9 Subchapter K and the Design Build Agreement (DBA) for the SH 360 Project

1. GOALS

A. Percentage Goals

The following percentage goals are presented below to reflect the Lane- Abrams JV's good faith effort to employ Small Business Enterprises whenever possible in accordance with all applicable requirements set forth in 43 TAC Chapter 9, Subchapter K, the SBE Special Provisions set forth in Exhibit 7A to the DBA, and the provisions in DB Contractor's approved SBE Performance Plan, set forth in Exhibit 7B to the DBA.

- i. The assigned SBE subcontracting goal for participation in the part of the Work consisting of Construction Work is established as 11% of the Price allocable to Construction Work and shall be offered to SBEs.
- ii. Lane–Abrams JV will demonstrate, document and comply with good faith efforts requirements as outlined in Exhibit 7A section 2(b) if SBE subcontracting goals cannot be attained.

2. PRINCIPAL TYPES OF SUPPLIES AND SERVICES TO BE SUBCONTRACTED

The principal products and/or services the Lane-Abrams JV anticipates subcontracting as well as the identification of SBEs for performance of construction work will be determined as work progresses through the Design phase of the Design Build Agreement during the first 12 months after the issuance of NTP2 based on our initial project schedule. As the plans, specification and estimate are completed and SBEs to perform the work are identified Lane-Abrams will submit the Form SMS 4906 Small Business Enterprise (SBE) Program Commitment Agreement Form.

Good faith efforts to date include the following:

- Mailing out a Request for Interest to SBE subcontractors based on Lane-Abrams mailing lists, including the SBE subcontractors in the Texas Unified Certification Program (TUCP) willing to work in the Project area, to introduce the project and solicit interest
- Contacting SBE subcontractors in the TUCP willing to work in the

Project area and discussing project opportunities and schedules

- Identify potential work to be considered for subcontracting SBEs to include:

Reinforcing steel placement
Trucking and Hauling Lighting and traffic signals Landscaping
Traffic Management & Tolling Systems
Signing and pavement markings
Erosion Control
Fencing and guard rail
Drilled shafts
Curb & gutter and flatwork

3. METHOD FOR DEVELOPING GOALS

The work activities to be self-performed by the Lane-Abrams JV's workforce will be identified by project management personnel based on best value assessment of each work activity and labor resource. Lane-Abrams JV's labor and materials sourcing strategy embodies preferences in offering subcontractor-designated work to qualified SBE's, as feasible.

The goals listed herein reflect internal policy objectives and procedures that require a careful review and evaluation process of the services and/or products to be subcontracted. The subcontracting data accumulated by Lane-Abrams JV through our sourcing/evaluation process for this project will be based on an outreach program targeted at maximizing the utilization of qualified SBE's whenever practicable by using a broad base of resources to identify and source potential SBE's.

4. SOURCES FOR SOLICITATION

The following sources have been identified by Lane-Abrams JV as available resources to locate and solicit appropriate SBEs and will be utilized as needed:

- i. Owner provided subcontractor listings
- ii. Texas Unified Certification Program (TUCP) directory
 - *National Center for American Indian Enterprise Development*
 - *National Business League*
 - *Latin American Management Association*
 - *The National Black Business Council, Inc.*
 - *Hispanic Business Professional Women Association*
- iii. Texas Comptroller of Public Accounts
 - *Centralized Master Bidders List-HUB Directory Search*

All subcontractors considered for Invitations to Bid by Lane-Abrams JV, including

SBEs may be asked to complete a Prequalification Form. This form is reviewed internally by Lane-Abrams JV to evaluate the following areas:

- + Safety record;
- + Quality of services and/or products;
- + Experience;
- + Insurance/Bonding Capacity;
- + Financial stability;
- + Personnel and Equipment Availability and Capacity;
- + Delivery schedule;
- + Pricing structure;

Additional information, if required, may be obtained from Dun and Bradstreet reports, personal interviews and contact with business references.

5. INVITATION TO BID

Following the identification and prequalification of a potential SBE, an Invitation to Bid is formulated and issued to the subcontractors. A log is maintained to track the subcontractors contacted and their response. Sample subcontract, material contract and/or purchase orders agreements are included with the Invitation as a resource document for the subcontractor's information and pricing consideration. All plans and specifications are made available for review. The DBA and applicable addenda may also be transmitted to the subcontractor.

6. SELECTION PROCESS AND AWARD

The responsive subcontractor quotes are evaluated based on prequalification information, qualifications of bid, inclusions/exclusions, price etc. After careful consideration the team makes a selection of the successful subcontractors for each work scope subcontracted. If an SBE is not selected the reasons for this decision are documented. Appropriate agreements are drafted and forwarded to the subcontractor for execution.

7. PLAN ADMINISTRATION

The following individual will administer the subcontracting Program:

NAME: Ruben Landa SBE/HUB *Liaison*

ADDRESS: 3001 Meacham Blvd. Suite 215
Fort Worth, TX 76244

PHONE: (817)-632-3800

EMAIL: Rlanda@laneabramsiv.com

The specific duties, as they relate to this subcontracting plan, include oversight of the subcontracting program, and the development, assist in the preparation and execution of individual subcontracting plans, documentation and the

monitoring of performance relative to the contractual subcontracting requirements contained in this plan including, but not limited to:

- Preparing and submitting periodic governmental required subcontracting reports including a monthly SBE Plan assessment report.
- Coordinating activities during compliance reviews by TxDOT.
- Coordinating activities involving SBEs.
- Monitoring attainment of proposed goals.

8. OUTREACH EFFORTS

- A. Efforts will be taken to assure that SBEs will have an equitable opportunity to compete, along with large businesses, for subcontract work. Outreach efforts will be made through:
- i. Contacts with minority and small business trade associations.
 - ii. Contacts with business development organizations.
 - iii. Contacts with the TxDOT Office of Civil Rights.
 - iv. Attendance at SBA procurement conferences and trade fairs.
 - v. Mentor-Protege relationships.
- B. Internal efforts will be made to guide and encourage purchasing agents, buyers, etc., to utilize SBEs as follows:
- i. By notifying appropriate internal purchasing agents and buyers of SBE sources.
 - ii. By monitoring efforts to achieve the goals of the subcontracting plan.

9. PLANS FOR SUBCONTRACTORS FOR LANE-ABRAMS JV

- A. Lane-Abrams JV shall include in all subcontracts subject to this plan the following language incorporated by reference in accordance with all applicable contract requirements and regulations:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or gender in the performance of this contract. The contractor shall carry out applicable requirements of 43 TAC Chapter 9, Subchapter K in the award and administration of DOT-assisted contracts and subcontracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Lane-Abrams JV deems appropriate.

Lane-Abrams JV shall pay each Subcontractor for Work performed within ten days after receiving payment from TxDOT for the Work performed by the Subcontractor, and shall pay any retainage on a Subcontractor's Work within ten days after satisfactory completion of all of the Subcontractor's Work.

Completed Subcontractor Work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the Subcontractor.

Satisfactory completion shall have been accomplished when:(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the OBA for the subcontracted Work, including the submission of all submittals required by the Subcontract and DBA, and (b) the Work done by the Subcontractor has been inspected and approved by Lane-Abrams JV and the final quantities of the Subcontractor's Work have been determined and agreed upon.

Subcontractor hereby specifically agrees to be bound and to comply with the subcontracting requirements of the terms and conditions of the OBA including but not limited to, the requirement that Subcontractor, except small business concerns, adopt and comply with a plan similar to this plan and submit such plan for review and acceptance by Lane-Abrams JV.

10. COMPLIANCE WITH REPORTING REQUIREMENTS

- A. Lane-Abrams JV agrees to submit monthly reports and to cooperate in any studies or surveys, as may be required by the Contracting Agency, in order to determine the extent of the compliance by the Owner to achieve the goal of the SBE plan. These reports will be due within 15 days after the end of a calendar month and will be submitted until all SBE subcontracting or material supply activity is completed.
- B. Lane-Abrams JV agrees to submit all applicable Standard Forms modified to fit the OBA. SMS 4906, SMS 4906-M/S, SMS 4906-T, SMS 4907 and SMS 4908 located on the TxDOT website at
- C. <http://www.txdot.gov/inside-txdot/forms-publications/doing-business/sbe-forms.html>
- D. To ensure that SBE requirements are complied with, TxDOT will monitor Lane- Abrams JV's efforts by reviewing monthly reports submitted to TxDOT by Lane- Abrams JV indicating progress in achieving the SBE contract goal and by compliance reviews conducted on the project site by TxDOT.

11. RECORDS

- A. Lane-Abrams JV agrees to maintain the following types of records to document compliance with the SBE plan:

- i. SBE source lists, guides, and the other data identifying these suppliers, subcontractor, etc.
- ii. Organizations contacted for providing SBE business sources.
- iii. Records on each subcontract solicitation resulting in an award showing whether or not SBEs were contacted, and if not, why not; whether or not SBEs were contacted, and if not, why not; and, if applicable the reason the award was not made to a small or small disadvantaged business concern.
- iv. Records of any outreach efforts to contact trade associations, business development, business development organizations, and conferences and trade fairs, to locate SBEs.
- v. Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and performance monitoring to evaluate compliance with program requirements.
- vi. Records on a contract-by-contract basis to support award data submitted by the offer or to the government including name, address, and business size of each subcontractor.

12. TRAINING

Lane-Abrams JV will ensure that all applicable training requirements will be accomplished with each subcontractor through orientation and/or acknowledgement of safety requirements included in all subcontract agreements.

