EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

(Attached)

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACORD	Association for Cooperative Operations Research and Development
ACM	Asbestos-containing materials
ACT	Antiquities Code of Texas
ADA	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
ADT	Average Daily Traffic
ALJ	Administrative Law Judge
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
APS	Accessible Pedestrian Signal
AREMA	American Railway Engineering and Maintenance of Way Association
ASB	Asphalt Bond Breaker
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATP	Acceptance Test Plan
AWS	American Welding Society
BMP	Best Management Practice
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CAP	(Environmental) Compliance Action Plan
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CEPP	Comprehensive Environmental Protection Program
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Code of Federal Regulations
CGP	Construction General Permit
CMA	Capital Maintenance Agreement
CMP	Construction Monitoring Plan

CP	Communication Plan
CPCD	Concrete Pavement Contraction Design
CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQP	Construction Quality Program
CQMP	Construction Quality Management Plan
CRCP	Continuously Reinforced Concrete Pavement
CSBE	Cement Stabilized Backfill Embankment
CSJ	Control Section Job
CSTM	Materials and Pavements Section of TxDOT Construction Division
CTB	Cement Treatment Base
CTE	Coefficient Thermal Expansion
CTMS	Computerized Traffic Management System
CTS	Cement Treatment Sub-Grade
CWA	Clean Water Act
CZP	Contributing Zone Plan
CP	Communication Plan
DBE	Disadvantaged Business Enterprise
DMS	Dynamic Message Signs
DQMP	Design Quality Management Plan
DSS	Decent, Safe and Sanitary (dwelling)
DUC	DB Contractor Utility Coordinator
DWC	Deferred Work Component
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Data Management System
EMR	Environmental Monitoring Report
EMS	Environmental Management System
EMT	Electrical Metallic Tubing
ENR	Engineering News Record
EP	Extraction Procedure (toxicity)
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits, Issues and Commitments
EPTP	Environmental Protection Training Plan
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team

FAPG	Federal-Aid Policy Guide
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIS	Flood Insurance Study
FM	Farm to Market Road
FWCA	Fish and Wildlife Coordination Act
FOB	Field Operation Building
FONSI	Finding of No Significant Impact
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
GPS	Global Positioning System
HCR	Highway Condition Report
HEC	Hydraulic Engineering Circular
HMMP	Hazardous Materials Management Plan
HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
ISDN	Integrated Services Digital Network
ISI	Initial Serviceability Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway Systems
IWP	Investigative Work Plan
JSA	Job Safety Analysis
LOMR	Letters of Map Revision
LPA	Local Public Agency
LRFD	Load and Resistance Factor Design
LSLS	Licensed State Land Surveyor
LTS	Lime Treatment Sub-Grade
MMP	Maintenance Management Plan
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPLS	Multiple Protocol Label Switching

MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSDS	Material Safety Data Sheet
MSE	Mechanically Stabilized Earth
MUTCD	Manual of Uniform Traffic Control Devices
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NBI	National Bridge Inventory
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NTP	Notice to Proceed
NTCIP	National Transportation Communications for ITS Protocol
OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PBS	Project Baseline Schedule
PBS-1	Preliminary Project Baseline Schedule
PC	Point of Curvature
PCC	Point of Compound Curvature
PCO	Potential Change Order
PCS	Pavement Condition Survey
PDF	Portable Document Format
PH	Percent Hydrogen
PI	Plasticity Index or Point of Intersection, as appropriate
PrI	Principle Investigator
PIAP	Project Independent Acceptance Program
PM	Project Manager
PMP	Project Management Plan
POB	Point of Beginning
POC	Point of Commissioning
PRC	Point of Reverse Curvature
PVC	Polyvinyl Chloride

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
QC / QRP	Quality Control / Quality Review Program
QMP	Quality Management Plan
QS	Qualifications Submittal
RDVCS	Regional Data and Video Communications System
RFI	Request For Information
RCP	Reinforced Concrete Pipe
RFP	Request for Proposals
RFQ	Request for Qualifications
RHA	Rivers and Harbors Act
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
RP	Recycling Program
RPLS	Registered Professional Land Surveyor
RQD	Rock-Quality Designation
RTP	Ramp Toll Plazas
SDP	Special Deposit and Possession
SDPP	Special Deposit and Possession Procedure
SEC	Securities and Exchange Commission
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SHSD	Standard Highway Sign Design for Texas
SI	System Integrator
SIR	Site Investigation Report
SOAH	Texas State Office of Administrative Hearings
SSCB	Single Slope Concrete Barrier
SSTR	Single Slope Traffic Railing

SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAS	Texas Accessibility Standards
TAC	Texas Administrative Code
TBPLS	Texas Board of Professional Land Surveying
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
TDLR	Texas Department of Licensing and Regulation
TCP	Traffic Control Plan
TDWR	Terminal Doppler Weather Radar
THC	Texas Historical Commission
TIM/OS	Turnpikes Intelligent Management / Operation System
TL	Testing Level
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
TSI	Terminal Serviceability Index
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAFM	Utility Adjustment Field Modification
UAP	TxDOT Utility Accommodation Policy
UAR	TxDOT Utility Accommodation Rules
UAdR	Utility Adjustment Report
UCS	Utility Coordination Specialist
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Agreement
UM	Utility Manager
UPA	Utility and Personnel Access-way
USPAP	Uniform Standards of Professional Appraisal Practice
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service

USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
UTM	Universal Transverse Mercator
UTP	Unshielded Twisted Pair
VE	Value Engineering
VGA/HDMI	Video Graphics Adaptor/High Definition Multimedia Interface
VMS	Variable Message Sign
WBS	Work Breakdown Structure
XML	Extensible Markup Language

AASHTO Guidelines shall mean the standards for design and construction of roadways and related facilities promulgated by American Association of State Highway and Transportation Officials.

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 Section 6.3.4.5 of 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 Package(s) shall mean the packages of documentation and information for the acquisition of parcel 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 (i) rest area sites, (ii) the DB Contractor-Designated ROW and (iii) any additional real property outside of the Schematic ROW that must be acquired due to a Necessary Basic Configuration Change. The term includes 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 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 Contract Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 6..3.5 of the Agreement.

Aesthetics and Landscaping 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 5.4 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 Section 6.2.4.1 of 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.

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

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.

Archeologist 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 Section 4.4 of 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.

Austin Bridge & Road shall mean Austin Bridge & Road, LP, a Delaware limited partnership.

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

BAFO shall mean the Proposal Revision and Best and Final Offer submitted by the DB Contractor in response to the Request for BAFOs, as described in Section 9.0 of the ITP.

Basic Configuration shall mean the following elements defining the Project as set forth in the Schematic Design plans:

(a) the Schematic ROW and control of access as shown in the Schematic Design plans;

(b) the number of lanes for the Schematic Design;

(c) the approximate location of ramps, and

(d) the approximate location of interchanges and the type of interchanges.

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

Bay shall mean Berry Contracting, LP d/b/a Bay Ltd., a Texas limited liability company.

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.

Book 1 shall mean the Agreement, all exhibits thereto, and the executed originals of Exhibits that are contracts (if any).

Book 2 means the Project-specific technical provisions entitled "Technical Provisions for the US 77 Upgrade from Kingsville to Driscoll Project."

Bond Trustee shall mean the Person or Persons acting as bond trustee, paying agent or other designated representative of the bondholders under any bond indenture or resolution for the bonds or any other indebtedness issued by TxDOT to finance the Project, its legal successor, or any other commercial bank or trust company duly organized and existing under the laws of any state or the United States of America, which is authorized under the laws of the State to exercise corporate trust powers and is subject to examination by federal authority, appointed pursuant to the Project finance documents as its successor or its successors.

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

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

Capital Maintenance Agreement (CMA) shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor for Maintenance Contractor to perform certain maintenance for at least five years for the Project.

Certificate of Final Acceptance shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final 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 Contract Documents or in the terms and conditions of the Contract Documents in accordance with Section 13 of

the Agreement 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 Contract 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.

CMA Documents or **Maintenance Agreement Documents** shall mean the documents identified in Sections 1.2.1 and 1.2.2 of the Capital Maintenance Agreement.

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

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

Comprehensive Environmental Protection Program (CEPP) shall mean the document obligating DB Contractor to protect the environment an document the measures taken during the performance of the Work to avoid and minimize impacts on the environment as further described in Section 4 of the Technical Provisions.

Communications Plan shall mean the TxDOT-DB Contractor Communications Plan as described in Section 2.6 of the Technical Provisions.

Comprehensive Environmental Protection Program (CEPP) shall mean the document obligating DB Contractor to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment, as further described in Section 4 of the Technical Provisions.

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

Conflicts Group means a Party, a Party's Affiliates and its and their agents, contractors, subcontractors or suppliers and any other Person that is a party to a Contract.

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 Contract 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 Section 4.3.2 of the Technical Provisions.

Construction Monitoring Plan (CMP) shall mean the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and the Contract Documents as more particularly described in Section 4.3.6 of 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 Southwestern Testing 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 2.2.8.1.3 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 2.2.8.1.1 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 2.2.8 of the Technical Provisions.

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

Contract Documents has the meaning set forth in Section 1.2. of the Agreement.

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 13.2.1.4 of the Agreement.

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

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

Cultural Resource Management Personnel shall mean the Archeologist and the Historian, and each of their respective staffs.

Customer Groups shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in Section 3.2.4 of the Technical Provisions.

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

DB Contractor shall mean Austin-Bay JV, a joint venture comprised of Austin Bridge & Road and Bay, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended, together with its successors and assigns.

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

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 Agreement.

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 Contract Documents or any applicable Law or Governmental Approval.

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

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

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

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

Design 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 Contract Documents, the Governmental Approvals and applicable Law.

Design Exception shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design

Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

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

Design Quality Assurance Firm (DQAF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent Professional Services quality assurance and audits of the DQMP. The initial approved DQAF is AIA Engineers, Ltd.

Design Quality Assurance Manager (DQAM) shall mean the person appointed by the DQAF who is responsible for management and quality assurance functions, as more particularly described in Section 2.2.7.4.2 of the Technical Provisions.

Design Quality Management Plan (DQMP) shall mean the plan prepared by DB Contractor setting forth the internal quality control & quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Section 2.2.7 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 Contract Documents issued under Section 13 of the Agreement. "**Deviation**" includes a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual.

Differing Site Condition shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents listed in Exhibit 19, 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 Agreement. The term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated

groundwater; (v) acquisition of real property for drainage purposes; and (vi) any conditions which constitute or are caused by a Force Majeure Event.

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

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

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 19.3, 19.4 and 19.3.5 of the Agreement and the applicable portions of Section 201.112 of the Code and the dispute resolution procedures established thereunder as described in Title 43 of the Texas Administrative Code, Section 9.2, as the same may be amended from time to time. **Drainage Design Report** shall mean the report documenting all components of the Project's drainage system as more particularly described in Section 12.2.1 of the Technical Provisions.

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit 15 to the Agreement or Exhibit 11 to the Capital Maintenance Agreement.

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 2.2.6.9 of the Technical Provisions.

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

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

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

Environmental Commitments Document shall mean the document describing anticipated Environmental Commitments released to Proposers on or before July 10, 2012.

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) the 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 the DB Contractor documents compliance with the CMP as described in Section 4.3.6 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 requirements set forth in all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.3.3 of 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 Section 4.4 of the Technical Provisions.

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

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 21.1 of the Agreement.

