DESIGN-BUILD AGREEMENT

THE SOUTHERN GATEWAY PROJECT

between

Texas Department of Transportation

and

[DB CONTRACTOR]

Dated as of: _____, 2017

DESIGN-BUILD AGREEMENT

The Southern Gateway Project

TABLE OF CONTENTS

SECTION 1. DEFINITIONS; CONTRACT DOCUMENTS; INTERPRETATION OF CONTRACT DOCUMENTS 3

1.1 Definitions 3
1.2 Contract Documents; Order of Precedence 3
1.3 Interpretation of Contract Documents 5
1.4 Referenced Standards, Policies and Specifications 7
1.5 Explanations; Omissions and Misdescriptions 8
1.6 Computation of Periods 8
1.7 Reference Information Documents 8
1.8 Professional Services Licensing Requirements 9
1.9 Federal Requirements 9
1.10 Incorporation of ATCs 9
1.11 TxDOT Monetary Obligations 10

SECTION 2. OBLIGATIONS OF DB CONTRACTOR; REPRESENTATIONS AND WARRANTIES 11

2.1 Performance Requirements 11
2.2 General Obligations of DB Contractor 15
2.3 Representations and Warranties 16
2.4 Survival of Representations and Warranties 19

SECTION 3. SUBMITTALS; DESIGN REQUIREMENTS AND DISCLAIMER; ROLES OF TXDOT CONSULTANTS AND FHWA; GOVERNMENTAL APPROVALS 20

3.1 Submittal, Review and Approval Terms and Procedures 20
3.2 [RESERVED] 26
3.3 Responsibility for Design 26
3.4 Disclaimer 28
3.5 Role of TxDOT Consultants 29
3.6 Role of and Cooperation with FHWA 29
3.7 Governmental Approvals and Third-Party Agreements 29
3.8 Software Compatibility 32

SECTION 4. TIME; PROJECT SCHEDULE AND PROGRESS 33

4.1 Time of Essence; Notices to Proceed; LE Work Package 33
4.2 Completion Deadlines 35
4.3 Scheduling of Design, Construction and Payment 36
4.4 Conditions to Commencement of Construction 37
4.5 Recovery Schedule 39

4.6 Performance Evaluations ... 39

SECTION 5. CONTROL OF WORK ... 41

5.1 Control and Coordination of Work ... 41
5.2 Safety and Police Services ... 41
5.3 Obligations to Minimize Impacts ... 42
5.4 Oversight, Inspection and Testing; Meetings ... 42
5.5 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals ... 45
5.6 Nonconforming Work ... 46

SECTION 6. ACCESS TO SITE; UTILITY ADJUSTMENTS; ENVIRONMENTAL COMPLIANCE ... 48

6.1 Acquisition of Project ROW ... 48
6.2 Costs of Acquisitions ... 49
6.3 Limiting Acquisition of Certain Additional Properties ... 51
6.4 Representations by DB Contractor ... 52
6.5 Negotiations and Condemnation Proceedings Relative to the Acquisition of Project ROW ... 53
6.6 Physical Possession of Project ROW; Transfer of Title to Improvements ... 55
6.7 Access to Project ROW ... 55
6.8 Utility Adjustments ... 56
6.9 Hazardous Materials Management ... 72
6.10 Environmental Compliance ... 74

SECTION 7. CONTRACTING AND LABOR PRACTICES ... 76

7.1 DBE Requirements ... 76
7.2 Non-Discrimination; Equal Employment Opportunity ... 76
7.3 Subcontracts ... 77
7.4 Key Personnel; Qualifications of Employees ... 81
7.5 Responsibility for DB Contractor-Related Entities ... 85
7.6 Subcontracts with Affiliates ... 85
7.7 Labor Standards ... 86
7.8 Ethical Standards ... 86
7.9 Job Training Plan and Small Business Opportunity ... 87
7.10 Prevailing Wages ... 88
7.11 E-Verify ... 88
7.12 Uniforms ... 89

SECTION 8. PERFORMANCE, PAYMENT, RETAINAGE AND WARRANTY BONDS; GUARANTEES ... 90

8.1 Provision of Bonds ... 90
8.2 No Relief of Liability ... 92
8.3 Guaranty ... 92

SECTION 9. INSURANCE 94

9.1 General Insurance Requirements 94
9.2 Prosecution of Claims 100
9.3 Disclaimer 101

SECTION 10. TITLE; SITE SECURITY; MAINTENANCE DURING AND AFTER CONSTRUCTION 103

10.1 Title 103
10.2 Site Security 103
10.3 Risk of Loss or Damage; Maintenance and Repair of Work 103

SECTION 11. WARRANTIES 105

11.1 Warranties 105
11.2 Applicability of Warranties to Re-Done Work 106
11.3 Subcontractor Warranties 106
11.4 Effect of TxDOT or DB Contractor Activities on Warranties 107
11.5 No Limitation of Liability 108
11.6 Damages for Breach of Warranty 108

SECTION 12. PAYMENT FOR SERVICES 109

12.1 Price 109
12.2 Invoicing and Payment 111
12.3 Deductions, Exclusions and Limitations on Payment 115
12.4 Final Payment 118
12.5 Payment to Subcontractors 119
12.6 Disputes 120

SECTION 13. CHANGES IN THE WORK 121

13.1 Circumstances Under Which Change Orders May Be Issued 121
13.2 TxDOT-Initiated Change Orders 123
13.3 DB Contractor-Requested Change Orders 125
13.4 Contents of Change Orders 135
13.5 Certain Limitations 137
13.6 Change Order Pricing 139
13.7 Time-and-Materials Change Orders 142
13.8 Change Orders for Differing Site Conditions, Utilities, Force Majeure Events, Hazardous Materials, Access to ROW and Necessary Basic Configuration Changes 146
13.9 Change Order Records 152
13.10 Matters Not Eligible for Change Orders and Waiver 154
13.11 Disputes 156
13.12 Changes Not Requiring Change Order 156
13.13 No Release or Waiver 156

SECTION 14. SUSPENSION 158

14.1 Suspensions for Convenience 158
14.2 Suspensions for Cause 158
14.3 Responsibilities of DB Contractor During Suspension Periods 159

SECTION 15. TERMINATION FOR CONVENIENCE; TERMINATION BASED ON DELAY IN NTP1 160

15.1 Termination for Convenience 160
15.2 DB Contractor's Responsibilities After Receipt of Notice of Termination 160
15.3 Settlement Proposal 163
15.4 Amount of Negotiated Termination Settlement 163
15.5 No Agreement as to Amount of Termination Settlement 164
15.6 Reduction in Amount of Claim 166
15.7 Payment 166
15.8 Subcontracts 166
15.9 Termination Based on Delay to Issuance of NTP1 166
15.10 No Consequential Damages 167
15.11 No Waiver; Release 167
15.12 Dispute Resolution 167
15.13 Allowability of Costs 167

SECTION 16. DEFAULT; REMEDIES 168

16.1 Default of DB Contractor 168
16.2 TxDOT Remedies for DB Contractor Default 171
16.3 Event of Default Due Solely to DB Contractor's Failure to Achieve Completion Deadlines 175
16.4 Right to Stop Work for Failure by TxDOT to Make Undisputed Payment 176

SECTION 17. LIQUIDATED DAMAGES, LANE RENTAL FEES AND LIMITATION OF LIABILITY 177

17.1 Liquidated Damages Respecting Delays 177
17.2 Liquidated Damages for Lane Closures and Lane Rental Fees 178
17.3 [RESERVED] 178
17.4 Additional Acknowledgements Regarding Liquidated Damages 178
17.5 Payment; Satisfaction; Waiver; Non-Exclusive Remedy 179
17.6 Limitation of DB Contractor's Liability 180
17.7 Limitation on Consequential Damages 180

SECTION 18. INDEMNIFICATION 182

18.1 Indemnity by DB Contractor 182
18.2 Defense and Indemnification Procedures 185

SECTION 19. PARTNERING AND DISPUTE RESOLUTION 189

19.1 General Dispute Resolution Provisions 189
19.2 Partnering 189
19.3 Dispute Resolution Procedures 189
19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes 200
19.5 [RESERVED] 201
19.6 Subsequent Proceedings 201
19.7 Continuation of Disputed Work 201
19.8 Records Related to Claims and Disputes 202
19.9 Interest 202
19.10 Attorney Fees 202

SECTION 20. COMPLETION AND ACCEPTANCE; EARLY OPENING 203

20.1 Substantial Completion 203
20.2 Punch List 204
20.3 Final Acceptance 205
20.4 Early Opening 207
20.5 Clayton Act Assignment 208

SECTION 21. [RESERVED] 209

SECTION 22. RECORDS AND AUDITS; OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY 210

22.1 Escrowed Proposal Documents 210
22.2 Financial Reporting Requirements 212
22.3 Subcontract Pricing Documents 213
22.4 Maintenance and Inspection of Records 214
22.5 Audits 215
22.6 Public Information Act 217
22.7 Ownership of Documents 218
22.8 Intellectual Property 219

SECTION 23. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS 222

23.1 Cooperation with Other Contractors 222
23.2 Interference by Other Contractors 222
23.3 Coordination with Utility Owners and Adjacent Property Owners 222

SECTION 24. MISCELLANEOUS PROVISIONS 223

24.1 Amendments 223
24.2 Waiver 223
24.3 Independent Contractor 224
24.4 Successors and Assigns; Change of Control 224

24.5 Change of Organization or Name 226
24.6 Designation of Representatives; Cooperation with Representatives 226
24.7 Survival 226
24.8 Limitation on Third Party Beneficiaries 227
24.9 No Personal Liability of TxDOT Employees; Limitation on State's Liability 227
24.10 Governing Law 228
24.11 Notices and Communications 228
24.12 Taxes 230
24.13 Interest on Amounts Due and Owing 230
24.14 Integration of Contract Documents 230
24.15 Severability 231
24.16 Headings 231
24.17 Entire Agreement 231
24.18 Counterparts 231
24.19 Joint and Several Liability 231

LIST OF EXHIBITS

Exhibit 1	Abbreviations and Definitions
Exhibit 2	DB Contractor's Proposal Commitments and ATCs
Exhibit 3	Federal Requirements
Exhibit 4	TxDOT-Provided Approvals
Exhibit 5	Maximum Payment Schedule
Exhibit 6	DBE Special Provisions for Non-Traditional Contracts
Exhibit 7	DB Contractor's DBE Performance Plan
Exhibit 8	DB Contractor's Job Training Plan/ Small Business Opportunity Plan
Exhibit 9	Form of Performance Bond
Exhibit 10	Form of Payment Bond
Exhibit 11	Form of Retainage Bond
Exhibit 12	Form of Warranty Bond
Exhibit 13	Form of Guaranty
Exhibit 14	Insurance Coverage Requirements
Exhibit 15	Form of Draw Request and Certificate
Exhibit 16	Form of Change Order
Exhibit 17	Liquidated Damages for Lane Closures and Lane Rental Fees
Exhibit 18	Initial Designation of Authorized Representatives
Exhibit 19	List of Reference Information Documents
Exhibit 20	Disputes Board Agreement
Exhibit 21	Key Subcontractors
Exhibit 22	LE Scope Items and LE Line Item Prices
Exhibit 23	Terms of TxDOT Material Inspection and Testing Services
Exhibit 24	Remaining Project ROW

DESIGN-BUILD AGREEMENT

THE SOUTHERN GATEWAY PROJECT

This Design-Build Agreement ("Agreement") is entered into by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and _____, a _____ ("Design-Build Contractor" or "DB Contractor"), effective as of _____, 2017.

RECITALS

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

B. TxDOT wishes to enter into an agreement with the private sector DB Contractor to develop, design and construct improvements for an approximately 5.1-mile section of Interstate Highway 35E ("I-35E") from Colorado Boulevard to south of the I-35E / U.S. Highway ("US") 67 interchange (with transition work extending north to approximately Reunion Boulevard) and an approximately 4.9-mile section of US 67 from the I-35E / US 67 interchange to Interstate Highway 20 ("I-20") in Dallas County and a portion of the Local Enhancements (the "Project"). In addition, TxDOT wishes to enter into an agreement with the private sector DB Contractor to, at TxDOT's sole option, maintain the Project for specified optional terms.

C. Pursuant to the Code and the Rules, TxDOT issued a Request for Qualifications (as amended, the "RFQ") on May 13, 2016.

D. TxDOT received five qualification statements on June 30, 2016 and subsequently shortlisted three proposers.

E. On November 10, 2016, TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the "RFP") to develop, design, construct and, at TxDOT's sole option, maintain the Project.

F. On [, 2017], TxDOT received responses to the RFP, including the response of DB Contractor (the "Proposal").

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

H. On [_____, 2017], the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this Agreement.

I. Concurrently with the execution of this Agreement, TxDOT and DB Contractor are entering into a Capital Maintenance Agreement ("CMA") for DB Contractor to provide, at TxDOT's sole option, maintenance of the Project.

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

K. The Executive Director of TxDOT has been authorized to enter into this Agreement pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order, dated [_____, 2017].

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

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

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

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

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

1.1 Definitions

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

1.2 Contract Documents; Order of Precedence

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

1.2.1 Subject to Sections 1.2.2 through 1.2.6, in the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

1. Change Orders and all other amendments to this Agreement (excluding amendments to the Technical Provisions that are separately addressed in subparagraphs 3 and 4, below), and all exhibits and attachments thereto;

2. This Agreement, including all exhibits and the executed originals of exhibits that are contracts, except Exhibits 2 and 19);

3. Amendments to the Technical Provisions (including Change Orders to the extent they amend the Technical Provisions), and all exhibits and attachments to such amendments;

4. The Technical Provisions, and all exhibits and attachments to the Technical Provisions;

5. DB Contractor's Proposal commitments and approved ATCs (as set forth in Exhibit 2); and

6. Released for Construction Documents to be developed in accordance with the Contract Documents, provided that (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist

between the Released for Construction Documents and the other Contract Documents with respect to requirements of the Released for Construction Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (c) any other Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified to TxDOT by DB Contractor and such Deviations are approved by TxDOT in writing.

1.2.2 Notwithstanding the order of precedence among Contract Documents set forth in Section 1.2.1, in the event and to the extent that Exhibit 2 expressly states that it supersedes specific provisions of the Contract Documents, including approved deviations expressly listed in Appendix 2 to Exhibit 2, Exhibit 2 shall control over the specified provisions. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains statements, offers, terms, concepts or designs that TxDOT considers to be more advantageous than the requirements of the other Contract Documents, DB Contractor's obligations hereunder shall include compliance with all such statements, offers, terms, concepts or designs, that shall have the priority of Agreement amendments and Technical Provision amendments, as applicable.

1.2.3 The Reference Information Documents are listed in Exhibit 19. Portions of the Reference Information Documents are explicitly referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The Reference Information Documents shall be deemed incorporated in the Contract Documents solely to the extent that they are so referenced, with the same order of priority as the Contract Document in which the reference occurs.

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

1.2.5 Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.2, if a Contract Document contains differing provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents,

the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

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

1.3 Interpretation of Contract Documents

1.3.1 In the Contract Documents:

(a) the singular includes the plural and vice versa;

(b) references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;

(c) the words "including," "includes," and "include" shall be deemed to be followed by the words "without limitation" and shall not be considered to set forth an exhaustive list;

(d) unless otherwise indicated, the words "Section", "subsection", "paragraph", "sentence", "clause", "sub-clauses," and "Exhibit" mean and refer to the specified section, subsection, paragraph, sentence, clause, sub-clause, or exhibit of or to this Agreement and a reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the Section in which the reference appears;

(e) words such as "herein," "hereby", "hereof", "hereto," and "hereunder" and words of similar import refer to the entire document in which they are contained and not to any particular provision or section;

(f) words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;

(g) references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities;

(h) words of any gender used herein shall include each other gender where appropriate;

(i) unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive;

(j) the word "discretion" with respect to any Person means the sole and absolute discretion of such Person except as otherwise stated herein;

(k) the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances;

(l) unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified, or supplemented from time to time in accordance with its terms;

(m) the division of this Agreement into parts, sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement and the headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement; and

(n) whenever the Contract Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, order, response, waiver, explanation, policy, information, or the like, the same and any request for any of the foregoing must be in writing (unless otherwise waived in writing by the other Party).

1.3.2 DB Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Effective Date, to review the terms and conditions of the Contract Documents (including those Reference Information Documents that are referenced in the Contract Documents, and pursuant to Section 1.2.3 above, are considered Contract Documents) and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. DB Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person that prepared them, and, instead, other rules of interpretation and construction shall be used.

1.3.3 TxDOT's interim or final answers to the questions posed during the Proposal process for this Agreement shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous.

1.3.4 On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.3.5 Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws, and (d) all future Laws pertaining to the same or similar subject matter.

1.4 Referenced Standards, Policies and Specifications

1.4.1 Except as otherwise specified in the Contract Documents or otherwise directed by TxDOT, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Due Date.

1.4.2 In interpreting standards, policies and specifications referenced in the Technical Provisions, the following apply:

(a) References to the project owner shall mean TxDOT.

(b) References to the Engineer in the context of provider of compliance judgment may mean the Professional Services Quality Assurance Firm (PSQAF), the Independent Quality Firm (IQF) or it may mean a TxDOT representative, depending on the context, as determined by TxDOT in its discretion.

(c) References to "plans" shall mean the Released for Construction Documents, unless otherwise indicated.

(d) Cross-references to measurement and payment provisions contained in the referenced standards, policies and specifications shall be deemed to refer to the measurement and payment provisions contained in the Contract Documents.

1.5 Explanations; Omissions and Misdescriptions

DB Contractor shall not take advantage of or benefit from any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, DB Contractor shall request in writing such further written explanations from TxDOT as may be necessary and shall comply with the explanation provided. DB Contractor shall promptly notify TxDOT in writing of all Errors that it may discover in the Contract Documents (including those Reference Information Documents that are referenced in the Contract Documents, and pursuant to Section 1.2.3 above, are considered Contract Documents), and shall obtain specific instructions in writing from TxDOT regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work that are necessary to carry out the intent of the Contract Documents, or that are customarily performed, shall not relieve DB Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.6 Computation of Periods

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

1.7 Reference Information Documents

1.7.1 TxDOT has provided and disclosed the Reference Information Documents to DB Contractor. Except as provided in Section 1.2.3, (a) the Reference Information Documents are not mandatory or binding on DB Contractor and (b) DB Contractor is not entitled to rely on the Reference Information Documents as presenting a design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the Contract Documents, Governmental Approvals or Law.

1.7.2 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any DB Contractor-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents, except any schedule or monetary relief available hereunder as set forth in Section 13 of this Agreement.

1.7.3 Except as provided in Section 1.2.3, TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. DB Contractor shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

1.8 Professional Services Licensing Requirements

TxDOT does not intend to contract for, pay for, or receive any Professional Services that are in violation of any professional licensing or registration laws, and by execution of this Agreement, DB Contractor acknowledges that TxDOT has no such intent. It is the intent of the Parties that DB Contractor is fully responsible for furnishing the Professional Services through itself or subcontracts with licensed/registered Professional Service firms as provided herein. Any references in the Contract Documents to DB Contractor's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that DB Contractor shall "furnish" the Professional Services for the Project. The terms and provisions of this Section 1.8 shall control and supersede every other provision of all Contract Documents.

1.9 Federal Requirements

DB Contractor shall comply and require its Subcontractors to comply with all federal requirements applicable to transportation projects that receive federal-aid funding or other federal funds or credit, including those requirements set forth in Exhibit 3. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

1.10 Incorporation of ATCs

1.10.1 If the Contract Documents incorporate any approved ATCs and either (a) DB Contractor does not comply with one or more TxDOT conditions applicable to the ATC or (b) DB Contractor does not obtain a third-party approval required for the ATC, then DB Contractor shall comply with the Contract Document

requirements that would have applied but for the ATC, including acquiring DB Contractor Designated ROW necessary to comply with the Contract Documents, without any increase in the Price, extension of the Completion Deadlines or any other Change Order.

1.10.2 ATCs contained in proposals submitted by unsuccessful proposers and, except for those ATCs included in Appendix 2 to Exhibit 2, DB Contractor ATCs that were approved by TxDOT for inclusion in the Proposal that were not incorporated into the Proposal may be presented to DB Contractor as a Request for Change Proposal in accordance with Section 13.2.1 of this Agreement.

1.11 TxDOT Monetary Obligations

All TxDOT monetary obligations under the Contract Documents are subject to appropriation by the Texas Legislature. This Section 1.11 applies to all monetary obligations of TxDOT set forth in the Contract Documents, notwithstanding any contrary provisions of the Contract Documents. The Contract Documents do not create a debt under the Texas Constitution.

SECTION 2. OBLIGATIONS OF DB CONTRACTOR; REPRESENTATIONS AND WARRANTIES

2.1 Performance Requirements

2.1.1 Performance of Work; Project Management Plan

2.1.1.1 The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the TxDOT Schematic Design and otherwise complying with the requirements of the Contract Documents, except as otherwise approved in writing by TxDOT. All materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance of each Facility on or before the applicable Completion Deadline shall be DB Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. DB Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly impacted by the Work. Subject to the terms of Section 13, the costs of all Work, including all necessary materials, services and efforts, are included in the Price.

2.1.1.2 DB Contractor is responsible for all quality assurance and quality control activities necessary to fulfill all of its obligations under the Contract Documents. DB Contractor shall undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the approved Project Management Plan and Good Industry Practice.

2.1.1.3 DB Contractor shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in Section 2 of the Technical Provisions and Good Industry Practice. The Project Management Plan shall include all the component parts identified in the Technical Provisions.

2.1.1.4 DB Contractor shall submit to TxDOT for approval in TxDOT's discretion in accordance with the procedures described in Section 3.1 of this Agreement and the timing requirements set forth in the Technical Provisions each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. TxDOT may require any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by DB Contractor.

2.1.1.5 DB Contractor shall not commence or permit the commencement of any aspect of the Work before the relevant component parts, plans, and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by TxDOT in accordance with the

procedures described in Section 3.1 of this Agreement and the timing requirements set forth in the Technical Provisions.

2.1.1.6 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document then all such referenced or incorporated materials shall be submitted to TxDOT for approval in TxDOT's discretion at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to TxDOT.

2.1.1.7 DB Contractor shall cause each of its Subcontractors at every level to comply with the applicable requirements of the approved Project Management Plan.

2.1.1.8 The PSQAM shall, irrespective of his or her other responsibilities, have defined authority for ensuring the establishment and maintenance of the Professional Services elements of the Project Management Plan and reporting to TxDOT on the performance of the Project Management Plan with respect to those elements; and the Independent Quality Firm Manager (IQFM) shall, irrespective of his or her other responsibilities, have defined authority for ensuring the establishment and maintenance of the Construction Work elements of the Project Management Plan and reporting to TxDOT on the performance of the Project Management Plan with respect to those elements.

(a) DB Contractor shall contract for all PSQAF and IQF services through independent firms.

(b) The PSQAF and the IQF shall not be owned at any time during the term of the Agreement by DB Contractor or any subsidiary or related company affiliated with DB Contractor or the Design Firms unless agreed to in writing by TxDOT at TxDOT's discretion.

(c) DB Contractor shall not terminate its agreement with the PSQAF or IQF, or permit or suffer any substitution or replacement of the PSQAF or IQF, except with TxDOT's prior written approval.

2.1.1.9 DB Contractor shall cause the Subcontracts to be entered into between DB Contractor and the PSQAF and between DB Contractor and the IQF to provide that: (a) the PSQAF and the IQF shall owe a duty of care to TxDOT in carrying out its obligations in relation to the Project; and (b) the PSQAM and the IQFM shall be independent from DB Contractor, including by having authority independent of the Project Manager, and shall not be directed by the Project Manager.

2.1.2 Performance Standards; Deviations

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

2.1.2.2 All Work shall be subject to certification pursuant to the procedure contained in the approved Quality Management Plan.

2.1.2.3 DB Contractor acknowledges that prior to the Effective Date it had the opportunity to identify any provisions of the Technical Provisions that are erroneous, conflicting or create a potentially unsafe condition, and the opportunity and duty to notify TxDOT in writing of such fact and of the changes to the provisions that DB Contractor believed were the minimum necessary to render the provisions correct or to render a potentially unsafe condition safe. If it is reasonable or necessary to adopt changes to the Technical Provisions after the Effective Date to make the provisions correct or to correct a potentially unsafe condition, such changes shall not be grounds for any adjustment to the Price, Completion Deadline or other Claim, unless (a) DB Contractor neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) DB Contractor knew of and reported to TxDOT the erroneous or potentially unsafe provision prior to the Effective Date and TxDOT did not adopt reasonable and necessary changes. If DB Contractor commences or continues any Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, DB Contractor shall bear any additional costs associated with redoing the Work already performed. Inconsistent or conflicting provisions of the Contract Documents shall not be treated as erroneous provisions under this Section 2.1.2.3, but instead shall be governed by Section 1.2.

2.1.2.4 DB Contractor may apply for TxDOT's approval of Deviations from applicable Technical Provisions regarding the Work in accordance with Section 13.12. All applications shall be in writing. Where DB Contractor requests a Deviation as part of the submittal of a component plan of the Project Management Plan, DB Contractor shall specifically identify and label the proposed

Deviation. TxDOT shall consider in its discretion, but have no obligation to approve, any such application. DB Contractor shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves TxDOT's applicable safety standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Project Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. TxDOT's lack of issuance of a written approval for any Deviation within 14 days after DB Contractor applies therefor in writing shall be deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the dispute resolution procedures of this Agreement.

2.1.2.5 References in the Technical Provisions to manuals or other publications governing the Work shall mean the most recent editions in effect as of the Proposal Due Date, unless expressly provided otherwise. Except as set forth in Section 2.1.2.3, any changes to the Technical Provisions related to the Work shall be subject to the Change Order process for a TxDOT-Directed Change in accordance with Section 13.