13. EEO (Equal Employment Opportunity)

All Federal employment requirements to include EEO, affirmative action, labor, and all other applicable requirements will be posted at project site and reference to these requirements attached to all subcontract agreements.

14. IMPLEMENTATION

In order to effectively implement this plan to the extent consistent with efficient contract performance, Lane-Abrams JV shall perform the following functions:

- A. Assist small businesses by allowing time for the preparation of bids, quantities, specifications and delivery schedules. Where the lists of potential SBE subcontractors are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.
- B. Counsel and discuss subcontracting opportunities with representatives of SBE's.

- C. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as SBE's for the purpose of obtaining a subcontract that is to be included as part of all of a goal contained in the Lane-Abrams JV's subcontracting plan.

EXHIBIT 8

DB CONTRACTOR'S JOB TRAINING PLAN AND SMALL BUSINESS MENTORING PLAN

Section 1: On the Job Training Program

Policy Statement

Lane - Abrams Joint Venture (Lane-Abrams or L-A JV) will institute an on-the-job training program on the SH 360 Project, in accordance with the TxDOT Special Provisions On-the-Job Training Program for Design - Build and Comprehensive Development Agreement Projects 11-13 (Attachment A). Lane - Abrams will utilize the Associated General Contractors of Texas On-the-Job Training Program (Revised March 2004) (Attachment B) as a guiding resource for developing and implementing the Lane - Abrams On-the-Job Training Program. The program is designed to train and advance minorities, women and economically disadvantaged persons toward journeyworker status in all phases of the highway construction industry.

Nondiscrimination

It is the policy of Lane - Abrams to ensure that all applicants are considered and that employees are treated fairly during their employment, without regard to race, color, religion, age, physical or mental disability, gender, marital status, ancestry, national origin, veteran's status, citizenship, pregnancy, gender orientation, other protected activities, or any other characteristic protected by federal, state, or local law. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; wages or other forms of compensation; selection for training, including apprenticeship, pre-apprenticeship, and/or on the job training; and ensuring and maintaining a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which employees are assigned to work.

Lane - Abrams JV Annual Goal Commitment

Lane - Abrams is voluntarily participating in the On-the-Job Training Program and will train, at a minimum, 11 trainees. Training will begin in 2016.

Dissemination of On-the-Job Training (OJT Program)

Lane - Abrams will advise employees and applicants for employment of available training programs and prerequisites for each program. Upon entering the program, each trainee will receive a copy of their completed **Form AGC of Texas Federal On-the-Job Training Program Enrollment Form**.

Good Faith Efforts

At or before the issuance of NTP2, Lane – Abrams will submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR) and to the Department's representative set forth in Section 24.13.3 of the DBA. The plan will specify how Lane – Abrams 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 trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed. .

Reporting Requirements

Lane - Abrams will notify TxDOT within seven (7) days of intent to assign trainee to the project using the ***AGC of Texas Federal On-the-Job Training Program Enrollment Form***.

On a monthly basis, Lane – Abrams will submit the ***AGC of Texas Federal On-the-Job Training Program Enrollment Monthly Reporting Form*** to the Department's representative set forth in Section 24.13.3 of the DBA and the OCR in Austin. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, Lane - Abrams is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

Lane - Abrams will notify TxDOT within seven (7) days of intent to graduate a trainee from the On-the-Job Training program, provided the trainee has demonstrated to Lane - Abrams his/her ability to perform at a journeyman level. Lane - Abrams reserves the right to graduate a qualified trainee at any time should they be deemed qualified.

Lane - Abrams will utilize ***AGC of Texas Federal On-the-Job Training Program Enrollment Form*** to notify TxDOT of the replacement trainee's enrollment.

Lane - Abrams will retain original training records for a period not less than three years after the end of the project.

Trainee Requirements

No employee will be enrolled in the On-the-Job Training program in any classification in which he/she has previously completed a training course leading to journeyman status, or in which he/she has been employed as a journeyman.

Trainee Wage Rates

Trainees will be paid at a minimum the established percentages of the project specific journeyman starting wage (JSW) rates as set forth by Lane - Abrams. Under no circumstance will the trainee receive less than the minimum wage. Trainees' compensation will be not less than 60% of JSW specified in the contract for the first half of the training period, 75% for the third quarter of the training period and 90% for the last quarter of the training period.

Section 2: Small Business Mentoring/Training Program

Lane - Abrams Joint Venture (Lane-Abrams JV or L-A JV) has created a Mentoring Plan to provide training and assistance to SBE, HUB and other small businesses to participate in the areas of goods and services; design and construction and will use the the TxDOT- NTTA Cooperative Inclusion Plan (CIP) as a guiding reference document. As part of this plan, a Mentor Program will be established. Eligible firms will receive assistance from Lane - Abrams JV SBE/HUB Coordinator and other Lane - Abrams JV personnel to help them in bidding and performing work on the SH 360 Project.

Definition of Terms

Disadvantaged Business Enterprises (DBEs) - Any business so certified in Accordance with 49 CFR Part 26.

Historically Underutilized Businesses (HUBs) - Any business so certified by the Texas Buildings and Procurement Commission (TB&PC) (formerly the General Services Commission).

Small Business Enterprises (SBEs) - Any business certified as SBE and/or HUB or otherwise so certified by TxDOT.

Lane - Abrams JV Mentor (Mentor) - Employees from Lane-Abrams Joint Venture.

Lane - Abrams Joint Venture (L-A JV) Protégé (Mentor Protégé) - HUBs/ SBEs that sign an agreement with L-A JV to participate in the L-A JV- Small Business Mentor Protégé Program..

Session - series of meetings for the L-A JV-Small Business Mentor Protégés.

Program Goals

The program goal is to empower Disadvantaged Business firms by providing them the training and assistance that will help them succeed and in turn contribute to the success of the SH 360 Project. Types of assistance include:

- Guidance in the interpretation of plans, specifications, bid documents, estimating and pricing.
- Assistance in establishing business relationships with material suppliers, equipment rental and other vendors.
- Assistance in obtaining bonding, insurance and meeting other business needs.
- Familiarizing and assisting with safety regulations and other applicable laws, rules and regulations.
- Familiarization and guidance with environmental issues specific to the project.
- Guidance in billing and invoice preparation and general money management.

Program Components

A. Educational Workshops

As part of the Mentoring Plan, Lane - Abrams JV will conduct a series of educational workshops for subcontractors who are interested in additional training. Topics for these workshops include contracts, contract negotiation, bonding, design-build method, construction law, Safety and OSHA requirements, taxes and payroll requirements and bonding and insurance requirements. The primary audience for these workshops will be small emerging businesses and established firms needing assistance to improve and grow their operations and local businesses desiring involvement in the SH 360 Project.

Workshops will generally be scheduled quarterly, however, if necessary additional workshops will be scheduled when a need is identified, particularly at the beginning of the project. Bonding and Insurance requirements are one of those needs that will be addressed very early in the procurement process. Workshops addressing these requirements will allow potential subcontractors an opportunity to make the appropriate arrangements needed to be able to bid on the work.

B. Mentor Program

Lane-Abrams Joint Venture's (L-A JV) Small Business Mentor Protégé Program provides an opportunity to selected Small Businesses to learn about L-A JV's business opportunities and its business practices. Small businesses will receive information to assist them in bidding and performing on L-A JV's contracts by working directly with L-A JV and appropriate subcontractors gaining valuable on-the-job training during a one (1) year mentoring period.

Eligibility Criteria

A. Educational Workshops

To be eligible for the program, the small business must be certified by the State of Texas as a HUB, or SBE and must perform a category of work or supply a type of material that adds value to the project (e.g., design services, rebar placement, pavement markings, etc.).

B. Mentor Program

To be eligible for the program, the small business must have been certified by the State of Texas as a HUB, or SBE for at least one consecutive year and must perform a category of work or supply a type of material that adds value to the project

(e.g., design services, concrete supplier, and rebar tier). Firms interested in the program must submit a Small Business Mentor Protégé application to Lane - Abrams JV. L-A JV will offer participation in the program to each HUB, or SBE that has an active role in the project during the design and construction phase as well as during the COMA period. The actual number of Protégés participating in the program will depend on the total number of candidate firms working on the project that express interest in the program.

Once selected by L-A JV, the Mentor Protégé must commit the necessary time and efforts needed for the successful training. This is a voluntary program and either party may withdraw at any time by providing notice outlining the reason for withdrawal from the program (a courtesy copy will be provided to TxDOT). Upon completion of the one year (1) program, L-A JV will provide each Mentor Protégé with a Certificate of Completion.

Program Approach and Topics

Lane - Abrams JV Small Business Mentor Protégé program aims to provide effective mentoring to DBEs/HUBs/SBEs that have already been selected as subcontractors for the project. Lane - Abrams JV will make best efforts to mentor the Protégé while the Protégé is working on the project, attending project meetings, and participating in project discussions, allowing Protégé to gain an understanding of the conduct of the project operations and receive one-on-one training opportunities. The intent of this approach is to provide actual project experience.

Each Mentor Protégé will be invited to participate in project meetings through which the Mentor Protégé will gain practical experience related to project operations. Meeting topics may include planning strategies, schedule reviews, budgeting and cost tracking, subcontractor interface coordination, insurance, bonding, safety (including safety task assessments), celebratory events, and quality reviews. The various meetings are held either at the project office or at the particular field site, as applicable.