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

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

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

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

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

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 Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

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

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 2.2.6.7 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 DQAM demonstrating compliance with the Contract Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.6.5 of the Technical Provisions.

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

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

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 the DB Contractor-Related Entities and are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or Law of any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by DB Contractor:

(a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction;

(b) Any epidemic in the geographic vicinity of the Project;

(c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;

(d) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;

(e) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any species listed 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 Developer 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) does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;

(h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;

(i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any DB Contractor-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and

(j) The addition of any new condition or requirement in the NEPA Approval based on the Schematic Design and the Schematic ROW, subject to the limitations and conditions described in Section 6.10.1 of the Agreement.

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

(i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning,

explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;

(ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;

(iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;

(iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;

(v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;

(vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents, as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;

(vii) any Change in Law which has the effect of modifying a Utility Owner's required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by DB Contractor (or reimbursed by DB Contractor), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and

(viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (j) above.

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

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

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 Contract Documents.

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

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

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 4.4.7 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 Section 4.4 of the Technical Provisions.

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

(a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).

(b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).

(c) The Utility is an overhead Utility existing as of the Proposal Date or which commenced installation prior to the Proposal Date.

(d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).

(e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

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

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on public right of way, and it is in fact

located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

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

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

(a) Service Line Adjustments including appurtenances (excluding any Service Line Adjustment for which the owner of the affected real property has been compensated pursuant to Section 7 of 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 Section 7 of 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, FHWA, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Initial Maintenance Term shall have the meaning set forth in Exhibit 1 to the CMA.

Instructions to Proposers (ITP) shall mean the Instructions to Proposers issued by TxDOT on August 31, 2012 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes traffic

management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and software source code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

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

Joint Venturer shall mean each of Austin Bridge & Road and Bay, each a party to the Joint Venture Agreement made December 5, 2012, as amended, establishing DB Contractor.

Key Personnel shall mean the following positions: (1) Project Manager; (2) Design Manager; (3) Construction Manager; (4) Professional Services Quality Control Manager; (5) Design Quality Assurance Manager; (6) Construction Quality Acceptance Manager; (7) Environmental Compliance Manager; and (8) Capital Maintenance Manager.

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

Key Subcontractor shall mean the Subcontractors identified on Exhibit 21.

Lane Closure shall mean full or partial closure of any traffic lane in any portion of the Project or a connecting highway, as applicable, and for any duration, including main lanes, ramps, direct connectors, frontage roads and cross roads.

Law or **Laws** means (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 Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

License Agreement shall mean any license agreement for construction, maintenance, and use of railroad ROW between an operating railroad and TxDOT as more particularly described in Section 14.3.2 of the Technical Provisions.

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

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

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

Liquidated Damages for Lane Closures shall mean the liquidated damages described in Section 17.2 and Exhibit 17 to the Agreement.

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

Maintenance Contractor shall mean Austin-Bay JV, a joint venture comprised of Austin Bridge & Road and Bay, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended, 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 Agreement as more particularly described in Section 19.2 of the Technical Provisions.

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

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

Maintenance Term shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Major Culvert shall mean a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A major culvert may consist of a single

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

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

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 Section 2 of the Technical Provisions.

Maximum Payment Schedule shall mean the curve described in Section 4.3.2 of the Agreement 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 4.3.2 of the Technical Provisions.

National Wetland Inventory shall mean the system of mapping wetlands in 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 Section 4.4.5 of 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 Contract Documents as a direct result of an Error in the Schematic Design (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 Contract Documents without a material change in the Basic Configuration), (b) necessitates the acquisition 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, Deviation or Design Exception from the requirements of the Contract Documents by TxDOT.

NEPA Approval shall mean each decision document issued by FHWA for the Project or portion of the Project, including the Finding of No Significant Impact issued by FHWA on July 10, 2012, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

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 6.2.2 of the Agreement.

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 Contract 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 Agreement.

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 Agreement.

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

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

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

NTP2 means a written notice issued by TxDOT to DB Contractor pursuant to Section 4.1.4 of the Agreement 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 Agreement.

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

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

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

Original Proposal shall mean DB Contractor's original Proposal submitted in response to the RFP on December 14, 2012.

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

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

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

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

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

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

Possession and Use Agreement shall have the meaning set forth in Section 7.4 of 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 Section 2.2.6.5 of the Technical Provisions.

Preliminary Bridge Layouts shall mean the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in Section 13.1 of 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 Agreement, as it may be modified from time to time in accordance with the express provisions of the Agreement.

Private Pipeline shall mean a private line, facility or system used for the carriage, transmission and/or distribution of gas, oil, petroleum products, hydrocarbons and similar substances, which is used for the benefit of one or more individual precipitants rather than directly or indirectly serving the public.

Professional Services shall mean all Work performed under the Agreement 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) (or Design Quality Manager) shall mean the person assigned by DB Contractor with responsibility to 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 2.2.7.4.1 of the Technical Provisions.

Program Manager shall mean HNTB Corporation 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 Agreement.

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 Agreement.

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 of the Technical Provisions.

Project Management Plan (PMP) shall mean the document complying with BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT,

describing quality assurance and quality control activities necessary to manage the design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in Section 2 and Attachment 2-1 to the Technical Provisions.

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

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 Section 2.1.1.2 of 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 NEPA Approval, 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, as modified by the original BAFO in accordance with ITP Section 5.8 and including any clarifications.

Proposal Due Date shall mean February 14, 2013, the deadline for submission of the BAFO to TxDOT.

Proposer shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on June 1, 2012, as amended.

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

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

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

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

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

Reference Information Documents (RID) shall mean those documents listed in Exhibit 19 to the Agreement. Except as expressly provided in the Contract Documents, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.

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 Agreement, provided that the 25% and 145% mark-ups allowed under Section 13.7.1 of the Agreement shall be reduced to 12.5% and 130%**,** and the 15% mark-up allowed under Section 13.7.2 of the Agreement shall be reduced to 7.5%.

Release of Hazardous Materials means 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 Agreement, 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 Agreement, 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 Agreement.

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

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

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

Request for Proposal Revisions and Best and Final Offers or **Request for BAFOs** shall mean Addendum 7 to the RFP.

Reserved Rights shall mean all of the following:

(a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and

(b) all right to use, and use of:

(i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;

(ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;

(iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and

(iv) any area or space over, on, under or adjacent to the Project ROW for any other commercial or non-commercial development or use.

Retainage Bond shall mean the bond required in accordance with Section 8.1.5 of the Agreement.

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 Contract Documents, the CMA Documents and the Reference Information Documents and any addenda issued in connection therewith.

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

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

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

Safety Plan shall have the meaning as set forth in Section 2.5 of the Technical Provisions.

Schematic Design shall mean the roadway schematic plans in the environmental evaluation approved by TxDOT and FHWA and included in the RID.

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

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

Service Line shall mean: (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

Site shall mean Schematic ROW, Additional Properties, 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 4.3.4 of the Technical Provisions.

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

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

Special Deposit and Possession (SDP) shall mean a declaration of taking in condemnation. This Special Deposit and Possession is a process of acquiring real property through a special condemnation procedure, to be approved by TxDOT and authorized by the Texas Transportation Commission.

State shall mean the State of Texas.

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

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

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

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

Submittal shall mean any document, work product or other written or electronic end product or item required under the Contract Documents to be delivered or submitted to 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 Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

Substantial Completion Deadline shall mean the deadlines as determined pursuant to in Section 4.2.1.1 of the Agreement, as such deadlines may be adjusted by Change Order pursuant to the Agreement.

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 MUAA by means of a UAAA, as more particularly described in Section 6 of the Technical Provisions.

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

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

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

Technical Provisions (TP) means Book 2, as such document may be revised or amended pursuant to the Agreement.

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 Agreement.

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

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 that occurs on or after the date TxDOT makes available to DB Contractor the affected parcel.

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

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

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 Section 18 of the Technical Provisions.

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

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

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 Schematic ROW available within the time period set forth in Section 6.5.3 of the Agreement, and subject to the risk allocation contained therein;

(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 Contract Documents as an express prerequisite

to DB Contractor's right to proceed or act, within the time periods (if any) indicated in the Contract 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 Contract Documents; and

(d) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the Agreement, if such Work exposed or examined is in conformance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT.

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

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

TxDOT-Directed Changes shall mean any changes in the scope of the Work or terms and conditions of the Contract 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 Agreement, 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 Agreement.

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

TxDOT-Provided Approvals shall mean the NEPA Approvals.

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

TxDOT's Recoverable Costs means:

(a) The costs of any assistance, action, activity or Work undertaken by TxDOT which DB Contractor is liable for or is to reimburse under the

terms of the Contract Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TXDOT staff and employees performing such action, activity or Work; plus

(b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

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

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

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

Ultimate Scope shall have the meaning as set forth in Section 1.3.1 of the Technical Provisions.

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 7.3.5.1.12 of the Technical Provisions.

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

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

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

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

Utility Adjustment Agreement Amendment (UAAA) shall mean an agreement between DB Contractor and the Utility Owner that amends a Master Utility Adjustment Agreement, as more particularly described in Section 6.1.3 of the Technical Provisions.

Utility Adjustment Field Modifications has the meaning set forth in Section 6.4.7 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 6.3.4.1 of the Technical Provisions.

Utility Adjustment Submittals shall mean Submittals, submitted in accordance herewith and with any Master 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 6.7 of the Agreement. Any Utility Adjustment Work furnished or performed by DB Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement shall mean a PUAA, MUAA and/or UAAA, 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 Master Utility Adjustment Agreement and any applicable Amendments), as more particularly described in Section 6.3.4.5 of the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

Utility Assembly Checklist shall mean a checklist listing the required components of a Utility Assembly, as referenced in Section 6.3.4.5 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 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

Utility Coordinator or DB Contractor Utility Coordinator (DUC) shall mean the utility staff personnel designated by the DB Contractor to coordinate the utility

adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with either the Utility Owner and/or TxDOT and its consultants.

Utility Design Coordinator (UDC) shall mean the Registered Professional Engineer designated by the DB Contractor to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

Utility Enhancement shall mean a Betterment or a Utility Owner Project, as referenced in Section 6.7.2 of the Agreement,

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

Utility Manager (UM) shall mean the senior staff utility administrator designated by DB Contractor to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

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

Utility Owner Delay shall have the meaning set forth in Section 6.7.5.2 of the Agreement.

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 6.7.2.3 of the Agreement) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

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

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

Value Engineering (VEs) shall have the meaning set forth in Section 22.1 of the Agreement.

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

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

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

Water Quality Specialist shall mean the person designated by the Environmental Compliance Manager to provide expertise in water quality, as more particularly described in Section 4.4.6 of the Technical Provisions.

Work shall mean all of the work required under the Contract 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 Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts which such Contract Documents expressly specify will be performed by Persons other than the DB Contractor-Related Entities.