2.1.2.6 New or revised statutes or regulations adopted after the Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including safety standards, related to the Work, as well as revisions to Technical Provisions to conform to such new or revised statutes or regulations, shall be treated as Changes in Law rather than a TxDOT-Directed Change to Technical Provisions; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

2.1.3 Changes in Basic Configuration

2.1.3.1 Any material change in the Basic Configuration must be approved by TxDOT and authorized by a Change Order in accordance with Section 13 and subject to the limitations contained in Section 6.10. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on DB Contractor's costs. For the avoidance of doubt, any VE and any DB Contractor request for an increase in the Price or an extension of a Completion Deadline in connection with a change to the Basic Configuration constitutes a material change.

2.1.3.2 DB Contractor shall be responsible for any cost increases or delays due to inaccuracies or Errors in the TxDOT Schematic Design, except where such inaccuracies or Errors result in a Necessary Basic Configuration Change in accordance with the requirements and limitations set forth in Section 13. Any other changes in the Basic Configuration, including any change due to an Error in the TxDOT Schematic Design that does not result in a Necessary Basic Configuration Change, shall be the responsibility of DB Contractor, with the exception of a TxDOT-Directed Change involving more than $10,000 in additional direct costs or involving a delay to a Critical Path and subject to the limitations set forth in this Agreement, including Section 13.

2.1.3.3 No Change Order shall be required for any non-material changes in the Basic Configuration that (a) have been approved by TxDOT, (b) for which DB Contractor is not claiming any right to an increase in Price or an extension of any Completion Deadline, and (c) do not constitute a VE. DB Contractor acknowledges and agrees that constraints set forth in the TxDOT-Provided Approvals, TxDOT Standard Specifications and other Contract Documents, as well as site conditions and the TxDOT Design Schematic, will impact DB Contractor's ability to make non-material changes in the Basic Configuration.

2.2 General Obligations of DB Contractor

DB Contractor, in addition to performing all other requirements of the Contract Documents, shall:

2.2.1 Furnish all design and other Professional Services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents expressly specify will be undertaken by TxDOT or other Persons) to administer, design and construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents so as to achieve Substantial Completion and Final Acceptance of each Facility by the applicable Completion Deadlines.

2.2.2 At all times provide a Project Manager approved by TxDOT who will (a) have full responsibility for the prosecution of the Work, (b) act as agent and be a single point of contact in all matters on behalf of DB Contractor, (c) be present (or have a TxDOT-approved designee present) at the Site at all times that Work is performed, and (d) be available to respond to TxDOT or TxDOT's Authorized Representatives.

2.2.3 Comply with, and require that all Subcontractors comply with, all requirements of all applicable Laws, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended.

2.2.4 Cooperate with TxDOT, TxDOT Consultants and subcontractors, and Governmental Entities with jurisdiction in all matters relating to the Work, including their review, inspection and oversight of the Work and the design and construction of Utility Adjustments.

2.2.5 Use commercially reasonable efforts to mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying DB Contractor's and its Subcontractors' forces to other work, as appropriate.

2.2.6 Obtain and pay the cost of obtaining all Governmental Approvals required in connection with the Project (except to the extent TxDOT has expressly agreed to be responsible therefor under Section 6.10.1).

2.3 Representations and Warranties

DB Contractor represents and warrants that:

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

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

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

2.3.4 Except as to parcels that TxDOT lacked title or access to prior to the Proposal Due Date, DB Contractor, in accordance with Good Industry Practice, examined or had the opportunity to examine the Site and surrounding locations, performed or had the opportunity to perform appropriate field studies and

geotechnical investigations of the Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations; and as a result of such opportunity for review, inspection, examination and other activities, DB Contractor is familiar with and accepts the physical requirements of the Work, subject to DB Contractor's rights to seek relief under Section 13. Before commencing any Work on a particular portion or aspect of the Project, DB Contractor shall verify all governing dimensions of the Site and shall examine all adjoining work (including Adjacent Work) that may have an impact on such Work. DB Contractor shall ensure that any Design Documents and Construction Documents furnished as part of the Work accurately depict all governing and adjoining dimensions.

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

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

2.3.7 As of the Effective Date, DB Contractor is a [_____] duly organized and validly existing under the laws of the State of Texas with all requisite power and all required licenses to carry on its present and proposed obligations under the Contract Documents. DB Contractor is composed of [_____]. Each member of DB Contractor is duly qualified to do business, and is in good

standing, in the State as of the Effective Date, and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

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

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

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

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

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

organizational conflict of interest has the meaning set forth in the Instructions to Proposers.

2.3.13 At any time a Guaranty is required to be in place pursuant to the Contract Documents, the applicable Guarantor is duly organized, validly existing and in good standing under the laws of the state of its organization, is duly qualified to do business in, and is in good standing in the State, and will remain in good standing for as long as any obligations guaranteed by such Guarantor remain outstanding under the Contract Documents and each such Guarantor has all requisite power and authority to carry on its present and proposed obligations under the Contract Documents.

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

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

2.4 Survival of Representations and Warranties

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

SECTION 3. SUBMITTALS; DESIGN REQUIREMENTS AND DISCLAIMER; ROLES OF TXDOT CONSULTANTS AND FHWA; GOVERNMENTAL APPROVALS

3.1 Submittal, Review and Approval Terms and Procedures

3.1.1 General

This Section 3.1 sets forth uniform terms and procedures that shall govern all Submittals to TxDOT pursuant to the Contract Documents or the Project Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 3.1 and any other provisions of the Contract Documents or the Project Management Plan and component plans thereunder, concerning submission, review and approval procedures, this Section 3.1 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 3.1.

3.1.2 Time Periods

3.1.2.1 Whenever TxDOT is entitled to review and comment on, or to affirmatively approve, a Submittal, TxDOT shall have a period of 10 Business Days to act after the date it receives an accurate and complete Submittal and all necessary information and documentation concerning the subject matter, except as otherwise provided below.

3.1.2.2 If any provision of the Contract Documents expressly provides a longer or shorter period for TxDOT to act, such period shall control over the foregoing time period.

3.1.2.3 If at any given time TxDOT is in receipt of more than (a) 10 concurrent Submittals in the aggregate (other than Submittals governed by provisions in the Contract Documents that expressly specify a different maximum concurrent number) that are subject to TxDOT's review and comment or approval or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the Contract Documents, TxDOT may extend the applicable period for it to act to that period in which TxDOT can reasonably accommodate the Submittals under the circumstances or such other period of extension set forth in any other provision of the Contract Documents, and no such extension shall entitle DB Contractor to an adjustment to the Price or Completion Deadlines or form the basis of any other Claim. However, if at any time TxDOT is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether TxDOT may extend the applicable period. Submittals are

deemed to be concurrent to the extent the review time periods available to TxDOT under this Section 3.1.2 regarding such Submittals overlap. Whenever TxDOT is in receipt of excess concurrent Submittals, DB Contractor may establish by written notice to TxDOT an order of priority for processing such Submittals; and TxDOT shall comply with such order of priority. Refer to Sections 6.5.1, 7.2.12, and 7.3.1 of the Technical Provisions for maximum concurrent Utility Adjustment Submittals, Submittals of Acquisition Packages and Submittals of Project ROW maps, and extensions of time in the case of Utility Adjustment Submittals, Acquisition Packages and Project ROW maps in excess of the maximum.

3.1.2.4 All time periods for TxDOT to act shall be extended by the period of any delay caused, in whole or in part, by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract, or Governmental Approval by any DB Contractor-Related Entity.

3.1.2.5 TxDOT shall endeavor to reasonably accommodate a written request from DB Contractor for expedited action on a specific Submittal within the practical limitations and based on availability of TxDOT personnel appropriate for acting on the type of Submittal in question; provided, however, that DB Contractor sets forth in its request specific, abnormal circumstances demonstrating the need for expedited action by TxDOT. This provision shall not apply, however, during any time described in Section 3.1.2.4.

3.1.3 TxDOT Discretionary Approvals

If the Submittal is one where the Contract Documents indicate approval or consent or acceptance is required from TxDOT in its discretion, absolute discretion, unfettered discretion, or good faith discretion, then TxDOT's lack of approval, determination, decision, or other action within the applicable time period under Section 3.1.2 shall be deemed disapproval. If approval is subject to the sole, absolute or unfettered discretion of TxDOT, then its decision shall be final, binding and not subject to dispute resolution and such decision shall not entitle DB Contractor to an adjustment to the Price or Completion Deadlines or form the basis of any other Claim. If the approval is subject to the good faith discretion of TxDOT, then its decision shall be binding unless it is finally determined by clear and convincing evidence under the dispute resolution procedures of this Agreement that such decision was arbitrary or capricious. For avoidance of doubt, if the approval is subject to the good faith discretion of TxDOT and the decision is determined to be arbitrary and capricious and causes delay, the delay will constitute and be treated as a TxDOT-Caused Delay, and DB Contractor shall be entitled to submit a Claim in accordance with Section 13.

3.1.4 Other TxDOT Approvals

3.1.4.1 Whenever the Contract Documents indicate that a Submittal or other matter is subject to TxDOT's approval or consent and no particular standard therefor is stated, then the standard shall be reasonableness.

3.1.4.2 If the reasonableness standard applies to TxDOT's right of approval of or consent to a Submittal, and TxDOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 3.1.2, then DB Contractor may deliver to TxDOT a written notice stating the date within which TxDOT was to have decided or acted and that if TxDOT does not decide or act within five Business Days after receipt of the notice, delay thereafter may constitute a TxDOT-Caused Delay for which DB Contractor may be entitled to submit a Claim in accordance with Section 13.3.

3.1.5 TxDOT Review and Comment

Whenever the Contract Documents indicate that a Submittal or other matter is subject to TxDOT's review, comment, review and comment, or similar action not requiring TxDOT's prior approval before DB Contractor may act or proceed and TxDOT delivers no comments, exceptions, objections, rejections, or disapprovals (referred to in this Section 3.1 as "comments and objections") within the applicable time period under Section 3.1.2, then DB Contractor may proceed thereafter at its election and risk, without prejudice to TxDOT's rights to later object in accordance with Section 3.1.7.1. No such failure or delay by TxDOT in delivering comments and objections within the applicable time period under Section 3.1.2 shall constitute a TxDOT-Caused Delay, entitle DB Contractor to an adjustment to the Price or Completion Deadlines, or form the basis of any other Claim. When used in the Contract Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) TxDOT has reviewed and provided comments and objections, and all the same have been resolved or (b) the applicable time period has passed without TxDOT providing any comments and objections.

3.1.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract Documents indicate that DB Contractor is to deliver a Submittal to TxDOT but express no requirement for TxDOT review, comment, disapproval, prior approval or other TxDOT action, then DB Contractor is under no obligation to provide TxDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and TxDOT shall have the right, but is not obligated, to at any time make comments and objections with

respect to the Submittal in accordance with Section 3.1.7.1. No failure or delay by TxDOT in delivering comments and objections with respect to the Submittal shall constitute a TxDOT-Caused Delay, entitle DB Contractor to an adjustment to the Price or Completion Deadlines, or form the basis of any other Claim.

3.1.7 Resolution of TxDOT Comments and Objections

3.1.7.1 If the Submittal is one not governed by Section 3.1.3, TxDOT's comments and objections shall be deemed reasonable, valid and binding if and only if based on any of the following grounds:

(a) The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, term, or provision of the Contract Documents or the Project Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;

(c) DB Contractor has not provided all content or information required with respect to the Submittal or subject provisions thereof, provided that TxDOT assumes no duty, obligation, or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to another Governmental Entity as a proposed Governmental Approval or in order to obtain, modify, amend, supplement, renew, extend, waive, or carry out a Governmental Approval;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to another Governmental Entity as a proposed Governmental Approval or, in order to obtain, modify, amend, supplement, renew, extend, waive, or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not usual and customary arrangements that TxDOT offers or accepts for addressing similar circumstances affecting its own projects.

3.1.7.2 DB Contractor shall respond to all of TxDOT's comments and objections to a Submittal and make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this Section 3.1. DB Contractor acknowledges that TxDOT may provide comments and objections that reflect concerns regarding interpretation or preferences of the commenter or that otherwise

do not directly relate to grounds set forth in Section 3.1.7.1. DB Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Section 3.1. However, if the Submittal is not governed by Section 3.1.3, the foregoing shall in no way be deemed to obligate DB Contractor to incorporate any comments or resolve objections that are not based on any of the grounds set forth in Section 3.1.7.1 and would result in a delay to a critical path on the Project Schedule or in an increase in DB Contractor's costs, except pursuant to a TxDOT-Directed Change. If, however, DB Contractor does not accommodate or otherwise resolve any comment or objection, DB Contractor shall deliver to TxDOT within a reasonable time period, not to exceed 30 days after receipt of TxDOT's comments or objections, a written explanation of why modifications based on such comment or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

3.1.7.3 The foregoing shall in no way be deemed to obligate DB Contractor to incorporate any comments or resolve objections that DB Contractor demonstrates would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a TxDOT-Directed Change.

3.1.7.4 If DB Contractor fails to notify TxDOT within such time period, TxDOT may deliver to DB Contractor a written notice stating the date by which DB Contractor was to have addressed TxDOT's comments and objections and that if DB Contractor does not address those comments and objections within five Business Days after receipt of such notice, then that failure shall constitute DB Contractor's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to an adjustment to the Price or Completion Deadlines or any other Claim, including any Claim that TxDOT assumes design or other liability.

3.1.7.5 After TxDOT receives DB Contractor's explanation as to why the modifications are not required as provided in Sections 3.1.7.2, 3.1.7.3 and 3.1.7.4, the Parties shall attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, it shall be resolved according to the dispute resolution procedures of this Agreement, except (a) as provided otherwise in Section 3.1.7 and (b) if TxDOT elects to issue a Directive Letter pursuant to Section 13.1.1.2 with respect to the disputed matter, DB Contractor shall proceed in accordance with TxDOT's directive while retaining any Claim as to the disputed amount.

3.1.8 Limitations on DB Contractor's Right to Rely

3.1.8.1 No review, comment on, objection, rejection, approval, disapproval, acceptance, certification (including any certificates of

Substantial Completion and Final Acceptance), concurrence monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of TxDOT, and no lack thereof by TxDOT, shall constitute either (i) acceptance of materials or Work that fails to comply with the Contract Documents, or (ii) waiver of any legal or equitable right under the Contract Documents, at law, or in equity, except to the extent Nonconforming Work is expressly accepted by TxDOT in its discretion and in accordance with Section 5.6.2. TxDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work that must be done to bring the Work and Project into compliance with requirements of the Contract Documents, regardless of whether previous review, comment on, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by TxDOT. Regardless of any such activity or failure to conduct any such activity by TxDOT, DB Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. DB Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by TxDOT:

(a) Is solely for the benefit and protection of TxDOT;

(b) Does not relieve DB Contractor of its responsibility for the selection and the competent performance of all DB Contractor-Related Entities;

(c) Does not create or impose upon TxDOT any duty or obligation toward DB Contractor to cause it to fulfill the requirements of the Contract Documents;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by TxDOT;

(e) May not be relied upon by DB Contractor or used as evidence in determining whether DB Contractor has fulfilled the requirements of the Contract Documents; and

(f) May not be asserted by DB Contractor against TxDOT as a defense, legal or equitable, to, or as a waiver of or relief from, DB Contractor's obligation to fulfill the requirements of the Contract Documents.

3.1.8.2 Unless expressly permitted under Section 5.6.2, DB Contractor shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the Contract Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 3.1.8.1 or failure to conduct any such activity by TxDOT. Such activity by TxDOT shall not relieve DB Contractor from liability for, and the

responsibility to cure and correct, any unapproved Deviations, Nonconforming Work that is not expressly accepted in accordance with Section 5.6.2 or DB Contractor defaults.

3.1.8.3 To the maximum extent permitted by law, DB Contractor hereby releases and discharges TxDOT from any and all duty and obligation to cause DB Contractor's Work or the Project to satisfy the standards and requirements of the Contract Documents.

3.1.8.4 Notwithstanding the provisions of Sections 3.1.8.1, 3.1.8.2 and 3.1.8.3:

(a) DB Contractor shall be entitled to rely on written approvals and acceptances from TxDOT (i) for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within its sole, absolute, or unfettered discretion, but only to the extent that DB Contractor is prejudiced by a subsequent decision of TxDOT to rescind such approval or acceptance;

(b) DB Contractor shall be entitled to rely on specific written Deviations TxDOT approves under Section 2.1.2.4;

(c) DB Contractor shall be entitled to rely on the certificates of Substantial Completion and Final Acceptance from TxDOT for the limited purpose of establishing that Substantial Completion and Final Acceptance, as applicable, for the applicable Facility, have occurred, and the respective dates thereof;

(d) TxDOT is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement TxDOT delivers to DB Contractor; and

(e) TxDOT is not relieved from performance of its express responsibilities under the Contract Documents in accordance with all standards applicable thereto.

3.2 [RESERVED]

3.3 Responsibility for Design

3.3.1 DB Contractor Responsibility

DB Contractor agrees that it has full responsibility for the design of the Project and that DB Contractor will furnish the design of the Project, regardless of the fact that aspects of the TxDOT Schematic Design have been provided to DB

Contractor as a preliminary basis for DB Contractor's design. DB Contractor specifically acknowledges and agrees that:

(a) DB Contractor is not entitled to rely on (i) the TxDOT Schematic Design except as specified in Section 3.3.2, (ii) the Reference Information Documents, or (iii) any other documents or information provided by TxDOT, except to the extent specifically permitted in the Contract Documents.

(b) DB Contractor is responsible for causing the Released for Construction Documents to address and correct any Errors in the TxDOT Schematic Design through the design and construction process without any increase in the Price or extension of a Completion Deadline, subject only to the right to a Change Order with respect to Necessary Basic Configuration Changes to the extent permitted by Section 13.8.6.

(c) TxDOT's liability for Errors in the TxDOT Schematic Design is limited to its obligations relating to Necessary Basic Configuration Changes as set forth in Section 2.1.3.2 and is subject to the requirements and limitations of Section 13.

(d) DB Contractor's warranties and indemnities hereunder cover Errors in the Project even though they may arise from or be related to Errors in the TxDOT Schematic Design.

(e) DB Contractor is responsible for verifying all calculations and quantity takeoffs contained in the RFP Documents or otherwise provided by TxDOT.

3.3.2 TxDOT Schematic Design

3.3.2.1 DB Contractor acknowledges and agrees that if DB Contractor wishes to deviate from the Schematic ROW, it must specifically identify such modifications in writing to TxDOT in accordance with Section 2.1.2.4, provide justification for the modification and obtain specific written approval from TxDOT, in its discretion, prior to use of such modifications. Subject to Section 2.1.2.3, DB Contractor must obtain TxDOT's prior written approval to deviate from the TxDOT Schematic Design unless the proposed modification meets all of the following: (a) is within the Schematic ROW and requires no additional right of way; (b) meets the requirements of the Technical Provisions; (c) requires no New Environmental Approval; (d) does not constitute a Design Exception or Design Waiver; (e) is consistent with the design concepts included in the Proposal; and (f) does not deviate from TxDOT's design intent as embodied in the TxDOT Schematic Design. DB Contractor acknowledges and agrees that the requirements and constraints set forth in the Contract Documents and in the Governmental Approvals, as well as

Site conditions, will impact DB Contractor's ability to revise the concepts contained in the TxDOT Schematic Design, in addition to the requirement to obtain approval.

3.3.2.2 DB Contractor may rely on the Schematic ROW limits as shown on the TxDOT Schematic Design, acknowledges that it is feasible to design and develop the Project within the Schematic ROW limits identified in the TxDOT Schematic Design, and shall have the right to obtain a Change Order for certain increased costs incurred due to Necessary Basic Configuration Changes to the extent provided in Section 13.8.6; provided, however, that DB Contractor acknowledges that "feasible to design and develop the Project" is not intended to mean or be limited to DB Contractor's design approach set forth in its Proposal or DB Contractor's preferred design approach.

3.3.2.3 DB Contractor acknowledges that the TxDOT Schematic Design is preliminary and subject to refinement through the design development process and that DB Contractor is not entitled to any time extensions in connection with any changes from the TxDOT Schematic Design, and DB Contractor's entitlement to an increase in the Price in connection with any changes from the TxDOT Schematic Design is limited to certain increased costs incurred as a result of Necessary Basic Configuration Changes to the extent allowed under Section 13.8.6.

3.4 Disclaimer

3.4.1 DB Contractor understands and agrees that TxDOT shall not be responsible or liable in any respect for any Losses whatsoever suffered by any DB Contractor-Related Entity by reason of any use of any information contained in the TxDOT Schematic Design or Reference Information Documents, or any action or forbearance in reliance thereon, except to the extent that TxDOT has specifically agreed in Section 13 that DB Contractor shall be entitled to an increase in the Price or extension of a Completion Deadline with respect to such matter. DB Contractor further acknowledges and agrees that (a) if and to the extent DB Contractor or anyone on DB Contractor's behalf uses any of said information in any way, such use is made on the basis that DB Contractor, not TxDOT, is responsible for said information and (b) DB Contractor is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at DB Contractor's own risk and at its own discretion.

3.4.2 TxDOT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE TxDOT SCHEMATIC DESIGN OR REFERENCE INFORMATION DOCUMENTS IS EITHER COMPLETE OR ACCURATE (INCLUDING WITH RESPECT TO (i) THE EXISTENCE OR

NEED FOR BRIDGES; (ii) BRIDGE LENGTHS, LOCATIONS, TYPES AND VERTICAL PROFILES DEPICTED IN THE TxDOT SCHEMATIC DESIGN, (iii) THE EXISTENCE, NEED FOR, OR LOCATIONS OF CULVERTS; (iv) THE EXISTENCE OR NEED FOR RETAINING WALLS, (v) RETAINING WALL HEIGHTS, LENGTHS OR SIZES DEPICTED IN THE TxDOT SCHEMATIC DESIGN OR (vi) ANY FAILURE OR OMISSION TO DEPICT ANY OF THE FOREGOING IN THE TxDOT SCHEMATIC DESIGN) OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF TxDOT-PROVIDED APPROVALS, OTHER CONTRACT DOCUMENTS, GOVERNMENTAL APPROVALS OR LAW. TxDOT DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE TECHNICAL PROVISIONS. THE FOREGOING SHALL IN NO WAY AFFECT TxDOT'S LIABILITY FOR NECESSARY BASIC CONFIGURATION CHANGES AS SPECIFIED HEREIN OR TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

3.5 Role of TxDOT Consultants

TxDOT Consultants will assist TxDOT in the management and oversight of the Project and the Contract Documents. DB Contractor shall cooperate with TxDOT Consultants in the exercise of their respective duties and responsibilities in connection with the Project.

3.6 Role of and Cooperation with FHWA

DB Contractor acknowledges and agrees that FHWA will have certain approval rights with respect to the Project (including rights to approve the Project design and certain Change Orders), as well as the right to provide certain oversight and technical services with respect to the Project. In such cases, DB Contractor shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Project.

3.7 Governmental Approvals and Third-Party Agreements

3.7.1 As of the Effective Date, TxDOT had not obtained all of the TxDOT-Provided Approvals set forth in Exhibit 4. TxDOT retains responsibility for processing all TxDOT-Provided Approvals (based on the TxDOT Schematic Design) that TxDOT has not obtained as of the Effective Date. DB Contractor shall obtain all other Governmental Approvals, including any modifications, renewals and extensions of the TxDOT-Provided Approvals, and, except to the extent the Contract Documents expressly provide TxDOT is responsible therefor, all third-party approvals and agreements required in connection with the Project, the Project Right

of Way or the Work. Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), DB Contractor shall submit the same, together with any supporting environmental studies and analyses, to TxDOT (a) for approval or (b) for review and comment, as specified in the Technical Provisions.

3.7.2 Prior to any DB Contractor action to acquire Additional Properties or submittal for TxDOT review or approval of any modification of or deviation from any Governmental Approvals, including TxDOT-Provided Approvals, DB Contractor shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between TxDOT and other Governmental Entities. These agreements include the following, as such agreement may be modified or revised:

(a) **Memorandum of Understanding** between the Office of the Governor, the Economic Development and Tourism Division and the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission (April 2004 – current, to promote tourism in Texas);

(b) **Memorandum of Understanding** between the Texas Department of Transportation and the Texas Parks and Wildlife Department (September 1, 2013);

(c) **Memorandum of Understanding** between the Texas Department of Transportation and the General Land Office (June 15, 2004);

(d) **Memorandum of Understanding** between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission (applicable to its successor agency the Texas Commission on Environmental Quality) (May 16, 2013);

(e) **First Amended Programmatic Agreement** among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings (December 28, 2005, renewed in September, 2010 and on December 7, 2015); and

(f) **Memorandum of Understanding** between the Federal Highway Administration and the Texas Department of Transportation concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327 (December 16, 2014).

Upon DB Contractor's request, TxDOT will cooperate with DB Contractor in updating the foregoing list and providing DB Contractor with copies of the applicable agreements between TxDOT and other Governmental Entities. DB Contractor shall periodically visit and monitor TxDOT's website for updates to the above documents.

3.7.3 At DB Contractor's request, TxDOT shall reasonably assist and cooperate with DB Contractor in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by DB Contractor under the Contract Documents. TxDOT and DB Contractor shall work jointly to establish a scope of work and budget for TxDOT's Recoverable Costs related to the assistance and cooperation TxDOT will provide. Subject to any agreed scope of work and budget and to any rights of DB Contractor under Section 13, DB Contractor shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, TxDOT incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies.

3.7.4 DB Contractor shall comply with all conditions imposed by, and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to TxDOT in the Contract Documents.