L-A JV will introduce the Trainees to key L-A JV staff and to TxDOT's project staff and provide networking opportunities with individuals. L-A JV mentors, in collaboration with L-A JV's staff, subcontractors, bonding agents, and other applicable parties, will meet with the Trainee during regularly scheduled meetings and will work individually with the Trainees as needed to achieve program goals. L-A JV will publish bulletins that identify the firms participating in the Mentor/Training program in order to improve awareness of the program and to achieve program goals.

This approach will provide the Mentor Protégé with practical, hands-on project operations experience, which has been shown to provide the most successful method of training - actual, real-time experience.

The Small Business Mentor /Training Program will offer participants the opportunity to enhance their business skills by focusing on fundamental construction business tenets:

- 1. Schedule and scheduling**
 - a) Short-term and long-term scheduling.
 - b) How to schedule.
 - c) Progressing a schedule.
 - d) Keeping on schedule.
 - e) Identifying and applying appropriate resources.
 - f) Schedule recovery.

- 2. Creating a cost budget and measuring costs**
 - a) Establishing a budget with appropriate cost codes.
 - b) Monitoring the budget by conducting weekly review of cost reports.
 - c) Anticipating necessary changes to the budget.
 - d) Adjusting the budget.
 - e) Identifying changed conditions.

- 3. Measuring Cash flow and profitability**
 - a) Cash in vs. Cash out.
 - b) Relationship of cash flow to profitability.

- 4. Understanding the role of bonds and insurance**

- 5. Clarifications to the contract documents, when requested by the Trainee**

- 6. Human resources**

- 7. Project Safety**

Participant Responsibilities and Reporting

A. Mentor Protégé:

The Mentor Protégé is responsible for complying with the following guidelines:

- Attend and be on-time for all meetings related to the program.
- Perform assignments given by the Mentor.
- Hold Lane-Abrams JV, including its employees, or agents harmless from any claim, suit, suit action, or demand of Mentor Protégé or Mentor Protégés creditors, or any other person arising out of the Mentor Protégé Agreement.

B. Mentor:

Lane - Abrams JV Mentor is assigned to each Mentor Protégé and will perform the mentoring activities described in this Program plan. The Mentor is responsible to verify the Mentor Protégé receives and understands the information presented during the meetings. The Mentor will have regular contact with each Mentor Protégé to respond to any questions that the Mentor Protégé may have regarding the Program.

The Mentor will complete a quarterly report for each Protégé that outlines topics covered, progress towards completion, and recommended future training. The Mentor will submit each quarterly report to Lane - Abrams JV's SBE/HUB Liaison Manager and TxDOT by the 10th working day of the following quarter.

Evaluating Effectiveness

The criteria used to evaluate the effectiveness of the program will include the following SH 360 project goals:

- Additional SBE/HUB participation is achieved.
- The ability of mentored subcontractors to bid, win and perform work.
- The ability of mentored subcontractors to complete work on time and under budget is improved.
- Mentored subcontractors achieve safety.
- The ability of mentored subcontractors to increase their experience and improve their capabilities enabling them to compete for work outside of the SH 360 project.

ATTACHMENT A TO EXHIBIT 8

SPECIAL PROVISION

**On-the-Job Training Program for
Design-Build and Comprehensive Development Agreement Projects**

This training special provision is the Department’s implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of DB Contractor’s equal employment opportunity affirmative action program, training shall be provided as follows:

1. The DB Contractor shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.
2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R.§230.111:
 - 1) Dollar value of the construction services contract;
 - 2) Duration of the construction work activity;
 - 3) Geographic location;
 - 4) Availability of minorities, women, and disadvantaged for training;
 - 5) The potential for effective training;
 - 6) Type of work;
 - 7) Total normal work force that the average proposer could be expected to use;
 - 8) The need for additional journeymen in the area;
 - 9) Recognition of the suggested minimum goal for the State; and
 - 10) A satisfactory ratio of trainees to journeymen expected to be on DB Contractor's work force during normal operations.

Construction Cost Estimate		
From	To	Trainees
\$0	\$9,999,999.99	0
\$10,000,000	\$19,999,999.99	1
\$20,000,000	\$39,999,999.99	2
\$40,000,000	\$59,999,999.99	3
\$60,000,000	\$79,999,999.99	4
\$80,000,000	\$99,999,999.99	5
\$100,000,000	\$119,999,999.99	6
Thereafter for each increment of \$20 million, goal is increased by one trainee		

3. The OJT program trainee goal for this project is 0 trainees.
4. The DB Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.
5. In the event that DB Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The DB Contractor should insure that this training special provision is made applicable to such subcontract. However, DB Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.
6. The DB Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. The DB Contractor shall conduct 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 a reasonable area of recruitment.
7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.
8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of DB Contractor and aims to train and upgrade employees to journey worker status.
9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.
10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

11. 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.
12. 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. The DB Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, DB Contractor's records should document the findings in each case.
13. At or before contract execution, DB Contractor must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how DB Contractor 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.
14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.
15. 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.
16. The OCR must approve all proposed apprentices and trainees before training begins. The DB Contractor must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. The DB Contractor shall provide each trainee with a copy of the training program he or she will follow.
17. On a monthly basis, DB Contractor shall submit the Federal OJT Monthly Reporting Form to the Department's Strategic Projects office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, DB Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.
18. The DB Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
19. If requested, DB Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless of whether DB Contractor receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit DB Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to DB Contractor if the trainees are concurrently employed on a federal-aid project and when DB Contractor: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to DB Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by DB Contractor and evidences a lack of good faith on the part of DB Contractor in meeting the requirements of this Training Special Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

ATTACHMENT B TO EXHIBIT 8

(Attached.)

EXHIBIT 9

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

SH 360 PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Agreement for the SH 360 Project, duly executed and delivered as of _____, 2014 (the “DBA”), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$15,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the DBA Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the DBA.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the DBA Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Lane Rental Charges and Performance Assessment Charges as specified in the DBA Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the DBA Documents with respect to those obligations of Principal which survive such Final Acceptance.

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

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

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Work, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBA, and pay to the Obligees the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligees 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 Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefor.

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

6. After the Obligees has terminated the Principal's right to complete the DBA, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the DBA, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the DBA. 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 DBA, Surety is obligated without duplication for:

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

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

c. Liquidated Damages, Lane Rental Charges and Performance Assessment Charges under the DBA.

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

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

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

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

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of

Bond
No.

Type of
Bond: **Performance Bond**

dated
effective

(MONTH-DAY-YEAR)
[DB Contractor]

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor

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

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

The Bonded Sum hereunder shall increase to the amount of \$214,874,002.00 effective upon issuance by the Obligee of NTP2 under the DBA.

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

This rider
is effective

Signed _____ and _____
Sealed _____
(MONTH-DAY-YEAR)

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____
(PRINCIPAL)

(SURETY)

By: _____
Attorney in fact

EXHIBIT 10

FORM OF PAYMENT BOND

[To be replaced by actual Payment Bond]

SH 360 PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Agreement for the SH 360 Project, duly executed and delivered as of _____, 2014 (the “DBA”), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$15,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.4 of the DBA.

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

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

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

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

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

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

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of

Bond
No.

Type of
Bond: **Payment Bond**

dated
effective

(MONTH-DAY-YEAR)
[DB Contractor]

, as Principal,

(PRINCIPAL)

and by

, as Surety,

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

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

The Bonded Sum hereunder shall increase to the amount of \$214,874,002.00 effective upon issuance by the Obligee of NTP2 under the DBA.

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

This rider
is effective

Signed _____ and _____
Sealed _____
(MONTH-DAY-YEAR)

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____
(PRINCIPAL)

(SURETY)

By: _____
Attorney in fact

EXHIBIT 11

FORM OF RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO. _____

RETAINAGE BOND

KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the DBA, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the **Principal** to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anyway affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the contract or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____ day of _____, 20 ____.

CONTRACTOR

SURETY (Print Firm Name and Seal)

By: _____
(Title)

*By: _____
(Title)

By: _____
(Title)

SURETY (Print Firm Name and Seal)

SURETY (Print Firm Name and Seal)

*By: _____
(Title)

*By: _____
(Title)

*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.

EXHIBIT 12

- 12-A Form of Warranty Bond
- 12-B Form of Dual Obligee Rider for Warranty Bond

EXHIBIT 12-A

FORM OF WARRANTY BOND

[To be replaced with actual Warranty Bond]

SH 360 PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Agreement for the SH 360 Project, duly executed and delivered as of _____, 20__ (the “DBA”), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$_____ ***[Insert amount that is 20% of the Price]*** (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

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

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

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

2. This Bond shall inure to the benefit of all Subcontractors and Suppliers with respect to the Work, other than entities having an equity interest in Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

3. The guarantees contained herein shall survive Final Acceptance.

4. Whenever Principal shall fail to pay the lawful claims of any of the persons identified in Paragraph 2 above with respect to the Work, excluding entities having an equity interest in Principal, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

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

a. arrange for Principal to perform and complete the DBA;

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Work (as defined in the DBA), through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBA, and pay to the Obligees the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the Price incurred by the Obligees resulting from the Principal's default; or

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

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

7. After the Obligees has terminated the Principal's right to complete the DBA, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the DBA, and the responsibilities of the Obligees to Surety shall not be greater

than those of the Obligee under the DBA. 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 DBA, Surety is obligated without duplication for:

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

b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and

c. Liquidated Damages, Lane Rental Charges and Performance Assessment Charges under the DBA.

8. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Sureties' prior written consent thereto having been obtained, does not increase the Price by more than \$_____ ***[Insert amount that is 20% of the Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

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

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

EXHIBIT 12-B

FORM OF DUAL OBLIGEE RIDER

(Warranty Bond)

[To be replaced with actual Dual Obligee Rider]

DUAL OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Warranty Bond No. _____.

WHEREAS, the Texas Department of Transportation (“TxDOT” or “Primary Obligee”) has awarded to _____, a _____ (“Principal”), a Design-Build Agreement for the SH 360 Project, duly executed and delivered as of _____, 20, (hereinafter called the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, after Final Acceptance and upon release of the Payment and Performance Bonds, Principal is required to furnish a warranty bond whereby the North Texas Tollway Authority (the “Authority”) is named as an additional obligee under such bond; and

WHEREAS, Principal and _____ (the “Surety”) have agreed to execute and deliver this Rider concurrently with the execution of Warranty Bond No. _____ (hereinafter referred to as “Warranty Bond”) upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

The North Texas Tollway Authority (Authority) is hereby added to the Warranty Bond as a named obligee (hereinafter referred to as “Additional Obligee”).

The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or any either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) substantially in accordance with the terms of said Contract as to payments; and the Surety shall not be liable under the Warranty Bond to the Primary Obligee, Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee, Additional Obligee, or either of them, shall have occurred, been declared by the Principal, and be continuing under the Contract.

The aggregate liability of the Surety under this Warranty Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Warranty Bond. The Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee and/or the claimants under the Warranty Bond, provided that the Additional Obligee has received notice and 30 days' prior opportunity to cure breach or default by the Primary Obligee under the Contract.

The Surety may, at its option, make any payments under the Warranty Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Warranty Bond and this Rider, this Rider shall govern and control. All references to the Warranty Bond, either in the Warranty Bond or in this Rider, shall include and refer to the Warranty Bond as supplemented and amended by this Rider. Except as herein modified, the Warranty Bond shall be and remains in full force and effect.

Signed, sealed and dated this ____ day of _____, 20__.

(Principal)
(Seal)

By: _____
(Title)

(Surety)
(Seal)

By: _____
, Attorney-in-Fact

EXHIBIT 13

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

RECITALS

A. _____, as design-build contractor ("DB Contractor"), and TxDOT are parties to that certain Design-Build Agreement (the "DBA") pursuant to which the 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 DBA Documents.

B. To induce TxDOT to (i) enter into the DBA; 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 DBA by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the DBA with DB Contractor. Therefore, in consideration of TxDOT's execution of the DBA 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 the DB Contractor arising out of, in connection with, under or related to the DBA 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 the DB Contractor. If any payment made by the 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 DBA Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the DB Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which the 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 the DB Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the 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 the DB Contractor. Guarantor hereby waives the right to require TxDOT to proceed against the DB Contractor, to exercise any right or remedy under any of the DBA 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 the DB Contractor and TxDOT or their respective successors and assigns, with respect to any of the DBA 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 DBA Documents or any modification thereof; (iii) any release of the DB Contractor from any liability with respect to any of the DBA Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by the 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 DBA

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 DBA 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 the DB Contractor under the DBA. Accordingly, in the event that the 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 the DB Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and the 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 the DB Contractor, if and as permitted by the DBA, 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 discretion may determine, and (vi) exercise any other rights available to it under the DBA 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 infeasible

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 DBA 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 DBA 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 the DB Contractor; (iv) any defenses, set-offs or counterclaims that the 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 the 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 DBA 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, the 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 the DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor, to the Purchasers, to any Purchaser 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 the DB Contractor under any of the DBA 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 16.1.3 of the DBA; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of the 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 which it may now have or may hereafter acquire against the 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 the 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 the 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 the DB Contractor.

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

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

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

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

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

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

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

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

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

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

g. it has reviewed and approved copies of the DBA Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to the 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 the DB Contractor and will keep itself fully informed as to all aspects of the financial condition of the DB Contractor, the performance of the Guaranteed Obligations 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 the 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 Authority which 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 supersede 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
Director of Strategic Projects Division
125 East 11th Street
Austin, Texas 78701
Attention: Katharine D. Nees, P.E.
Telephone: 512-936-0903
Email: katie.nees@txdot.gov

With copies to: Texas Department of Transportation
Office of General Counsel

125 East 11th Street
Attention: John J. Ingram, Esq.
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 which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) 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 the DB Contractor or by any defense which the 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 the 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 which 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 the 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 individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to the 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 the DB Contractor under the DBA except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the DB Contractor and any other defense to formation of the DBA, and (c) defenses available to the 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 16.1.3 of the DBA.

[SIGNATURES ON NEXT PAGE]

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

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT 14

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until Final Acceptance, DB Contractor shall procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage, including off-site storage, or in the course of inland transit on land to the Site, and (ii) unless covered by commercial general liability insurance pursuant to Section 2 of this Exhibit 14, all existing property and improvements that are within the construction work zone or are or will be affected by the construction Work, including a sublimit not less than \$2,500,000 for existing property in the construction work zone.

(c) The policy shall provide coverage per occurrence up to the full replacement cost of the covered property loss or, with approval of TxDOT, for an amount equivalent to the probable maximum loss, based on an analysis by an expert advisor as reviewed and accepted by TxDOT, however in no event less than \$50,000,000, including a sublimit acceptable to TxDOT for demolition and debris removal, without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than \$5,000,000 per occurrence and \$10,000,000 aggregate; (ii) for the peril of Named Windstorm, not less than \$10,000,000; (iii) for building ordinance compliance, not less than \$5,000,000; (iv) for "soft cost expense," not less than \$5,000,000; and (v) for professional fees, a sublimit acceptable to TxDOT but not less than \$1,000,000.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds on the policy. DB Contractor also may, but is not obligated to, include other Subcontractors as insureds. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other insureds. DB Contractor shall be named as the named insured under the policy.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion; (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery; (iii) plans, blueprints and specifications; (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials; (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission; (vi) demolition and debris removal coverage; (vii) the increased replacement cost due to any change in applicable codes or other Laws; (viii) expense to reduce loss; (ix) building ordinance compliance, with the building ordinance exclusion deleted; (x) “soft cost expense” (including costs of Governmental Approvals, mitigation costs, attorneys’ fees, and other fees and costs associated with such damage or loss or replacement thereof) and (xi) delayed start-up coverage with a minimum limit of \$12 million.

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence. However, with regard to the perils of windstorm, flood and earthquake/earth movement, TxDOT will accept deductibles up to 5% of the policy limit.

2. Commercial General Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance, naming DB Contractor as a named insured, as specified below. During any period in which DB Contractor, at its election, maintains in effect builder’s third party liability insurance pursuant to Section 3 of this Exhibit 14, the commercial general liability insurance policy need not duplicate the builder’s third party liability insurance coverage.

(a) The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 2(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

- (i) Contractual liability;
- (ii) Premises/operations;
- (iii) Independent contractors;
- (iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product), with coverage to

remain in place post-completion for 10 years or through the applicable statute of limitations or repose period, whichever is longer;

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 04 13 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) No exclusion for claims arising from professional services except for CG 22 80 or its equivalent;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 14.

(c) The policy shall have limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate per policy period, applicable on a per project or per location basis. Such limits may be shared by all insured and additional insured parties and shall reinstate annually.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO Forms CG 20 33 07 04 and CG 20 37 07 04 or their equivalents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other additional insureds.

(e) The policy shall have a deductible or self-insured retention no greater than \$1,000,000 per occurrence.

3. Automobile Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a

project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) DB Contractor shall be the named insured under its automobile liability policy.

(c) DB Contractor's policy shall have a single limit per policy period of not less than \$1,000,000 combined single limit.

(d) Each policy shall provide a deductible or self-insured retention not exceeding \$250,000 per occurrence.

(e) TxDOT and the Indemnified Parties shall be named as additional insureds.

5. Umbrella/Excess Liability

In addition to the Commercial General Liability, Automobile Liability and Employer's Liability Insurance policies noted herein, DB Contractor also shall maintain \$50 million of umbrella/excess liability on a following form basis in excess of each of the noted policies.

6. Pollution Liability Insurance

DB Contractor shall procure and maintain during the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by DB Contractor, its agents, representatives, employees or subcontractors. Coverage shall be at least broad as:

(a) Contractors Pollution Liability with coverage for losses caused by pollution conditions that arise from the operations of the DB Contractor described under the scope of services of this DBA:

(i) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring,

(ii) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

(iii) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

(iv) Non-owned Disposal Site coverage for specified sites (by endorsement) if contractor is disposing of waste(s).

(b) Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes,

acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

(c) Contractor's Pollution Liability (occurrence form): DB Contractor shall maintain limits no less than \$10,000,000 per occurrence/\$10,000,000 aggregate for the term of the DBA, plus a three year completed operations period.

(d) The policy shall provide a deductible or self-insured retention not exceeding \$500,000 per occurrence.

(e) TxDOT and the Indemnified Parties shall be named as an additional insured on the policy. The specific scope of services required under the DBA shall be listed on the certificate of insurance.

7. Contractor's Professional Liability Insurance

Design-Build Contractor shall, at all times until Substantial Completion carry Contractor's Professional Liability Insurance with a limit of at least \$5 million per claim and in the aggregate. This coverage may be written on a claims-made basis and shall be carried for a period of three years after substantial completion. Coverage may, at the DB Contractor's option, be provided through a project-specific policy or by maintaining a "practice" contractor's professional liability insurance policy. Such coverage shall be in addition to the design professional liability insurance required under paragraph 8 below.