[END OF DEFINITIONS]

EXHIBIT 2

DB CONTRACTOR'S PROPOSAL COMMITMENTS, ATCS AND SCHEMATICS

Appendix 1: **Proposal Commitments**

Appendix 2: **ATCs**

Appendix 3: **Schematics**

APPENDIX 1 TO EXHIBIT 2

PROPOSAL COMMITMENTS

SUBSTANTIAL COMPLETION DEADLINES

Description	Substantial Completion Date
Proposal Commitment Date for Substantial Completion	NTP1 plus 1092 calendar days

KEY PERSONNEL

DB Contractor commits to provide the following individuals to serve as the following Key Personnel:

Name of Key Personnel	Key Personnel Position
Dan Holycross	Project Manager
David Nufer, P.E.	Design Manager
Mark Miller	Construction Manager
Roxanne L. Pillar, P.E.	Professional Services Quality Control Manager
Olen Howard, P.E.	Design Quality Assurance Manager
Jonathan Green, P.E.	Construction Quality Control Manager
Lenwood S. Adams, P.E.	Construction Quality Acceptance Manager
Benjamin Furr	Environmental Compliance Manager
Zane Webb, P.E.	Capital Maintenance Manager

OTHER PROPOSAL COMMITMENTS

Comment No.	Proposal Location	Proposal Commitment
1	Vol 1: Sec D Figure	At all times during the phases of construction, the traveling public will be protected from the work area (AOW 1) by portable concrete traffic barriers (PCTB) with appropriate

	D1(a) Page 4	crash cushion attenuators.
2	Vol 1: Sec D Figure D2(a) Page 6	Information on the work within these (AOW 2) limits will have extra emphasis placed on it to keep the public, businesses, the city of Bishop and Bishop ISD informed well in advance of any impacts to traffic.
3	Vol 1: Sec D Page 11	Austin-Bay will minimize dust by watering access roads as well as any areas of construction that have been prepared for construction.
4	Vol 1: Sec D Page 12	Austin-Bay will use design awareness in the TCP to mitigate the potential damage of local roads. Additionally, the Austin-Bay team will adhere to the local, state and federal laws that apply to load limit weights. It will perform continuous monitoring through daily traffic control inspections to identify and assess the potential of any damage.
5	Vol 1: Sec D Page 12	Austin-Bay will use the corrosion protection measures applicable to the Corpus Christi District including increased clear cover on the substructure components and penetrating Class II concrete surface treatment on the bridge decks.
6	Vol 1: Sec D Page 12	In lieu of coatings or paint, concrete stains will be used for a higher quality and longer lasting aesthetic appearance.
7 CMA Term	Vol 1: Sec D Page 21	Maintenance records will be formatted consistent with TxDOT formatting of its statewide asset inventory and condition assessments, and with TxDOT's maintenance management systems.
8	Vol 1: Sec D Page 25	Prior to implementing TCPs, Austin-Bay's public information and communications team will take an active role in business and community outreach in conjunction with TxDOT, while continuing to coordinate with stakeholders to mitigate any disruptions to property access.
9	Vol 1: Sec D Page 31	After completion of the field adjustment work, the acceptability of the construction will be verified by the CQAM, for utility owner adjustments.
10	Vol 1: Sec D Page 34	Austin-Bay's design leadership, construction team, and TxDOT will be co-located at the project office as needed during the design phase. The Austin-Bay construction team and TxDOT will be co-located throughout the construction phase. Key maintenance personnel will attend regularly scheduled technical work groups (TWGs) and constructability

		review meetings at the project office throughout the design phase and as needed during construction.
11	Vol 1: Sec D Page 35	The design kick-off meeting will provide an avenue for Austin-Bay and TxDOT to coordinate and mutually agree upon design packaging and content (such as drainage, individual structures, roadway, traffic sequencing and others), a list of mandatory submittals and a proposed submittal schedule.
12	Vol 1: Sec D Page 36	Technical Work Groups (TWGs) established during the pre-bid phase will continue these into the final design. The TWGs are organized into the following disciplines: • Environmental/Permitting • Utilities • Traffic Management • Hydrology/Hydraulics • Roadway • Structures • Retaining Walls • Aesthetics
13	Vol 1: Sec D Page 37	Capital Maintenance Manager will participate in discussions involving design alternative review, materials selection, and life-cycle cost analysis helps to ensure that sustainability and long-term asset maintenance and preservation issues are considered from the onset of project development.
14	Vol 1: Sec D Page 38	The owner status meeting and three-week look-ahead meeting will be held weekly throughout the duration of the project.
15	Vol 1: Sec D Page 38	Austin-Bay's design team will frequently conduct and document design quality management meetings (at least weekly) with the PSQCM, DQAM and TxDOT to discuss the design work progress, constructability auditing and quality reviews of design products.
16	Vol 1: Sec D Page 38	The Construction Quality Acceptance Manager (CQAM) will chair weekly quality meetings as part of Austin-Bay's approach to ensuring that the quality program is functioning properly and in a proactive manner.
17	Vol 1: Sec D Page 39	All meeting minutes will be posted to eManagers within 24 hours of the meetings.
18	Vol 1: Sec	Lead discipline engineers and other support staff will attend

	D Page 40	meetings in person at the project office when their subject matter expertise is required.
19	Vol 1: Sec D Page 42	The Capital Maintenance Manager, Mr. Zane Webb, will play an active role during project development and construction, as well as leading all capital maintenance activities during the CMA term. Mr. Webb will provide technical insight and valuable TxDOT experience to discussions involving design alternative review, materials selection and life-cycle cost analysis to ensure maintainability.
20 CMA Term	Vol 1: Sec D Page 43	A maintenance facility will be established in the vicinity of the project for use during the CMA term.
21	Vol 1: Sec D Page 43	Project-specific documents, including the PMP, QMP and project Safety Plan will be provided to each subconsultant, and they will be bound to follow the requirements and standards established by these documents. These subconsultants will report to the design manager, and he will administer the subcontracts. They will have direct access to the team's secure internet website and eManagers where all documentation and design files will be maintained.
22	Vol 1: Sec D Page 51	Decision Making and Dispute resolution Process: A decision-making matrix establishing authorization levels will be created at the initial project kickoff meeting.
23	Vol 1: Sec D Page 53	Orientation and Training: All project personnel, including both design and construction, will receive a site specific safety orientation that covers Austin-Bay's safety policies, HAZCOM and fall protection. Safety orientation will be required before beginning work on-site; attendance will be verified by sign in sheets and hard hat stickers for compliance.
24	Vol 1: Sec D Page67	To integrate consistency and quality into the design process, Austin-Bay will develop design task protocols (DTPs) and standardized design hardware and software
25 CMA Term	Vol 1: Sec D Page68	Maintenance Quality Control, Mr. Graff will submit an annual report summarizing the actual versus planned maintenance services completed, along with an assessment of compliance with traffic control requirements. The annual report will identify opportunities for improvement, corrective measures and lessons learned, and these will be incorporated within Austin-Bay's maintenance management plan to refine maintenance practices, ensure results and deliver sound capital maintenance services.

26	Vol 1: Sec D Page 72	Austin-Bay/Huitt-Zollar to employ an IS0 9001-compliant design quality management system.
27	Vol 1: Sec D Page 75	PSQCM, DQAM, CQAM, CQCM, MQCM will have the authority and obligation to stop work should a quality-related issue warrant such action.
28 CMA Term	Vol 1: Sec D Page 78	During the maintenance period, the design and construction quality managers will be available for assistance to provide a history of construction issues, and as-built clarifications.
29	Vol 1: Sec D Page 79	To assist with TxDOT oversight, a next day activity list containing descriptions of all scheduled work, including required inspections and tests, will be transmitted to TxDOT daily for the following workday's activities.
30	Vol 1: Sec D Page 80	Multiple NCRs regarding the same issue can be escalated to a corrective action report (CAR), if it is determined to be a systemic problem which could require immediate attention to resolve.
31	BAFO Vol 1: Sec A Page 6	Austin Bay QMP will meet the requirement of ISO 9001:2008.

APPENDIX 2 TO EXHIBIT 2

DB CONTRACTOR'S ATCS

The following bulleted list contains DB Contractor's approved alternative technical concepts (ATCs), as well as approved ATCs of unsuccessful Proposers that the 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 Design-Build Agreement. The conditions of approval are listed in Attachment 1 to this Appendix 2 to Exhibit 2. The ATCs, to the extent utilized by DB Contractor, shall otherwise meet all requirements of the Technical Provisions.

- ATC No. 003 – Prime Coat for Flexible Pavement Underseal
- ATC No. 004 – Optimized Pavement Design Methodologies for Flexible Pavement
- ATC No. 006 – Mechanical-Empirical (M-E) Design Methodologies for Flexible Pavement Design
- ATC No. 013 – Close Median Gap with Sloped Embankment
- ATC No. 014 – Carreta Creek Access Road Retaining Wall

ATTACHMENT 1 TO APPENDIX 2 TO EXHIBIT 2

APPROVED ALTERNATIVE TECHNICAL CONCEPTS FOR USE ON THE PROJECT

ATC #	Brief Description	Decision	Conditions of Approval
ATC No. 003	Prime Coat for Flexible Pavement Underseal	Conditionally Approved	• On a flexible pavement with a proposed HMA thickness less than or equal to 6" on a granular untreated base, the underseal may not be omitted in lieu of a prime coat.
ATC No. 004	Optimized Pavement Design Methodologies for Flexible Pavement	Conditionally Approved	• The initial serviceability index may be modified in accordance with the TXDOT PDG, however, the terminal serviceability index shall remain at 3.0. • Additionally, the modification to the AASHTO coefficient is not acceptable and shall remain as shown in Table 4
ATC No. 006	Mechanical-Empirical (M-E) Design Methodologies for Flexible Pavement Design	Conditionally Approved	• The use of mechanistic checks in FPS21 is acceptable provided that the structural design, in the first performance period (prior to first overlay), is adequate to handle 60% of the design ESALS. Additionally, other LEA software can be used for inputs used in mechanistic models appearing in FPS21. • The use of DARWin-ME is not acceptable.
ATC No. 013	Close Median Gap with Sloped Embankment	Conditionally Approved	• Will require safety shape barrier on the face of retaining wall or account for clear zone issues with modifications to frontage road design. • DB Contractor required to construct 10-foot inside shoulder on US 77 mainlane within the project limit where this ATC is applied to reduce

ATC #	Brief Description	Decision	Conditions of Approval
			median opening (notwithstanding Table 11-1 of the Technical Provisions indicating 4' inside shoulders on mainlanes).
ATC No. 014	Carreta Creek Access Road Retaining Wall	Conditionally Approved	• Minimum 20' wide and 12' vertical clearance is required. • Due to the potential disturbance of the endangered species of Slender Rush Pea and South Texas Ambrosia, additional environmental coordination must be conducted with permitting agencies and TxDOT. All environmental requirements, permitting, approvals, etc. must be obtained by the Design team.

APPENDIX 3 TO EXHIBIT 2

SCHEMATICS

The attached CD contains DB Contractor's Schematics, which formed the basis of DB Contractor's Proposal.

EXHIBIT 3

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	21
Attachment 3 – Wage Determination of the Secretary of Labor	3
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Lobbying Certification	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 - Certification of Nondiscrimination in Employment	1
Attachment 9 - On-the-Job Training Program	1

ATTACHMENT 1 TO EXHIBIT 3

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and 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) "authorized representative", such references shall be construed to mean TxDOT or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder", "Federal-aid construction contractor" or "prospective first tier participant", "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 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 cause the contractor to 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 Agreement 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
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

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):

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 contacting 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.