3.7.5 In the event that any Governmental Approvals required to be obtained by DB Contractor must formally be issued in TxDOT's name, DB Contractor shall undertake the necessary efforts to obtain such approvals subject to TxDOT's reasonable cooperation with DB Contractor, at DB Contractor's expense (except in connection with Governmental Approvals required due to a TxDOT-Directed Change), in accordance with Section 3.7.3, including execution and delivery of appropriate applications and other documentation in form approved by TxDOT.

3.7.6 In the event that TxDOT or FHWA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals that are the responsibility of DB Contractor, DB Contractor shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents and applications.

3.7.7 DB Contractor shall be responsible for compliance with all applicable Laws in relation to Project Specific Locations and for obtaining any Environmental Approval or other Governmental Approval required in connection with Project Specific Locations.

3.7.8 DB Contractor shall not enter into any agreement with any Governmental Entity, Utility, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate TxDOT, or states or implies that TxDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the expiration or termination of this Agreement, unless TxDOT otherwise approves in writing in its discretion. DB Contractor has no power or authority to enter into any such agreement with a third party in the name or on behalf of TxDOT.

3.8 Software Compatibility

3.8.1 Unless otherwise specifically stated in the Contract Documents, DB Contractor is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by TxDOT. Prior to using any software or version of software not then in use by TxDOT, DB Contractor must obtain written approval from TxDOT. In addition, DB Contractor shall provide to TxDOT staff, at DB Contractor's cost, working electronic copies of the software, any necessary licenses for TxDOT's use of the software and any training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by DB Contractor.

3.8.2 In addition to all other requirements set forth in the Contract Documents, DB Contractor shall submit all documents, correspondence and Submittals to TxDOT through TxDOT's dedicated SharePoint site for the Project unless otherwise directed by TxDOT. Nothing in this Section 3.8.2 overrides or otherwise alters or amends in any way any other provision regarding requirements for notice, correspondences, Submittals or other communications to TxDOT as set forth in the Contract Documents, including the requirements set forth in Section 24.11.

SECTION 4. TIME; PROJECT SCHEDULE AND PROGRESS

4.1 Time of Essence; Notices to Proceed; LE Work Package

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

4.1.2 Authorization allowing DB Contractor to proceed with Work hereunder shall be provided through TxDOT's issuance of NTP1 and NTP2. DB Contractor acknowledges and agrees that TxDOT has no obligation to issue any NTP hereunder, and further agrees that unless and until NTP1 is issued, TxDOT shall have no liability to DB Contractor hereunder, and unless and until the NTP for a portion of the Work is issued, TxDOT's liability hereunder shall be limited to payment owing hereunder for Work under NTPs actually issued (if any).

4.1.3 TxDOT anticipates issuing NTP1 concurrently with execution and delivery of this Agreement. Issuance of NTP1 authorizes DB Contractor to perform only the Work described in this Section 4.1.3 or otherwise expressly authorized upon issuance of NTP1 in the Contract Documents. Issuance of NTP1 authorizes DB Contractor to perform the portion of the Work necessary to obtain TxDOT's approval of the component parts, plans and documentation of the Project Management Plan set forth in the Technical Provisions. It also authorizes DB Contractor to enter the Project Right of Way that TxDOT owns in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to commence negotiating Utility Agreements with Utility Owners. DB Contractor, however, shall not execute any Project Utility Adjustment Agreement until issuance of NTP2. Refer to Sections 12.1.4 and 15.9 regarding a Price adjustment to be made in certain circumstances if the effective date of the NTP1 is later than 180 days after the Proposal Due Date, and regarding DB Contractor's remedies for certain delays in issuance of NTP1 beyond 365 days after the Effective Date.

4.1.4 DB Contractor may request that TxDOT grant DB Contractor approval to begin design, engineering, architecture, or ROW acquisition services Work prior to issuance of NTP2 if DB Contractor meets all of the conditions described in Section 4.1.5 relating to the design, engineering, architecture, or ROW acquisition services Work to be performed and any other conditions identified by

TxDOT. These conditions include TxDOT approval, in its discretion, of the PSQMP, that all insurance policies required under Section 9 that cover such design, engineering, architecture, or ROW acquisition services Work have been obtained and are in full force and effect and that written binding verification of coverage from the relevant issuers of such insurance policies have been delivered to TxDOT, TxDOT approval of that portion of the Schedule of Values identifying the design, engineering, architecture, or ROW acquisition services Work to be performed and delivery to TxDOT of copies of all executed Subcontracts with Key Subcontractors that will perform any of such design, engineering, architecture, or ROW acquisition services Work and were not required to be provided to TxDOT prior to issuance of NTP1. Any approval granted by TxDOT under this Section 4.1.4 is subject to TxDOT's discretion. Notwithstanding the foregoing, DB Contractor is not entitled to payment for any Work prior to issuance of NTP2 in excess of $35,000,000.

4.1.5 TxDOT anticipates issuing NTP2 concurrently with (a) TxDOT's approval, in its discretion, of all the component parts, plans and documentation of the Project Management Plan and the PBS2 and (b) with respect to any Work to be performed upon issuance of NTP2, DB Contractor's provision to TxDOT of copies of all executed Subcontracts with Key Subcontractors that were not provided to TxDOT prior to issuance of NTP1. Issuance of NTP2 authorizes DB Contractor to perform all other Work (including ROW acquisition services) and activities pertaining to the Project.

4.1.6 Notwithstanding Section 4.1.5, DB Contractor may request that TxDOT issue NTP2 prior to approval of all of the component parts, plans and documentation of the Project Management Plan and the PBS2. In such event, TxDOT may elect to issue NTP2 prior to satisfaction by DB Contractor of any particular conditions to NTP2. TxDOT may condition such early issuance of NTP2 upon payment by DB Contractor to TxDOT the amount of $1,000 for each day during the period that NTP2 has been issued and any condition to NTP2 remains unsatisfied. Notwithstanding any early issuance of NTP2, DB Contractor shall not be permitted to commence Construction Work on any portion of the Project until all the conditions to the commencement of Construction Work described in Section 4.4 have been satisfied.

4.1.7 TxDOT shall have the option, in its discretion, to add additional LE Scope Items (beyond the LE Base Scope) to the LE Work Package by notice to DB Contractor (the "LE Work Package Notice"), setting forth (a) each LE Scope Item that is to be added to the LE Base Scope and constitute part of the LE Work Package, (b) the aggregate amount to be added to the Price for the LE Work Package, which amount shall equal the sum of the LE Line Item Prices for each LE Scope Item (excluding the LE Base Scope) identified in the LE Work Package

Notice, which amount when added to the LE Base Scope Price shall not exceed the LE Work Package Maximum Price, and (c) an updated Maximum Payment Schedule for Facility LE reflecting such increase. The deadline for issuance of the LE Work Package Notice is 30 days following the Effective Date (the "LE Work Package Deadline"). Delivery of the LE Work Package Notice by TxDOT on or before the LE Work Package Deadline shall, without any further action of the Parties, automatically amend (x) the Price by increasing it an amount equal to the amount described in clause (b) herein as set forth in the LE Work Package Notice, and (y) the Maximum Payment Schedule for Facility LE set forth in Exhibit 5 by replacing it in its entirety with the updated Maximum Payment Schedule set forth in the LE Work Package Notice. Further, notwithstanding anything herein to the contrary, if TxDOT fails to deliver the LE Work Package Notice by the LE Work Package Deadline, the LE Work Package shall include solely the LE Base Scope and there shall be no adjustment to the Price or the Maximum Payment Schedule for Facility LE. DB Contractor shall not be entitled to any adjustment to the Project Schedule or to any compensation for any delay or disruption costs arising out of, or in connection with, the finalization of the LE Work Package in accordance with this Section 4.1.7. The Capital Maintenance Agreement shall be amended as needed in accordance therewith in connection with the finalization of the LE Work Package pursuant to this Section 4.1.7.

4.2 Completion Deadlines

4.2.1 Substantial Completion Deadlines

DB Contractor shall achieve Substantial Completion of each Facility within the applicable time-frames established in Exhibit 2. Said dates for achieving Substantial Completion, as they may be extended hereunder, are referred to herein as the "Substantial Completion Deadline" for the applicable Facility.

4.2.2 Final Acceptance Deadlines

DB Contractor shall achieve Final Acceptance of each Facility on or before 120 days after Substantial Completion of the applicable Facility. Said deadlines for achieving Final Acceptance of each Facility, as they may be extended hereunder, are referred to herein as the "Final Acceptance Deadline" for the applicable Facility.

4.2.3 No Time Extensions

Except as otherwise specifically provided in Section 13, TxDOT shall have no obligation to extend a Completion Deadline and DB Contractor shall not be relieved of its obligation to comply with the Project Schedule and to achieve

Substantial Completion and Final Acceptance of each Facility by the applicable Completion Deadlines for any reason.

4.3 Scheduling of Design, Construction and Payment

4.3.1 Project Schedule

The Work shall be undertaken and completed in accordance with the Project Schedule prepared in conformance with Section 2.1.1 of the Technical Provisions. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Work and as the basis for determining the amount of monthly progress payments to be made to DB Contractor.

4.3.2 Float

All Float contained in the Project Schedule, as shown in the Preliminary Project Baseline Schedule or as generated thereafter, shall be considered a Project resource available to either Party or both Parties as needed to absorb delays caused by any event, or to achieve schedule milestones, interim completion dates or Completion Deadlines. All Float shall be shown as such in the Project Schedule on each affected schedule path. TxDOT shall have the right to examine the identification of (or failure to identify) Float on the schedule in determining whether to approve the Project Schedule. Once identified, DB Contractor shall monitor, account for and maintain Float in accordance with critical path methodology.

4.3.3 Maximum Payment Schedule

The Project Schedule shall provide for payment to be made solely on the basis of progress by DB Contractor, subject to a cap on payments shown on the Maximum Payment Schedule established for the Project. The Maximum Payment Schedule shall not limit payment for Change Order Work unless otherwise specified in the Change Order. In other words, at no time shall DB Contractor's cumulative total progress payments (including mobilization payments but exclusive of payments for Change Order Work) exceed the cumulative total expenditure permitted by the Maximum Payment Schedule. The Maximum Payment Schedule shall be calculated based on the monthly expenditure rate set forth in Exhibit 5 for the Project. If DB Contractor and TxDOT mutually agree in writing to a different expenditure rate at any time, then such revised rate shall thereafter be the Maximum Payment Schedule for the Project. The Maximum Payment Schedule shall be revised from time to time thereafter upon request by TxDOT or by DB Contractor on its own initiative, as appropriate to account for any changes in the Price as evidenced by Change Orders or amendments and in accordance with Section 13.4. The aggregate amount of progress payments to DB Contractor

hereunder shall not exceed the amount allowed by the Maximum Payment Schedule at any time, exclusive of payments for Change Order Work, without the prior written approval of TxDOT, which approval may be withheld in its discretion.

4.4 Conditions to Commencement of Construction

4.4.1 Construction Work Generally

Except to the extent expressly permitted in writing by TxDOT, in TxDOT's discretion, DB Contractor shall not commence or permit or suffer commencement of Construction Work or any applicable portion thereof until TxDOT issues NTP2 and all of the following conditions have been satisfied:

(a) All Governmental Approvals necessary to begin Construction Work in the applicable portion of the Project have been obtained, and DB Contractor has furnished to TxDOT fully executed copies of such Governmental Approvals.

(b) Fee simple title or other property rights acceptable to TxDOT in its discretion for the Project ROW necessary for commencement of construction of the applicable portion of the Project and Utility Adjustments included in the Construction Work have been identified, conveyed to and recorded in favor of TxDOT, TxDOT has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement or right of entry therefor on terms acceptable to TxDOT with the exception of Quitclaim Deeds used for Utility Adjustments, which shall comply with the requirements of Section 6.2.4.4 of the Technical Provisions.

(c) DB Contractor has satisfied for the applicable portion of the Project all applicable pre-construction requirements contained in the Environmental Approvals and other Governmental Approvals.

(d) Each Performance Bond, Payment Bond, and Retainage Bond (including any dual obligee riders), in form and from a surety approved by TxDOT, required under Section 8 has been obtained and is in full force and effect, and DB Contractor has delivered to TxDOT certified and conformed copies of the originals of each such bond, with the original of each such bond delivered to DB Contractor.

(e) The Guarantees, if any, required under Section 8.3 have been obtained and delivered to TxDOT.

(f) All insurance policies required under Section 9 have been obtained and are in full force and effect, and DB Contractor has delivered to TxDOT

written binding verifications of coverage from the relevant issuers of such insurance policies.

(g) DB Contractor has caused to be developed and delivered to TxDOT and TxDOT has approved, in accordance with Section 2.1.1 of this Agreement and Section 2 of the Technical Provisions, the component parts, plans and documentation of the Project Management Plan.

(h) DB Contractor has delivered to TxDOT all Submittals relating to the Construction Work required by the Project Management Plan or Contract Documents, in the form and content required by the Project Management Plan or Contract Documents, including the Phase II and Phase III Environmental Site Assessments if required pursuant to Section 7.3.5.1(k) of the Technical Provisions.

(i) All representations and warranties of DB Contractor set forth in Section 2.3 shall be and remain true and correct in all material respects.

(j) DB Contractor has adopted written policies establishing ethical standards of conduct for all DB Contractor-Related Entities, including DB Contractor's supervisory and management personnel in dealing with (a) TxDOT and the TxDOT Consultants and (b) employment relations, in accordance with Section 7.8.

(k) There exists no uncured DB Contractor Default for which DB Contractor has received written notice from TxDOT.

(l) DB Contractor has provided to TxDOT at least 10 days advance written notice of the date DB Contractor determines that it will satisfy all of the conditions set forth in this Section 4.4.1.

(m) DB Contractor has provided to TxDOT copies of all executed Subcontracts with Key Subcontractors that were not required to be provided to TxDOT prior to issuance of NTP1 or NTP2.

4.4.2 Utility Adjustments

DB Contractor shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until TxDOT issues NTP2, all of the conditions set forth in Section 4.4.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the requirements provided in Section 6.4.4 of the Technical Provisions have been satisfied.

4.5 Recovery Schedule

4.5.1 If at any time, the Work on any Critical Path item is delayed for a period which exceeds the greater of either 30 days in the aggregate or that number of days in the aggregate equal to 5% of the days remaining until a Completion Deadline (including delays to which DB Contractor may be entitled to a time extension under Section 13), then DB Contractor shall prepare and submit to TxDOT for review and approval with the next Project Schedule Update a Recovery Schedule demonstrating DB Contractor's proposed plan to regain lost schedule progress and to achieve the contractual milestones in accordance with this Agreement, including Substantial Completion and Final Acceptance of each Facility, by the applicable Completion Deadline.

4.5.2 TxDOT shall notify DB Contractor within 14 days after receipt of each such Recovery Schedule whether the Recovery Schedule is deemed accepted or rejected. Within seven days after any rejection by TxDOT of the Recovery Schedule, DB Contractor will resubmit a revised Recovery Schedule incorporating TxDOT's comments. When TxDOT accepts DB Contractor's Recovery Schedule, DB Contractor shall, within five days after TxDOT's acceptance, incorporate and fully include such schedule into the Project Schedule, deliver the same to TxDOT, and proceed in accordance with the approved Recovery Schedule.

4.5.3 All costs incurred by DB Contractor in preparing, implementing and achieving the Recovery Schedule shall be borne by DB Contractor and shall not result in a change to the Price, except to the extent that the Recovery Schedule is in lieu of a time extension and a change in the Price is permitted for Acceleration Costs in accordance with Section 13.2.1.3 or 13.3.2.5.

4.5.4 If a TxDOT-approved Recovery Schedule is not in place within 30 days from DB Contractor's submission of a Recovery Schedule in accordance with Section 4.5.1 or if DB Contractor fails to provide an acceptable Recovery Schedule as required herein and in addition to any other rights and remedies in favor of TxDOT arising out of such failure, DB Contractor shall have no right to receive progress payments until such time as DB Contractor has prepared and TxDOT has approved such Recovery Schedule. Any failure or delay in the submittal or approval of a Recovery Schedule shall not result in any time extension under the Contract Documents.

4.6 Performance Evaluations

TxDOT will conduct performance evaluations of DB Contractor's major team members, consultants, and Subcontractors. These evaluations will be conducted annually at twelve-month intervals during the term of this Agreement, upon

termination of this Agreement, and when TxDOT determines that work is materially behind schedule or not being performed according to the requirements of this Agreement. DB Contractor agrees to cooperate in the conducting of these evaluations.

SECTION 5. CONTROL OF WORK

5.1 Control and Coordination of Work

DB Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures and Site and Project safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

5.2 Safety and Police Services

5.2.1 Safety

DB Contractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of TxDOT and its consultants, visitors to the Site and members of the traveling public who may be affected by the Work. DB Contractor shall at all times comply with all health and safety requirements contained in the Contract Documents and DB Contractor's Safety and Health Plan and all such requirements under applicable Law, including all rules, directives and guidance of the U.S. Department of Homeland Security or comparable State agency. DB Contractor shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

5.2.2 Police Services

5.2.2.1 DB Contractor acknowledges that the Texas Department of Public Safety is empowered to enforce all applicable Laws and to enter the Project at any and all times to carry out its law enforcement duties. No provision of the Contract Documents is intended to surrender, waive or limit any police powers of the Texas Department of Public Safety, TxDOT or any other Governmental Entity, and all such police powers are hereby expressly reserved.

5.2.2.2 TxDOT shall not have any liability or obligation to DB Contractor resulting from, arising out of or relating to the failure of the Texas Department of Public Safety or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

5.2.2.3 TxDOT and third parties with responsibility for traffic regulation and enforcement shall have the right to install, operate, maintain and replace cameras or other equipment on the Project that relate to traffic

regulation or enforcement. DB Contractor shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with any such installation, maintenance and replacement activities.

5.3 Obligations to Minimize Impacts

DB Contractor shall ensure that all of its activities and the activities of DB Contractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the traveling public to the maximum extent practicable.

5.4 Oversight, Inspection and Testing; Meetings

5.4.1 DB Contractor Inspection and Testing

5.4.1.1 DB Contractor shall perform the inspection, sampling, testing, quality control and quality assurance necessary for DB Contractor to comply with its obligations under the Contract Documents. All such testing and quality assurance activities shall be in accordance with the approved Quality Management Plan and the current version of the *TxDOT Quality Assurance Program for CDA/Design-Build Projects with a Capital Maintenance Agreement with Three Optional Five-Year Terms*. Without in any way diminishing its obligations under the Contract Documents, DB Contractor may utilize information developed by TxDOT related to acceptance testing for off-site fabricated materials, as more particularly described in Exhibit 23. In the event that DB Contractor elects to utilize such information, TxDOT may recover as TxDOT Recoverable Costs its reasonable expenses related to the performance of such services and the development of such information in accordance with the procedures described in Exhibit 23.

5.4.1.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, DB CONTRACTOR ACKNOWLEDGES AND AGREES THAT TxDOT WILL NOT BE RESPONSIBLE OR BEAR ANY LIABILITY FOR, AND HEREBY RELEASES TxDOT FROM, ANY DAMAGES, INCREASED COSTS, REVENUE LOSSES, DELAYS, OR OTHER IMPACTS TO DB CONTRACTOR OR TO ANY DB CONTRACTOR-RELATED ENTITY, ARISING AS A RESULT OF THE SERVICES PERFORMED BY TxDOT PURSUANT TO EXHIBIT 23, INCLUDING THOSE ARISING FROM ANY NEGLIGENT ACT OR OMISSION OF TxDOT IN PERFORMING THE SERVICES PURSUANT TO EXHIBIT 23, OR FAILURE OF OR DEFECT IN ANY MATERIAL OR PRODUCT INSPECTED OR TESTED BY TxDOT IN PERFORMING THE SERVICES PURSUANT TO EXHIBIT 23, REGARDLESS OF WHEN SUCH FAILURE OR DEFECT MAY

OCCUR OR BE DISCOVERED; PROVIDED, HOWEVER, THAT TxDOT SHALL NOT BE RELIEVED OF LIABILITY FOR ANY KNOWING AND INTENTIONAL MATERIAL MISREPRESENTATION.

5.4.2 Oversight by TxDOT and Others

5.4.2.1 TxDOT and its Authorized Representative shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable to (a) comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements and (b) verify DB Contractor's compliance with the Contract Documents and the Project Management Plan as provided in Section 22.4. TxDOT shall conduct such activity in accordance with DB Contractor's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

5.4.2.2 TxDOT shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and the Project Management Plan. DB Contractor shall provide to TxDOT all test results and reports, which may be provided in electronic format, in accordance with the Technical Provisions.

5.4.2.3 At all points in performance of the Work at which specific inspections or approvals by TxDOT are required by the Contract Documents, the CQMP, or the Project Management Plan, DB Contractor shall not proceed beyond that point until TxDOT has made such inspection or approval or waived its right in writing to inspect or approve. In addition, when any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the work. Such oversight, inspection or testing does not make such Person a party to this Agreement nor will it change the rights of the Parties. DB Contractor hereby consents to such oversight, inspection and owner verification testing. Upon request from TxDOT, DB Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.4.2.4 DB Contractor at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with TxDOT and its Authorized Representative to facilitate TxDOT's oversight activities. DB Contractor shall cause its representatives to be available at all reasonable times for consultation with TxDOT.

5.4.2.5 Without limiting the foregoing, DB Contractor shall afford TxDOT and its Authorized Representative (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to DB Contractor's Project offices and operations buildings, and (c) unrestricted access to data related to the Work, subject to Section 22.1. Without limiting the foregoing, DB Contractor shall deliver to TxDOT upon request accurate and complete books, records, data and information regarding Work, the Project and the Utility Adjustment Work, in the format required by the Technical Provisions.

5.4.2.6 Nothing in the Contract Documents shall preclude, and DB Contractor shall not interfere with, any review or oversight of Submittals or of Work that the FHWA may desire to conduct.

5.4.3 Obligation to Uncover Finished Work

5.4.3.1 DB Contractor shall inform TxDOT in writing of any part of the Work that is about to be covered and offer a full and adequate opportunity to TxDOT to examine by inspection, testing, or other means such part of the Work before it is covered. At all times before Final Acceptance of the Project, DB Contractor shall permit examination by TxDOT, including by removing or uncovering any part of the finished Work as directed by TxDOT. After examination by TxDOT and any other Persons designated by TxDOT, DB Contractor shall restore the Work to the standard required by the Contract Documents.

5.4.3.2 If any Work examined by TxDOT is found not to be in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring all Work at TxDOT's direction and recovery of any delay to any Critical Path occasioned thereby shall be at DB Contractor's cost and DB Contractor shall not be entitled to any adjustment to the Price or any Completion Deadline or any other relief. Furthermore, if DB Contractor performs any Work or uses any materials without adequate notice to and opportunity for prior inspection by TxDOT (if applicable) or without inspection in accordance with the Contract Documents and the Project Management Plan, TxDOT may direct the Work to be uncovered, removed or restored at DB Contractor's cost and without an adjustment to the Price or any Completion Deadline or any other relief, even if TxDOT determines that all of the Work is in conformance with the requirements of the Contract Documents and the Project Management Plan.

5.4.3.3 Except with respect to Work done or materials used as described in the foregoing sentence, if TxDOT determines that all Work examined by TxDOT under this Section 5.4.3 is in conformance with the requirements of the Contract Documents and the Project Management Plan, then any delay in any Critical Path from uncovering, removing and restoring Work at

TxDOT's direction shall be considered a TxDOT-Caused Delay, and DB Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

5.4.4 Meetings

DB Contractor shall conduct regular progress meetings with TxDOT at least once a month during the course of the Work. In addition, TxDOT and DB Contractor, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Work or Project. DB Contractor shall schedule all meetings with TxDOT at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide TxDOT with written notice and a meeting agenda at least three Business Days in advance of each meeting.

5.5 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals

5.5.1 Oversight and Acceptance

The oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances and approvals conducted by TxDOT and other Persons do not constitute acceptance of Nonconforming Work (except in limited circumstances as expressly provided in Section 5.6.2) or waiver of any warranty or legal or equitable right with respect thereto. TxDOT may request remedies for Nonconforming Work or identify additional Work that must be done to bring the Work into compliance with the requirements of the Contract Documents at any time prior to Final Acceptance of the Project, whether or not previous oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances or approvals were conducted or waived by TxDOT or any such Persons.

5.5.2 No Estoppel

DB Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. TxDOT shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Final Acceptance of the Project, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by DB Contractor, or from showing that the Work or materials do not conform in fact to the requirements of the Contract Documents.

Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, TxDOT shall not be precluded or estopped from recovering from DB Contractor and its Guarantors or Sureties such damages as TxDOT may sustain by reason of DB Contractor's failure to comply or to have complied with the terms of the Contract Documents.

5.6 Nonconforming Work

5.6.1 Rejection, Removal and Replacement of Nonconforming Work

Nonconforming Work rejected by TxDOT shall be removed and replaced so as to conform to the requirements of the Contract Documents, at DB Contractor's cost and without any adjustment to the Price or any Completion Deadline or any other relief, and DB Contractor shall promptly take all action necessary to prevent similar Nonconforming Work from occurring in the future. The fact that TxDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If DB Contractor fails to correct any Nonconforming Work within 10 days of receipt of notice from TxDOT requesting correction, or if such Nonconforming Work cannot be corrected within 10 days, and DB Contractor fails to (a) provide to TxDOT a schedule acceptable to TxDOT for correcting any such Nonconforming Work within such 10-day period, (b) commence such corrective Work within such 10-day period, and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then TxDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due DB Contractor or obtain reimbursement from DB Contractor for such cost.