8. Design Professional Liability Insurance

At all times that Professional Services are rendered under the DBA respecting design and construction of the Project until five years after the Professional Services have concluded for the Project, DB Contractor shall procure and keep in force, or cause others to procure and keep in force, professional liability insurance as specified in subparagraphs (a), (b) and (c) below; provided, however, that the total term of such professional liability coverage need not extend beyond ten (10) years. Such policy need not be Project-specific. DB Contractor may satisfy such insurance coverage requirement via a project policy, with a \$10,000,000 per claim and in the aggregate covering all firms providing Professional Services and/or by showing that all of the providers of Professional Services each has a practice policy with coverages satisfying subparagraphs (a), (b) and (c) below.

(a) The insurance policy shall provide coverage for the liability of the party performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services, including coverage for bodily injury or property damage.

(b) Unless covered by a project-specific policy as provided above, the Lead Design Firm and any design professional performing work with an estimated

contract value of \$10,000,000 or more shall carry an insurance policy with a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually if a project-specific policy is utilized. For those firms providing Professional Services with an estimated contract value greater than \$500,000 the insurance policy will have a limit of at least \$2 million per claim and in the aggregate. For those firms providing Professional Services with an estimated contract value of \$500,000 or less, the insurance policy shall have a limit of at least \$1,000,000 per claim and in the aggregate. Such policies shall be maintained for a three year period after completion of all Professional Services by such entity, and shall include a commercially reasonable deductible.

(c) The insurance policy for the Lead Design Firm and any firm providing Professional Services with an estimated contract value of \$10,000,000 or more shall provide a deductible or self-insured retention not exceeding \$1,000,000 per claim.

9. Workers' Compensation Insurance

At all times when Work is being performed by any employee of DB Contractor, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. DB Contractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

- (a) A voluntary compensation endorsement;
- (b) An alternative employer endorsement; and
- (c) An endorsement extending coverage to all states operations on an "if any" basis.
- (d) If any work is over or adjacent to navigable waters, coverage for any claims arising from the United States Longshore and Harbor Worker's Act and/or Jones Act.

10. Employer's Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

- (a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of DB Contractor working on or about any Site or otherwise engaged in the work.
- (b) DB Contractor shall be the named insured.

(c) The policy shall have a limit of not less than \$1,000,000 per accident, per disease, and in the aggregate.

11. Railroad Protective Liability Insurance

DB Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with any Work performed across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by DB Contractor upon operating railroad property. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the Work, DB Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

12. Subcontractors' Insurance

(a) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that performs work on the Site to provide the following insurances that comply with Section 9 of the DBA, unless the Subcontractor is otherwise covered by DB Contractor-provided liability insurance. DB Contractor shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's commercial general liability and automobile liability insurance policies. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(i) Commercial General Liability Insurance including operations and products/completed operations and non-owned and hired autos (unless covered by a separate policy pursuant to clause (ii) below), with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, such general aggregate to be applicable on a per project or location basis.

(ii) Business (or Commercial) Automobile Liability Insurance with a minimum \$1,000,000 combined single limit.

(iii) Worker's Compensation insurance as required by statute including voluntary compensation and alternate employer endorsements.

(iv) Employer's Liability Insurance with a minimum limit per accident, disease and an aggregate of \$500,000.

(v) For subcontracts with an estimated construction value of \$10,000,000 or more, umbrella/excess liability insurance with a minimum limit of \$5,000,000 excess of the commercial general liability and automobile liability (if applicable) noted above.

(b) Each such commercial general liability policy and automobile liability policy shall include each of the Indemnified Parties as additional insureds.

EXHIBIT 15

FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # _____

Date: _____
month/day/year

Texas Department of Transportation
[Address]

"Entry Required in Cell"

A. Draw Request for Work performed for the period: _____ to _____
month/day/year month/day/year

B. Original DBA Amount

C. Approved Change Order Amounts

D. Revised DBA Amount (B+C)

\$0.00

E. Cumulative Amount Earned to Date

F. Cumulative Maximum Payment Schedule Allowance (this period from Exhibit 5)

G. Cumulative Amount of Previous Draw Requests

H. Amount Qualified for Payment this Period (Lesser of "E-G" or "F-G ")

\$0.00

I. Retainage Percentage this Draw Request for Record Drawings (1% of "H")

\$0.00

\$0.00
\$0.00
\$0.00

J. Deduction from progress payment per Section 12.3.2 of the Agreement (this Draw Request)	\$
K. Total deductions ("I" + "J")	\$
L. Current Amount Due ("H" - "K")	\$

Printed Name DB Contractor Authorized Representative	Signature	month/day/year
Printed Name TxDOT Project Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 4 of 4 for Draw Request Checklist)

DRAW REQUEST NO. _____ CERTIFICATION

The undersigned hereby certifies that (choose applicable bracketed language):

- ◆ Except as specifically noted in this certification, all Work, including that of designers, Subcontractors, and Suppliers, which is the subject of this Draw Request has been checked and/or inspected by [the Professional Services Quality Control Manager with respect to Professional Services] [the Construction Quality Acceptance Manager with respect to construction Work];
- ◆ Except as specifically noted in this certification, all [Professional Services] [Construction Work] which is the subject of this Draw Request conforms to the requirements of the DBA Documents;
- ◆ [The Design Quality Management Plan] [The Construction Quality Management Plan] and all of the measures and procedures provided therein are functioning properly and are being followed; and
- ◆ [The Professional Services percentages and construction percentages indicated are accurate and correct.] [All quantities for which payment is requested on a unit price basis are accurate.]

Exceptions:

Name: _____
[PSQCM] [CQAM] Representative

Date

Seal:

DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- Monthly progress report as described in Section 2.1.1.2.4 of the Technical Provisions
- Certifications by the Professional Services Quality Control Manager and the Construction Quality Acceptance Manager;
- Monthly report of personnel hours;
- Draw Request data sheet(s) and documents that support and substantiate the amount requested;
- An approved Schedule of Values or an approved revised Schedule of Values as described in Section 2.1.1.2.3 of the Technical Provisions;
- Traffic incident reports;
- SBE and HUB progress/utilization reports;
- Cash flow curves and comparison to the Maximum Payment Schedule; and
- An approved Project Status Schedule Update as described in Section 2.1.1.2.2 of the Technical Provisions.

EXHIBIT 16

FORM OF CHANGE ORDER

CHANGE ORDER REQUEST NO. _____ CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• Company Name: _____

DESCRIPTION:

SCOPE:

REASON FOR REQUEST FOR CHANGE ORDER:

DB Contractor Project Manager Date

SECTION II

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

Payment Schedule Items Added/Deducted:

<u>Activity No.</u>	<u>Description</u>	<u>Amount</u>
---------------------	--------------------	---------------

_____	_____	_____
-------	-------	-------

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

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- _____ A unit price/quantities Change Order (provide information in Section IIB below)
- _____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is \$ _____

Section IIB

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

Total of all items in above Table: \$ _____

Section IIC

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

A.	DB Contractor Labor (construction)	
1.	Wages ¹	\$ _____
2.	Labor benefits ² (55% of A.1)	\$ _____
B.	DB Contractor and Subcontractor Labor (professional services)	
1.	Wages (Raw)	\$ _____
2.	Labor benefits ¹ (145% of B.1, which includes overhead and profit)	\$ _____
3.	Off-duty peace officers and patrol cruisers ¹	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment ²	\$ _____
E.	Subcontracts (Time and Materials cost)	\$ _____
F.	Utility Direct Costs	\$ _____
G.	Overhead and Profit	
1.	Labor (25% of A.1)	\$ _____
2.	Traffic Control (5% of B.3)	\$ _____
3.	Materials (15% of C)	\$ _____
4.	Subcontracts (5% of E)	\$ _____
5.	Utility Direct Costs (5% of F)	\$ _____
H.	Grand Total	\$ _____

¹ Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.

² Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 13.7.3 of the DBA.

SECTION III

The status of Substantial Completion is as follows:

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

The status of Final Acceptance is as follows:

- Unaffected by this Change Order Proposal
- Affected by (increasing) (decreasing) the date of Final Acceptance by _____ calendar days.

Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

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

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

Justification for Change Order with reference to the DBA:

Change order required under Maintenance Agreement? Yes_____/No_____

If yes, state reason:

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

(a) the above three sections represent a true and complete summary of all aspects of this Request for Change Order.

(b) the amount of 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 event, occurrence or matter giving rise to the proposed change; and

(d) the cost and pricing data forming the basis for the Change Order is complete, accurate and current.

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 IV (Reviewed by Program Manager)

Program Manager (Design-Build Agreement)

Date

Comments:

SECTION V (Reviewed by TxDOT Project Manager)

Project Manager (Design-Build Agreement)

Date

Comments:

SECTION VI (Reviewed by TxDOT SPO Director, if applicable)

TxDOT SPO Director

Date _____

Comments:

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

TxDOT SPD Director

Date _____

Comments:

SECTION VIII (Reviewed by TxDOT Chief Planning and Projects Officer, if applicable)

TxDOT Chief Planning and Projects Officer

Date _____

Comments:

SECTION IX (Approval by TxDOT Authorized Representative)

[Title] Date

Comments:

EXHIBIT 17

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s)

TxDOT's Executive Director, Chief Planning and Projects Officer, and
Director, Strategic Project Division and their designees.

LtGen J.F. Weber, USMC (Ret)

Russell Zapalac, P.E.

Katharine Nees, P.E.