2. 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

(Attached; subject to change)

TEXAS COUNTIES IDENTIFIED BY
WAGE RATE ZONES: 7, 8, 11, 12, 14, 16, 18, 34, 35, 37, 38, 40, 41, 54, 56, 63

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	38	Donley	54	Karnes	37	Reagan	54
Andrews	54	Duval	41	Kaufman	35	Real	54
Angelina	38	Eastland	54	Kendall	16	Red River	38
Aransas	40	Ector	7	Kenedy	41	Reeves	18
Archer	35	Edwards	18	Kent	54	Refugio	37
Armstrong	7	El Paso	34	Kerr	37	Roberts	54
Atascosa	16	Ellis	35	Kimble	54	Robertson	16
Austin	56	Erath	38	King	54	Rockwall	35
Bailey	54	Falls	38	Kinney	18	Runnels	54
Bandera	16	Fannin	38	Kleberg	37	Rusk	11
Bastrop	16	Fayette	37	Knox	54	Sabine	38
Baylor	54	Fisher	54	Lamar	38	San Augustine	38
Bee	37	Floyd	54	Lamb	54	San Jacinto	56
Bell	16	Foard	54	Lampasas	16	San Patricio	40
Bexar	16	Fort Bend	56	LaSalle	41	San Saba	54
Blanco	37	Franklin	38	Lavaca	37	Schleicher	54
Borden	54	Freestone	38	Lee	37	Scurry	54
Bosque	38	Frio	37	Leon	38	Shackelford	54
Bowie	11	Gaines	54	Liberty	56	Shelby	38
Brazoria	56	Galveston	56	Limestone	38	Sherman	54
Brazos	16	Garza	54	Lipscomb	54	Smith	11
Brewster	18	Gillespie	37	Live Oak	37	Somervell	38
Briscoe	54	Glasscock	54	Llano	37	Starr	41
Brooks	41	Goliad	40	Loving	54	Stephens	54
Brown	54	Gonzales	37	Lubbock	7	Sterling	54
Burleson	16	Gray	54	Lynn	54	Stonewall	54
Burnet	37	Grayson	35	Madison	38	Sutton	18
Caldwell	16	Gregg	11	Marion	38	Swisher	54
Calhoun	40	Grimes	38	Martin	54	Tarrant	35
Callahan	35	Guadalupe	16	Mason	37	Taylor	7
Cameron	8	Hale	54	Matagorda	37	Terrell	18
Camp	38	Hall	54	Maverick	41	Terry	54
Carson	7	Hamilton	38	McCulloch	54	Throckmorton	54
Cass	38	Hansford	54	McLennan	16	Titus	38
Castro	54	Hardeman	54	McMullen	41	Tom Green	7
Chambers	56	Hardin	56	Medina	16	Travis	16
Cherokee	38	Harris	56	Menard	54	Trinity	38
Childress	54	Harrison	63	Midland	7	Tyler	38
Clay	35	Hartley	54	Milam	38	Upshur	11
Cochran	54	Haskell	54	Mills	54	Upton	54
Coke	54	Hays	16	Mitchell	54	Uvalde	41
Coleman	54	Hemphill	54	Montague	54	Val Verde	18
Collin	35	Henderson	38	Montgomery	56	Van Zandt	38
Collingsworth	54	Hidalgo	8	Moore	54	Victoria	14
Colorado	37	Hill	38	Morris	38	Walker	38
Comal	16	Hockley	54	Motley	54	Waller	56
Comanche	54	Hood	38	Nacogdoches	38	Ward	54
Concho	54	Hopkins	38	Navarro	38	Washington	38
Cooke	54	Houston	38	Newton	38	Webb	8
Coryell	16	Howard	54	Nolan	54	Wharton	37
Cottle	54	Hudspeth	18	Nueces	40	Wheeler	54
Crane	54	Hunt	35	Ochiltree	54	Wichita	12
Crockett	18	Hutchinson	54	Oldham	54	Wilbarger	54
Crosby	7	Irion	7	Orange	56	Willacy	41
Culberson	18	Jack	38	Palo Pinto	38	Williamson	16
Dallam	54	Jackson	37	Panola	38	Wilson	16
Dallas	35	Jasper	38	Parker	35	Winkler	54
Dawson	54	Jeff Davis	18	Parmer	54	Wise	35
Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38
Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

Revised 1-6-12

The wage rates listed are those predetermined by the Secretary of Labor and State Statue to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-6-2012

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/6/12	ZONE TX08 1/6/12	ZONE TX11 1/6/12	ZONE TX12 1/6/12	ZONE TX14 1/6/12	ZONE TX16 1/6/12	ZONE TX18 1/6/12	ZONE TX34 1/6/12	ZONE TX35 1/6/12	ZONE TX37 1/6/12	ZONE TX38 1/6/12	ZONE TX40 1/6/12	ZONE TX41 1/6/12	ZONE TX54 1/6/12	ZONE TX56 1/6/12	ZONE TX63 1/6/12
1428	Agricultural Tractor Operator						$12.69					$12.35			$11.75		
1300	Asphalt Distributor Operator	$14.87	$13.48	$13.88			$15.55	$15.72	$13.28	$15.32	$15.62	$14.36	$14.25	$14.03	$13.75	$14.06	$14.40
1303	Asphalt Paving Machine Operator	$13.40	$12.25	$12.35	$13.87		$14.36	$14.20	$13.26	$13.99	$14.68	$12.92	$13.44	$12.53	$14.00	$14.32	$12.99
1106	Asphalt Raker	$12.28	$10.61	$12.02	$14.21		$12.12	$11.64	$11.44	$12.69	$12.05	$11.34	$11.67	$11.40	$12.59	$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	$11.21	$10.33	$10.08			$11.04	$11.62		$11.74	$11.41	$10.30		$10.23	$10.60	$12.68	$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	$13.55	$12.46	$13.16	$12.85		$12.56	$12.77	$12.44	$14.12	$13.04	$13.38		$12.80	$12.79	$12.98	$13.32
1318	Concrete Pavement Finishing Machine Operator						$15.48			$16.05		$19.31				$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											$16.34				$11.71	
1333	Concrete Saw Operator									$14.48	$17.33					$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						$18.36			$18.12	$18.04	$20.21			$18.63	$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	$16.82	$14.39	$13.85			$15.87			$17.27		$14.67			$16.42	$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						$19.38			$20.52		$17.49			$25.13	$15.80	
1306	Crawler Tractor Operator	$13.96	$16.63	$13.62			$15.67			$14.07	$13.15	$13.38			$14.60	$13.68	$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						$11.67										
1445	Directional Drilling Operator						$17.24										
1139	Electrician	$20.96		$19.87			$26.35		$20.27	$19.80		$20.92				$27.11	
1347	Excavator Operator, 50,000 pounds or less	$13.46	$12.56	$13.67			$12.88	$14.38	$13.49	$17.19		$13.88			$14.09	$12.71	$14.42
1348	Excavator Operator, Over 50,000 pounds		$15.23	$13.52			$17.71			$16.99	$18.80	$16.22				$14.53	
1150	Flagger	$9.30	$9.10	$8.50		$8.81	$9.45	$8.70		$10.06	$9.71	$9.03		$9.08	$9.90	$10.33	$8.10
1151	Form Builder/Setter, Structures	$13.52	$12.30	$13.38	$12.91	$12.71	$12.87	$12.38	$12.26	$13.84	$12.98	$13.07	$13.61	$12.82	$14.73	$12.23	$12.25
1160	Form Setter, Paving & Curb	$12.36	$12.16	$13.93	$11.83	$10.71	$12.94			$13.16	$12.54	$11.33	$10.69		$13.33	$12.34	
1360	Foundation Drill Operator, Crawler Mounted									$17.99						$17.43	
1363	Foundation Drill Operator, Truck Mounted		$16.86	$22.05			$16.93			$21.07	$20.20	$20.76		$17.54	$21.39	$15.89	
1369	Front End Loader Operator, 3 CY or Less	$12.28	$13.49	$13.40			$13.04	$13.15	$13.29	$13.69	$12.64	$12.89			$13.51	$13.32	$12.17
1372	Front End Loader Operator, Over 3 CY	$12.77	$13.69	$12.33			$13.21	$12.86	$13.57	$14.72	$13.75	$12.32			$13.19	$13.17	
1329	Joint Sealer																
1172	Laborer, Common	$10.30	$9.86	$10.08	$10.51	$10.71	$10.50	$10.24	$10.58	$10.72	$10.45	$10.30	$10.25	$10.03	$10.54	$11.02	$10.15
1175	Laborer, Utility	$11.80	$11.53	$12.70	$12.17	$11.81	$12.27	$12.11	$11.33	$12.32	$11.80	$11.53	$11.23	$11.50	$11.95	$11.73	$12.37
1346	Loader/Backhoe Operator	$14.18	$12.77	$12.97	$15.68		$14.12			$15.18	$13.58	$12.87		$13.21	$14.13	$14.29	

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/6/12	ZONE TX08 1/6/12	ZONE TX11 1/6/12	ZONE TX12 1/6/12	ZONE TX14 1/6/12	ZONE TX16 1/6/12	ZONE TX18 1/6/12	ZONE TX34 1/6/12	ZONE TX35 1/6/12	ZONE TX37 1/6/12	ZONE TX38 1/6/12	ZONE TX40 1/6/12	ZONE TX41 1/6/12	ZONE TX54 1/6/12	ZONE TX56 1/6/12	ZONE TX63 1/6/12
1187	Mechanic	$20.14	$15.47	$17.47			$17.10			$17.68	$18.94	$18.58		$16.61	$18.46	$16.96	
1380	Milling Machine Operator	$15.54	$14.64	$12.22			$14.18			$14.32	$14.35	$12.86			$14.75	$13.53	
1390	Motor Grader Operator, Fine Grade	$17.49	$16.52	$16.88			$18.51	$16.69	$16.13	$17.19	$18.35	$17.07	$17.74	$17.47	$17.08	$15.69	$20.01
1393	Motor Grader Operator, Rough	$16.15	$14.62	$15.83		$17.07	$14.63	$18.50		$16.02	$16.44	$15.12		$14.47	$17.39	$14.23	$15.53
1413	Off Road Hauler			$10.08			$11.88			$12.25		$12.23			$13.00	$14.60	
1196	Painter, Structures						$18.34						$21.29			$18.62	
1396	Pavement Marking Machine Operator	$16.42		$13.10			$19.17	$12.01		$13.63	$14.60	$13.17		$16.65	$10.54	$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															$14.95	
1205	Pipelayer		$11.87	$14.64			$12.79		$11.37	$13.24	$12.66	$13.24	$11.17	$11.67		$12.12	
1384	Reclaimer/Pulverizer Operator	$12.85					$12.88			$11.01		$10.46					
1500	Reinforcing Steel Worker	$13.50	$14.07	$17.53			$14.00			$16.18	$12.74	$15.83		$17.10		$15.15	
1402	Roller Operator, Asphalt	$10.95		$11.96			$12.78	$11.61		$13.08	$12.36	$11.68			$11.71	$11.95	$11.50
1405	Roller Operator, Other	$10.36		$10.44			$10.50	$11.64		$11.51	$10.59	$10.30		$12.04	$12.85	$11.57	
1411	Scraper Operator	$10.61	$11.07	$10.85			$12.27		$11.12	$12.96	$11.88	$12.43		$11.22	$13.95	$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	$13.98	$12.34	$14.11			$14.51	$15.56	$13.44	$14.58	$14.31	$13.83		$12.43	$13.72	$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									$15.96							
1515	Spreader Box Operator	$12.60		$13.12			$14.04			$14.73	$13.84	$13.68		$13.45	$11.83	$13.58	
1705	Structural Steel Welder															$12.85	
1509	Structural Steel Worker						$19.29									$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						$16.00										
1440	Trenching Machine Operator, Heavy						$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	$14.46	$13.63	$13.41	$15.00	$15.93	$15.66			$16.24	$16.39	$14.30	$16.62	$15.63	$14.28	$16.03	
1612	Truck Driver Transit-Mix									$14.14							
1600	Truck Driver, Single Axle	$12.74	$10.82	$10.75			$11.79	$13.53	$13.16	$12.31	$13.40	$10.30	$11.61		$11.97	$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	$11.33	$14.53	$11.95			$11.68		$14.06	$12.62	$11.45	$12.28		$13.08	$11.68	$11.48	$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	$12.49	$12.12	$12.50			$12.81	$13.16		$12.86	$16.22	$12.50			$13.80	$12.27	
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		$14.02				$15.97		$13.74	$14.84					$13.78		
1520	Work Zone Barricade Servicer	$10.30	$12.88	$11.46	$11.70		$11.85	$10.77		$11.68	$12.20	$11.22	$11.51	$12.96	$10.54	$11.67	

Notes:

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

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

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 (per-cent)	Goals for female participation in each trade (per-cent)
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

County	Goals for Minority Participation	County	Goals for Minority Participation
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

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 Agreement 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 Agreement 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 Agreement 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 Agreement.