5.6.2 Agreement to Accept Nonconforming Work

If TxDOT agrees to accept Nonconforming Work without requiring it to be fully corrected, TxDOT shall be entitled to reimbursement of a portion of the Price in an amount equal to the greatest of (a) the amount deemed appropriate by TxDOT to provide compensation for known impacts to all affected Persons (including TxDOT) such as future maintenance and other costs relating to the Nonconforming Work, (b) the amount of the Price allocated to such Work, or (c) 100% of DB Contractor's cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents. Such reimbursement shall be payable to TxDOT within 10 days after DB Contractor's receipt of an invoice therefor. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Agreement. DB Contractor acknowledges and agrees that, subject to DB

Contractor's right to correct Nonconforming Work in accordance with Section 5.6.1, including the timelines therein, TxDOT shall have discretion regarding acceptance or rejection of Nonconforming Work and shall have discretion with regard to the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to TxDOT under this Section 5.6.2 shall be a condition precedent to the acceptance of the applicable Nonconforming Work.

SECTION 6. ACCESS TO SITE; UTILITY ADJUSTMENTS; ENVIRONMENTAL COMPLIANCE

6.1 Acquisition of Project ROW

6.1.1 All Project ROW, including Additional Properties but excluding temporary interests in property for Project Specific Locations, shall be acquired in the name of the State. DB Contractor shall undertake and complete the acquisition of all Remaining Project ROW, including Additional Properties, in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Management Plan and all applicable Laws relating to such acquisition, including the Uniform Act. DB Contractor shall also be responsible for submitting the completed files in accordance with the closeout procedures as defined by TxDOT in Section 7.2.11 of the Technical Provisions.

6.1.2 DB Contractor may commence the following ROW acquisition services upon issuance by TxDOT of NTP1: developing subcontracts, obtaining title commitments, appraisal research and coordination with TxDOT to enter onto non-TxDOT properties to conduct survey and Environmental Site Assessments, subject to limitations and conditions determined by TxDOT. DB Contractor may also commence negotiating Utility Agreements with the Utility Owners; provided, however, DB Contractor shall not execute any Project Utility Adjustment Agreements until issuance of NTP2.

6.1.3 TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages and Condemnation Packages for Remaining Project ROW, (b) except as provided below, undertake eminent domain proceedings, if necessary, for Remaining Project ROW in accordance with the procedures and time frames established in Section 7 of the Technical Provisions and the approved Right of Way Acquisition Management Plan, and (c) provide review and approval for the following Submittals: payment Submittals, relocation Submittals, administrative settlement Submittals and closing Submittals for Remaining Project ROW in accordance with the procedures and time frames established in the Technical Provisions and the approved ROW Acquisition Management Plan. TxDOT shall also provide review and approval for final closeout procedures established in Section 7.2.12 of the Technical Provisions.

6.1.4 Except as otherwise agreed to by TxDOT in its discretion, for temporary Project Specific Locations, (a) TxDOT shall not be obligated to exercise its power of eminent domain in connection with DB Contractor's acquisition of any such temporary right or interest, (b) TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests, and (c) DB Contractor shall have no obligation to

submit Acquisition Packages to TxDOT for, or obtain TxDOT's approval of DB Contractor's acquisition of, any such temporary right or interest. All costs and expenses for the acquisition of any temporary right or interest in real property, including Project Specific Locations, that DB Contractor determines necessary or desirable for its convenience in constructing the Project, such as for work space, contractor laydown areas, materials storage areas or temporary Utility Adjustments, or for any permanent interest in real property that DB Contractor may wish to acquire for its convenience that will not be part of the Project ROW, shall be DB Contractor's sole responsibility, to be undertaken at DB Contractor's sole cost and expense. TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such rights or interests or the condition of such rights or interests, and shall not be obligated to use its powers of eminent domain in connection therewith. DB Contractor shall comply with all applicable Governmental Approvals and Laws in acquiring and maintaining or disposing of any such property rights or interests. DB Contractor shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that TxDOT shall have no liability with respect thereto.

6.2 Costs of Acquisitions

6.2.1 TxDOT shall be responsible for the purchase price of real property needed for ROW within the Schematic ROW, along with relocation assistance payments and title insurance for all such property. Subject to the immediately preceding sentence and Section 6.2.6, DB Contractor shall be responsible for the performance and the costs of all right of way engineering, surveying, appraisals, administration, acquisition, relocation assistance, environmental permitting (other than certain mitigation requirements expressly excluded under Section 6.10.1.2) and related services for all such parcels that are Remaining Project ROW (excluding the Additional Properties), including all costs and expenses of negotiation and, if necessary, support services for condemnation proceedings described in Section 7 of the Technical Provisions; provided, however, that DB Contractor's responsibility for such support services shall terminate upon Final Acceptance of the Project. If TxDOT incurs and pays any such costs and expenses on DB Contractor's behalf, DB Contractor shall reimburse TxDOT within 10 days of TxDOT's submittal to DB Contractor of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Agreement. Notwithstanding the foregoing, TxDOT shall be responsible for the legal costs for the Office of the Attorney General or fees for private counsel retained as directed by the Office of the Attorney General in connection with any condemnation actions, except for such legal fees and costs that arise out of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract

or Governmental Approval of a DB Contractor-Related Entity in the performance of its obligations under the Contract Documents.

6.2.2 TxDOT shall (a) pay the purchase price and any relocation assistance and title insurance premiums for any Additional Properties outside the Schematic ROW that must be acquired due to a TxDOT-Directed Change or a Necessary Basic Configuration Change or a Force Majeure Event, subject to TxDOT's reasonable determination that the property is necessary and (b) for Additional Properties that must be acquired due to a TxDOT-Directed Change or a Force Majeure Event, any other costs and expenses incurred by DB Contractor to acquire such real property, subject to the limitations in Section 13. DB Contractor shall perform all right of way engineering, surveying, appraisals, administration, acquisition, relocation assistance, archaeological surveys, environmental and other permitting and related services for such property, including any services related to reevaluation or modification to any TxDOT-Provided Approval, if necessary. Except as required as a direct result of a TxDOT-Directed Change, Force Majeure Event or a Necessary Basic Configuration Change, property outside of the Schematic ROW that is acquired for drainage easements hereunder shall be treated as DB Contractor-Designated ROW.

6.2.3 DB Contractor shall be responsible for and directly pay all costs and expenses in connection with acquiring all DB Contractor-Designated ROW, including (a) the cost of acquisition services and document preparation; (b) the cost of condemnation proceedings required by the Office of the Attorney General, including private attorneys' fees and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, other than the Attorney General's direct fees; (c) the purchase prices, court awards or judgments, and Special Commissioner's awards for all DB Contractor-Designated ROW (to be paid by DB Contractor at the time of closing, Special Commissioner's award or final judgment, as applicable); (d) the cost of permitting; (e) closing costs associated with parcel purchases including title insurance, in accordance with the Uniform Act and TxDOT policies; (f) property outside of the Schematic ROW that is acquired for drainage easements; (g) relocation assistance payments and costs, in accordance with the Uniform Act; and (h) the cost for separate property surveys in addition to the Schematic ROW surveys in accordance with Section 7.3.1 of the Technical Provisions. If a jury trial or final judgment is expected to occur after Final Acceptance of the Project, then a payment by DB Contractor to TxDOT for the amount of the acquisition cost exposure, to be determined by TxDOT, shall be made prior to Final Acceptance of the Project. If TxDOT incurs or pays any such costs and expenses on DB Contractor's behalf, DB Contractor shall reimburse TxDOT within 10 days of TxDOT's submittal to DB Contractor of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT

may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Agreement.

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

6.2.5 If any DB Contractor-Related Entity holds a real property interest, including a fee, easement or option to purchase, in a parcel located in the Schematic ROW, a mitigation site or a parcel on which a drainage easement shall be located, TxDOT, in its discretion, may elect to perform some or all of the real property acquisition services required under the Contract Documents that are associated with such parcel. In such event, TxDOT shall be entitled to deduct TxDOT's Recoverable Costs incurred in performing such services. Any risk of delay associated with the acquisition of the real property encumbered by the DB Contractor-Related Entity's property interest, including delay caused by condemnation proceedings, shall be borne by DB Contractor and shall not be eligible for time extension. The price paid by the DB Contractor-Related Entity for the real property interest acquired in such parcel may, in TxDOT's discretion, be disregarded as a comparable price for purposes of appraisal or condemnation of such parcel.

6.2.6 If a parcel acquired by TxDOT includes (a) property for which TxDOT is responsible for paying the price of acquisition (i.e., Schematic ROW) and (b) property for which DB Contractor is responsible for paying the price of acquisition (i.e., DB Contractor-Designated ROW), DB Contractor shall reimburse TxDOT a pro rata share of the parcel's total purchase price and related fees and costs based on the physical area of the property referenced in clause (b) of this Section 6.2.6 as a proportion of the combined physical area of the properties referenced in clauses (a) and (b) of this Section 6.2.6 that is acquired by TxDOT.

6.3 Limiting Acquisition of Certain Additional Properties

6.3.1 DB Contractor's recommendation regarding the acquisition of certain Additional Properties shall be subject to the following:

6.3.1.1 DB Contractor shall use its best efforts to restrict and limit additional costs to the Project associated with acquisitions related to TxDOT-Directed Changes, Force Majeure Events and Necessary Basic Configuration Changes. To the extent reasonably possible, consideration shall be

given to using retaining walls or making other engineering adjustments as an alternative to such acquisition. If it would be possible to use a retaining wall or other engineering adjustment to accommodate a TxDOT-Directed Change, Force Majeure Event or Necessary Basic Configuration Change, as an alternative to such acquisition, DB Contractor shall support its recommendation to acquire such Additional Properties in lieu of constructing a retaining wall or otherwise modifying the TxDOT Schematic Design with an analysis demonstrating cost or time savings or other justification.

6.3.1.2 DB Contractor shall support any requests for Change Orders for acquisitions related to DB Contractor-Designated ROW with such information as may be reasonably required by TxDOT.

6.3.1.3 In all cases, DB Contractor shall exercise particular care to avoid acquisition of land owned by a public entity and used for a use inconsistent with highway use.

6.4 Representations by DB Contractor

6.4.1 DB Contractor's designated Right of Way Acquisition Manager ("ROW Acquisition Manager") shall be entitled to undertake the right of way acquisition services described in Section 7 of the Technical Provisions on behalf of TxDOT as its agent for such limited purpose, subject to the conditions and limitations of Section 6.2.6 and this Section 6.4.

6.4.2 In performing such activities, the ROW Acquisition Manager shall at all times follow the standard of care and conduct and be subject to all Laws applicable to a licensed real estate broker licensed in the State, and shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all communications and interactions with the owners or occupants of the Project ROW or any other real property in which DB Contractor seeks to obtain any right or interest.

6.4.2.1 Except as provided in Section 6.4.2.2, any person or entity identified by DB Contractor to represent the State and who is to contact owners of real property interests, to make offers to or negotiate the purchase of such real property interests, or otherwise to perform services as agent for the State in the acquisition of real property interests, shall be licensed as a real estate broker by the Texas Real Estate Commission ("TREC") prior to and during all times such person or entity represents the State. The person or entity so identified by DB Contractor shall be the "Broker." Prior to any contact by the Broker with the owner of any real property interest, DB Contractor shall submit to TxDOT a copy of the current,

active license of each person or entity that will perform these tasks, in accordance with Section 7 of the Technical Provisions.

6.4.2.2 Other persons or entities may carry out the obligations of the Broker provided that such person or entity meets one of the following requirements:

(a) **Broker.** If the person is licensed by TREC as a real estate broker, such person shall be either employed by the Broker, or have a written agreement with the Broker that sets out the terms and obligations of such person to represent the State in the performance of services as agent. Prior to any contact with the owner of any real property interest, the Broker shall deliver to TxDOT a copy of the person's real estate broker's license and, in the event of an agreement, a copy of the agreement between the Broker and the person licensed as a real estate broker.

(b) **Entity.** If an entity is licensed by the TREC as a real estate broker, such entity shall have a written agreement with the Broker that sets out the terms and obligations of such entity to represent the State in the performance of services as agent. Prior to any contact with the owner of any real property interest, the Broker shall deliver to TxDOT a copy of the entity's real estate broker's license and a copy of the agreement between the Broker and the entity licensed as a real estate broker.

(c) **Salesperson.** If a person is licensed by TREC as a real estate salesperson, such person shall be either sponsored and employed by the Broker, or be employed by and sponsored by a person or entity licensed as a broker by TREC, which broker has a written agreement with the Broker that sets out the terms and obligations of the broker to represent the State in the performance of services as an agent. Prior to any contact with the owner of any real property interest, the Broker shall deliver to TxDOT a copy of the person's real estate salesperson's license.

6.4.3 DB Contractor shall not be entitled to a Change Order or Claim as a result of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by the ROW Acquisition Manager in connection with the ROW Acquisition Manager's activities in carrying out the limited agency provided herein.

6.5 Negotiations and Condemnation Proceedings Relative to the Acquisition of Project ROW

6.5.1 Negotiations for any Remaining Project ROW shall be undertaken as set forth in the Contract Documents, including Section 7.4.1 of the

Technical Provisions. DB Contractor shall obtain TxDOT's written approval of any offer to be extended to an owner of any interest in Remaining Project ROW prior to making such offer, in accordance with Section 7.3.6 of the Technical Provisions. DB Contractor shall notify TxDOT in writing, for its concurrence, of the failure of negotiations with respect to the acquisition of any parcel included in the Remaining Project ROW and shall submit to TxDOT for approval a Condemnation Package for the parcel as described in Section 7.4.4 of the Technical Provisions. TxDOT shall have 10 Business Days either to (a) approve the Condemnation Package or (b) provide its comments or request for additional information to DB Contractor if TxDOT determines that the Condemnation Package is incomplete or otherwise deficient. DB Contractor shall incorporate any suggested changes and provide any additional information requested by TxDOT and shall resubmit the Condemnation Package to TxDOT for review and approval. TxDOT shall have 10 Business Days to approve or provide comments to DB Contractor on any resubmittals.

6.5.2 Condemnation proceedings for any Remaining Project ROW will be brought by TxDOT within a reasonable time following approval by TxDOT of a complete Condemnation Package for the parcel as described in Section 7.4.4 of the Technical Provisions. TxDOT will deliver the petition for the parcel to DB Contractor within 105 days from the date of approval of the Condemnation Package. TxDOT will provide the payment for the parcel within 45 days from the date the Special Commissioners' award is filed with the court. At no additional cost to TxDOT, DB Contractor shall cooperate in all respects with TxDOT and shall cause all expert witnesses, appraisers, surveyors, land planners and other consultants utilized by DB Contractor in connection with the acquisition of the Remaining Project ROW subject to condemnation to be available to and assist TxDOT in connection with the condemnation proceedings, including discovery, depositions, prehearing preparation, Special Commissioner's hearing, jury trial, or other proceedings. Counsel engaged for settlement and condemnation proceedings shall be from the Office of the Attorney General representing TxDOT.

6.5.3 Except as provided in Section 6.2.5, DB Contractor shall be entitled to a Change Order in accordance with Section 13.8.5 for delays to the Critical Path due to (a) failure of TxDOT to make available (i) the portion of the Remaining Project ROW within the Schematic ROW or (ii) any Additional Properties that must be acquired due to a TxDOT-Directed Change, Force Majeure Event, or a Necessary Basic Configuration Change, in each case as described in a condemnation packet within 365 days after approval of the Condemnation Package, and (b) failure of TxDOT to make available the portion of the Schematic ROW that is not the Remaining Project ROW within 365 days after NTP1, in each case excluding any delay caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental

Approval by any DB Contractor-Related Entity in performing the services required under the Contract Documents; provided, however, that the risk of delay following the expiration of any such 365-day period, on an individual parcel basis, shall be borne equally by each Party for the first 100 days thereafter (i.e., for each parcel, DB Contractor shall be entitled to one day of time extension for every two days of delay). Following the expiration of the first 100 days after the initial 365-day period, DB Contractor shall be entitled to one day of time extension for each day of eligible delay. The term "make available," as used herein, shall mean to make available for (a) relocation of occupants and personal property, for occupied parcels, (b) demolition, for unoccupied, improved parcels, or (c) construction, for unoccupied, unimproved parcels. DB Contractor through due diligence shall initiate, cooperate and be responsible for all costs and all efforts necessary for the processing of the administrative portion of the condemnation action, up to and including the deposit of the award of Special Commissioners.

6.6 Physical Possession of Project ROW; Transfer of Title to Improvements

TxDOT shall notify DB Contractor of the availability of Project ROW within 10 Business Days after TxDOT has received access to such Project ROW. DB Contractor shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Project ROW. Upon obtaining knowledge of any anticipated delay in the dates for acquisition of any Project ROW, the Party obtaining knowledge shall promptly notify the other party in writing. In such event, DB Contractor shall immediately determine whether the delay impacts the Critical Path and, if so, to what extent it might be possible to avoid such delay through resequencing, reallocation or other alternative construction methods or otherwise. DB Contractor shall promptly meet with TxDOT to determine the best course of action and prepare a written report setting forth its recommendations, which shall be subject to the written approval of TxDOT. TxDOT may, in its discretion, transfer, without representation or warranty, TxDOT's right, title and interest in and to any improvements within the acquired Project ROW to DB Contractor for purposes of facilitating demolition of such improvements and construction of the Project as soon as feasible after title is acquired by TxDOT. DB Contractor shall accept such transfer of title and shall assume all responsibility associated with such improvements upon transfer to DB Contractor. Any value attributed to the transferred saleable improvements has been reflected in the Price, as set forth in Section 7.2.11 of the Technical Provisions.

6.7 Access to Project ROW

To the extent that DB Contractor has not been provided with access to portions of the Project ROW on or prior to the date set forth on the Project Schedule,

DB Contractor shall work around such Project ROW with the goals of minimizing delay to the completion of the Project. Except for delays caused by an event described in Section 6.5.3, DB Contractor shall not be entitled to any increase in the Price or time extension for delays caused by the failure or inability of TxDOT to provide Project ROW. Where DB Contractor makes a written request for access or rights of entry for any Project ROW for which access has not yet been acquired, DB Contractor may, with TxDOT's prior written consent, which may be withheld or withdrawn at any time, in TxDOT's discretion, and subject to the provisions of Section 6.6 above and Sections 7.4 and 7.5 of the Technical Provisions, negotiate with property owners or occupants for early access or temporary use of land, provided that any such negotiations shall comply in all respects with applicable Law, including the Uniform Act. DB Contractor's negotiations with property owners or occupants for early rights-of-entry shall occur only under such terms and conditions as are stipulated by TxDOT. TxDOT shall not be bound by the terms and conditions agreed upon by DB Contractor and any property owner or occupant until such time as TxDOT has expressly so indicated in writing (and then only to the extent expressly set forth therein).

6.8 Utility Adjustments

DB Contractor is responsible for causing, in accordance with the Project Schedule, all Utility Adjustment Work necessary to accommodate the design and construction of the Project. All Utility Adjustment Work performed by DB Contractor shall comply with the Contract Documents. DB Contractor shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards applicable to the Professional Services and Construction Work and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Section 13, DB Contractor shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact or be impacted by the Project (whether located within or outside the Project ROW) are compatible with the Project. DB Contractor agrees that (a) the Price (as it may be modified hereunder) covers all of the Utility Adjustment Work to be furnished, performed or paid for by DB Contractor, (b) it is feasible to obtain and perform all necessary Utility Adjustments within the time deadlines of the Contract Documents (as they may be modified pursuant to Section 13), and (c) the Price includes contingencies deemed adequate by DB Contractor to account for the potential risks of additional costs and delays relating to Utility Adjustments, except to the extent that an adjustment to the Price is permitted under this Section 6.8 and in accordance with Section 13.

The Utility Adjustment Work for City of Dallas Utilities is included in the Work (including all requirements to be included in the City of Dallas Utility Agreement) and the Price includes all costs associated with the City of Dallas Reimbursable Utility Adjustments and DB Contractor's Utility coordination and permitting costs associated with all City of Dallas Utilities, but prior to entering into the DWU Change Order as described below, the Price excludes all other costs associated with the City of Dallas Non-Reimbursable Utility Adjustments.

DB Contractor shall not be required to enter into a PUAA with the City of Dallas. DB Contractor and TxDOT will negotiate in good faith with City of Dallas the City of Dallas Utility Agreement setting the terms and price of the Utility Adjustment Work for the City of Dallas Utilities, based on the draft agreement included in the RID. TxDOT and DB Contractor intend to enter into a Change Order (the "DWU Change Order") increasing the Price to account for the costs of the City of Dallas Non-Reimbursable Utility Adjustments (other than DB Contractor's costs associated with Utility coordination costs and permitting) upon finalization of the City of Dallas Utility Agreement. DB Contractor shall segregate Draw Requests for such Change Order Work in accordance with Section 12.2.1. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor shall comply with the requirements for all Utility Adjustment Work for City of Dallas Utilities in accordance with the requirements set forth in the City of Dallas Utility Agreement, without any right to any additional increase in the Price beyond the costs of the City of Dallas Non-Reimbursable Utility Adjustments under the DWU Change Order as decribed above. Subject to the following paragraph of this Section 6.8, DB Contractor shall not be entitled to a time extension pursuant to the DWU Change Order negotiated in accordance with this Section 6.8 or for any additional requirements under the City of Dallas Utility Agreement. If the City of Dallas elects not to use DB Contractor to perform the City of Dallas Reimbursable Utility Adjustments, TxDOT and DB Contractor will enter into a reductive Change Order removing these Utility Adjustments from the Work and decreasing the Price by $[_____] [***insert one hundred percent (100%) of the Price allocable to City of Dallas Reimbursable Utility Adjustments (equal to the sum of Lines 6 and 22 of Form M-2.1)***].

The term "City of Dallas Utility Delay" shall mean a delay to a Critical Path that is directly attributable to the City of Dallas's failure to cooperate in good faith with TxDOT and DB Contractor in performing Utility Adjustment Work within the time period reasonably scheduled by DB Contractor for performance of such work, where the City of Dallas Utility Agreement has not yet been executed. Subject to the restrictions and limitations set forth in Section 13 and Section 6.8.5.3, DB Contractor shall bear 100% of the risk of such delay prior to and during the 90-day period commencing on the later of (i) the first day of any such delay and (ii) the day

on which TxDOT has determined that the City of Dallas failed to cooperate in good faith, and, in either case, DB Contractor has complied with all other requirements for a Change Order under this Agreement, including Section 13, and the risk of delay after such 90-day period shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of City of Dallas Utility Delay occurring after expiration of the 90-day period). If a City of Dallas Utility Delay is concurrent with another delay that is DB Contractor's responsibility hereunder, DB Contractor shall not be entitled to a time extension on account of such City of Dallas Utility Delay. If a City of Dallas Utility Delay is concurrent with another City of Dallas Utility Delay or with a Utility Owner Delay by another Utility Owner, only one of the delays shall be counted. If a City of Dallas Utility Delay is concurrent with any other delay for which DB Contractor is entitled to a time extension under Section 13, the delay shall be deemed a City of Dallas Utility Delay and the provisions of this Section 6.8 shall apply.

6.8.1 New Utilities and Unidentified Utilities

DB Contractor's entitlement to Change Orders for additional compensation or extension of time on account of New Utilities and omissions or inaccuracies in the Utility Strip Map shall be limited as set forth in this Section 6.8.1. DB Contractor shall use its best efforts to minimize costs for which DB Contractor is entitled to compensation pursuant to this Section 6.8.1, and to minimize any delay for which DB Contractor is entitled to an extension in the Completion Deadline pursuant to this Section 6.8.1, subject to DB Contractor's obligation to comply with all applicable requirements of the Contract Documents, including the Utility Accommodation Rules (UAR).

6.8.1.1 New Utilities. DB Contractor shall be entitled to a Change Order (a) increasing the Price to compensate DB Contractor for any increase in DB Contractor's costs incurred in performing the Utility Adjustment Work that is directly attributable to a New Utility (including reimbursements owed to Utility Owners but excluding delay and disruption damages) and (b) extending the applicable Completion Deadline as a result of any delay in the Critical Path directly attributable to performing the Utility Adjustment Work directly attributable to a New Utility. Subject to the foregoing, the amount of such Change Order shall be determined in accordance with Section 13.

6.8.1.2 Unidentified Utilities.

(a) DB Contractor shall be entitled to an increase in the Price in connection with certain increases in the cost of the Work due to Unidentified Utilities within the Schematic ROW. Such increase shall be determined on a facility-by-facility basis, and shall apply for a particular

Unidentified Utility facility only if the Basic Costs for the Utility Adjustment for that facility are greater than $50,000. The amount of the Price increase in any Change Order issued under this Section 6.8.1.2 for each such Unidentified Utility facility shall be equal to the Basic Costs for that facility, less $50,000 (which amount shall be DB Contractor's sole responsibility). Notwithstanding the foregoing, an aggregate cap of $1,000,000 shall apply to the total amount of such $50,000 "deductibles" that are DB Contractor's responsibility. In determining whether the aggregate cap has been reached, Utility Adjustments of Unidentified Utilities with Basic Costs of less than $50,000 shall not be counted towards the aggregate $1,000,000 cap and such amounts shall be DB Contractor's sole responsibility. If the $1,000,000 aggregate cap is reached, the amount of the Price increase in any Change Order thereafter issued under this Section 6.8.1.2 for a Utility Adjustment of any Unidentified Utility for which the Basic Costs are in excess of $50,000 shall be equal to the Basic Costs for that facility. In no event shall DB Contractor be entitled to a Change Order for increased costs due to Utility Adjustments for Unidentified Utilities for which the Basic Costs are $50,000 or less, regardless of whether the aggregate cap is reached. DB Contractor's rights to recover additional costs as specified in this Section 6.8.1.2(a) shall not include delay and disruption damages.

(b) All Basic Costs calculations submitted by DB Contractor shall be supported by detailed cost proposals and supporting documentation (for all estimates used in such calculations) meeting the requirements of Section 13.6. TxDOT shall have the right to require that any or all of the information submitted by DB Contractor in the EPDs be used in evaluating the cost proposals.