DB Contractor's Authorized Representative(s)

George A. Hassfurter
3001 Meacham Blvd., Suite 215
Fort Worth, TX 76137
Telephone: 817-632-3800
Facsimile: 817-632-3777
E-mail: GAHassfurter@Laneconstruct.com

EXHIBIT 18

**PROGRESS PAYMENT
CERTIFICATE**

WHEREAS, the Texas Department of Transportation (“TxDOT”) and _____ (“DB Contractor”) are parties to a Design-Build Agreement (the “DBA”) to design and construct the SH 360 Project (the “Project”) in Travis County, Texas; and

WHEREAS, TxDOT has issued to DB Contractor a Certificate of Final Acceptance for the design and construction of the Project; and

WHEREAS, pursuant to the Maximum Payment Schedule set forth in the DBA, TxDOT’s payments to DB Contractor for design and construction of the Project must continue beyond the date of Final Acceptance of DB Contractor’s design and construction work by TxDOT; and

WHEREAS, TxDOT has determined that there is no dispute that it owes \$_____ to DB Contractor, to be paid in accordance with the schedule described in Section 12.4.6 of the DBA; and

NOW THEREFORE, TxDOT acknowledges its obligation, subject to Texas law, to pay DB Contractor a total of \$_____, and hereby certifies that it will pay that obligation by monthly payments as set forth on Attachment 1.

Executed as of the ____ day of _____, ____.

TEXAS DEPARTMENT OF TRANSPORTATION

Executive Director

ATTACHMENT A TO EXHIBIT 18

PAYMENT DATE	PAYMENT AMOUNT

EXHIBIT 19

KEY SUBCONTRACTORS

- Project Management: Lane-Abrams, J.V., The Lane Construction Corporation and J.D. Abrams, L.P.
- Lead Design Firm: AECOM Technical Services, Inc.
- Design Quality Management: AECOM Technical Services, Inc.
- Construction Quality Management: Rodriguez Engineering Laboratories, LLC
- Key Task Leader – Geotechnical: Fugro Consultants, Inc.
- Key Task Leader – Hydraulics and Hydrology: Hayden Consultants, Inc.
- Key Task Leader – Structural: Michael Baker Jr., Inc.
- Key Task Leader – Environmental: Blanton & Associates, Inc.
- Key Task Leader – Utilities: CSJ Utility Coordinators, LLC
- Key Task Leader – ROW: Pinnacle Consulting Group, LLC

EXHIBIT 20

WARRANTY PERFORMANCE AND MEASUREMENT TABLE BASELINE

(Attached.)

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
ELEMENT CATEGORY – ROADWAY				
1-20.01	Pavement - Ruts	5 years, except for overlay sections having a 2-year performance Warranty Term	All pavement sections to be measured in compliance with TxDOT standards.	Ruts – Main-lanes, shoulders, frontage roads, cross streets & ramps. Depth as measured cannot exceed: a) Main lanes, shoulders and ramps – 3% of wheel path length with ruts greater than ¼" in depth in each Auditable Section b) Frontage roads and cross streets – 10% of wheel path length with ruts greater than ¼" in depth in each Auditable Section c) 0.5" for the depth of rut at any location using the 10ft straight edge used to measure rut depth for localized areas.
1-20.02	Pavement Quality Ride	5 years, except for overlay sections having a 2-year performance Warranty Term	Measurement of International Roughness Index ("IRI") according to TxDOT standard Tex-1001-S, Operating Inertial Profilers for mainlanes and frontage roads (TxDOT Standard Specification Item 585 - Surface	Ride Quality - For 80% of all Auditable Sections measured, IRI throughout 98% of each Auditable Section is less than or equal to: a) Main lanes, – 95" per mile** b) Frontage roads – 120" per mile** c) Ramps and cross streets – 3/16" in. variance between any two contacts on a 10-ft straight edge

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
			<p>Test Type B) and 10-ft straightedge for ramps and cross streets (TxDOT Standard Specification Item 585 - Surface Test Type A).</p> <p>**To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance.</p>	<p>Ride Quality- For each Auditable Section measured, IRI measured throughout 98% of Auditable Section of less than or equal to:</p> <ul style="list-style-type: none"> a) Main-lanes – 120" per mile** b) Frontage roads – 150" per mile** c) Main-lanes, 0.1 mile average – 150" per mile** d) Frontage roads- 0.1 mile average – 180" per mile e) Ramps and cross streets – 1/8" in. variance between any two contacts on a 10-ft straight edge f) No individual discontinuities greater than 0.75" <p>Ride Quality - For each Auditable Sections measured, IRI measured throughout 98% of each lane containing a</p> <ul style="list-style-type: none"> a) bridge deck in any Auditable Section, 0.1 mile average – 200" per mile**

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
1-20.03	Pavement – Failures	5 years, except for overlay sections having a 2-year performance Warranty Term	Correct any instances of failures.	Pavement is functioning as intended, failure, repairs/mitigation are performed on pavement failures that exceed the failure criteria set forth in the Authority’s Pavement Management Rating System, including potholes, base failures, punchouts and jointed concrete pavement failures.
1-20.04	Pavement Resistance Skid	5 years, except for overlay sections having a 2-year performance Warranty Term	All pavement sections to be measured using ASTM E274/E274M-11 Standard Test Method for skid resistance testing of paved surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E524-08.	Main lanes, shoulders, ramps and Frontage roads – For all 0.5 mile sections with an average Skid Number below 30, investigate the potential risk of skidding accidents and take appropriate remedial action.
1-20.05	Crossovers and other paved areas	2 years	Crossovers and other paved areas free of Defects.	a) No Potholes of low severity or higher b) No base failures of low severity or higher
1-20.06	Joints in concrete	5 years	Visual inspection of joints.	All unsealed joints greater than ¼" shall be sealed.

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
			Measurement of joint width and level difference of two sides of joints.	Measurement of joint width of joints cannot exceed 1" or faulting more than 1/4".
1-20.07	Curbs	2 years	Visual inspection.	Curbs shall not have any length out of alignment greater than 1".
ELEMENT CATEGORY – DRAINAGE				
1-20.08	Flooding of Travel Lane	2 years	Visual inspection of water on surface.	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth. No portion of a lane can have standing water that exceeds the criteria listed in Section 12 and Section 19.1.7 of the Technical Provisions that would potentially cause a safety hazard to the traveling public
1-20.09	Drainage treatment devices	2 years	Visual inspection.	Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.
1-20.10	Discharge systems	2 years	Visual inspection and records.	Surface water discharge systems perform their proper function and discharge to groundwater and waterways in compliance with the relevant Laws and Governmental Approvals.

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
ELEMENT CATEGORY – STRUCTURES				
1-20.11	Structures - having an opening measured along the center of the roadway of more than 20 feet	5 years	TxDOT performed inspections and assessment in accordance with the requirements of Federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual.	No occurrences of condition rating below seven for any deck, superstructure or substructure
1-20.12	Non-bridge class culverts	5 years	Visual inspection.	No defects in sealant to movement joints No scour damage
1-20.13	Gantries	5 Years	Visual inspection.	Sign / signal gantries are structurally sound and free of: <ul style="list-style-type: none"> • defects in surface protection systems including painted or galvanized surfaces
ELEMENT CATEGORY – PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS				

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
1-20.14	Pavement Markings	2 years	Maintain pavement markings and perform annual Mobile Retroreflectivity Data Collection (MRDC) in accordance with Special Specification 8094 Mobile Retroreflectivity Data Collection for Pavement Markings.	Pavement markings shall be clean and visible during the day and at night, whole and complete and of the correct color, type, width and length and are placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets. Pavement markings shall: a) Meet the minimum retroreflectivity 175 mcd/sqm/lx for white b) Meet the minimum retroreflectivity 125 mcd/sqm/lx for yellow c) Not account more than 5% loss of area of material at any point d) Not account for spread more than 10% of specified dimensions e) Perform its intended function and compliant with relevant regulations
1-20.15	Raised Pavement Markers, Object and Delineators	2 years	Markings General - Physical measurement	Raised reflective pavement markers, object markers and delineators shall be clean and clearly visible, of the correct color and type, reflective or retroreflective as TxDOT standard, correctly located, aligned and at the correct level, are firmly fixed and are in a condition that will ensure that they remain at the correct level.
ELEMENT CATEGORY – GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS				

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
1-20.16	Guardrail/Safety Barriers, Concrete Barriers (temporary or permanent)	2 years	Visual inspection.	All guardrails, safety barriers, concrete barriers (temporary or permanent) are to be maintained free of Defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.
1-20.17	Attenuators	2 years	Visual inspection.	All impact attenuators are appropriately placed and correctly installed, free of defects or damage.
ELEMENT CATEGORY – TRAFFIC SIGNS				
1-20.18	Traffic Signs	2 years	Retroreflectivity - Coefficient of retro reflectivity Face damage - Visual inspection Placement - Visual inspection	Meet the performance requirements for the following: a) Retroreflectivity coefficient cannot be below the requirements of TxDOT's TMUTCD. b) Face damage cannot exceed 5% of surface area. c) Sign mounting posts are vertical, structurally sound and rust free. Dynamic message signs are in an operational condition.
ELEMENT CATEGORY – TRAFFIC SIGNALS				