Concurrently with execution of the Agreement, 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 Agreement 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 Agreement.

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 Contract 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 Contract Price.

B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract 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.

DB CONTRACTOR	AUSTIN-BAY, JV
By AUSTIN BRIDGE & ROAD, LP, a joint venture member	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	
By BERRY CONTRACTING, LP D/B/A BAY LTD., a joint venture member	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

ATTACHMENT 8 TO EXHIBIT 3

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.

ATTACHMENT 9 TO EXHIBIT 3

2004 Specifications

SPECIAL PROVISION
000—1676
On-the-Job Training Program

1. Description. The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

2. Trainee Assignment. Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.

3. Program Requirements. Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed $0.80 per training hour at no additional cost to the Department.

Compliance. The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

EXHIBIT 4

TXDOT-PROVIDED APPROVALS

1. Finding of No Significant Impact issued by FHWA on July 10, 2012

EXHIBIT 5

MAXIMUM PAYMENT SCHEDULE

(Attached)

US 77 Upgrade from Kingsville to Driscoll Project

Modified Form BAFO M-2 *38 Periods Total

(all figures are in U.S. dollars, nominal)

Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow	Cash Flow % of Cumulative Draw (A / B)	Cumulative Cash Flow % of Maximum Draw (B / Maximum Payment)
1	$2,000,000	$2,000,000	2.5%	2.5%
2	$1,000,000	$3,000,000	3.8%	3.8%
3	$2,353,500	$5,353,500	6.8%	6.8%
4	$779,500	$6,133,000	7.8%	7.8%
5	$521,500	$6,654,500	8.4%	8.4%
6	$784,000	$7,438,500	9.4%	9.4%
7	$970,000	$8,408,500	10.7%	10.7%
8	$851,000	$9,259,500	11.7%	11.7%
9	$707,000	$9,966,500	12.6%	12.6%
10	$1,179,500	$11,146,000	14.1%	14.1%
11	$1,449,000	$12,595,000	16.0%	16.0%
12	$1,105,000	$13,700,000	17.4%	17.4%
13	$2,283,000	$15,983,000	20.3%	20.3%
14	$3,378,510	$19,361,510	24.5%	24.5%
15	$3,458,010	$22,819,520	28.9%	28.9%
16	$2,605,010	$25,424,530	32.2%	32.2%
17	$2,472,510	$27,897,040	35.3%	35.3%
18	$3,053,010	$30,950,050	39.2%	39.2%
19	$3,485,010	$34,435,060	43.6%	43.6%
20	$3,483,510	$37,918,571	48.0%	48.0%
21	$3,734,510	$41,653,081	52.8%	52.8%
22	$4,241,510	$45,894,591	58.2%	58.2%
23	$1,272,760	$47,167,351	59.8%	59.8%
24	$1,432,010	$48,599,361	61.6%	61.6%
25	$1,351,510	$49,950,871	63.3%	63.3%
26	$1,534,750	$51,485,621	65.2%	65.2%
27	$2,465,000	$53,950,621	68.4%	68.4%
28	$1,583,000	$55,533,621	70.4%	70.4%
29	$2,334,000	$57,867,621	73.3%	73.3%
30	$2,137,500	$60,005,121	76.0%	76.0%
31	$2,914,000	$62,919,121	79.7%	79.7%
32	$2,637,500	$65,556,621	83.1%	83.1%
33	$2,696,500	$68,253,121	86.5%	86.5%
34	$2,721,500	$70,974,621	89.9%	89.9%
35	$2,538,705	$73,513,326	93.1%	93.1%
36	$2,538,705	$76,052,031	96.4%	96.4%
37	$2,159,500	$78,211,531	99.1%	99.1%
38	$708,247	$78,919,778	100.0%	100.0%

TOTAL $78,919,778

Nominal Development Payments

Design Build Price To Form BAFO M-1

MAXIMUM PAYMENT $78,919,778

EXHIBIT 6

SPECIAL PROVISION FOR THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Disadvantaged Business Enterprise in Federal-Aid Construction for Design-Build Contracts

I. Description. The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal. For purposes of this Special Provision, the term "contract" means the Agreement (referred to sometimes as the "Design-Build Agreement"), the term "Bidder" means the selected Proposer for the Project, and the term "Contractor" means Design-Build Contractor under the Agreement (referred to sometimes as the "DB Contractor").

A. Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.

1. Policy. It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, the Department's DBE Program, and the Contractor's approved DBE Performance Plan apply to this contract as follows:

a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

b. The Contractor, sub-recipient 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 recipient deems appropriate.

c. The requirements of this Special Provision shall be physically included in any subcontract.

d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment, and that, if selected for the Design-Build Agreement, the

Bidder will submit a DBE Performance Plan meeting the requirements set forth in Section A.2.m, below.

2. Definitions.

a. "Department" means the Texas Department of Transportation.

b. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

c. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.

d. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

e. "Disadvantaged Business Enterprise" or "DBE" means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26.

f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications."

h. "Regular Dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

i. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.

j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.

l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

m. "DBE Performance Plan" means the plan submitted by the selected Bidder for a Design-Build project describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Bidder's exercise of good faith efforts. The selected Bidder's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Design-Build Agreement. Each DBE Performance Plan must at a minimum include the following:

(1) Specific categories of services and work anticipated for DBE participation on the project;

(2) Identification of DBEs for performance of design work and other professional services, to the extent known at the date of submission of the DBE Performance Plan;

(3) Identification of DBEs for construction subcontracts, to the extent known at the date of submission of the DBE Performance Plan;

(4) Schedule for submission of DBE commitment agreements (using Form No. SMS. 4901), based on Bidder's initial project schedule; provided, however, that:

(a) DBE commitment agreements for design work and other professional services must be submitted at least 30 days prior to commencement of design work or other professional services for the applicable segment or phase of work under the Design-Build Agreement; and

(b) DBE commitment agreements for construction subcontracts must be submitted at least 30 days prior to commencement of construction for the applicable segment or phase of the project under the Design-Build Agreement;

(5) Detailed description of:

(a) Good faith efforts the Bidder has exercised to identify DBEs and obtain commitment agreements prior to the date of submission of the DBE Performance Plan; and

(b) Good faith efforts that will be exercised by the Contractor following execution of the Design-Build Agreement to achieve the DBE participation goal for the project; and

(6) The name, experience, qualifications and responsibilities of the Bidder's Civil Rights/DBE Compliance Manager.

3. Contractor's Responsibilities. These requirements must be satisfied by the Contractor.

a. After conditional award of the contract, the Contractor shall, in consultation with the Department's Business Opportunity Programs (BOP) Office, develop and submit a DBE Performance Plan meeting the requirements set forth in A.2.m, above, and shall also submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of the contract. The DBE Performance Plan is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the Design-Build Agreement.

b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902.

c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(1) Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

(2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically

feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.

(3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(4) Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(5) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.

(7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

(8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(9) Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(10) If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the

Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.

d. Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

e. The preceding information shall be submitted directly to the Business Opportunity Programs Office, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

h. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's BOP Office. An update of the Directory can be found on the Internet at http://www.dot.state.tx.us/business/tucpinfo.htm.

c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Sections A.3.a. and A.3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

5. Determination of DBE Participation. When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:

a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(a) In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

(b) In all cases, prime or other subcontractor assistance will not be credited toward the DBE goal.

(2) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least

30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

(3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

(a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

(b) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

(c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

(d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

(4) When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.

c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the

premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(2), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section A.5.c.(2).

(3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

(4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

6. Records and Reports.

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, “DBE or HUB Progress Report,” is to be used for monthly reporting. Form No. SMS.4904, “DBE or HUB Final Report,” is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Business Opportunity Programs Office and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department’s project number.

b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

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 or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."

e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

7. Compliance of Contractor.

a. To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

d. The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

e. When a DBE subcontractor, named in the commitment under Section A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation. It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form No. SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

2. The Contractor, sub-recipient 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 recipient deems appropriate.

EXHIBIT 7

DB CONTRACTOR'S DBE PERFORMANCE PLAN

(Attached)

DBA

EXHIBIT 7

DESIGN-BUILDER'S DBE PERFORMANCE PLAN

DBE PLAN

The following is submitted as an individual Disadvantaged Business Enterprise (DBE) Plan to address the applicable requirements in TxDOT's DBE Program adopted pursuant to 49 CFR Part 26, the Texas Administrative Code and the Design-Build Agreement for the US 77 Upgrade from Kingsville to Driscoll Project.

1. Goals

A. Percentage Goals

Per RFP Addendum 7 (BAFO), Volume 1-Instructions to Proposers, Section 1.9.2, DBE Requirements page 8--

"The DBE participation goal for the Project shall be 6% of the Price. TxDOT's DBE requirements applicable to the DBA are set forth in Section 7.1 of the DBA, the DBE Special Provisions attached as Exhibit 6 to the DBA and TxDOT's DBE Program adopted pursuant to Title 49 CFR Part 26. TxDOT's DBE requirements applicable to the CMA are set forth in Section 6.1 of the CMA.
Following conditional award of the DBA and the CMA, the selected Proposer will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Proposer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the DBE Special Provisions, Exhibit 6 to the DBA..."

Per RFP Addendum 7 (BAFO), Capital Maintenance Agreement, Section 6.1 DBE Requirements

***"6.1.1** Maintenance Contractor shall comply with the TxDOT Disadvantaged Business Enterprise (DBE) program in effect as of the date on which Maintenance NTP1 is issued by TxDOT, including undertaking good faith efforts to encourage DBE participation in the Maintenance Services and maintaining and submitting documentation as required by the TxDOT DBE program. Maintenance Contractor shall submit the documentation required under TxDOT's DBE program within 90 days following issuance of the Maintenance NTP1…"*

B. Design Work Percentage
Six (6) percent of the total design work and other professional services dollars shall be offered to DBE sub-consultants and/or suppliers.

C. Build Work Percentage

Six (6) percent of the total planned construction subcontracting/ procurement dollars shall be offered to DBE subcontractors, suppliers and/or hauling firms.

D. Maintenance Work Percentage

Maintenance Contractor shall comply with the TxDOT Disadvantaged Business Enterprise (DBE) program in effect no the date when Maintenance NTP1 is issued by TxDOT. This will include undertaking good faith efforts to encourage DBE participation in the Maintenance Services and maintaining and submitting documentation as required by the TxDOT DBE program.