6.8.1.3 No Time Extension. Except as otherwise provided in Section 6.8.1 with regard to New Utilities, no time extension will be allowed on account of (a) any delays attributable to any inaccuracy in the Utility Strip Map or (b) the performance of Utility Adjustments for Unidentified Utilities.

6.8.2 Utility Enhancements

DB Contractor shall be responsible for addressing any requests by Utility Owners that DB Contractor design or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancements").

6.8.2.1 If a Utility Owner requests that DB Contractor design or construct a Betterment, then subject to Section 6.8.3.4, DB Contractor (or TxDOT and DB Contractor, if the Utility Owner is the City of Dallas) shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense,

with payments to be made directly by the Utility Owner to DB Contractor (or by the City of Dallas to TxDOT for payment to DB Contractor if the Utility Owner is the City of Dallas). Any such agreement shall be set forth in the applicable Utility Agreement. Any such Betterment shall be deemed added to the scope of the Work only upon execution by the Utility Owner and DB Contractor and approval by TxDOT (or execution by the City of Dallas and TxDOT, if the Utility Owner is the City of Dallas) of a Utility Agreement identifying and providing for performance of such Betterment. Any change in the scope of the Work pursuant to this Section 6.8.2.1 shall not be treated as a TxDOT-Directed Change or extend the Completion Deadlines.

6.8.2.2 The Price shall not be increased on account of any Betterment added to the Work, except where the Utility Owner is the City of Dallas, in which case the Price will be increased as part of the DWU Change Order in accordance with requirements for any Betterments set forth in the City of Dallas Utility Agreement. For all other Betterments, DB Contractor shall have the right to collect payment for such work directly from the Utility Owner, subject to the provisions of the applicable Utility Agreement. The amount of compensation payable by the Utility Owner to DB Contractor or TxDOT for a Betterment shall be determined pursuant to the process set forth in the applicable Utility Agreement. DB Contractor shall submit to TxDOT a copy of each invoice delivered to a Utility Owner pursuant to this Section 6.8.2.2, concurrently with its delivery to the Utility Owner.

6.8.2.3 If a Utility Owner (other than the City of Dallas) requests that DB Contractor design or construct a Utility Owner Project, then subject to Section 6.8.3.4, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to DB Contractor. Any such agreement shall be a separate contract between DB Contractor and the Utility Owner; and any such Utility Owner Project shall be performed outside of this Agreement and the Work, without any impact on the Price and the Completion Deadlines and shall be subject to Section 6.8.8. The compensation payable by the Utility Owner to DB Contractor for a Utility Owner Project shall be determined in a manner acceptable to both DB Contractor and the Utility Owner. Notwithstanding the foregoing, for any Utility Owner Project where the City of Dallas is the Utility Owner, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the City of Dallas providing for DB Contractor to perform such work at the City of Dallas' expense, which agreement upon approval by TxDOT may be incorporated as part of the initial City of Dallas Utility Agreement or an amendment thereto, with payments to be made by the City of Dallas to TxDOT and from TxDOT to DB Contractor

pursuant to an increase in the Price solely for the costs of such Utility Owner Project included in the DWU Change Order if such Utility Owner Project is included in the intial City of Dallas Utility Agreement or in a subsequent negotiated Change Order in accordance with Section 13 if such Utility Owner Project is included in a subsequent amendment to the City of Dallas Utility Agreement. DB Contractor shall not be entitled to a time extension for any Utility Owner Project negotiated in accordance with this Section 6.8.2.3.

6.8.2.4 DB Contractor is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that DB Contractor design or construct Utility Enhancements. Any Betterment performed as part of a Utility Adjustment, whether by DB Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Under no circumstances shall DB Contractor proceed with any Utility Enhancement that is incompatible with the Project or that cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the Completion Deadlines. Under no circumstances will DB Contractor be entitled to any Price increase or time extension hereunder as the result of any Utility Enhancement, whether performed by DB Contractor or by the Utility Owner. DB Contractor may, but is not obligated to, design and construct Utility Enhancements. DB Contractor shall promptly notify TxDOT of any requests by Utility Owners that DB Contractor considers to be Betterments, and shall keep TxDOT informed as to the status of negotiations with Utility Owners concerning such requests. DB Contractor shall provide TxDOT with such information, analyses, and certificates as may be requested by TxDOT in order to determine compliance with this Section 6.8.2.

6.8.3 Utility Agreements

6.8.3.1 As described in the Technical Provisions, DB Contractor is responsible for preparing and entering into Utility Agreements (other than the City of Dallas Utility Agreement) with the Utility Owners, and TxDOT agrees to cooperate as reasonably requested by DB Contractor in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. TxDOT is not providing any assurances to DB Contractor that the Utility Owners will accept, without modification, the standard Utility Agreement forms specified in the Technical Provisions. DB Contractor is solely responsible for the terms and conditions of all PUAAs and UAAAs into which it enters (subject to the requirements of the Contract Documents, including Section 6.1.3 of the Technical Provisions). Utility Agreements shall not be considered Contract Documents. DB Contractor shall not be entitled to any increase in the Price or to

any time extension on account of the terms of any Utility Agreement (including those related to any Betterment), except for the City of Dallas Utility Agreement as described in this Section 6.8.

6.8.3.2 TxDOT will not be a party to the Utility Agreements (other than the City of Dallas Utility Agreement); however, DB Contractor shall cause the Utility Agreements (other than the City of Dallas Utility Agreement) to designate TxDOT as an intended third-party beneficiary thereof and to permit assignment of DB Contractor's right, title and interest thereunder to TxDOT without necessity for Utility Owner consent. DB Contractor shall not enter into any agreement with a Utility Owner that purports to bind TxDOT in any way, unless TxDOT has executed such agreement as a party thereto. However, TxDOT's signature indicating approval or review of an agreement between DB Contractor and a Utility Owner, or its status as a third-party beneficiary, shall not bind TxDOT as a party to such agreement.

6.8.3.3 If a conflict occurs between the terms of a Utility Agreement and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between DB Contractor and TxDOT.

6.8.3.4 DB Contractor shall comply with and timely perform all obligations imposed on DB Contractor by any Utility Agreement.

6.8.3.5 Each Utility Adjustment (whether performed by DB Contractor or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreements. DB Contractor is solely responsible for negotiating any terms and conditions of its Utility Agreements that might limit a Utility Owner's amendments and additions to its Adjustment Standards after the Proposal Due Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreements, and all other requirements specified in the Contract Documents.

6.8.4 Failure of Utility Owners to Cooperate

6.8.4.1 DB Contractor shall use best efforts to obtain the cooperation of each Utility Owner as necessary for the Utility Adjustment. DB Contractor shall notify TxDOT immediately if (a) DB Contractor is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a

Utility Owner on a necessary Utility Agreement within a reasonable time, (b) DB Contractor reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (c) DB Contractor becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between DB Contractor and a Utility Owner with respect to the Project, despite DB Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that TxDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. DB Contractor shall provide TxDOT with such information as TxDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to TxDOT any notice or request for assistance, DB Contractor shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

6.8.4.2 If DB Contractor requests TxDOT's assistance pursuant to Section 6.8.4.1, DB Contractor shall provide evidence reasonably satisfactory to TxDOT that (a) the Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (d) the Utility Owner is not cooperating (the foregoing items (a) through (d) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by DB Contractor to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, that TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its discretion. If TxDOT holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its discretion not to exercise those rights, then TxDOT shall assign those rights to DB Contractor upon DB Contractor's request; provided, however, that such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. DB Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to DB Contractor. Any assistance provided by TxDOT shall not relieve DB Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 6.8.4.

6.8.4.3 If TxDOT objects in writing to a request for assistance pursuant to Section 6.8.4.1, based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 6.8.4.2(a) and (b),

then DB Contractor shall take such action as is appropriate to satisfy the conditions and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 6.8.4.1 based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 6.8.4.2(c) and (d), then DB Contractor shall take such action as DB Contractor deems advisable during the next 30 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until DB Contractor succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence DB Contractor presents, that the conditions to assistance have been satisfied. DB Contractor shall have the right to submit the question of the reasonableness of TxDOT's determination through the dispute resolution process described in Section 19.

6.8.5 Delays by Utility Owners

6.8.5.1 DB Contractor shall bear 100% of the risk of Critical Path delays caused by a Utility Owner's failure to timely comply with the requirements of an executed Utility Agreement.

6.8.5.2 The term "Utility Owner Delay" shall mean a delay to a Critical Path that is directly attributable to a Utility Owner's (other than the City of Dallas) failure to cooperate with DB Contractor in performing Utility Adjustment Work within the time period reasonably scheduled by DB Contractor for performance of such work, where DB Contractor and such Utility Owner have not yet executed a Utility Agreement addressing such Utility Adjustment Work. DB Contractor shall bear 100% of the risk of each Utility Owner Delay prior to and during the 90-day period commencing on the later of (a) the first day of any such Utility Owner Delay and (b) the day on which TxDOT has received evidence required by Section 6.8.4.2 that is reasonably satisfactory to TxDOT, and, in either case, DB Contractor has complied with all other requirements for a Change Order under this Agreement, including Section 13. The risk of any Utility Owner Delay after such 90-day period shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delay occurring after expiration of the 90-day period). If a Utility Owner Delay is concurrent with another delay which is DB Contractor's responsibility hereunder, DB Contractor shall not be entitled to a time extension on account of such Utility Owner Delay. If a Utility Owner Delay is concurrent with another Utility Owner Delay by the same Utility Owner or by another Utility Owner, or

with a City of Dallas Utility Delay, only one of the delays shall be counted. If a Utility Owner Delay is concurrent with any other delay for which DB Contractor is entitled to a time extension under Section 13, the delay shall be deemed a Utility Owner Delay and the provisions of this Section 6.8.5 shall apply.

6.8.5.3 No Change Order for delay to a Critical Path shall be allowable pursuant to Section 6.8.5.2 or, with respect to City of Dallas Utility Delays, Section 6.8, unless all of the following criteria are met:

(a) the general requirements and conditions for Change Orders set forth in Section 13 have been met;

(b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that (i) DB Contractor took advantage of Float time available early in the Project Schedule for coordination activities with respect to the affected Utility and (ii) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation but has been unable to obtain such cooperation;

(c) if applicable, DB Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner;

(d) DB Contractor or the Utility Owner has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct such Utility Adjustment;

(e) no other circumstance exists that would delay the affected Utility Adjustment even if the Utility Owner were cooperative; and

(f) the delay is allowable under Section 13.5.3.

6.8.5.4 Except as set forth in Section 6.8.5.2 with respect to certain Utility Owner Delays and Section 6.8 with respect to City of Dallas Utility Owner Delays, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs which it may incur as a result of any delays caused by a Utility Owner, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 6.8.5.2 or, with respect to City of Dallas Utility Owner Delays, Section 6.8. Any action or inaction by TxDOT as described in Section 6.8.4.2 shall have no bearing on the restriction set forth in this Section 6.8.5.4.

6.8.6 Utility Adjustment Costs

6.8.6.1 Subject to Section 6.8.1, DB Contractor is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding costs attributable to Betterments and any other costs for which the Utility Owner is responsible under applicable Law. DB Contractor shall fulfill this responsibility either by performing the Utility Adjustment Work itself at its own cost (except that any assistance provided by any DB Contractor-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work, in compliance with Section 6.2.4 of the Technical Provisions), or by reimbursing the Utility Owner for its Utility Adjustment Work (however, DB Contractor has no obligation to reimburse Utility Adjustment costs for any Service Line Utility Adjustment for which the affected property owner has been compensated pursuant to Section 6.2). DB Contractor is solely responsible for collecting directly from the Utility Owner any reimbursement due to DB Contractor for Betterment costs or other costs incurred by DB Contractor for which the Utility Owner is responsible under applicable Law.

6.8.6.2 For each Utility Adjustment, the eligibility of Utility Owner costs (both indirect and direct) for reimbursement by DB Contractor, as well as the determination of any Betterment or other costs due to DB Contractor, shall be established in accordance with applicable Law and the applicable Utility Agreements, all of which shall incorporate by reference 23 CFR Part 645 Subpart A.

6.8.6.3 For each Utility Adjustment, DB Contractor shall (a) compensate the Utility Owner for the market value of each Existing Utility Property Interest relinquished pursuant to Section 6.2.4 of the Technical Provisions, to the extent TxDOT would be required to do so by applicable Law and provided that TxDOT has approved the Utility Owner's claim or (b) reimburse the Utility Owner's reasonable acquisition costs for a Replacement Utility Property Interest. The Utility Owner will determine which method of compensation is satisfactory. DB Contractor shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith (including any incurred by TxDOT on DB Contractor's behalf for eminent domain proceedings or otherwise) in accordance with Section 6.2. DB Contractor shall be responsible for all eligible costs of right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting and related services for compensating the Utility Owner or replacing each Existing Utility Property Interest, including all costs and expenses associated with negotiation and condemnation action. DB Contractor shall also carry out the duties in Section 6.2.4.2 of the Technical Provisions

6.8.6.4 If for any reason DB Contractor is unable to collect any amounts owed to DB Contractor by any Utility Owner, then (a) TxDOT shall have no liability for such amounts; (b) DB Contractor shall have no right to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owing to DB Contractor from TxDOT; and (c) DB Contractor shall have no right to stop work or to exercise any other remedies against TxDOT on account of such Utility Owner's failure to pay DB Contractor.

6.8.6.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, DB Contractor shall coordinate with TxDOT and such local Governmental Entity regarding accounting for and approval of those costs.

6.8.6.6 DB Contractor shall maintain a complete set of records for the costs of each Utility Adjustment (whether incurred by DB Contractor or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and DB Contractor costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. DB Contractor also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the Contract Documents. This Work includes the deliverables identified in the final closeout procedures of Section 6.5.3 of the Technical Provisions.

6.8.7 FHWA Utility Requirements

Unless TxDOT advises DB Contractor otherwise, the following provisions apply to Utility Adjustments.

6.8.7.1 The Project will be subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and 23 CFR Section 635.410 (Buy America) and FHWA associated policies. DB Contractor shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A and 23 CFR Section 635.410. DB Contractor acknowledges, however, that without regard to whether such compliance is required, (a) it is not anticipated that DB Contractor will be eligible for FHWA reimbursement of any Utility Adjustment outlays and (b) DB Contractor will not have any share in any reimbursement from FHWA or other federal financing or funding that TxDOT may receive on account of Utility Adjustments.

6.8.7.2 DB Contractor shall prepare and deliver to TxDOT the Alternate Procedure List in appropriate format, together with all other documentation required by FHWA or TxDOT for compliance with the FHWA Alternate Procedure.

6.8.7.3 Promptly upon determining that any Utility Owner not referenced on the Alternate Procedure List is impacted by the Project, DB Contractor shall submit to TxDOT all documentation required by FHWA or TxDOT to add these Utilities to the Alternate Procedure List.

6.8.7.4 TxDOT will forward the approved list to DB Contractor.

6.8.8 Applications for Utility Permits

6.8.8.1 It is anticipated that during the Work, Utility Owners will apply for utility permits to install Utilities that would cross or longitudinally occupy the Project ROW, or to modify, upgrade, relocate or expand existing Utilities within the Project ROW for reasons other than accommodation of the Project. The provisions of this Section 6.8.8 shall apply to all such permit applications. TxDOT shall provide DB Contractor with a copy of each such permit application received after the Effective Date, within 30 days after TxDOT's receipt of such application.

6.8.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, DB Contractor shall furnish the most recent Project design information or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities.

6.8.8.3 DB Contractor shall assist TxDOT in deciding whether to approve a permit described in Section 6.8.8.1. Within a time period that will enable TxDOT to timely respond to the application, DB Contractor shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, DB Contractor shall furnish to TxDOT Utility No Conflict Sign-Off Forms, signed by both DB Contractor's Utility Design Coordinator (UDC) and DB Contractor's Utility Manager (UM), using the standard forms included in the Technical Provisions. DB Contractor shall limit the grounds for its recommendation to the grounds on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval. However, TxDOT shall have the right to issue Utility permits in its discretion. Applications for Utility permits and associated coordination described in

this Section 6.8.8 shall not be subject to a Change Order and are not considered a New Utility or Unidentified Utility as described in Section 6.8.1.

6.8.9 Security for Utility Adjustment Costs; Insurance

6.8.9.1 Upon request from a Utility Owner entitled to reimbursement of Utility Adjustment costs, DB Contractor shall, at its sole cost, provide security for such reimbursement by way of a payment bond, letter of credit or retention account, in such amount and on such terms as are negotiated in good faith between DB Contractor and the Utility Owner (or between TxDOT, DB Contractor, and the City of Dallas, where the Utility Owner is the City of Dallas).

6.8.9.2 DB Contractor may satisfy a Utility Owner's requirement that DB Contractor provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by DB Contractor or any Subcontractor pursuant to Section 9.

6.8.10 Additional Restrictions on Change Orders for Utility Adjustments

In addition to all of the other requirements and limitations contained in this Section 6.8 and in Section 13, the entitlement of DB Contractor to any Change Order under this Section 6.8 shall be subject to the restrictions and limitations set forth in this Section 6.8.10.

6.8.10.1 DB Contractor shall provide documentation satisfactory to TxDOT showing that the required analysis was performed and an appropriate determination made regarding the need for the Utility Adjustment, and shall also bear the burden of proving that the amount of any additional costs or time incurred by DB Contractor are both necessary and reasonable.

6.8.10.2 As part of the Work, DB Contractor is responsible for causing all Utility Adjustment Work and Incidental Utility Adjustment Work to occur, for reimbursing the Utility Owners for their costs of performing or furnishing Utility Adjustment Work and Incidental Utility Adjustment Work, and, subject to Section 6.8.5.2, for scheduling all Utility Adjustment Work and Incidental Utility Adjustment Work (whether performed by DB Contractor or the affected Utility Owner) so as to meet the Completion Deadlines herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by DB Contractor, or if DB Contractor performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting time extension and no

resulting change in the Price. The foregoing shall not affect TxDOT's right to any credit that may be owing under Section 13.

6.8.10.3 DB Contractor shall not be entitled to a Change Order for any costs or delays that are attributable to (a) any errors, omissions, inaccuracies, inconsistencies or other defects in designs furnished by any Utility Owner, including any failure of such designs to comply with the requirements of Section 6.3 of the Technical Provisions or (b) any defect in construction performed by any Utility Owner or other failure of such construction to comply with the requirements of Section 6.4 of the Technical Provisions.

6.8.10.4 DB Contractor shall not be entitled to a Change Order for any costs or delays resulting from the performance of Incidental Utility Adjustment Work by DB Contractor or any Utility Owner (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 6.8.1).

6.8.10.5 Any Change Order increasing the Price pursuant to this Section 6.8 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.

6.8.10.6 DB Contractor shall not be entitled to any increase in the Price for any costs of coordinating with Utility Owners (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 6.8.1).

6.8.10.7 Any information with respect to Utilities provided in the Reference Information Documents is for DB Contractor's reference only, has not been verified, and shall not be relied upon by DB Contractor. Without limiting the generality of the foregoing, DB Contractor acknowledges that such information does not identify most of the Service Lines that may be impacted by the Project and that there may be other facilities impacted by the Project that are not identified in such information. DB Contractor shall verify all information with respect to Utilities included in the Reference Information Documents and shall perform its own investigations as provided in Sections 6.3.1 and 6.4.2 of the Technical Provisions. Accordingly, there shall be no changes in the Price and no time extensions on account of any inaccuracies in the Reference Information Documents with respect to any Utilities. Except as provided in Section 6.8.1, DB Contractor shall not be entitled to any increase in the Price or time extension as a result of any of the following:

(a) any increase in the extent or change in the character of the Utility Adjustment Work necessary to Adjust any Utility from that anticipated by DB Contractor;

(b) any difference in the cost to Adjust a Utility from that anticipated by DB Contractor;

(c) any inaccuracy in the information included in the Reference Information Documents as to the existence, location, ownership, type, or any other characteristic of any Utility;

(d) any inaccuracy in the Reference Information Documents as to whether any Utility is located within privately owned property or public right of way; or

(e) any inaccuracy in the Reference Information Documents as to the existence or nature of any rights or interest relating to the occupancy of any real property by any Utility.

6.8.10.8 Inasmuch as DB Contractor is both furnishing the design of and constructing the Project, DB Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering each such opportunity, DB Contractor shall consider the impact of design changes on Utility Adjustments to the extent practical. Accordingly, except as otherwise provided in Section 13 with respect to TxDOT-Directed Changes, the following provisions shall apply with respect to any increase or decrease in the cost of the Work and any delay associated with design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature or extent of anticipated Utility Adjustments:

(a) DB Contractor shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes.

(b) DB Contractor shall not be entitled to any increase in the Price for any such additional costs that DB Contractor incurs (including both additional costs of Utility Adjustment Work and the costs of any additional Work on other aspects of the Project undertaken in order to avoid or minimize Utility Adjustments).

(c) If TxDOT incurs any such additional costs, then DB Contractor shall reimburse TxDOT for such costs within 10 days after receipt of TxDOT's invoice therefor, or in TxDOT's discretion, TxDOT may deduct the amount

of reimbursement due from any payment due to DB Contractor under this Agreement.

(d) TxDOT shall not be entitled to a credit on account of reductions in the cost of the Work due to any such avoided or minimized Utility Adjustments.

6.8.10.9 If DB Contractor elects to make payments to Utility Owners or to undertake any other efforts which are not required by the terms of the Contract Documents, DB Contractor shall not be entitled to a Change Order in connection therewith. DB Contractor shall promptly notify TxDOT of the terms of any such arrangements.

6.8.10.10 Except as specified in this Section 6.8 or in Section 13, DB Contractor shall not be entitled to any Change Order with respect to any Utility Adjustments, including any act or omission of any Utility Owner that may result in a delay to the Project Schedule or in DB Contractor's incurring costs not included in the Price.

6.9 Hazardous Materials Management

6.9.1 Procedures and Compensation for Hazardous Materials Management

6.9.1.1 Subject to Section 6.9.1.3, DB Contractor shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents. If during the course of the Work, DB Contractor encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the Contract Documents, DB Contractor shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify Governmental Entities under applicable Law and notify such Governmental Entities as required under applicable Law and (b) take reasonable steps, including design modifications or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If during the performance of the Work TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project,

Project ROW or Work, TxDOT shall promptly notify DB Contractor in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, DB Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Wherever feasible and consistent with the Contract Documents, applicable Law and Good Industry Practice, contaminated soil and groundwater shall not be disposed off-site.

6.9.1.2 Except where DB Contractor is required to take immediate action under the Contract Documents or applicable Law, DB Contractor shall afford TxDOT the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions before any action is taken that would inhibit TxDOT's ability to ascertain the nature and extent of the contamination.

6.9.1.3 Subject to the limitations and exceptions set forth in this Section 6.9 and Section 13, DB Contractor shall be entitled to a Change Order as set forth in Section 13.8.4 with respect to additional costs and delays directly attributable to the discovery of (a) Pre-existing Hazardous Materials within the Schematic ROW, (b) Hazardous Materials other than DB Contractor Releases of Hazardous Materials on any parcels added to the Site by a TxDOT-Directed Change or required due to a Force Majeure Event or Necessary Basic Configuration Change, and (c) Hazardous Materials falling within the definition of Force Majeure Event.

6.9.2 Off-Site Disposal and Hazardous Material Generator

6.9.2.1 Off-site disposal of Hazardous Materials other than DB Contractor Releases of Hazardous Materials is subject to the following provisions:

(a) As between DB Contractor and TxDOT, TxDOT shall be considered the generator and assume generator responsibility for Hazardous Materials other than DB Contractor Releases of Hazardous Materials.

(b) TxDOT has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials other than DB Contractor Releases of Hazardous Materials will be transported. With regard to Hazardous Materials other than DB Contractor Releases of Hazardous Materials, TxDOT shall comply with the applicable standards for generators including those found at 40 CFR Part 262, including the responsibility to sign manifests for the transport of hazardous wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that TxDOT or DB Contractor may have against any Governmental Entity or other third parties, including prior owners,

lessees, licensees and occupants of any parcel of land that is or becomes part of the Project ROW.

(c) To the extent permitted by applicable Law, TxDOT shall indemnify, save, protect and defend DB Contractor from Third Party Claims and Losses arising out of or related to generator liability for Hazardous Material for which DB Contractor is not considered the generator pursuant to this Section 6.9.2, specifically excluding generator liability for actual and threatened DB Contractor Releases of Hazardous Materials.

6.9.2.2 As between DB Contractor and TxDOT, DB Contractor shall be considered the generator and assume generator responsibility only for DB Contractor Releases of Hazardous Materials. For such Hazardous Materials, the following provisions shall apply:

(a) Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to such shall not be compensable to DB Contractor or entitle DB Contractor to an extension of the Completion Deadlines.

(b) To the extent permitted by applicable Law, DB Contractor shall indemnify, save, protect and defend TxDOT from claims, causes of action and Losses arising out of or related to generator liability for such DB Contractor Releases of Hazardous Materials.

6.10 Environmental Compliance

DB Contractor shall be responsible for performance of all environmental mitigation measures and compliance with all other conditions and requirements of the Contract Documents and Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals for the Project, other than the mitigation requirements which TxDOT has expressly agreed to perform pursuant to Section 6.10.1. The Price includes compensation for DB Contractor's performance of all environmental requirements and conditions, including mitigation measures, except as otherwise described in this Section 6.10.