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
1-20.19	Traffic Signal ¹	2 years	Structural soundness - Visual inspection Electrical soundness - Inspection records showing compliance	Traffic signals are structurally and electrically sound.
ELEMENT CATEGORY – HIGHWAY LIGHTING				
1-20.20	Highway Lighting ¹	2 years	Perform a monthly inspection to monitor and maintain highway lighting.	Columns are upright, correctly founded, visually acceptable and structurally sound.
1-20.21	Electrical Supply ¹	2 years	Testing to meet NEC regulations, visual inspection	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning.
ELEMENT CATEGORY – FENCE, WALLS, AND SOUND ABATEMENT				
1-20.22	Fence, Walls and Sound Abatement	5 years	Structural assessment if visual inspection warrants.	All fence, walls and sound abatement to act as designed and serve the purpose for which they were intended.
ELEMENT CATEGORY – EARTHWORKS, EMBANKEMENTS, AND CUTTINGS				

ELEMENT NO.	ELEMENT	WARRANTY TERM	INSPECTION AND MEASUREMENT METHOD	MINIMUM PERFORMANCE REQUIREMENTS
1-20.23	Slope Failure	5 years	Visual inspection by geotechnical specialist and further tests as recommended by the specialist.	All structural failures of the embankment and cut slopes of the Project are repaired.
ELEMENT CATEGORY – ITS AND TOLLING				
1-20.24	ITS devices installed by Contractor (not otherwise listed below) ¹	2 years	Authority monitoring	ITS devices fully perform or meet the Project ITS standards and/or specifications.
1-20.25	Network Switches installed by Contractor ¹	5 years	Authority monitoring	Switches fully perform or meet the Project ITS standards and/or specifications.
1-20.26	Uninterruptible Power Supplies installed by Contractor ¹	5 years	Authority monitoring	Power supplies fully perform or meet the Project ITS standards and/or specifications.
1-20.27	Buildings, facilities, and related facilities constructed by Contractor ¹	5 years	Visual and structural inspection	All buildings, infrastructure, material and equipment perform or meet the Project standards and/or specifications.
<p>Notes:</p> <p>1. If Maintenance NTP 1 is issued, the Warranties for these element categories shall be the only applicable Warranties under this Warranty Performance and Measurement Table Baseline.</p>				

EXHIBIT 21

PERFORMANCE ASSESSMENT CHARGES FOR DEFECT HAZARD CATEGORY EVENTS AND CONSTRUCTION VIOLATION EVENTS

1.1 DB Contractor will be assessed Performance Assessment Charges during the Construction Period in accordance with this Section 1 for DB Contractor's failure to meet the minimum operations and maintenance performance requirements that constitute a Defect Hazard Category Event or a Construction Violation Event as set forth in Tables 19-1 and 19-2 of the Technical Provisions and where such event is not cured within the "Cure Period" specified.

(a) DB Contractor shall promptly notify TxDOT of a Defect Hazard Category Event or a Construction Violation Event. If TxDOT believes there has occurred any Defect Hazard Category Event or Construction Violation Event specified in Tables 19-1 and 19-2 of the Technical Provisions, DB Contractor shall deliver to TxDOT a notice setting forth (i) the Defect Hazard Category Event or Construction Violation Event, (ii) the applicable cure period (if any), (iii) whether the Defect Hazard Category Event or Construction Violation Event was cured during the applicable cure period (if any), including a statement supporting such determination, and (iv) the Performance Assessment Charges to be assessed with respect thereto.

(b) For each Defect Hazard Category Event or Construction Violation Event with a cure period specified in Tables 19-1 and 19-2 of the Technical Provisions, DB Contractor's cure period with respect to such Defect Hazard Category Event or Construction Violation Event shall be deemed to start upon the earliest of the date and time DB Contractor first obtained knowledge of, or first reasonably should have known of, or the date and time that DB Contractor received notice thereof by any third party of the Defect Hazard Category Event or Construction Violation Event. For this purpose, if the notice of the Defect Hazard Category Event or Construction Violation Event is initiated by TxDOT, DB Contractor shall be deemed to first obtain knowledge of the Defect Hazard Category Event or Construction Violation Event no later than the date and time of delivery of the initial notice to DB Contractor. The interval of recurrence is the period given in the column entitled "Interval of Recurrence" specified in Tables 19-1 and 19-2 of the Technical Provisions; it is applied after the initial cure period has lapsed, within which the DB Contractor must correct the Defect before additional damages are assessed.

(c) Each of the cure periods set forth in Tables 19-1 and 19-2 of the Technical Provisions shall be the only cure period for DB Contractor applicable to the Defect Hazard Category Event or Construction Violation Event. If such cure period differs from any cure period set forth in Section 16.1.2 of the Agreement that might otherwise apply to the Defect Hazard Category Event or Construction Violation Event, the applicable cure period set forth in Tables 19-1 and 19-2 of the Technical Provisions shall control for purposes of the assessment of Performance Assessment Charges under Section 17 of the Agreement and this Exhibit 21.

(d) When DB Contractor determines that it has completed cure of any Defect Hazard Category Event or Construction Violation Event, DB Contractor shall provide to TxDOT notice, (i) identifying the Defect Hazard Category Event or Construction Violation Event, (ii) stating that DB Contractor has completed cure and (iii) briefly describing the cure. Thereafter, TxDOT shall have the right, but not the obligation, to inspect to verify completion of the cure. TxDOT may reject any DB Contractor notice of cure if TxDOT determines that DB Contractor has not fully cured the Defect Hazard Category Event or a Construction Violation Event. Any Dispute regarding determination of cure shall be resolved according to the dispute resolution procedures set forth in this DBA.

1.2 Upon determination of a Defect Hazard Category Event or a Construction Violation Event in accordance with Section 1.1 of this Exhibit 21, Performance Assessment Charges shall be assessed in the amount set forth in Table 21-1 that corresponds with the Defect Hazard Category Mitigation Classification or Construction Violation Classification set forth in Tables 19-1 and 19-2 of the Technical Provisions. Performance Assessment Charges shall be assessed as follows:

(a) If a Defect Hazard Category Event or a Construction Violation Event for which a cure period is provided in Tables 19-1 and 19-2 of the Technical Provisions is not fully cured within the applicable cure period, then continuation of such Defect Hazard Category Event or a Construction Violation Event beyond such cure period shall remain open and shall be assessed additional Performance Assessment Charges with each "Interval of Recurrence" until the cure is completed. Accordingly, without further notice, additional Performance Assessment Charges shall be assessed against DB Contractor in accordance with Section 17.7 and this Section 1 of Exhibit 21, deducted from payments of the Price in accordance with Section 12 of the Agreement.

Table 21-1: Performance Assessment Charges

Defect Hazard Mitigation Classification	Damages Amount
1A	\$2,400
1B	\$6,000
1C	\$12,000
1D	\$18,000
1E	\$30,000
Construction Violation Classification	Damages Amount
2A	\$600
2B	\$1,200
2C	\$3,000
2D	\$12,000
2E	\$24,000

1.3 Each of the amounts of Performance Assessment Charges set forth in Table 21-1 shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CCI between the CCI for October of the second immediately preceding year and the CCI for October of the immediately preceding year. In no event shall the amount be less than the amount in effect during the immediately preceding year.

Exhibit 22

List of Reference Information Documents (RID)

All files posted within the folders and sub-folders listed below and included in the RID_INDEX are included in this Exhibit 22.

1. Minute Orders
2. Project Development Agreement
3. Project Schematics
 - CADD FILES & AERIALS
 - CADD – Interim Schematics
 - AERIALS – Interim Schematics
 - GPK - Interim Schematics
 - TIN - Interim Schematics
 - Options
 - Option 1 DGNs
 - Option 2 DGNs
 - Option 3 DGNs
4. Ultimate Project Schematics
 - Design Reference DGN Files
 - Design Sheets
 - Cross Sections
 - GPK
 - TIN
 - Plots
5. Environmental - Finding of no Significant Impact (FONSI)
6. Frontage Road Request
7. Hazmat
8. Right-of-Way
 - ROW Transfer Map DGN Files
9. As-Builts
10. Survey

11. Drainage

- CAD_Files
- CulvertMaster Files
- FlowMaster Files
- Master_HH_Report Files
- Mountain_Creek_HEC_RAS_Study Files
- HEC-RAS_SH360 Files (Total of 285 files)
- SH 360 HMS Models Files

12. City Design Requirements

- a. City Of Arlington
 - Paving Drainage Details
 - Traffic Counts Maps
- b. City of Grand Prairie
 - Engineering Standards
 - Floodplain
 - Inspection
 - Ordinances Engineering
 - Permit Forms
 - FloodPlain Permits
 - Natural Gas Pad Pipeline
 - TRA
 - Private Development
 - Grading-Erosion_Control_Requirements
 - Impact_Fees
 - Plan_Submittal_Requirements
 - Project_Final_Acceptance
 - ROW
 - Stormwater
 - Traffic Detail Drawings
 - Wastewater Criteria
- c. City of Mansfield
 - Integrated Stormwater Management (iSWM)
 - 2006 DESIGN MANUAL FOR SITE DEVELOPMENT
 - iSWM Criteria Manual
 - iSWM Program Guidance
 - iSWM Technical Manual

13. Local Agreements

14. RR Agreements

15. NTTA Design Standards & Guidelines

- a. NTTA Design Manual & Guidelines

- 16. Private Developments
- 17. Reports
- 18. Outreach
- 19. Utilities
 - a. Existing Utility Permits
 - b. ATT
 - c. Charter
 - d. City of Arlington
 - e. City of Grand Prairie
 - f. City of Mansfield
 - g. Energy Transfer
 - h. Fiber Light
 - i. Summit Midstream
 - j. Time Warner

Exhibit 23

TERMS OF TXDOT MATERIAL INSPECTION AND TESTING SERVICES

TxDOT agrees to perform certain material inspection and testing services as requested by DB Contractor, and subject to the terms set forth below. Material inspection and testing to be performed by TxDOT consists of the following:

- Various inspected materials fabricated off-site (structural steel bridge components, pre-cast concrete stressed/non-stressed products, and miscellaneous fabricated products).
- Selected roadway monitored materials (as described in page 2) from approved/monitored sources (i.e. Quality Monitored Materials and Material Producer List qualified materials)
- Other materials inspection and testing as agreed upon in writing by TxDOT and DB Contractor

Inspections will be performed in reasonable compliance with the specifications and instructions supplied by DB Contractor in its Work Request, utilizing the form attached as Appendix 2 hereto, and subject to the terms and conditions described below. Inspections will be performed only at locations in Texas where TxDOT routinely provides resident inspection services for its own highway materials. Out-of-state inspections for DB Contractor may be performed as requested by DB Contractor. DB Contractor will reimburse TxDOT for all associated travel costs including airfare, per diem, vehicle rentals, and other directly related costs. TxDOT will only perform tests listed in the TxDOT Inspection & Testing Rates Table attached to this Exhibit 23, as amended from time to time. Out-of-state inspections for DB Contractor will be performed only when TxDOT has employees scheduled to conduct inspections for TxDOT projects at the requested locations.