2. PRINCIPAL TYPES OF SUPPLIES AND SERVICES TO BE SUBCONTRACTED

The principal products and/or services the Design Build Contractor anticipates subcontracting and identification of DBE's for performance of design work and other professional services will be identified and submitted to TxDOT on the DBE commitment agreement form SMS 4901within forty-five (45) days of NTP1.

For construction operations identification and submittal to TxDOT on the DBE commitment agreement form SMS 4901will be completed and submitted as a condition to start construction under DBA section 4.4.1, but in no event shall such form be completed and submitted later than January 1, 2014.

3. METHOD FOR DEVELOPING GOALS

The work activities to be self-performed by the Design Build Contractor's workforce will be identified by human resource managers and project management personnel based on best value assessment of each work activity and labor resource. The Design Build Contractor's labor and materials sourcing strategy embodies preferences in offering subcontractor designated work to qualified DBE'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 or purchased. The subcontracting data accumulated by the Design Build Contractor through our sourcing and evaluation process for this project will be based on an aggressive program targeted at maximizing the utilization of qualified DBE's whenever practicable by using a broad base resources to identify and source potential DBE's.

4. Sources for Solicitation

The following sources have been identified by the Design Build Contractor as available sources to locate and solicit appropriate disadvantaged business enterprises and will be utilized on the US-77 project.

i. Owner provided contractor listings

ii. Texas Unified Certification Program (TUCP) directory. Note: Only firms certified as DBE's in the TUCP directory will count towards the goal on this project.

iii. Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA).

iv. The Design Build Contractors Internal Vendors Database – created from letters of introduction, pre-qualification documents and personal interviews with small, small disadvantaged, Women owned, HUB, HUB Zone and service disabled veteran enterprise companies. Note: Firms not currently certified as a DBE in accordance with the standards of 49 CFR, Part 26, Subpart D at the time of execution of the contract will not count toward any DBE goals, except as provided for in 49 CFR–§26.87(i).

v. The Blue Book of Building Construction, regional directories of building and construction vendors.

vi. Office of Small and Disadvantaged Business specialist.

vii. Local Community Chambers & Organizations
- Corpus Christi Hispanic Chamber of Commerce
- Corpus Christi Black Chamber of Commerce
- Corpus Christi Chamber of Commerce

viii. Databases including:
- Corpus Christi Regional Transportation Agency
- Minority Business Development Agency (MBDA)
- South Central Texas Regional Certification Agency
- Texas Depart of Transportation DBE Directory

ix. MBE Contractor Directory – compiled and maintained by the Associated General Contractors of America.

x. Publications including:
- Minorities Business Daily
- Local newspapers and trade publications

Trade and Professional Associations including:
- Hispanic Business Professional Women Association
- Minority Professional Network
- National Association of Minority Contractors (Houston Chapter & Beaumont Chapter)
- National Minority Supplier Development Council, Inc. (South West & Houston Chapters)
- Texas Association of Mexican American Chambers of Commerce
- Hispanic Contractors Association De San Antonio
- Regional Hispanic Contractors Association of Texas

All subcontractors and suppliers considered for invitations to bid by the Design Build Contractor, including DBE's will be asked to complete a Prequalification Form. This form will be reviewed internally by the Design Build Contractor to evaluate the following:
- Safety record
- Experience
- Insurance/Bonding information

- Quality of service and/or products
- Personnel
- Equipment
- Financial stability
- Pricing structure
- Delivery schedule

Additional information may be obtained from Dun and Bradstreet reports, personal interviews and contacts with business references.

5. Invitation to Bid

Following the identification and prequalification of potential subcontractors/suppliers an invitation is issued to the potential selected subcontractors/suppliers. A bid log is maintained to track the subcontractors/suppliers invited and their response to the invitation. Sample subcontract, sub-consultant agreement or purchase orders are included with the invitation to bid as resource documents for the bidder's information and pricing consideration. All plans and specifications are made available in several formats for review and take-off by the bidders. The DBA and any applicable addenda will also be available to the potential bidders.

6. Selection Process and Award

The responsive subcontractor/supplier proposals will be evaluated based on price, qualifications of bids, inclusions and exclusions etc. After careful consideration of the proposals the project management team will make a selection of the successful subcontractor/supplier for each work scope to be subcontracted. Following this the appropriate agreements are finalized and forwarded to the subcontractor/supplier for execution.

7. The following individual will administer the subcontracting program:

Name: Vicki Davis
DBE Liaison

Address: 6330 Commerce Drive, Suite 150 Irving, Texas 75063

Phone: 817-204-0258 Ext. 20734

The DBE Liaison's specific duties as they relate to this subcontracting plan include oversight of the subcontracting program, and execution, assist in the preparation and execution of individual subcontracting plans, documentation and monitoring of performance relative to the contractual subcontracting requirements contained in this plan including, but not limited to:

- Preparing and submitting periodic governmental and contractual required subcontracting reports including a monthly DBE Plan assessment report.

- Coordinating activities during compliance reviews.

- Coordinating activities involving DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran enterprises, as related to the subcontracting program.

- Monitoring attainment of the program goals.

8. Outreach Efforts

   A. Efforts will be taken to assure that DBE small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran enterprises concerns will have an equitable opportunity to compete, along with large businesses, for subcontract work. Outreach efforts will include:

      - Contacts with minority and small business trade associations.
      - Contacts with business development organizations
      - Contacts with TxDOT Business Development Section
      - Attendance at SBA procurement conferences and trade fairs.
      - Mentor-Protégé relationships.

   B. Internal efforts will be made to guide and encourage purchasing agents, buyers, etc., to utilize DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran enterprises concerns, as follows:

      - By notifying appropriate internal purchasing and buyers of sources for DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran enterprises.
      - By monitoring efforts to achieve the goals outlined in the project subcontracting plan.

9. Design Build Contractor Subcontract Language

   A. The design Build Contractor will include in all subcontracts issued under this contract the following language incorporated by reference in accordance with all Design Build Contract requirements:

      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 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 Design Build Contractor deems appropriate.

      Design Build Contractor shall pay each Subcontractor for work performed within ten days after receiving payment from TxDOT for 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 DBA Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and DBA Documents: and (b) the Work done by the Subcontractor has been inspected and approved by the Design Build Contractor 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 Design Build Agreement including but not limited to, the requirements 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 the Design Build Contractor.

10. Compliance with Reporting Requirements

    A. The Design Build Contractor agrees to submit monthly reports and to cooperate in any studies or surveys, as may be required by TxDOT in order to determine the extent of compliance with the goal of the DBE plan. These reports will be due 15 days after the end of a calendar month and will be submitted until all DBE subcontracting, material supply, hauling, and DBE Truck Owner-Operator activity is completed.

    B. The design Build Contractor agrees to submit all applicable Standard Forms modified to fit the DBA, SMS 4901, SMS 4901-M/S, SMS 4901-T, SMS 4903 and SMS 4904 located on the TxDOT website at:
    http:www.txdot.gov/inside-txdot/forms-publicaction/doing-business/dbe.html
    In the event any of these forms are modified by the Design Build Contractor, such modifications are subject to prior TxDOT approval

    C. To ensure that DBE requirements are complied with TxDOT will monitor the Design Build Contractor's efforts by reviewing monthly reports submitted to TxDOT by the Design Build Contractor indicating progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by TxDOT.

11. Records

    A. The Design Build Contractor agrees to maintain the following types of records to document compliance with the DBE plan:

        - DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran business concern source list, guides and other data identifying these suppliers, subcontractors, etc.

        - Organizations contacted for providing DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran business sources.

- Records on each subcontract solicitation resulting in an award showing (a) whether or not DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran business concerns were contacted, and (b) if applicable the reason the award was not made to a DBE, small, small disadvantaged, women-owned, HUB, HUB Zone and service disabled veteran business.

- Records of any outreach efforts to contact trade associations, business development organizations, conferences and trade fairs, to identify potential DBE's.

- Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and performance monitoring to evaluate compliance with the program requirements.

- Records on a contract-by-contract basis to support award data submitted by the Design Build Contractor to TxDOT including name, address and business size of each subcontractor.

12. Training

The Design Build Contractor will verify that all applicable training requirements have been accomplished with each subcontractor employee through orientation and/or through verification of safety requirements included in all subcontract agreements.

13. EEO

All Federal employment requirements to include EEO, affirmative action, labor and all other applicable requirements will be posted at the project site and reference to those requirements will be attached to all subcontract agreements.

14. Implementation

In order to efficiently facilitate this plan to the extent consistent with efficient contract performance, he Design Build Contractor shall perform the following:

A. Assist disadvantaged businesses by allowing sufficient time for the preparation of take-offs, preparation of bids and delivery schedules. Where the list of potential DBE subcontractors are excessively long, reasonable effort will 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 DBE's.

C. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as DBE's for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Design Build Contractor's subcontracting plan.

EXHIBIT 8

DB CONTRACTOR'S JOB TRAINING AND SMALL BUSINESS OPPORTUNITY PLAN

(Attached)

DBA

EXHIBIT 8

Design Build Contractor's Job Training and Small Business Opportunity Plan

TRAINING PLAN

The Austin-Bay Job Training and Small Business Opportunity Plan will consist of three major parts: (1) Training/Continuous Improvement Practices, (2) On the Job Training and (3) our Mentor Protégé Program as described below.

1. **Training/Continuous Improvement Practices**
   The Austin-Bay team will follow our standard training programs for all disciplines. These training programs include but are not limited to: safety, quality, environmental, OSHA and professional development. The purpose of our training program is to continuously improve our employees' knowledge and our companies' ability to provide a safe, environmentally-compliant cost-effective product for TxDOT.

2. **On the Job Training**
   Austin-Bay will also participate in TxDOT's on-the-job training (OJT) program, which meets the requirements of the Federal Aid Highway Act of 1970 and CFR 23 (Code of Federal Regulations) Part 230, Subpart A. The objective is to establish apprenticeship and training programs targeted to move women, minorities, and disadvantaged individuals into journeyman level positions to ensure that a competent workforce is available to meet future highway construction hiring needs. See Attachment 1 – The approved On the Job Training Program Manual. Details of the OJT program requirements are as follows:

   - The Department has assigned a project-specific minimum trainee goal of graduating at least 3 trainees in accordance with guidelines set forth in 23 C.F.R. 230.111. This goal is in addition to any other goals assigned by the Department's Office of Civil Rights (OCR) to meet federal-aid requirements.
   - The type of apprentice, number of trainees, type of training, and length of training will be established and submitted within 30 days of contract execution.
   - The trainee(s) shall begin training on the project after start of work in the field and remain on the project as long as training opportunities exist or until the training is completed.
   - 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.
   - The OCR will approve all proposed apprentices and trainees before training begins. Austin-Bay will submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. Austin-Bay will provide each trainee with a copy of the training program he or she will follow.

- On a monthly basis, Austin-Bay will submit the Federal OJT Monthly Reporting Form to the Department's area office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, Austin-Bay will make a good faith effort to replace the trainee within 30 calendar days of the termination.
- Austin-Bay will provide each trainee with a certification showing the type and length of training satisfactorily completed.
- If requested, Austin-Bay 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 whether Austin-Bay receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit Austin-Bay from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to Austin-Bay if the trainees are concurrently employed on a federal-aid project and when Austin-Bay: 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 Austin-Bay if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by Austin-Bay and evidences a lack of good faith on the part of Austin-Bay in meeting the requirements of this Training Special Provision.
- Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual.