6.10.1 TxDOT's Responsibility for Approvals and Certain Mitigation

6.10.1.1 The following TxDOT-Provided Approval had not yet been obtained as of the Proposal Due Date – the LE NEPA Approval. All conditions and requirements of the NEPA Approvals and other Environmental Approvals for the Project shall automatically be deemed included in the scope of the Work. DB Contractor acknowledges that TxDOT makes no commitment to any

alternative being evaluated in the NEPA process, and the comparative merits of all alternatives presented in the LE NEPA documents, including the no-build alternative, will be evaluated and fairly considered. In the event the no-build alternative is selected in relation to the Local Enhancements, TxDOT will terminate the Agreement, in part, for convenience pursuant to Section 15.1.

6.10.1.2 If the LE NEPA Approval contains conditions or requirements that differ materially from the Environmental Commitments for the Categorical Exclusion for the Local Enhancements included in the RIDs, and such conditions or requirements (a) have a material adverse impact on DB Contractor's obligations hereunder and (b) were not caused by modifications to the TxDOT Schematic Design that were initiated by DB Contractor, DB Contractor may request a Change Order for a Force Majeure Event pursuant to Section 13.8.3. TxDOT will be responsible for additional mitigation requirements resulting from TxDOT-Directed Changes.

6.10.2 New Environmental Approvals To Be Obtained by DB Contractor

6.10.2.1 If it is necessary to obtain a New Environmental Approval for any reason (including any New Environmental Approval associated with drainage easements or any New Environmental Approval associated with Additional Properties) other than a Force Majeure Event or a TxDOT-Directed Change, DB Contractor shall be fully responsible, at its sole cost and expense, for obtaining the New Environmental Approval and any other environmental clearances that may be necessary, and for all requirements resulting therefrom, as well as for any litigation arising in connection therewith.

6.10.2.2 If any New Environmental Approval is necessitated by a TxDOT-Directed Change or Force Majeure Event, DB Contractor shall be responsible for obtaining such New Environmental Approval and performing any additional mitigation requirements of such New Environmental Approval only if directed to do so by a Directive Letter or a Change Order. TxDOT shall cooperate with DB Contractor and support its efforts to obtain any such New Environmental Approval. Any Change Order covering a TxDOT-Directed Change or Force Majeure Event shall include compensation to DB Contractor for additional costs incurred by DB Contractor to obtain the New Environmental Approval and to implement any changes in the Work (including performance of additional mitigation measures which are DB Contractor's responsibility) resulting from such New Environmental Approvals, as well as any time extension necessitated by the TxDOT-Directed Change or Force Majeure Event, subject to the conditions and limitations contained in Section 13.

SECTION 7. CONTRACTING AND LABOR PRACTICES

7.1 DBE Requirements

7.1.1 TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions for Non-Traditional Contracts applicable to the Project are set forth in Exhibit 6. The purpose of the DBE Special Provisions for Non-Traditional Contracts is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. DB Contractor shall comply with all applicable requirements set forth in the DBE Special Provisions for Non-Traditional Contracts and TxDOT's Disadvantaged Business Enterprise Program applicable to design-build agreement projects and adopted pursuant to 49 CFR Part 26, and the provisions in DB Contractor's approved DBE Performance Plan, set forth in Exhibit 7. The approved overall DBE participation goal for the Project is established as 12.5% of the Price.

7.1.2 DB Contractor shall exercise good faith efforts to achieve such DBE participation goal for the Project through implementation of DB Contractor's approved DBE Performance Plan. DB Contractor shall include provisions to effectuate the requirements of Section 7.1.1 in every Subcontract (including purchase orders and in every subcontract of any DB Contractor-Related Entity for the Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.1.3 DB Contractor shall not cancel or terminate any Subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Subcontracts with DBE firms set forth in the DBE Special Provisions in Exhibit 6.

7.2 Non-Discrimination; Equal Employment Opportunity

7.2.1 DB Contractor shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. DB Contractor shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by DB Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as TxDOT deems appropriate (subject to DB Contractor's rights to notice and opportunity to cure set forth in this Agreement).

7.2.2 DB Contractor shall include Section 7.2.1 in every Subcontract (including purchase orders and in every subcontract of any DB Contractor-Related Entity for the Work), and shall require that they be included in

all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.2.3 DB Contractor confirms for itself and all Subcontractors that DB Contractor and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that DB Contractor and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. DB Contractor shall comply with all applicable Laws relating to equal employment opportunity and nondiscrimination, including those set forth in Exhibit 3, and shall require its Subcontractors to comply with such provisions.

7.3 Subcontracts

7.3.1 DB Contractor shall retain or cause to be retained only Subcontractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. DB Contractor shall assure that each Subcontractor has at the time of execution of the Subcontract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws.

7.3.2 DB Contractor shall comply with the following Subcontractor requirements.

(a) DB Contractor shall provide TxDOT, as part of each monthly Progress Report, a listing of (a) all Subcontracts in effect to which DB Contractor is a party and (b) where DB Contractor is a party to a Subcontract with an Affiliate, all Subcontracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Subcontract with DB Contractor are delegated to the Subcontractor. DB Contractor also shall list in the monthly Progress Report the Subcontractors under such Subcontracts, guarantees of Subcontracts in effect and the guarantors thereunder. Subject to Section 22.1, DB Contractor shall allow TxDOT ready access to all Subcontracts and records regarding Subcontracts, including amendments and supplements to Subcontracts and guarantees thereof.

(b) DB Contractor shall provide TxDOT the information and certifications required pursuant to Article A, Section 6 of the DBE Special Provisions for Non-Traditional Contracts in Exhibit 6.

7.3.3 The retention of Subcontractors by DB Contractor will not relieve DB Contractor of its responsibility hereunder or for the quality of the Work or materials provided by it. DB Contractor shall supervise and be fully responsible

to TxDOT for the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity or by any member or employee of DB Contractor or any DB Contractor-Related Entity, as though DB Contractor directly employed all such individuals. No Subcontract entered into by DB Contractor will impose any obligation or liability upon TxDOT to any such Subcontractor or any of its employees. Nothing in this Agreement will create any contractual relationship between TxDOT and any Subcontractor of DB Contractor.

7.3.4 The following requirements shall apply to Subcontracts:

(a) DB Contractor shall, prior to soliciting any bids for performance of work or labor or rendering of services relating to the design or construction of the Project or for special fabrication and installation of a portion of the Work, submit to TxDOT for its review and approval a procedure for the conduct of the bidding and approval process applicable to Major Subcontracts. DB Contractor may use procedures set forth in the TxDOT Standard Specifications or may submit alternative procedures to TxDOT for approval. DB Contractor shall not enter into any Major Subcontracts except in accordance with the foregoing procedure; provided, however, that this Section 7.3.4(a) shall not apply to Major Subcontracts entered between DB Contractor and a Subcontractor identified in DB Contractor's Proposal.

(b) DB Contractor shall not terminate any Major Subcontract, or permit or suffer any substitution or replacement of a Major Subcontractor, except that (i) for Major Subcontracts that are not with Key Subcontractors, DB Contractor may terminate the Major Subcontract in the case of material default by a Major Subcontractor, termination of this Agreement for convenience or with TxDOT's prior written approval and (ii) for Major Subcontracts that are with Key Subcontractors, DB Contractor may terminate the Major Subcontract only in accordance with Section 7.3.5.

(c) As soon as DB Contractor identifies a potential Subcontractor for a potential Subcontract described in the first sentence of Section 7.3.2, but in no event later than five days after Subcontract execution, DB Contractor shall notify TxDOT in writing of the name, address, phone number and authorized representative of such Subcontractor.

7.3.5 The following additional requirements shall apply to Key Subcontractors:

(a) DB Contractor shall not terminate any Subcontract with a Key Subcontractor, or permit or suffer any substitution or replacement of a Key Subcontractor, unless the Key Subcontractor:

(i) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement or Subcontract with DB Contractor;

(ii) voluntarily removes itself from DB Contractor's team; or

(iii) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the Proposal stage.

(b) If DB Contractor makes changes to a Key Subcontractor in violation of Section7.3.5(a), DB Contractor shall pay to TxDOT 100% of any cost savings resulting from the change.

Each Subcontract shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents and Good Industry Practice for work of similar scope and scale and shall set forth effective procedures for claims and change orders.

(b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.

(c) Without cost to DB Contractor or TxDOT, expressly permit assignment to TxDOT or its successor, assign or designee of all DB Contractor's rights under the Subcontract, contingent only upon delivery of written request from TxDOT following termination of this Agreement, allowing TxDOT or its successor, assign or designee to assume the benefit of DB Contractor's rights with liability only for those remaining obligations of DB Contractor accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility.

(d) Expressly state that any acceptance of assignment of the Subcontract to TxDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Subcontract by DB Contractor or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the

Subcontractor's rights to suspend work or demobilize due to DB Contractor's breach).

(e) Expressly include a covenant to recognize and attorn to TxDOT upon receipt of written notice from TxDOT that it has exercised its rights under this Agreement, without necessity for consent or approval from DB Contractor or to determine whether TxDOT validly exercised its rights, and DB Contractor's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such written notice.

(f) Not be assignable by the Subcontractor to any Person other than TxDOT (or its assignee) without DB Contractor's prior written consent.

(g) Expressly include requirements that the Subcontractor will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider); (ii) permit audit thereof with respect to the Project or Work by each of DB Contractor and TxDOT pursuant to Section 22.5; and (iii) provide progress reports to DB Contractor appropriate for the type of work it is performing sufficient to enable DB Contractor to provide the reports it is required to furnish TxDOT under this Agreement.

(h) Include the right of DB Contractor to terminate the Subcontract in whole or in part upon any Termination for Convenience of this Agreement without liability of DB Contractor or TxDOT for the Subcontractor's lost profits or business opportunity.

(i) Expressly require the Subcontractor to participate in meetings between DB Contractor and TxDOT, upon TxDOT's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by DB Contractor, and provided further that nothing in this clause (i) shall limit the authority of TxDOT to give such direction or take such action that, in its discretion, is necessary to remove an immediate and present threat to the safety of life or property.

(j) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Section 19, if such participation is requested by either TxDOT or DB Contractor.

(k) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of TxDOT in the Project or the Project ROW.

(l) With respect to Major Subcontracts, expressly include a covenant, expressly stated to survive termination of the Major Subcontract, to promptly execute and deliver to TxDOT a new contract between the Major Subcontractor and TxDOT on the same terms and conditions as the Major Subcontract, in the event (i) the Major Subcontract is rejected by DB Contractor in bankruptcy or otherwise wrongfully terminated by DB Contractor and (ii) TxDOT delivers written request for such new contract following termination or expiration of this Agreement.

(m) Be consistent in all other respects with the terms and conditions of the Contract Documents to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by this Agreement.

DB Contractor shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of TxDOT.

7.3.6 DB Contractor shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

7.4 Key Personnel; Qualifications of Employees

7.4.1 The Contract Documents identify certain job categories of Key Personnel for the Project. Except as provided in Section 7.4.6, DB Contractor shall not change, or permit any change in, any Key Personnel. Any replacement Key Personnel during the Term shall be subject to prior approval by TxDOT.

7.4.2 DB Contractor shall designate an Authorized Representative who shall have onsite field and office authority to represent and act for DB Contractor. An Authorized Representative shall be present at the job site at all times while Work is actually in progress. DB Contractor shall provide phone, e-mail addresses and mobile telephone numbers for all Key Personnel. TxDOT requires the ability to contact the following Key Personnel 24 hours per day, seven days per week: (a) Project Manager, (b) Safety Manager, (c) Environmental Compliance Manager, (d) Construction Manager, and (e) Independent Quality Firm Manager.

7.4.3 DB Contractor acknowledges and agrees that the award of this Agreement by TxDOT to DB Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and DB Contractor's commitment that such individuals would be available to undertake and perform the Work. DB Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Individuals filling Key Personnel roles shall

be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In addition to the foregoing, TxDOT reserves the right to require a 100% time commitment per position from any Key Personnel if TxDOT, in its discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

7.4.4 If an individual filling one or more Key Personnel roles is not available for the Work and does not maintain active involvement in the prosecution and performance of the Work because such individual has been replaced, DB Contractor acknowledges that TxDOT, the Work, and the Project will suffer significant and substantial Losses due to the unavailability of the individual identified in the Proposal and that it is impracticable and extremely difficult to ascertain and determine the actual Losses that would accrue to TxDOT in such event. Therefore, if an individual filling a Key Personnel role is not available or not actively involved in the prosecution and performance of the Work sufficient for satisfactory performance of the Work to be performed by such Key Personnel, as determined by TxDOT in its discretion, regardless of whether such individual has been replaced by an individual approved by TxDOT, DB Contractor agrees to pay TxDOT a Key Personnel Change Fee as follows, for each position held by such individual, as deemed compensation to TxDOT for such Losses:

POSITION	**KEY PERSONNEL CHANGE FEE**
Project Manager	$150,000
Construction Manager	$200,000
Design Manager	$100,000
Lead Roadway Design Engineer	$75,000
Lead Structural Engineer	$75,000
Lead Maintenance of Traffic Engineer	$75,000
Professional Services Quality Assurance Manager	$75,000
Independent Quality Firm Manager	$150,000
Environmental Compliance Manager	$50,000
Safety Manager	$50,000
Public Information Coordinator	$40,000

7.4.5 In addition, if an individual filling one or more Key Personnel roles is not available for the Work and does not maintain active involvement in the prosecution and performance of the Work and such individual has not been replaced by an individual approved by TxDOT, DB Contractor acknowledges that TxDOT, the Work and the Project will suffer significant and substantial additional Losses due to the unavailability of an approved individual to fill a Key Personnel role and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, for each day that a Key Personnel role is not filled by an approved individual, DB Contractor agrees to pay TxDOT a Key Personnel Change Fee amount as follows, for each position not filled, as deemed compensation to TxDOT for such Losses:

POSITION	**KEY PERSONNEL CHANGE FEE PER DAY**
Project Manager	$10,000
Construction Manager	$15,000
Design Manager	$5,000
Lead Roadway Design Engineer	$5,000
Lead Structural Engineer	$5,000
Lead Maintenance of Traffic Engineer	$5,000
Professional Services Quality Assurance Manager	$5,000
Independent Quality Firm Manager	$10,000
Environmental Compliance Manager	$2,500
Safety Manager	$2,500
Public Information Coordinator	$2,500

7.4.6 DB Contractor understands and agrees that any Key Personnel Change Fees payable in accordance with this Section 7.4 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. TxDOT shall have the right to deduct any amount owed by DB Contractor to TxDOT hereunder from any amounts owed by TxDOT to DB Contractor, or to collect from any bond or Guaranty furnished under this Agreement for such Key Personnel Change Fees.

Notwithstanding the foregoing, DB Contractor shall not be liable for Key Personnel Change Fees under Sections 7.4.4 or 7.4.5 if (a) DB Contractor removes or replaces such personnel at the direction of TxDOT, except pursuant to Section 7.7.3; (b) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable DB Contractor-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding Key Personnel Change Fees); or (c) such individual is unavailable due to TxDOT's failure to issue NTP1 within 180 days of the Proposal Due Date for a reason other than the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity; provided, however, in each such case, DB Contractor shall promptly propose to TxDOT a replacement for such personnel, which individual shall be subject to TxDOT's review and written approval. If NTP1 has not been issued within 180 days after the Proposal Due Date through no act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, DB Contractor shall have 30 days after issuance of NTP1 to identify any change in Key Personnel without incurring any Key Personnel Change Fees. Following any TxDOT-approved substitution or replacement of a Key Personnel pursuant to the terms hereof, the new individual shall be considered a Key Personnel for all purposes under this Agreement, including the provisions of this Section 7.4 relative to Key Personnel Change Fees.

7.4.7 DB Contractor acknowledges and agrees that the Key Personnel positions are of critical importance to TxDOT and the Project. In addition to the approval rights of TxDOT set forth in Section 7.4.1 and the Key Personnel Change Fees set forth in Sections 7.4.4 and 7.4.5, if an individual in a Key Personnel position leaves that position for a reason other than as set forth in clauses (a) through (c) of Section 7.4.6, TxDOT shall have the right to terminate this Agreement for default under Section 16, unless DB Contractor provides TxDOT a replacement acceptable to TxDOT within 30 days after the earlier of (a) the date on which such individual has left his/her position or (b) DB Contractor or TxDOT becomes aware that such individual intends to leave his/her position.

7.4.8 Any position on DB Contractor's organizational chart or within DB Contractor's organization structure that is above that of the designated Key Personnel position for which Key Personnel Change Fees may apply will be deemed to be a Key Personnel position and, for purposes of Key Personnel Change Fees under Sections 7.4.4 and 7.4.5, shall be at the level which is immediately higher than the Key Personnel immediately below that position (e.g., an individual that reports into the deputy project director level but is higher than the other Key Personnel level would be considered a deputy project director for this purpose).

7.5 Responsibility for DB Contractor-Related Entities

DB Contractor shall supervise and be responsible for the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity, as though DB Contractor directly employed all such Persons.

7.6 Subcontracts with Affiliates

7.6.1 DB Contractor shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

(a) DB Contractor shall execute a written Subcontract with the Affiliate;

(b) The Subcontract shall comply with all applicable provisions of this Section 7, be consistent with Good Industry Practice, and be in form and substance substantially similar to Subcontracts then being used by DB Contractor or Affiliates for similar Work or services with unaffiliated Subcontractors;

(c) The Subcontract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;

(d) The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to DB Contractor than those that DB Contractor could reasonably obtain in an arm's length, competitive transaction with an unaffiliated Subcontractor. DB Contractor shall bear the burden of proving that the same are no less favorable to DB Contractor; and

(e) No Affiliate shall be engaged to perform any Work or services which any Contract Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

7.6.2 Before entering into a written Subcontract with an Affiliate or any supplement or amendment thereto, DB Contractor shall submit a true and complete copy of the proposed Subcontract to TxDOT for review and comment. TxDOT shall have 20 days after receipt to deliver its comments to DB Contractor.

7.6.3 DB Contractor shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's-length, competitive transactions of similar scope.

7.7 Labor Standards

7.7.1 In the performance of its obligations under the Contract Documents, DB Contractor at all times shall comply, and require by Subcontract that all Subcontractors and Suppliers comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.

7.7.2 All individuals performing Work shall have the skill and experience and any licenses required to perform the Work assigned to them.

7.7.3 If any individual employed by DB Contractor or any Subcontractor is not performing the Work in a proper, safe and skillful manner, then DB Contractor shall, or shall cause such Subcontractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if DB Contractor fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then TxDOT may suspend the affected portion of the Work by delivery of written notice of such suspension to DB Contractor. Such suspension shall be considered a suspension for cause and shall in no way relieve DB Contractor of any obligation contained in the Contract Documents or entitle DB Contractor to any additional compensation or time extension hereunder.

7.8 Ethical Standards

7.8.1 Within 90 days after the Effective Date, DB Contractor shall adopt written policies establishing ethical standards of conduct applicable to all DB Contractor-Related Entities, including DB Contractor's supervisory and management personnel, in dealing with (a) TxDOT and TxDOT Consultants and (b) employment relations. Such policy shall be subject to review and comment by TxDOT prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

(a) Restrictions on gifts and contributions to, and lobbying of, TxDOT, the Texas Transportation Commission, TxDOT Consultants and any of their respective commissioners, directors, officers and employees;

(b) Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(c) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting

of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any DB Contractor-Related Entity;

(d) Restrictions on directors, members, officers or supervisory or management personnel of any DB Contractor-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(e) Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of DB Contractor or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(f) Restrictions on directors, members, officers or employees of any DB Contractor-Related Entity performing any of the Work if the performance of such services would be prohibited under TxDOT's published conflict of interest rules and policies applicable to TxDOT's design-build agreement program, or would be prohibited under Section 572.054 of the Texas Government Code.

7.8.2 DB Contractor shall cause its directors, members, officers and supervisory and management personnel, and include contract provisions requiring those of all other DB Contractor-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct. DB Contractor shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

7.9 Job Training Plan and Small Business Opportunity

7.9.1 DB Contractor's Job Training Plan and Small Business Opportunity Plan applicable to the Project are set forth in Exhibit 8. The purpose of the Job Training Plan and Small Business Opportunity Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. DB Contractor shall perform and comply with all requirements set forth in the Job Training Plan and Small Business Opportunity Plan.

7.9.2 DB Contractor shall include provisions to effectuate the Job Training Plan and Small Business Opportunity Plan in every Subcontract to which

it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Subcontracts (including purchase orders and task orders for Work), except for Subcontracts with TxDOT or Governmental Entities, so that such provisions will be binding upon each Subcontractor. The foregoing shall not apply to any Subcontracts with TxDOT or Governmental Entities.

7.10 Prevailing Wages

7.10.1 DB Contractor shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 3. DB Contractor shall comply and cause its Subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to any Subcontracts with TxDOT or Governmental Entities.

7.10.2 It is DB Contractor's sole responsibility to determine the wage rates required to be paid. DB Contractor shall bear the cost of labor and shall have no Claim against TxDOT on account of any changes to such costs. Without limiting the foregoing, no Claim will be allowed that is based upon DB Contractor's lack of knowledge or a misunderstanding of requirements pertaining to prevailing wages or DB Contractor's failure to include in the Price adequate wages over the duration of this Agreement.

7.10.3 Any issue between DB Contractor or a Subcontractor, and any affected worker relating to any alleged violation of Section 2258.023 of the Texas Government Code that is not resolved before the 15th day after the date TxDOT makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code.

7.10.4 DB Contractor shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

7.11 E-Verify

Pursuant to Executive Order PR-80, DB Contractor certifies and ensures that for all contracts for services, DB Contractor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system

during the Term and Warranty Term of this Agreement to determine the eligibility of:

(a) All persons hired by DB Contractor during the Term and Warranty Term of this Agreement to perform duties within the State of Texas; and

(b) All persons, including subcontractors, hired during the Term and Warranty Term and assigned by DB Contractor during the Term and Warranty Term to perform work pursuant to this Agreement.

Violation of this provision constitutes a material breach of this Agreement.

7.12 Uniforms

Any uniforms, badges, logos and other identification worn by personnel of DB Contractor-Related Entities shall bear colors, lettering, design or other features to assure clear differentiation from those of TxDOT and its employees.

SECTION 8. PERFORMANCE, PAYMENT, RETAINAGE AND WARRANTY BONDS; GUARANTEES

8.1 Provision of Bonds

DB Contractor shall provide payment, performance, retainage and warranty bonds to TxDOT securing DB Contractor's obligations hereunder, and shall maintain such bonds in full force and effect as described below.

8.1.1 On or before the issuance by TxDOT of NTP1, DB Contractor shall deliver to TxDOT a performance bond in the initial amount of $35,000,000 (the "NTP1 Performance Bond Amount") and in the form attached hereto as Exhibit 9.

8.1.2 On or before the issuance by TxDOT of NTP1, DB Contractor shall deliver to TxDOT a payment bond in the initial amount of $35,000,000 (the "NTP1 Payment Bond Amount") and in the form attached hereto as Exhibit 10.

8.1.3 Upon the issuance by TxDOT of NTP2, the amount of the Performance Bond shall increase to [_____] [***insert one hundred percent (100%) of the Price allocable to Construction Work (equal to the sum of Line 44 of Form M-2.1 plus the DB Price for LE Base Scope ("A") from Form M-1.2) plus the sum of the LE Line Item Prices for each LE Scope Item (excluding the LE Base Scope) identified in any LE Work Package Notice***] (the "NTP2 Performance Bond Amount"), in accordance with the Performance Bond rider included in Exhibit 9 effecting such increase. After the first Final Acceptance of a Facility, and provided that TxDOT has received the Warranty Bond in accordance with Section 8.1.7, DB Contractor may reduce the NTP2 Performance Bond Amount by [_____] [***insert one hundred percent (100%) of the Price allocable to Construction Work for Facility 1&2A (equal to Line 44 of Form M-2.1)***] if such Final Acceptance relates to Facility 1&2A or by [_____] [***insert one hundred percent (100%) of the Price allocable to Construction Work for Facility LE (equal to the DB Price for LE Base Scope ("A") from Form M-1.2 plus the sum of the LE Line Item Prices for each LE Scope Item (excluding the LE Base Scope) identified in any LE Work Package Notice)***] if such Final Acceptance relates to Facility LE. After Final Acceptance of the Project, TxDOT shall provide a written release of the NTP2 Performance Bond, provided that (and upon such date after Final Acceptance of the Project that) all of the following conditions are met: (a) DB Contractor is not in default under this Agreement; (b) no event has occurred that with the giving of notice or passage of time would constitute a default by DB Contractor hereunder or under the Contract Documents; and (c) TxDOT has received the Warranty Bond in accordance with Section 8.1.7.

8.1.4 Upon the issuance by TxDOT of NTP2, the amount of the Payment Bond shall increase to [_____] [***insert one hundred percent (100%) of the Price allocable to Construction Work (equal to the sum of Line 44 of Form M-2.1 the DB Price for LE Base Scope ("A") from Form M-1.2 plus the sum of the LE Line Item Prices for each LE Scope Item (excluding the LE Base Scope) identified in any LE Work Package Notice)***] (the "NTP2 Payment Bond Amount") in accordance with the Payment Bond rider included in Exhibit 10 effecting such increase. TxDOT will release the Payment Bond upon (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Payment Bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed a preliminary notice of a claim against the Payment Bond or (b) expiration of the statutory period for Subcontractors to file a claim against the Payment Bond if no claims have been filed.

8.1.5 On or before the issuance by TxDOT of NTP2, DB Contractor shall deliver to TxDOT a Retainage Bond in the form attached hereto as Exhibit 11. The Retainage Bond shall be in the amount of 4% of the Price, and is to be used as a guaranty for the protection of any claimants and TxDOT for overpayments, Liquidated Damages, Key Personnel Change Fees, Lane Rental Fees, failure to deliver Record Documents and other deductions or damages owed by DB Contractor in connection with this Agreement.