As inspection and testing services are performed by TxDOT, written inspection/test reports will be provided to DB Contractor in accordance with TxDOT's existing policies for providing such reports. Reports will include the date, time, locations and nature of services performed. Monitored Materials will not be furnished with inspection/test reports.

Prior to the commencement of the Construction Work, the DB Contractor shall provide TxDOT with a single point of contact for this scope of services. TxDOT will direct all invoices, test reports, questions and other issues to this point of contact. DB Contractor shall provide written notification of a change to the point of contact.

INSPECTED MATERIALS:

Unless agreed upon otherwise by TxDOT and DB Contractor, TxDOT will only perform inspection services for DB Contractor at structural steel fabrication plants, commercial precast prestressed and non-stressed concrete products plants, and other miscellaneous fabrication plants where TxDOT routinely provides such inspection and testing services for its own highway materials or for others. TxDOT reserves the right to prioritize or reschedule any inspection and testing services according to the following:

- Inspection and testing services may be cancelled or deferred due to unavailability of TxDOT personnel to perform the necessary inspection
- Inspections for DB Contractor will be given lower priority than inspections performed by TxDOT for TxDOT projects
- Inspections for DB Contractor may be rescheduled to coincide with the inspection of products for TxDOT projects.

TxDOT may perform additional technical materials acceptance services for DB Contractor to be agreed upon by both parties. These services are defined as additional inspection, testing, or technical materials acceptance services beyond what is performed during the routine in-plant inspection process. DB Contractor will compensate TxDOT for all direct costs or expenses associated with the performance of these additional services, based upon actual costs of salaries and travel expenses incurred.

DB Contractor and its fabricators will abide by the Nonconformance Report (NCR) process utilized by TxDOT for disposition of products that do not meet the requirements of the DB Contractor's specifications provided in the Work Request. The current TxDOT NCR process for handling various NCR conditions is described in Appendix 1. TxDOT, in its sole and unfettered discretion, may revise the TxDOT NCR process.

A minimum of two (2) weeks prior to TxDOT performing any inspections, DB Contractor will submit Work Requests to TxDOT. Each Work Request will be for a single Fabricator, and will include the following:

- Project information (i.e. contract number, CSJ, etc.)
- Work description
- Type and estimated quantity of material(s) to be inspected
- Fabricator information (Name, contact person, physical location)
- Desired date of inspection
- Signature/name and telephone number of DB Contractor's authorized representative.
- TxDOT 2014 Specification Item or Special Specification to be used for inspection
- List of DB Contractor's amendments to TxDOT 2014 Specification Item
- DB Contractors Special Specifications
- Complete set of necessary design drawings, material specifications, and shop drawing files in Adobe .pdf format to perform inspection of the material

MONITORED MATERIALS:

TxDOT maintains certain materials for TxDOT use. Additionally, certain products or Manufacturers/Suppliers are monitored as being TxDOT compliant. These materials are described in one of the following categories:

- **QM**- Quality Monitoring Program. Materials in Program sent directly to projects. Materials supplied with documentation of program compliance.
- **MPL** - Material maintained on approved list (Material Producer List). No additional testing necessary unless directed by Engineer
- **WA** - Warehouse Agreements to stock Pre-Tested materials
- **PJT** - Approve on the basis of project samples

The DB Contractor will not receive a test report for these above listed Monitored Materials.

TEST REPORTS AND INVOICES

TxDOT will send a monthly invoice to the DB Contractor for services performed pursuant to this Exhibit 23. The test reports will be sent to the DB Contractor's point of contact.

PAYMENTS:

DB Contractor will pay TxDOT's fees for performance of the materials testing and inspection services as shown in the TxDOT Inspection & Testing Rates Table in effect at the time the service is performed. Information regarding TxDOT's Inspection & Testing Rates Table is attached as Appendix 3. Payments must be remitted by DB Contractor, within 30 days after receipt of TxDOT's invoice, to:

Construction Division/ Texas Department of Transportation
Attn: Construction Division/BMS (RA/200-2nd fl.)
125 E. 11th Street
Austin, TX 78701-2483

Appendix 1 to Exhibit 23

NCR Process Non-Compliance Report (NCR) Process for Structural Steel Bridge Products

The NCR process for handling various NCR conditions in the Structural Steel Fabrication Branch includes,

NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the DB Contractor's point of contact. Upon review of the information regarding the non-compliance, the DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Misplaced components beyond specification tolerances.
- Extreme cases of additional, missing, elongated, etc. holes due to poor workmanship.
- Material/design substitutions/changes after shop drawings have been approved.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Sweep, camber, and twist beyond specification limits.
- Welding procedures, processes, and defects.
- Misdrilled holes (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Additional splices in flanges and webs (may need to contact Designer if non-traditional member).
- Base metal defects.
- Assembly of members.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Weld pick-ups.
- Minor heat corrections for sweep/camber.
- Weld defects (up to two times per location – generally).
- Painting issues.

Non-Compliance Report (NCR) Process for Steel Non-Bridge Structures

The NCR process handling various NCR conditions in the Miscellaneous Products Fabrication Branch for steel non-bridge structures includes,

NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the DB Contractor's point of contact. Upon review of the information regarding the non-compliance, the DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Fabrication discrepancies beyond specification tolerances. (mislocated and/or oversized holes for structural fasteners and/or anchor bolts, etc.)
- Proposed material substitutions for steel components.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Welding procedures, welding repair procedures, procedure qualification records.
- Misdrilled holes, bent surfaces (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Proposed paint system substitutions.
- Base metal defects.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Galvanized weldment tests.
- Minor heat corrections.
- Weld defect repairs permitted by the AWS D1.1 Structural Welding Code.
- Painting and galvanizing issues.

Non-Compliance Report (NCR) Process for Commercially Produced Precast Concrete Products

The NCR process for handling various NCR conditions in the Precast Concrete Fabrication Branch includes,

NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide non-compliance information to the DB Contractor's point of contact. Upon review of the information regarding the non-compliance, the DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.

- Major honeycombed and/or spalled concrete exposing prestressing strand.
- Modification to prestressed concrete bridge beams (cutting 6-12 inches off beam ends).
- Thin top slab on prestressed concrete box beams (internal void floating).
- Thick bottom slabs on prestressed concrete U-beams and box beams (excessive dead load).
- Low strength concrete

NCRs handled by CSTM&P, Precast Concrete Fabrication Branch, Austin Headquarters

- Horizontal misalignment – Coordinate with prime contractor and District personnel.
- Minor honeycombed/spalled concrete with exposed reinforcing and prestressing steel.
- Damage over traffic lanes requiring concrete repair material (not allowed).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Minor beam modification – drilling anchor holes, cutting up to 6 inches off beam ends. (Coordinated with prime contractor and District personnel)
- Concrete damage in the bearing area of beams - shifting bearing pad away from beam end to reduce amount of bearing area affected by damage. (Coordinated with prime contractor and District personnel)
- Concrete temperature and/or curing violations.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Honeycombed/spalled concrete not extending beyond the first plane of reinforcing steel and not over traffic lanes.
- Damage to prestressed bridge deck panels.
- Damage to non-prestressed products.

Appendix 2 to Exhibit 23

Work Request

Ms. **Miranda Unruh**
TxDOT - Construction Division
Materials & Pavements Section
125 East 11th Street
Austin, Texas 78701-2483

Re: SH 360 Project
Project Limits:
County:
CSJ No. _____
WORK REQUEST

Dear Ms **Unruh**,

We are requesting fabrication inspection of the following materials:

DB Contractor provided specification number
Railing PR1 (150 LF)
Bid Item XXX

The fabricator:

Company Name
Company Address

Company Contact Person:

The date of the inspection:

DB Contractor insert requested inspection date

Additional inspection information or request:

If you have any questions concerning this matter, please feel free to call me at (DB Contractor insert office phone number).

Sincerely,

DB Contractor Quality Manager

cc: DB Contractor to provide pdf of necessary design files

Appendix 3 to Exhibit 23
TxDOT Inspection & Testing Rates

Charges will be based on rates in effect at the time inspection and testing services are performed.

TxDOT's current Inspection and Testing Rates are published at

http://ftp.dot.state.tx.us/pub/txdot-info/cst/inspection_testing.pdf