3. Austin- Bay will also offer selected subcontractors the opportunity to participate in our Mentor Protégé Program designed to provide selected Small Business Mentor Protégé's the opportunity to learn about the Design Build Contractors business opportunities and business practices. Mentor Protégé's will receive information to assist them in bidding and performing the Design Build Contractors contracts by working directly with the Design Build Contractor and appropriate subcontractors gaining valuable on-the-job training during the mentoring period. See Attachment 2 - our Mentor Protégé Program.

EXHIBIT 9

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

US 77 UPGRADE FROM KINGSVILLE TO DRISCOLL PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended ("Principal"), a Design-Build Agreement for the US 77 Upgrade from Kingsville to Driscoll Project, duly executed and delivered as of _____, 2013 (the "Contract"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $3,000,000, 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 Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the Contract.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages as specified in the Contract Documents, but not to exceed the Bonded Sum.

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

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

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

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

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

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons 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 Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. 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 Contract, 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 under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $7,891,977.80. 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 _____, 2013.

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)

Austin-Bay, JV

, 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 $68,272,144.00 (ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work) effective upon issuance by the Obligee of NTP2 under the Contract.

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

This rider
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____
(PRINCIPAL)

_____
(SURETY)

By: _____
Attorney in fact

EXHIBIT 10

FORM OF PAYMENT BOND

[To be replaced by actual Payment Bond]

US 77 UPGRADE FROM KINGSVILLE TO DRISCOLL PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended ("Principal"), a Design-Build Agreement for the US 77 Upgrade from Kingsville to Driscoll Project, duly executed and delivered as of _____, 2013 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, 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 $3,000,000, 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 Contract.

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

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

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $7,891,977.80. 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 _____, 2013.

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)

Austin-Bay, JV

, 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 $$68,272,144.00 (ONE HUNDRED PERCENT (100%) of Price allocable to Construction Work) effective upon issuance by the Obligee of NTP2 under the Contract.

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

This rider
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____
(PRINCIPAL)

_____
(SURETY)

By: _____
Attorney in fact

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 Contract, 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

_____	By: _____
SURETY (Print Firm Name and Seal)	(Title)
*By:_____	By: _____
(Title)	(Title)
_____	_____
SURETY (Print Firm Name and Seal)	**SURETY** (Print Firm Name and Seal)
*By:_____	*By: _____
(Title)	(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

FORM OF WARRANTY BOND

[To be replaced with actual Warranty Bond]

US 77 UPGRADE FROM KINGSVILLE TO DRISCOLL PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended ("Principal"), a Design-Build Agreement for the US 77 Upgrade from Kingsville to Driscoll Project, duly executed and delivered as of _____, 20__ (the "Contract"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $7,891,977.80 (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

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

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

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

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

a. arrange for Principal to perform and complete the Contract;

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

d. waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee 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 Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 5.d of this Bond, and the Obligee refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligee shall be entitled to enforce any remedy available to the Obligee.

7. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. 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 Contract, 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 under the Contract.

8. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Sureties' prior written consent thereto having been obtained, does not increase the Price by more than $7,703,565.70. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

_____
_____
_____

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

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 13

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

A. Austin-Bay, JV, as design-build contractor ("DB Contractor"), and TxDOT are parties to that certain Design-Build Agreement (the "Agreement") 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 Contract Documents.

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

C. DB Contractor is a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended. The Guarantor is _____. The execution of the Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Agreement with DB Contractor. Therefore, in consideration of TxDOT's execution of the Agreement 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 Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or

not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against 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 Contract 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. <u>Independent Obligations</u>. 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 Contract Documents or to pursue any other remedy or to enforce any other right.

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

subordination of any collateral then held by TxDOT as security for the performance by 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 Contract Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the DB Contractor under the Agreement. 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. <u>Liability of Guarantor.</u>

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 Agreement, 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 Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of 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. <u>Waivers.</u> 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 Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, 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 Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the Agreement; (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 duly organized, validly existing, and in good standing under the laws of the State of [_____] and qualified to do business and is in good standing under the laws of the State of Texas;

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

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

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

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

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of 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 Contract 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
Strategic Projects Division
814 Arion Parkway, Suite 401
San Antonio, Texas 78216
Attn: Mr. Frank Holzmann, P.E.
Telephone: (210) 232-8157
E-mail: frank.holzmann@txdot.gov

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Attn: John J. Ingram, Esq.
Telephone: (512) 463-8630
E-mail: jack.ingram@txdot.gov

Texas Department of Transportation
Strategic Projects Division
814 Arion Parkway, Suite 401
San Antonio, Texas 78216
Attn: Mr. Beau Buchanan, P.E.
Telephone: (830) 463-9147
E-mail: beau.buchanan@txdot.gov

Texas Department of Transportation
Strategic Projects Division
7745 Chevy Chase, Bldg. 5, Ste. 300
Austin, Texas 78752
Attention: Dieter Billek, P.E.
Telephone: (512) 334-3831
E-mail: dieter.billek@txdot.gov

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Email:_____

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 Agreement 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 Agreement, 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 Agreement.

[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 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, 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 shall be named as additional insured on the policy. DB Contractor also may, but is not obligated to, include other Subcontractors as additional insureds. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other insureds. DB Contractor will be named as the named insured on the policy. The policy will include a waiver of subrogation in favor of TxDOT, DB Contractor, and all Subcontractors.

(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; and (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).

(f) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

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 as specified below.

(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;

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 04 13 or its equivalent 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) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by DB Contractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting DB Contractor's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;

(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 $50,000,000 per occurrence and in the aggregate per policy period. Such limits may be provided through umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(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 provide one of the following, as DB Contractor selects:

(i) A deductible or self-insured retention not exceeding $100,000 per occurrence;

(ii) A deductible or self-insured retention not exceeding $250,000 per occurrence with an aggregate of $2,000,000 per policy period; or

(iii) A deductible (but not self-insured retention) of $500,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

3. [Intentionally Omitted].

4. Automobile 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, 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. If DB Contractor does not supply any vehicles that would be the subject of such policy, the joint venture member(s) of DB Contractor which supplies the vehicles shall be the named insured rather than DB Contractor.

(c) DB Contractor's policy shall have a single limit per policy period of not less than $50,000,000 any one claim and in the aggregate, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) Each policy shall provide a deductible or self-insured retention not exceeding $50,000 per occurrence.

5. 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 Agreement.

(d) The policy shall provide a deductible or self-insured retention not exceeding $250,000 per occurrence.

(e) TxDOT shall be named as an additional named insured on the policy. The specific scope of services required under the DBA shall be listed on the certificate of insurance.

6. Professional Liability Insurance

At all times that Professional Services are rendered under the Agreement 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 via a practice policy covering all the foregoing providers of Professional Services and/or by showing that all of the foregoing providers of Professional Services each has a practice policy with coverages satisfying paragraphs (a), (b), and (c) below.

(a) The insurance policy shall provide coverage of 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 contingent bodily injury or property damage.

(b) The insurance policy shall have a limit of not less than $10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) The insurance policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

In addition, DB Contractor shall cause each other Subcontractor that provides Professional Services for the Project to procure and keep in force professional liability

insurance, covering its professional services practice, of not less than $2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Project-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

7. 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. If DB Contractor does not have any employees involved with the Project, then the joint venture member(s) of DB Contractor which provide(s) the employees shall be the named insured rather than DB Contractor. The workers' compensation insurance policy shall contain the following endorsements:

(a) [Intentionally Omitted];

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) An endorsement extending coverage to all states operations on an "if any" basis.

8. 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. If DB Contractor does not have employees involved with the Project, then the joint venture member(s) of DB Contractor which provide(s) the employees shall be the named insured rather than DB Contractor.

(c) The policy shall have a limit of not less than $25,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

9. 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.

10. 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 commercial general liability insurance that complies with Section 9 of the Agreement, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Subcontractor is not 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 liability insurance policies, except for the Worker's Compensation Insurance and Professional Liability Insurance. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(b) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) 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. 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.

(ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a combined single limit per policy period of not less than $1,000,000.

(iv) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times when Work is being performed by any employee of a Subcontractor, DB Contractor shall cause subcontractor to 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. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(i) [Intentionally Omitted];

(ii) A voluntary compensation endorsement;

(iii) An alternative employer endorsement; and

(iv) An endorsement extending coverage to all states operations on an "if any" basis.

(d) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

(i) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of subcontractor working on or about any Site or otherwise engaged in the work.

(ii) Subcontractor shall be the named insured.

(iii) The policy shall have a limit of not less than $1,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

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 Contract Amount	
C. Approved Change Order Amounts	
D. Revised Contract 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 ") (includes Electronic Communications Allowance and Landscaping allowance work described below)	$0.00
I. Retainage Percentage this Draw Request for Record Drawings (1% of "H")	$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's Project Manager	Signature	month/day/year
Printed Name TxDOT Program 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 Design Quality Assurance 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 Contract 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: _____ Date

[DQAM] [CQAM] Representative

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 Design Quality Assurance 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
- ☐ DBE utilization reports;
- ☐ Cash flow curves and comparison to the Maximum Payment Schedule;
- ☐ 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:

Activity No.	Description	Amount
_____	_____	_____

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 Agreement.

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 Agreement:

_____
_____
_____

Change order required under Maintenance Agreement? Yes_____/No_____
If yes, state reason:

_____
_____
_____

The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

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.

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)

_____
TxDOT Project Manager

Date_____

Comments:
_____
_____
_____

SECTION VI (Reviewed by FHWA Project Representative)

_____
FHWA Project Representative

Date

Comments:
_____
_____
_____

SECTION VII (Approval by TxDOT CDA Program Director and District Engineer)

_____
TxDOT CDA Program Director **Date**

_____
TxDOT District Engineer **Date**

Comments:
_____
_____
_____

EXHIBIT 17

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s)

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees.