8.1.6 DB Contractor shall not commence or permit or suffer commencement of any Professional Services (except the Professional Services authorized upon issuance of NTP1 in accordance with Section 4.1.3 and as expressly permitted pursuant to Section 4.1.4), or any Construction Work, until DB Contractor obtains from its Sureties and provides to TxDOT written confirmation that the Performance Bond and Payment Bond amounts have been increased to equal the NTP2 Performance Bond Amount and NTP2 Payment Bond Amount, respectively, in accordance with this Section 8.

8.1.7 After the first Final Acceptance of a Facility and subject to the requirements herein, including Section 8.1.3, DB Contractor may obtain a reduction of the Performance Bonds by providing a warranty bond which shall guarantee performance of the Work required to be performed during the Warranty Term for such Facility, as subject to extension under Section 11.2, and which shall also constitute a payment bond guaranteeing payment to Persons performing such Work (the "Warranty Bond"). The Warranty Bond shall be in an amount equal to 10% of the Price and shall be in the form attached hereto as Exhibit 12. Upon Final Acceptance of the Project, DB Contractor may obtain a release of the Performance and Payment Bonds, subject to the requirements of Section 8.1.3 and provided that

TxDOT has received the Warranty Bond in accordance with this Section 8.1.7. The Warranty Bond shall be released upon expiration of the Warranty Term, as subject to extension under Section 11.2, and (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Warranty Bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the Warranty Bond and (b) expiration of the statutory period for Subcontractors to file a claim against the Warranty Bond if no claims have been filed.

8.1.8 Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least A minus (A-) or better and Class VIII or better by A.M. Best Company or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by TxDOT in its discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, DB Contractor shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to TxDOT in its discretion. If the Price is increased in connection with a Change Order, TxDOT may, in its discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

8.2 No Relief of Liability

Notwithstanding any other provision set forth in the Contract Documents, performance by a Surety or Guarantor of any of the obligations of DB Contractor shall not relieve DB Contractor of any of its obligations hereunder, including the payment of Liquidated Damages, Key Personnel Change Fees, Lane Rental Fees, or other deductions, damages or charges payable by DB Contractor under this Agreement.

8.3 Guaranty

8.3.1 _____ are the Guarantors of DB Contractor's obligations under the Contract Documents. Such guaranty, in the form attached as Exhibit 13 to this Agreement, assures performance of DB Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of this Agreement and so long as any obligations of DB Contractor remain outstanding under the Contract Documents.

8.3.2 DB Contractor shall report the Tangible Net Worth of DB Contractor, its equity members and Guarantors, if any, to TxDOT, on or before each anniversary of the Effective Date by means of audited financial statements of DB Contractor, its equity members and any Guarantors, and on a quarterly basis

during the Term by means of certifications by the chief financial officers of DB Contractor, its equity members and any Guarantors.

8.3.3 If at any time during the course of this Agreement the total combined Tangible Net Worth of DB Contractor, its equity members and any Guarantors, is less than $400,000,000, DB Contractor shall provide one or more guarantees from a Guarantor acceptable to TxDOT so that the combined Tangible Net Worth of DB Contractor, its equity members and any Guarantors is at least $400,000,000. Each such guaranty shall be in the form attached as Exhibit 13, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations.

SECTION 9. INSURANCE

DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, the insurance policies required in accordance with Section 9 and Exhibit 14.

9.1 General Insurance Requirements

9.1.1 Qualified Insurers

Each of the insurance policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is:

(a) Authorized to do business in the State and has a current policyholder's management and financial size category rating of not less that "A – VII" according to A.M. Best's Insurance Reports Key Rating Guide; or

(b) Otherwise approved in writing by TxDOT.

9.1.2 Premiums, Deductibles and Self-Insured Retentions.

DB Contractor shall timely pay the premiums for all insurance required under this Agreement. Subject to Section 13, TxDOT shall have no liability for any deductibles, self-insured retentions or amounts in excess of the coverage provided. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the insurance policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

9.1.3 Primary and Non-Contributory Coverage

Each insurance policy shall provide that the coverage is primary and noncontributory coverage with respect to all named and additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

9.1.4 Verification of Coverage

9.1.4.1 At each time DB Contractor is required to initially obtain or cause to be obtained each insurance policy, including insurance coverage required of Subcontractors, DB Contractor shall deliver to TxDOT a certificate of

insurance. Each required certificate must meet the requirements of Texas Insurance Code Chapter 1811 and, to the extent permitted under applicable Laws, state the identity of all carriers, named insureds and additional insureds required under the Contract Documents, state the type and limits of coverage, deductibles, subrogation waiver, and termination provisions of the policy, include as attachments all additional insured endorsements required under the Contract Documents, and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker and otherwise be in a form satisfactory to TxDOT.

9.1.4.2 In addition, within a reasonable time after receipt of each insurance policy (but not to exceed 30 days after such receipt), DB Contractor shall deliver to TxDOT (a) a complete certified copy of each such insurance policy or modification, or renewal or replacement insurance policy and all endorsements thereto and (b) satisfactory evidence of payment of the premium therefor.

9.1.4.3 If DB Contractor has not provided TxDOT with the foregoing proof of coverage and payment within five days after TxDOT delivers to DB Contractor written notice of an Event of Default under Section 16.1.2 and demand for the foregoing proof of coverage, TxDOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force (a) obtain such an insurance policy; and DB Contractor shall reimburse TxDOT for the cost thereof upon demand and (b) suspend all or any portion of Work for cause and close the Project until TxDOT receives from DB Contractor such proofs of coverage in compliance with this Section 9.1 (or until TxDOT obtains an insurance policy, if it elects to do so).

9.1.5 Subcontractor Insurance Requirements

9.1.5.1 DB Contractor's obligations regarding Subcontractor's insurance are set forth in Exhibit 14. DB Contractor shall cause each Subcontractor to provide such insurance in the manner and in the form consistent with the requirements contained in Exhibit 14 and also including a requirement to comply with the primary and non-contributory, waiver of subrogation, and notice of cancellation provisions of this Section.

9.1.5.2 If any Subcontractor fails to procure and keep in effect the insurance required of it under Exhibit 14 and TxDOT asserts the same as an Event of Default hereunder, DB Contractor may, within the applicable cure period, cure such Event of Default by (a) causing such Subcontractor to obtain the requisite insurance and providing to TxDOT proof of insurance; (b) procuring the requisite insurance for such Subcontractor and providing to TxDOT proof of insurance; or (c) terminating the Subcontractor and removing its personnel from the Site.

9.1.6 Policies with Insureds in Addition to DB Contractor

All insurance policies, other than those subject to Section 9.1.5, that are required to insure Persons (whether as named or additional insureds) in addition to DB Contractor shall comply or be endorsed to comply with the following provisions.

9.1.6.1 The insurance policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds, including any additional insureds, provided that professional liability policies shall not be required to comply with this Section 9.1.6.1. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the insurance policies, any breach of warranty, any action or inaction of a named insured or others, any misrepresentation, act or omission of the named insured, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Project consultants).

9.1.6.2 The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

9.1.6.3 All endorsements adding additional insureds to required insurance policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the insurance policy generally. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, DB Contractor (if applicable) and TxDOT shall be included as additional insureds under DB Contractor's commercial general liability policy.

9.1.7 Additional Terms and Conditions

9.1.7.1 Each insurance policy shall be endorsed to state that coverage cannot be canceled, not renewed, voided, suspended, adversely modified, or reduced in coverage or in limits except after 30 days' prior written notice (or 10 days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to TxDOT and each other insured or additional insured party; provided that DB Contractor may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 9.1.11. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice. Should such an endorsement not be available, prior to an insurance policy being canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for

non-payment of premium), DB Contractor shall require its insurance broker to furnish 30 days' prior written notice (or 10 days in the case of cancellation for non-payment of premium) to TxDOT and each other insured or additional insured party by registered or certified mail, return receipt requested. DB Contractor's agreement to comply with this requirement shall be provided along with the certificates of insurance.

9.1.7.2 If DB Contractor's or any Subcontractor's activities involve transportation of Hazardous Materials, the automobile liability insurance policy for DB Contractor or such Subcontractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean Up (MCS-90).

9.1.7.3 Each insurance policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability insurance policies).

9.1.8 Waivers of Subrogation

TxDOT waives all rights against DB Contractor-Related Entities, and DB Contractor waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Section 9, except such rights as they may have to the proceeds of such insurance. If DB Contractor is deemed to self-insure a claim or loss under Section 9.2.3, then DB Contractor's waiver shall apply as if it carried the required insurance. DB Contractor shall require all Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated above. Subject to Section 9.1.11, each policy, including workers' compensation if permitted under the applicable worker's compensation insurance laws, shall include a waiver of any right of subrogation against the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss.

9.1.9 No Recourse

There shall be no recourse against TxDOT for payment of premiums or other amounts with respect to the insurance required to be provided by DB Contractor hereunder, except to the extent such costs are recoverable under Section 13.

9.1.10 Support of Indemnifications

The insurance coverage provided hereunder by DB Contractor is not intended to limit DB Contractor's indemnification obligations under the Contract Documents.

9.1.11 Inadequacy or Unavailability of Required Coverages

9.1.11.1 TxDOT makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect DB Contractor against its undertakings under the Contract Documents, to TxDOT, or any other Person. No such limits of liability or approved variances therefrom shall preclude TxDOT from taking any actions as are available to it under the Contract Documents or otherwise at Law.

9.1.11.2 If DB Contractor demonstrates to TxDOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to maintain the insurance coverages it is required to provide hereunder, and if, despite such diligent efforts and through no fault of DB Contractor, any of such coverages (or any of the required terms of such coverages, including insurance policy limits) become unavailable during the Term on commercially reasonable terms, TxDOT will grant DB Contractor an interim written variance from such requirements under which DB Contractor shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 9 as is commercially reasonable under then-existing insurance market conditions.

9.1.11.3 DB Contractor shall not be excused from satisfying the insurance requirements of this Section 9.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including insurance policy limits) are not commercially available, DB Contractor shall bear the burden of proving either that (a) the same is not available at all in the global insurance and reinsurance markets or (b) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded. For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for highway facilities, and DB Contractor shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to claims or loss experience (with the exception of a Force Majeure Event) on the Project or of any DB Contractor-Related Entity or Affiliate, whether under an insurance policy required by this Section 9 or in connection with any unrelated work or activity of

any DB Contractor-Related Entity or Affiliate, shall be considered in determining whether required insurance is commercially unavailable.

9.1.11.4 DB Contractor shall not be entitled to any increase in the Price for increased costs or any time extension to the Completion Deadlines resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. TxDOT shall be entitled to a reduction in the Price if it agrees to accept alternative policies providing less than equivalent coverage and if DB Contractor is not required to self-insure for such risks, with the amount to be determined by extrapolation using the insurance quotes included in the EPDs (or based on other evidence of insurance premiums as of the Proposal Due Date if the EPDs do not provide adequate information).

9.1.12 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the insurance policies, except that defense costs may be included within the limits of coverage of professional and pollution liability policies.

9.1.13 Contesting Denial of Coverage

If any insurance carrier under an insurance policy denies coverage with respect to any claims reported to such carrier, upon DB Contractor's request, TxDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then DB Contractor shall bear all costs of contesting the denial of coverage.

9.1.14 Umbrella and Excess Policies

DB Contractor shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

9.1.15 Additional Insurance Policies

If DB Contractor carries insurance coverage or additional limits in addition to that required under this Agreement, then DB Contractor shall, to the extent feasible, include TxDOT and its members, directors, officers, employees, agents and the Indemnified Parties as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall

be as described in Section 9.1.6.3 and DB Contractor shall provide to TxDOT the proofs of coverage and copy of the policy described in Section 9.1.4. The provisions of Sections 9.1.4, 9.1.6, 9.1.8, 9.1.9, 9.1.13, and 9.2 shall apply to all such policies of insurance coverage.

9.2 Prosecution of Claims

9.2.1 Unless otherwise directed by TxDOT in writing with respect to TxDOT's insurance claims, DB Contractor shall be responsible for reporting and processing all potential claims by TxDOT or DB Contractor against the insurance policies required hereunder. DB Contractor agrees to report timely to the insurers under such insurance policies any and all matters which may give rise to an insurance claim by DB Contractor or TxDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such insurance policies, whether for defense or indemnity or both. DB Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that DB Contractor shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

9.2.2 TxDOT agrees to promptly notify DB Contractor of TxDOT's incidents, potential claims against TxDOT, and matters that may give rise to an insurance claim against TxDOT, to tender to the insurer TxDOT's defense of the claim under such insurance policies, and to cooperate with DB Contractor as necessary for DB Contractor to fulfill its duties hereunder. DB Contractor shall ensure that, to the extent covered by DB Contractor's policies:

9.2.2.1 For claims and suits which DB Contractor's insurer reasonably estimates to be within the limits of its available coverage, DB Contractor or its insurer shall communicate and coordinate the defense strategy with TxDOT and the Texas Office of the Attorney General and shall ensure that the insurer does not agree to any settlement without first obtaining the concurrence of the Texas Office of the Attorney General. TxDOT and the Texas Office of the Attorney General shall not unreasonably withhold consent to the strategy and plan communicated by DB Contractor or its insurer to TxDOT and the Texas Office of the Attorney General. Nor shall TxDOT and the Texas Office of the Attorney General unreasonably withhold consent to settlements and compromises proposed by DB Contractor or its insurers that fall within the limits of insurance provided by such insurers.

9.2.2.2 For claims and suits which DB Contractor's insurer reasonably estimates to be in excess of the available insurance provided by DB

Contractor's insurers, and implicating the potential for damages that are the financial liability or responsibility of TxDOT or the State of Texas, DB Contractor shall ensure that the defense of the claim is coordinated by the insurer with TxDOT and the Texas Office of the Attorney General and shall ensure that DB Contractor's insurer does not agree to any settlement in excess of DB Contractor's insurer's limits of liability without first obtaining the concurrence of the Texas Office of the Attorney General.

9.2.3 If in any instance DB Contractor has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining DB Contractor's liability and the limits thereon or determining reductions in compensation due from TxDOT to DB Contractor on account of available insurance, DB Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had DB Contractor performed such obligations and not committed such failure. Nothing in the Contract Documents shall be construed to treat DB Contractor as electing to self-insure where DB Contractor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the insurance policy is written meets the rating qualifications set forth in this Section 9.

9.2.4 If in any instance DB Contractor has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by TxDOT or another Indemnified Party, then TxDOT or the other Indemnified Party may, but is not obligated to, (a) notify DB Contractor in writing of TxDOT's intent to report the claim directly with the insurer and thereafter process the claim and (b) proceed with reporting and processing the claim if TxDOT or the other Indemnified Party does not receive from DB Contractor, within 10 days after so notifying DB Contractor, written proof that DB Contractor has reported the claim directly to the insurer. TxDOT or the other Indemnified Party may dispense with such notice to DB Contractor if TxDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

9.2.5 All insurance proceeds received by DB Contractor for any insured loss under the builder's risk insurance policies required by this Agreement shall be paid into a separate insurance proceeds account and shall be held in trust for the purposes of, and to be applied in accordance with, this Agreement.

9.3 Disclaimer

DB Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their

responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

SECTION 10. TITLE; SITE SECURITY; MAINTENANCE DURING AND AFTER CONSTRUCTION

10.1 Title

DB Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for TxDOT for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies delivered to the Site shall pass to TxDOT, free and clear of all Liens, upon the sooner of (a) incorporation into the Project or (b) payment by TxDOT to DB Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, DB Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Final Acceptance of the Project or until DB Contractor is terminated from the Project pursuant to Section 15 or Section 16.

10.2 Site Security

DB Contractor shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by DB Contractor, TxDOT, or any other Person.

10.3 Risk of Loss or Damage; Maintenance and Repair of Work

10.3.1 DB Contractor shall be responsible for maintenance of the Work and the Site in accordance with Section 19 of the Technical Provisions. Upon Final Acceptance of each Facility, TxDOT shall assume the maintenance obligations for such Facility; provided, however, that if TxDOT issues Maintenance NTP1 under the CMA, DB Contractor shall be responsible for the Maintenance Services pursuant to the terms of the CMA Documents. DB Contractor shall be relieved from responsibility for maintenance of all other portions of the Project completed and accepted at Final Acceptance of the Project, except that DB Contractor shall be responsible for (a) maintenance of improvements owned by third parties until control of and maintenance responsibility for such improvements has been formally transferred to the third parties; (b) maintenance of mitigation sites in accordance with the Environmental Compliance and Mitigation Plan required by Section 4.3.2 of the Technical Provisions and any other extended maintenance responsibilities set forth in the Technical Provisions; and (c) maintenance within any work zones that DB Contractor implements during the performance of corrective Work in accordance

with the Warranty under Section 11.1. This Section 10.3.1 shall not apply to, or limit DB Contractor's obligations, under the CMA.

10.3.2 DB Contractor shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project that is injured or damaged prior to the date that DB Contractor's maintenance responsibility ends as set forth in Section 10.3.1, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to TxDOT, except to the extent that TxDOT is responsible for such costs in accordance with the express terms of this Agreement. DB Contractor, at its cost, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the Project ROW whether owned by DB Contractor, TxDOT or any other Person; provided, however, that DB Contractor shall not be responsible for rebuilding, repairing and restoring Project-related property that the Contract Documents provide will be maintained by third parties, unless such property is damaged due to negligent or willful acts of a DB Contractor-Related Entity.

10.3.3 If insurance proceeds with respect to any loss or damage for which DB Contractor is responsible for the rebuilding, repair or restoration thereof are paid to TxDOT, then TxDOT shall arrange for such proceeds to reimburse DB Contractor as repair or replacement work is performed by DB Contractor to the extent that TxDOT has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to DB Contractor shall not be a condition precedent to DB Contractor's obligation to perform such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by TxDOT.

SECTION 11. WARRANTIES

11.1 Warranties

11.1.1 Warranty

DB Contractor warrants that (a) all Work furnished pursuant to the Contract Documents shall conform to Good Industry Practice, (b) the Project shall be free of defects, including design Errors, (c) the Project shall be fit for use for the intended function, (d) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (e) the Work shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties"). DB Contractor agrees that all such Warranties for Utility Adjustments for City of Dallas Utilities shall extend to both TxDOT and the City of Dallas, and DB Contractor agrees to take any further action required to evidence such Warranties to the City of Dallas.

11.1.2 Warranty Term

Subject to extension under Section 11.2, the Warranty Term for each Facility shall commence upon Substantial Completion of the Facility and remain in effect until one year after Final Acceptance of the Project. The Warranty Term for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons and shall end one year thereafter. If TxDOT determines that any of the Work has not met the standards set forth in this Section 11.1 at any time within the applicable Warranty Term, then DB Contractor shall correct such Work as specified in this Section 11, even if the performance of such corrective Work extends beyond the applicable Warranty Term. TxDOT and DB Contractor shall conduct a walk-through of the Site prior to expiration of the applicable Warranty Term and shall produce a punch list of those items requiring corrective Work.

11.1.3 Remedy

Within seven days of receipt by DB Contractor of notice from TxDOT specifying a failure of any of the Work to satisfy the Warranties, or of the failure of any Subcontractor representation, warranty, guarantee or obligation that DB Contractor is responsible for enforcing, DB Contractor and TxDOT shall mutually agree when and how DB Contractor shall remedy such failure, except that in case of an Emergency requiring immediate curative action or a situation that poses a significant safety risk, DB Contractor shall implement such action as it deems necessary and shall notify TxDOT in writing of the urgency of a decision. DB Contractor and TxDOT shall promptly meet in order to agree on a remedy. If DB Contractor does not use its best efforts to proceed to effectuate such remedy within

the agreed time, or should DB Contractor and TxDOT fail to reach such an agreement within such seven-day period (or immediately in the case of Emergency conditions), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by DB Contractor. Reimbursement therefor must be paid to TxDOT by DB Contractor within 10 days after DB Contractor's receipt of an invoice therefor. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Agreement. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.6.2.

11.1.4 Permits and Costs

DB Contractor shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with the performance of Work addressed under this Section 11.1. DB Contractor shall bear all costs of such Work, including additional testing and inspections, and DB Contractor shall reimburse TxDOT or pay TxDOT's expenses made necessary thereby including any costs incurred by TxDOT for independent quality assurance or quality control with respect to such Work within 10 days after DB Contractor's receipt of invoices therefor (including, subject to the limitations in Section 17.5, any Liquidated Damages for Lane Closures or Lane Rental Fees arising from or relating to such Work). Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Agreement.

11.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of this Agreement. Following acceptance by TxDOT of re-done, repaired, corrected or replaced Work, the Warranties as to each re-done, repaired, corrected or replaced element of the Work shall extend beyond the original Warranty Term in order that each element of the Project shall have at least a one-year warranty period (but not to exceed two years from Final Acceptance of the Project).

11.3 Subcontractor Warranties

11.3.1 Warranty Requirements

11.3.1.1 Without in any way limiting the Warranties and DB Contractor's own representations and warranties and other obligations with respect to all of the Work, DB Contractor shall obtain from all Subcontractors for periods at least coterminous with the Warranties appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship,

equipment, tools and supplies furnished by such Subcontractors to effectuate the provisions in this Section 11.

11.3.1.2 DB Contractor shall cause Subcontractor warranties to be extended to TxDOT and any third parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Subcontractor; provided that the foregoing requirement shall not apply to standard, prespecified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to TxDOT using commercially reasonable efforts. TxDOT agrees to forbear from exercising remedies under any such warranty so long as DB Contractor is diligently pursuing remedies thereunder.

11.3.1.3 All representations, warranties, guarantees and obligations of Subcontractors shall be written so as to survive all TxDOT inspections, tests and approvals. DB Contractor hereby assigns to TxDOT all of DB Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty Term that are received by DB Contractor from any of its Subcontractors. To the extent that any Subcontractor warranty would be voided by reason of DB Contractor's negligence or failure to comply with the Contract Documents in incorporating material or equipment into the Work, DB Contractor shall be responsible for correcting such defect.

11.3.2 Enforcement

Upon receipt from TxDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, DB Contractor shall enforce or perform any such representation, warranty, guarantee or obligation, in addition to DB Contractor's other obligations hereunder. TxDOT's rights under this Section 11.3.2 commence at the time such representation, warranty, guarantee or obligation is furnished and continue until the expiration of DB Contractor's relevant Warranty Term (including extensions thereof under Section 11.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of DB Contractor if such cost is covered by such a representation, warranty, guarantee or obligation, and DB Contractor shall replace or repair defective equipment, material or workmanship furnished by Subcontractors.

11.4 Effect of TxDOT or DB Contractor Activities on Warranties

DB Contractor acknowledges and agrees that TxDOT and DB Contractor and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and agrees that the Warranties shall apply

notwithstanding such activities; provided, however, that DB Contractor does not hereby waive any rights, claims or remedies to which it may be entitled as a result of such activities.

11.5 No Limitation of Liability

Subject to Sections 17.5 and 17.6, the Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit DB Contractor's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, intentional misconduct or fraud.

11.6 Damages for Breach of Warranty

Subject to Section 17.5 and in addition to TxDOT's other rights and remedies hereunder, at law or in equity, DB Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work, including the cost of performance of such obligations by others.

SECTION 12. PAYMENT FOR SERVICES

12.1 Price

12.1.1 Amount

As full compensation for the Work and all other obligations to be performed by DB Contractor under the Contract Documents, TxDOT shall pay to DB Contractor the lump sum "Price." The term "Price" as used herein shall mean the lump sum amount set forth in this Section 12.1.1, subject to adjustment from time to time to account for Change Orders and finalization of the LE Work Package in accordance with Section 4.1.7. The Price shall be increased or decreased only by a Change Order issued in accordance with Section 13, or in accordance with Section 4.1.7 upon the addition of LE Scope Items to the LE Work Package, as applicable. The Price shall be paid in accordance with Section 12.2. The Price is the lump sum amount of $[_____] ***[Insert sum of amount on Form M-1.1, plus the amount for the "DB Price for LE Base Scope ("A")" set forth on Form M-1.2]***.

12.1.2 Items Included in Price

12.1.2.1 DB Contractor acknowledges and agrees that, subject only to DB Contractor's rights under Section 13, the Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, job site and other overhead, profit and services relating to DB Contractor's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 2.2.6); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Laws, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of Utility Owners pursuant to Section 6 of the Technical Provisions; (e) payment of any taxes, duties, permit and other fees and royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; and (f) compensation for all risks and contingencies assigned to DB Contractor under the Contract Documents.

12.1.2.2 As of the Effective Date, the Price includes the costs for the LE Base Scope, but does not include the costs of any additional LE Scope Items. If TxDOT exercises its option to deliver the LE Work Package Notice adding certain LE Scope Items to the Work by the LE Work Package Deadline, the Price shall be increased in accordance with Section 4.1.7. Additionally, the Maximum Payment Schedule for Facility LE shall be amended in accordance with

Section 4.1.7. Thereafter, all references to the Price and to the Maximum Payment Schedule for Facility LE set forth herein shall mean the Price and schedule as so amended.

12.1.3 Payment for Work Prior to NTP2

DB Contractor acknowledges and agrees that the amount of funds available to pay for Work prior to issuance of NTP2 is limited to $35,000,000. TxDOT has no obligation to make any payments to DB Contractor in excess of $35,000,000 until such time (if any) as NTP2 is issued.

12.1.4 Delay in NTP1

12.1.4.1 TxDOT anticipates that it will issue NTP1 concurrently with or shortly after execution and delivery of this Agreement, but shall have the right in its discretion to defer issuance. If the effective date of NTP1 is more than 180 days after the Proposal Due Date and such delay in issuing NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, the Price will be adjusted by adding the following (which amount may not be less than zero) to the Price:

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

"Δ" is the adjustment amount distributed on a *pro rata* basis over the remaining payments on Exhibit 5;

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

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

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

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

12.1.4.2 If a Change Order is issued during the period starting 180 days after the Proposal Due Date and ending on the effective date of NTP1, the price of the Change Order, if any, shall be adjusted based on the date that the Change Order is approved to the effective date of NTP1 using the formula

set forth in Section 12.1.4.1 above, with "B" being the CCI for the month in which the Change Order is approved.