Phil Wilson

Russell Zapalac

Ed Pensock

Lonnie Gregorcyk

DB Contractor's Authorized Representative(s)

Mr. Shankar Narayanan
Chairman, Management Committee
Austin-Bay, JV
6330 Commerce Drive, Suite 150
Irving, Texas 75063
Telephone: (214) 596-7371
E-mail: snarayanan@austin-ind.com

EXHIBIT 18

LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

(Attached)

US 77 Kingsville to Driscoll RFP Reference Information Documents (RIDS) Listing

Updated: January 22, 2013

Description	Folder / File Name [1]	Status[2]	Date[2]
ENVIRONMENTAL DOCUMENTS	**Environmental**		
Environmental Assessment	Environmental Assessment		
Environmental Assessment Volume 1	ea_vol1.pdf		
Environmental Assessment Volume 2	ea_vol2.pdf		
Environmental Assessment Volume 3	ea_vol3.pdf		
Environmental Assessment Volume 4	ea_vol4.pdf		
US 77 FONSI	FONSI		
Finding of No Significant Impact	SKMBT_C45012071107270.pdf	Added	1-Oct-12
US 77 Biological Asssessment & Biological Opinion	US 77 Biological Asssessment & Biological Opinion		
Final Biological Opinion - Letter from DE	Final BO for Nueces_etc US 77.AHinojosa.6-25-12.pdf	Added	Nov. 2, 2012
Biological Opinion - Supporting Documentation	0412_052.pdf.pdf	Added	Nov. 2, 2012
Final Biological Opinion	Signed BO US 77 Section 7.pdf	Added	Nov. 2, 2012
Final Biological Assessment	Final US 77 BA submited 2-2012.pdf	Added	Nov. 2, 2012
Shapefiles	Shapefiles		
US 77 Waters and Wetlands Shapefile	US_77_Wetlands_Waters_Kingsville_Driscoll.zip	Added	7-Dec-12
AS BUILTS, EXISTING DESIGN PLANS, AND OTHER	**As Builts, Existing Design Plans, and Other**		
As Built Drawings	As Built Drawings		
US 77 As Built Drawings	US77 AB FM 70 at Bishop CSJ 102-3-73.pdf		
US 77 As Built Drawings	US 77 AB in Driscoll CSJ 102-2-64 102-3-58 102-3-56-V1.pdf		
US 77 As Built Drawings	US 77 AB N of Bishop to S. of Kingsville CSJ 102-3-28 102-4-36-V1.pdf		
US 77 As Built Drawings	US77 AB N of Driscoll to Kleberg Co. Line CSJ 102-3-8 102-2-10-V1.pdf		
US 77 As Built Drawings	US77 AB N of King Ave to S. of Kenedy St CSJ 102-4-63-V1.pdf		
US 77 As Built Drawings	US77 DRG N. OF DRISCOLL TO N. BISHOP CSJ: 102-3-15.pdf		
US 77 As Built Drawings	US77 AB Nueces Co. Line to S of Kingsville CSJ 102-4-29.pdf		
US 77 As Built Drawings	US 77DRG FROM NUECES CO LINE TO FM HWY 772 102-4-20 091062.pdf		
SCHEMATIC PLANS	**Schematic Plans**		
Schematics - FM 1898 to CR 16	Schematic Plans		
US 77 FM 1898 to CR 16 EA Schematic	map_39.pdf		
US 77 FM 1898 to CR 16 EA Schematic	map_40.pdf		
US 77 FM 1898 to CR 16 EA Schematic	map_41.pdf		
US 77 FM 1898 to CR 16 EA Schematic	map_42.pdf		
US 77 FM 1898 to CR 16 EA Schematic	map_43.pdf		
US 77 Geometric Schematic	US 77 Geometric Schematic		
US 77 Geometric Schematics	US77-DS39.pdf		
US 77 Geometric Schematics	US77-DS40.pdf		
US 77 Geometric Schematics	US77-DS41.pdf		
US 77 Geometric Schematics	US77-DS42.pdf		
US 77 Geometric Schematics	US77-DS43.pdf		
US 77 Curve Data	US77-CVDATA-KLEBERG04.pdf		
US 77 Curve Data	US77-CVDATA-NUECES01.pdf		
US 77 Frontage Road Profile	US77-NBFRPF-KLEBERG02.pdf		
US 77 Frontage Road Profile	US77-NBFRPF-NUECES01.pdf		
US 77 Frontage Road Profile	US77-RAMPPF-KLEBERG02.pdf		

US 77 Kingsville to Driscoll RFP Reference Information Documents (RIDS) Listing

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Description	Folder / File Name [1]	Status[2]	Date[2]
US 77 Frontage Road Profile	US77-RAMPPF-NUECES01.pdf		
US 77 Ramp Profile	US77-SBFRPF-KLEBERG02.pdf		
US 77 Ramp Profile	US77-SBFRPF-NUECES01.pdf		
DGN Schematic Sheets	DGN Schematic Sheets.zip		
DGN Reference Files	DGN Reference Files.zip		
GEOPAK Files	GEOPAK Files.zip		
US 77 Aerials	US 77 Aerials.zip		
TIN Files	TIN.zip	Added	24-Sep-12
US 77 North End of Project	US77 North End of Project.pdf	Added	9-Oct-12
US 77 BAFO Schematic	US 77 BAFO Schematic	Added	22-Jan-13
US 77 Geometric Schematics for BAFO	BAFO_Schematic1_2013-01-22.pdf	Added	22-Jan-13
US 77 Geometric Schematics for BAFO	BAFO_Schematic2_2013-01-22.pdf	Added	22-Jan-13
DBE FORMS	**DBE Forms**		
DBE Forms	DBE Forms		
DBE Form	DBE Program Commitment Agreement Form 4901 080107.pdf		
DBE Form	DBE Program Mat and Supply Commitment Agreement Form 4901-MS 070107.pdf		
DBE Form	DBE Program Trucking Commitment Agreement Form 4901-T 080107.pdf		
PUBLIC INVOLVEMENT	**Public Involvement**		
Public Involvement	Public Involvement		
Citizens Meeting Ramp Modifications	Citizen Meeting US 77 Ramp Modifications 091305-V1.pdf		
Citizens Meeting Ramp Reversal	Citizen Meeting US 77 Ramp Reversals 060903-V1.pdf		
Citizens Meeting Notes	Notes on Citizen Meeting US 77 111300-V1.pdf		
Public Meeting Notes	US 77 Public Meeting Kingsville TX 070661-V1.pdf		
Public Meeting Notes	US 77 Public Meeting Kingsville TX 081897-V1.pdf		
US 77 Ramp Modifications	US 77 Ramp Modifications 100405-V1.pdf		
MAPS	**Maps**		
Maps	Maps		
Corpus Christi Control Section Map	US77 DRG CONTROL SECTION MAP CORPUS CHRISTI DISTRICT 022806.pdf		
ROW Map	ROW Map		
US 77 ROW Map	0102-03-084_-085 MAP to ROW DIV (10-3-12).pdf	Added	15-Nov-12
REPORTS, STUDIES AND MANUALS	**Reports, Studies and Manuals**		
Bridge Inspection Reports	Bridge Inspection Reports		
NBI: 178-0102-03-008, Drain / Culvert	178-0102-03-008		
NBI: 178-0102-03-009, Drain / Culvert	178-0102-03-009		
NBI: 178-0102-03-051, Drain / Culvert	178-0102-03-051		
NBI: 178-0102-03-038, Drain / Culvert	178-0102-03-038		
NBI: 178-0102-03-053, Drain / Culvert	178-0102-03-053		
NBI: 178-0102-03-054, US 77 SB @ Bishop Channel	178-0102-03-054		
NBI: 178-0102-03-063, US 77 NB @ Bishop Channel	178-0102-03-063		
NBI: 178-0102-03-064, US 77 NB @ Carretta Creek	178-0102-03-064		
NBI: 178-0102-03-055, US 77 SB @ Carretta Creek	178-0102-03-055		
NBI: 137-0102-04-056, US 77 SB @ San Fernando Creek	137-0102-04-056		
NBI: 137-0102-04-065, US 77 NB @ San Fernando Creek	137-0102-04-065		

US 77 Kingsville to Driscoll RFP Reference Information Documents (RIDS) Listing

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Description	Folder / File Name [1]	Status[2]	Date[2]
Hydraulic Impact Analysis Report	Hydraulic Impact Analysis Report		
Hydraulic Impact Analysis Report - Volume 1	Final Report Submitted 04-2011 (volume 1).pdf		
Hydraulic Impact Analysis Report - Volume 2	Final Report Submitted 04-2011 (volume 2).pdf		
Pavement Condition	Pavement Condition		
Pavement Conditions Report 1	US 77 CDA Study Report 1 Jun 29 2007 Draft.pdf		
Pavement Conditions Report 2	US 77 CDA Study Report 2 Jun 29 2007 Draft.pdf		
Pavement Conditions Report 3	US 77 CDA Study Report 3 Jun 29 2007 Draft.pdf		
Pavement Management Information System (PMIS) Report	US0077_678_692.pdf		
US 77 Pavement Conditions	US 77 Pavement Conditions.pdf		
Utility Information	Utility Information		
Utilities Information	Workshop updated CD.zip		
Microstation SUE resource file from TN&P	SUE.rsc		
Utility Information for 0102-04-096	US77_0102-04-096_UTILITIES.dgn	Added	1-Oct-12
Microstation Resource file for 0102-04-096	TNP_SUE.rsc	Added	1-Oct-12
US 77 Overhead Utilities	US77_Overhead Utility RID _Kingsville to Driscoll__10-31-12.pdf	Updated	2-Nov-12
Texas Administrative Code for OH Utilities	TX Admin Code_OH Electric Comm.pdf	Added	9-Oct-12
SUE-DGN File for 03_081	03_081_UTILITIES.dgn	Added	2-Nov-12
SUE-DGN File for 03_082	03_082_utilities_TxDOT.dgn	Added	2-Nov-12
SUE-DGN File for 03_096	04_096_UTILITIES.dgn	Added	2-Nov-12
SUE-PDF File for 081	TXD12158-0102-03-081.pdf	Added	2-Nov-12
SUE-PDF File for 096	TXD12158-0102-04-096.pdf	Added	2-Nov-12
SUE-PDF File for 082	US77_0102-03-082_UTILITIES.pdf	Added	15-Nov-12
RWSC RID (Former Attachment 6-2)	RWSC RID (former Attachment 6-2).pdf	Added	3-Dec-12
SUE-PDF File for 081_Revised	0102-03-081 Revised 20121206.pdf	Added	6-Dec-12
SUE-PDF File for 082_Revised	0102-03-082 Revised 20121206.pdf	Added	6-Dec-12
SUE Revisions list	Response Letter 20121206.pdf	Added	6-Dec-12
SUE-DGN File for 081_Revised	03_081_UTILITIES.dgn	Added	11-Dec-12
SUE-DGN File for 082_Revised	US77_0102-03-082_UTILITIES.dgn	Added	11-Dec-12
Value Engineering Report	Value Engineering Report		
Value Engineering Study for US 77	TxDOT Corpus Christi US 77 DB VE Study Report Rev 1 FINAL.pdf	Updated	24-Sep-12
Survey Control	Survey Control		
Survey Control Files	Survey Control.zip	Added	1-Oct-12
Traffic Data	Traffic Data		
Updated Traffic Data	Updated Traffic Data 10-9-2012.pdf	Added	2-Nov-12
PMIS Data	PMIS Data		
PMIS Data (2001-2012)	US77_PMIS_2001_2012.xls	Added	2-Nov-12

Notes:

1 Blue Text represents File Name with Extension; Black Text represents Folder Name

2 If blank, represents original files issued with RFP. Updates will include status and date to this columr

3 Information available via secure log-in only

EXHIBIT 19

PROGRESS PAYMENT CERTIFICATE

WHEREAS, the Texas Department of Transportation ("TxDOT") and Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company ("DB Contractor") are parties to a Design-Build Agreement to design, construct and maintain the US 77 Upgrade from Kingsville to Driscoll Project ("Project") in Kleberg County and Nueces 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 DB Agreement, 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 DB Agreement; 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 A.

Executed as of the ____.day of _____, ____.

TEXAS DEPARTMENT OF TRANSPORTATION

_____
Executive Director

ATTACHMENT A TO EXHIBIT 19

PAYMENT DATE	PAYMENT AMOUNT

EXHIBIT 20

KEY SUBCONTRACTORS

- Project Management: Austin-Bay, JV
- Lead Design Firm: Huitt-Zollars, Inc.
- Quality Control Management: Professional Service Industries, Inc.
- Quality Assurance Management: AIA Engineers, Ltd.
- Key Task Leader – Geotechnical: Terracon Consultants, Inc.
- Key Task Leader – Hydraulics and Hydrology: Huitt-Zollars, Inc.
- Key Task Leader – Structural: Huitt-Zollars, Inc.
- Key Task Leader – Environmental: Florence & Hutcheson, Inc. – An ICA Company
- Key Task Leader – Utilities: Gorrondona & Associates, Inc.