12.1.4.3 If NTP1 has not been issued on or before 365 days after the Effective Date, the Parties may mutually agree to terms allowing an extension in time for issuance of NTP1 and adjustment of the Price. DB Contractor shall provide evidence satisfactory to TxDOT, meeting the requirements of Section 13.4, justifying the amount of any Price increase. If the delay in issuance of NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity and DB Contractor does not wish to negotiate an extension, or if the Parties fail to reach agreement in accordance with this Section 12.1.4.3, then DB Contractor's sole remedy shall be to terminate this Agreement in accordance with Section 15.9.

12.1.5 Additional Provisions Relating to Delays in NTP1

12.1.5.1 Notwithstanding anything to the contrary contained herein, DB Contractor shall not be entitled to an increase in the Price or extension of the Completion Deadlines, nor shall DB Contractor have a right to terminate this Agreement in accordance with Section 15.9 with respect to any delay in issuance of NTP1 due to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity.

12.1.5.2 Any Price increase under this Section 12.1 shall be amortized proportionally over all Work at issue.

12.2 Invoicing and Payment

The following process shall apply to invoicing and payment:

12.2.1 Delivery of Draw Request

On or about the fifth Business Day of each month following NTP1 and continuing through the last date of the Maximum Payment Schedule shown on Exhibit 5, DB Contractor shall deliver to TxDOT one hard copy and an electronic copy of a Draw Request in the form attached hereto as Exhibit 15 and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Draw Request shall be executed by DB Contractor's Authorized Representative. DB Contractor acknowledges that TxDOT will obtain funding for portions of the Work from the federal government, local agencies and other third parties, and DB Contractor agrees to segregate Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as

reasonably requested by TxDOT. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

12.2.2 Contents of Draw Request

Each Draw Request must contain the following items:

(a) Draw Request cover sheet;

(b) A monthly Project Schedule Update submitted for TxDOT approval as described in Section 2.1.1.3 of the Technical Provisions;

(c) Certification by DB Contractor that all Work that is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;

(d) Monthly report of personnel hours;

(e) Draw Request data sheets and supporting documents, as required by TxDOT to support and substantiate the amount requested (based on quantities and unit prices for unit priced Work, based on time and materials for Time-and-Materials Change Orders, based on actual costs as evidenced by invoices for items to be paid from an allowance, and based on the status of completion of Payment Activities shown on the Project Schedule for all other Work) and showing the maximum amount payable based on the Maximum Payment Schedule;

(f) DBE utilization report in a format reasonably satisfactory to TxDOT;

(g) Traffic incident reports;

(h) Cash flow curves and comparison to the Maximum Payment Schedule;

(i) A description of any Liquidated Damages, Key Personnel Change Fees, Lane Rental Fees, or any other amounts owed to TxDOT; and

(j) Such other items as TxDOT reasonably requests.

In addition, no Draw Request shall be considered complete unless it (i) describes in detail the status of completion of Payment Activities on the Project Schedule; (ii) sets forth separately and in detail the related payments that are then due in accordance with the Project Schedule and the payments that are then due in accordance with the Maximum Payment Schedule, as of the end of the prior month; (iii) in the case of amounts to be paid on a unit price basis, includes invoices,

receipts or other evidence establishing the number of units delivered; (iv) in the case of amounts invoiced on a time-and-materials basis, includes all supporting documentation described in Section 13.7; (v) sets forth in detail the amounts paid to Subcontractors, including Suppliers, from the payments made by TxDOT to DB Contractor with respect to the Draw Request submitted two months prior; and (vi) includes affidavits of payment and unconditional waivers of Liens and claims (including applicable waivers in the form required under Section 53.284 of the Texas Property Code) executed by DB Contractor and each Subcontractor with respect to all amounts paid in connection with the Draw Request submitted two months prior.

12.2.3 Draw Request Cover Sheet Contents

The Draw Request cover sheet shall include the following:

(a) Project number and title;

(b) Request number (numbered consecutively starting with "1");

(c) Total amount earned to date for the Project; and

(d) Authorized signature, title of signer, and date of signature.

12.2.4 Certification by Professional Services Quality Assurance Firm and Independent Quality Firm

Each Draw Request shall include a certificate signed by the Professional Services Quality Assurance Firm or the Independent Quality Firm, as appropriate, in a form included in Exhibit 15 or otherwise acceptable to TxDOT certifying that:

(a) Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, and Suppliers, that is the subject of the Draw Request has been checked or inspected in accordance with the respective Quality Management Plan;

(b) Except as specifically noted in the certification, all Work that is both the subject of the Draw Request and for which an audit or inspection has been performed conforms to the requirements of the Contract Documents;

(c) The Professional Services quality program and the Construction quality program and all of the measures and procedures provided therein are functioning properly and are being followed;

(d) The Professional Services percentages and construction percentages indicated are accurate and correct; and

(e) All quantities for which payment is requested on a unit price basis are accurate.

12.2.5 Draw Request Data Sheets

Draw Request data sheets shall be subdivided into DB Contractor-designated Project segments and shall be attached to a Project-wide report and Draw Request data sheet. Payments will be based on the percentage of Work completed, not on measured quantities (except as expressly set forth in this Agreement), except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. The percentage completion of Payment Activities shown on the Project Schedule Update submitted with monthly Progress Reports (subject to TxDOT's review and approval in accordance with Section 2.1.1.3 of the Technical Provisions) shall be the basis for determining periodic payments. Where progress is measured by percentage completed and days remaining, the percentage completion of each Payment Activity shall be calculated using the latest scheduling software and the methods set forth in Section 2.1.1 of the Technical Provisions. DB Contractor shall present the format of the Draw Request data sheets for TxDOT approval at least 20 Business Days prior to the submittal of the first Draw Request. Once the Draw Request format has been approved by TxDOT, the format shall not change without TxDOT's prior written approval.

12.2.6 Payment by TxDOT

Within 10 Business Days after TxDOT's receipt of a complete Draw Request, TxDOT shall notify DB Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. DB Contractor may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the Contract Documents related thereto. Within five Business Days after TxDOT's approval of a Draw Request, TxDOT will pay DB Contractor the amount of the Draw Request approved for payment less any amounts that TxDOT is entitled to withhold or deduct. In no event shall DB Contractor be entitled to (a) payment for any Payment Activity in excess of the value of the Payment Activity times the completion percentage of such activity (for non-unit-priced Work) or (b) aggregate payments hereunder in excess of (i) the overall completion percentage for the Project times the Price (for non-unit-priced Work) or (ii) the Maximum Payment Schedule for the month to which the Draw Request applies, plus amounts allowed by Change Orders not included in the Maximum Payment Schedule.

12.3 Deductions, Exclusions and Limitations on Payment

12.3.1 Withholding for Maintenance Security

TxDOT shall retain from the Final Payment, and if it reasonably appears there will be insufficient funds at Final Payment, from progress payments, $15 million as security for the provision of the Maintenance Security required under Section 7.1 of the CMA. DB Contractor shall have the option at any time to deliver an irrevocable letter of credit in the amount of $15 million in lieu of the retained sums in a form and on terms acceptable to TxDOT in its discretion. TxDOT shall release the retained $15 million or letter of credit, as applicable, to DB Contractor upon (a) the provision of the Maintenance Security required under Section 7.1 of the CMA within 60 days after TxDOT's issuance of Maintenance NTP1, or (b) the election of TxDOT not to issue Maintenance NTP1 within 180 days after Final Acceptance of the Project. In the event TxDOT does not receive the Maintenance Security required under Section 7.1 of the CMA by the deadline set forth therein, DB Contractor shall forfeit as liquidated damages and not as a penalty such sums, or if a letter of credit is provided in lieu of retained amounts, TxDOT shall have the right to draw on the letter of credit.

12.3.2 Deductions

In addition to the adjustments that TxDOT may make to the payment amount requested in Draw Requests exceeding the amounts to which DB Contractor is entitled pursuant to Section 12.2.6, TxDOT may deduct from each progress payment and the Final Payment the following:

(a) Any TxDOT or third-party Losses for which DB Contractor is responsible hereunder or any Liquidated Damages, Key Personnel Change Fees, or Lane Rental Fees that have accrued as of the date of the application for payment or that are anticipated to accrue based on the applicable Substantial Completion and Final Acceptance dates shown in the current Project Schedule;

(b) If a notice to stop payment, claim or Lien is filed with TxDOT, due to DB Contractor's failure to pay for labor or materials used in the Work, money due for such labor or materials will be withheld from payment to DB Contractor;

(c) Any sums expended by or owing to TxDOT as a result of DB Contractor's failure to maintain the Record Documents;

(d) Any sums expended by TxDOT in performing any of DB Contractor's obligations under the Contract Documents that DB Contractor has failed to perform; and

(e) Any other sums that TxDOT is entitled to recover from DB Contractor under the terms of this Agreement.

The failure by TxDOT to deduct any of these sums from a progress payment shall not constitute a waiver of TxDOT's right to such sums.

12.3.3 Unincorporated Materials

TxDOT will not pay for materials not yet incorporated in the Work unless all of the following conditions are met:

12.3.3.1 Material shall be (a) delivered to the Site, (b) delivered to DB Contractor and promptly stored by DB Contractor in storage at a location approved by TxDOT, or (c) stored at a Supplier's fabrication site, which must be a commercial location approved by TxDOT. DB Contractor shall submit certified bills for such materials with the Draw Request, as a condition to payment for such materials. TxDOT shall allow only such portion of the amount represented by these bills as, in its discretion, is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by TxDOT, DB Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against TxDOT by any state or subdivision thereof on account of the storage of such material.

12.3.3.2 All such materials that meet the requirements of the Contract Documents shall be and become the property of TxDOT. DB Contractor at its own cost shall promptly execute, acknowledge and deliver to TxDOT proper bills of sale or other instruments in writing in a form acceptable to TxDOT conveying and assuring to TxDOT title to such material included in any Draw Request, free and clear of all Liens. DB Contractor, at its own cost, shall conspicuously mark such material as the property of TxDOT, shall not permit such materials to become commingled with non-TxDOT-owned property or with materials that do not conform with the Contract Documents, and shall take such other steps, if any, as TxDOT may require or regard as necessary to vest title to such material in TxDOT free and clear of Liens.

12.3.3.3 The cost and charges for material included in a Draw Request, which material is subsequently lost, damaged or unsatisfactory, may be deducted from succeeding Draw Requests if TxDOT, in its discretion, determines that is appropriate after considering the availability of insurance coverage and DB Contractor's actions to replace the lost, damaged or unsatisfactory material.

12.3.3.4 Payment for material furnished and delivered as indicated in this Section 12.3.3 will not exceed the amount paid by DB Contractor as evidenced by a bill of sale supported by a paid invoice.

12.3.4 Payments for Mobilization, Bond and Insurance Premiums and Record Documents

12.3.4.1 Subject to the limitations on payment imposed by the Maximum Payment Schedule, DB Contractor shall be entitled to payment for mobilization in installments in an amount equal to the Mobilization Payment Activity Amount. The first payment for mobilization shall be in an amount not to exceed 5% of the Mobilization Payment Activity Amount, payable as part of the first Draw Request following NTP1. The second payment for mobilization shall be in an amount not to exceed 20% of the Mobilization Payment Activity Amount, payable as part of the first Draw Request following NTP2. The third payment for mobilization shall be in an amount not to exceed 50% of the Mobilization Payment Activity Amount, payable when at least 10% of the Price (less mobilization) is earned. The fourth payment for mobilization shall be in the remaining amount of the Mobilization Payment Activity Amount, payable when at least 25% of the Price (less the Mobilization Payment Activity Amount) is earned. The amounts calculated as due under this Section 12.3.4.1 shall be taken into account in assessing the amount to be paid under a Draw Request, which shall not be more than the amount in the Maximum Payment Schedule.

12.3.4.2 The portion of the Price allocable to bond and insurance premiums shall be payable to reimburse DB Contractor for bond and insurance premiums actually paid, without markup, as part of the first Draw Request following NTP1 for bonds and insurance required at NTP1 and as part of the applicable Draw Request following NTP2 for bonds and insurance required on or after NTP2. Any excess portion of a line item for the applicable premiums set forth in the Proposal shall be payable following the latest Substantial Completion of a Facility. The amounts paid under this Section 12.3.4.2 shall be subject to the Maximum Payment Schedule and shall be taken into account in assessing the maximum amount payable under a Draw Request through application of the Maximum Payment Schedule.

12.3.4.3 The amount payable for Record Documents acceptable to TxDOT shall equal 1% of the Price, which shall be withheld from the Final Payments of the Price. DB Contractor is not entitled to any interest on such withheld amounts. DB Contractor shall not be entitled to payment for the last 1% of the Price until acceptable Record Documents have been delivered to TxDOT.

12.3.5 Equipment

TxDOT shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 12.3.4, shall be allocated to and paid for as part of the

activities with which the equipment is associated, in a manner that is consistent with the requirements of Section 13.7.3.

12.4 Final Payment

Final Reconciliation of amounts owing for all Work will be made as follows:

12.4.1 On or about the date of Final Acceptance of the Project, DB Contractor shall prepare and submit a proposed Final Reconciliation to TxDOT showing the proposed total amount due DB Contractor as of the date of Final Acceptance of the Project, including any amounts owing from Change Orders. In addition to meeting all other requirements for Draw Requests hereunder, the Final Reconciliation shall propose a schedule of monthly payments that do not exceed the amounts set forth on the Maximum Payment Schedule. The Final Reconciliation shall list all outstanding PCO Notices stating the amount at issue associated with each such notice. The Final Reconciliation shall also be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners and other third parties against DB Contractor, TxDOT or the Project, (b) consent of any Guarantors and Surety to the proposed monthly payment schedule, (c) such other documentation as TxDOT may reasonably require, and (d) the release described in Section 12.4.4 executed by DB Contractor. Prior applications and payments shall be subject to correction in the Final Reconciliation. PCO Notices filed concurrently with the Final Reconciliation must be otherwise timely and meet all requirements under Section 13 and 19.

12.4.2 If the Final Reconciliation shows no existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners or other third parties against DB Contractor, TxDOT or the Project, and provided TxDOT has approved the Final Reconciliation, TxDOT, in exchange for an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to TxDOT, will pay in accordance with the monthly payment schedule described in Section 12.4.6 the entire sum found due on the approved Final Reconciliation, less the amount of any Losses that have accrued as of the date of Final Acceptance of the Project, any other deductions permitted under Section 12.3.2 above, and any withholding permitted under Section 12.3.1 above.

12.4.3 If the Final Reconciliation lists any existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners or other third parties against DB Contractor, TxDOT or the Project, or if any is thereafter filed, TxDOT may withhold from payment such amount as TxDOT deems advisable to cover any amounts owing or which may become owing to TxDOT by DB Contractor, including costs to complete or remediate uncompleted Work or Nonconforming Work, and the amount of any existing or threatened claims, Liens

and stop notices of Subcontractors, Suppliers, laborers, Utility Owners and other third parties against DB Contractor, TxDOT or the Project.

12.4.4 The executed release from DB Contractor shall be a release from any and all claims arising from the Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any PCO Notices listed as outstanding in the Final Reconciliation. The release shall be accompanied by an affidavit from DB Contractor certifying:

(a) that all Work has been performed in strict accordance with the requirements of the Contract Documents;

(b) that DB Contractor has resolved any claims made by Subcontractors, Suppliers, Utility Owners, laborers, or other third parties against DB Contractor, TxDOT or the Project (except those listed by DB Contractor in accordance with Section 12.4.3);

(c) that DB Contractor has no reason to believe that any Person has a valid claim against DB Contractor, TxDOT or the Project that has not been communicated in writing by DB Contractor to TxDOT as of the date of the certificate; and

(d) that all guarantees, Warranties and the Payment Bond, the Performance Bond, Retainage Bond and Warranty Bond are in full force and effect.

12.4.5 All prior Draw Requests shall be subject to correction in the Final Reconciliation.

12.4.6 TxDOT will review DB Contractor's proposed Final Reconciliation, and any changes or corrections, including deductions and withholdings described in Section 12.4.2, will be forwarded to DB Contractor for correction within 20 Business Days. Any changes or corrections made pursuant to this Section 12.4.6 will be reflected in an updated monthly payment schedule showing the net amount owed to DB Contractor by month.

12.4.7 TxDOT shall fulfill its payment obligations under this Agreement by paying the amounts identified in Section 12.4.6, in accordance with the schedule described in Section 12.4.6.

12.5 Payment to Subcontractors

12.5.1 DB Contractor shall pay each Subcontractor for Work performed within 10 days after receiving payment from TxDOT for the Work performed by the Subcontractor, and shall pay any retainage on a Subcontractor's Work within 10 days after satisfactory completion of all of the Subcontractor's

Work. Completed Subcontractor Work includes vegetative establishment, test, maintenance, performance, and other similar works that are the responsibility of the Subcontractor.

12.5.2 For the purpose of this Section 12.5, satisfactory completion shall have been accomplished when:

(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(b) the Work done by the Subcontractor has been inspected and approved by DB Contractor, and the final quantities of the Subcontractor's Work have been determined and agreed upon.

12.5.3 The foregoing payment requirements apply to all Subcontractors and shall be incorporated into all Subcontracts.

12.6 Disputes

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect DB Contractor's obligation to perform under the Contract Documents, including DB Contractor's obligation to achieve the Completion Deadlines and perform all Work in accordance with the Contract Documents, and DB Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any Claim or Dispute regarding such payment shall be resolved pursuant to Section 19. DB Contractor shall proceed as directed by TxDOT pending resolution of the Claim or Dispute. Upon resolution of any such Claim or Dispute, each Party shall promptly pay to the other any amount owing.

SECTION 13. CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under this Agreement. DB Contractor hereby acknowledges and agrees that the Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 13 and DB Contractor's right to collect certain payments from Utility Owners for Betterments as specified in Section 6.8.2, and that TxDOT is subject to constraints limiting its ability to increase the Price or extend the Completion Deadlines. DB Contractor unconditionally and irrevocably waives the right to any Claim for a time extension or for any monetary compensation in addition to the Price and other compensation specified in this Agreement, except in accordance with this Section 13. To the extent that any other provision of this Agreement expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 13.

13.1 Circumstances Under Which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Definition of Change Order

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. TxDOT may issue unilateral Change Orders as specified in Section 13.2.2. Change Orders may be requested by DB Contractor only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by TxDOT. Change Orders may be issued for the following purposes (or combination thereof):

(a) to modify the scope of the Work;

(b) to revise a Completion Deadline;

(c) to revise the Price; and

(d) to revise other terms and conditions of the Contract Documents.

Upon TxDOT's approval of the matters set forth in the Change Order form (whether it is initiated by TxDOT or requested by DB Contractor), TxDOT shall sign such Change Order form indicating approval thereof. A Change Order may, at the discretion of TxDOT, direct DB Contractor to proceed with the Work with the amount of any adjustment of any Completion Deadline or Price to be determined in the future. All additions, deductions or changes to the Work as

directed by Change Orders shall be executed under the conditions of the original Contract Documents.

13.1.1.2 Issuance of Directive Letter

TxDOT may at any time issue a Directive Letter to DB Contractor regarding any matter for which a Change Order can be issued or in the event of any Claim or Dispute regarding the scope of the Work or whether DB Contractor has performed in accordance with the requirements of the Contract Documents. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Subject to Section 13.2.1.5, DB Contractor shall proceed immediately as directed in the Directive Letter, pending the execution of a formal Change Order (or, if the Directive Letter states that the Work is within DB Contractor's original scope of Work, DB Contractor shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that TxDOT issue a Change Order with respect thereto).

13.1.1.3 Directive Letter as Condition Precedent to Claim that TxDOT-Directed Change Has Occurred

DB Contractor shall not be entitled to additional compensation or time extension for any such work performed prior to receipt of a Directive Letter or Change Order, except to the extent that Section 13.3.2.2 preserves DB Contractor's right to compensation for work performed following delivery of a Request for Partnering. DB Contractor acknowledges that it will be at risk if it elects to proceed with any such work, since TxDOT may later decide not to provide direction with regard to such work. In addition to provision of a PCO Notice and subsequent Change Order request pursuant to Section 13.3.2, receipt of a Directive Letter from TxDOT shall be a condition precedent to DB Contractor's right to make a Claim that a TxDOT-Directed Change has occurred.

The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT-Directed Change occurred. The determination whether a TxDOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter in fact constituted a change in those requirements.

13.1.2 TxDOT Right to Issue Change Orders

TxDOT may, at any time and from time to time, without notice to any Surety, authorize or require, pursuant to a Change Order, changes in the Work or in terms and conditions of the Technical Provisions (including changes in the

standards applicable to the Work); except TxDOT has no right to require any change that:

(a) Is not in compliance with applicable Laws;

(b) Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;

(c) Constitutes a fundamental change in the nature or scope of the Project;

(d) Would cause an insured risk to become uninsurable;

(e) Would materially adversely affect the health or safety of workers or users of the Project;

(f) Is fundamentally incompatible with the Project design; or

(g) Is not technically feasible to construct.

DB Contractor shall have no obligation to perform any work within any such exception unless on terms mutually acceptable to TxDOT and DB Contractor.

13.2 TxDOT-Initiated Change Orders

13.2.1 Request for Change Proposal

13.2.1.1 If TxDOT desires to issue a TxDOT-Directed Change or to evaluate whether to initiate such a change, then TxDOT may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed TxDOT-Directed Change.

13.2.1.2 Within five Business Days after DB Contractor receives a Request for Change Proposal, or such longer period to which the Parties mutually agree, TxDOT and DB Contractor shall consult to define the proposed scope of the change. Within five Business Days after the initial consultation, or such longer period to which the Parties may mutually agree, TxDOT and DB Contractor shall consult concerning the estimated cost and time impacts.

13.2.1.3 Within five Business Days after the second consultation and provision of any data described in Section 13.2.1.2, TxDOT shall notify DB Contractor whether TxDOT (a) wishes to issue a Change Order, (b) wishes to request DB Contractor to provide a Cost and Schedule Proposal as

discussed at the meeting, (c) wishes to request DB Contractor to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. TxDOT may at any time, in its discretion, require DB Contractor to provide two alternative Cost and Schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the non-extended Completion Deadlines, as well as any additional costs permitted hereunder.

13.2.1.4 If so requested, DB Contractor shall, within 10 Business Days after receipt of the notification described in Section 13.2.1.3, or such longer period as may be mutually agreed to by TxDOT and DB Contractor, prepare and submit to TxDOT for review and approval by TxDOT a Cost and Schedule Proposal (in the format provided by TxDOT) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by TxDOT. DB Contractor shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by TxDOT, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by TxDOT, may be included in the Change Order as reimbursable items. If the Change Order is approved, such design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 If DB Contractor and TxDOT are unable to reach agreement on a Change Order, TxDOT may, in its discretion, order DB Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at TxDOT's option, be in the form of (a) a Time-and-Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.1.2. Upon receipt of a Time-and-Materials Change Order or Directive Letter, as the case may be, pending final resolution of the relevant Change Order according to the dispute resolution procedures of this Agreement, (x) DB Contractor shall implement and perform the Work in question as directed by TxDOT and (y) TxDOT will make interim payments to DB Contractor on a monthly basis for the reasonable documented costs of the Work in question, subject to subsequent adjustment through the dispute resolution procedures of this Agreement.

13.2.1.6 If it is not practicable, due to the nature or timing of the event giving rise to a proposed Change Order, for DB Contractor to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, DB Contractor shall provide an incomplete proposal that includes all information capable of being ascertained. Said incomplete proposal shall (a) include

a list of those Change Order requirements that are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a critical path as is requested by TxDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Price increase associated therewith, to the extent such amount is then ascertainable. DB Contractor shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 13.3.2.6.

13.2.2 Unilateral Change Orders

TxDOT may issue a unilateral Time-and-Materials Change Order at any time, regardless of whether it has issued a Request for Change Proposal. DB Contractor shall be entitled to compensation in accordance with Section 13.7 for additional Work that is required to be performed as the result of any such unilateral Change Order, and shall have the right to submit the issue of entitlement to an extension of the Completion Deadlines to dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a Price reduction deemed appropriate by TxDOT, and DB Contractor shall have the right to submit the amount of such Price reduction to dispute resolution in accordance with Section 19.

13.2.3 TxDOT-Directed Changes Under $10,000

DB Contractor is not entitled to an increase in the Price for any TxDOT-Directed Changes involving less than $10,000 in additional direct costs incurred by DB Contractor.

13.3 DB Contractor-Requested Change Orders

13.3.1 Eligible Changes

13.3.1.1 DB Contractor may request a Change Order to extend a Completion Deadline only for delays directly attributable to one or more of the following events or circumstances that change the duration of a Critical Path:

(a) Force Majeure Events;

(b) TxDOT-Caused Delays;

(c) delays relating to any City of Dallas Utility Delay to the extent permitted by Section 6.8 and other delays relating to Utilities, to the extent permitted by Sections 6.8.1, 6.8.5 and 13.8.2;

(d) delays relating to discovery of Hazardous Materials, to the extent permitted by Section 13.8.4.2; or

(e) delays relating to access to ROW, to the extent permitted by Section 13.8.5.

13.3.1.2 DB Contractor may request a Change Order to increase the Price only for increased costs of performance of the Work as follows:

(a) subject to Section 13.2.3, additional costs directly attributable to additional Work resulting from TxDOT-Directed Changes and TxDOT-Caused Delays for which TxDOT has not submitted a Change Order or a Request for Change Proposal;

(b) additional costs relating to Differing Site Conditions, Hazardous Materials, and Force Majeure Events, to the extent provided in Section 13.8;

(c) certain additional costs relating to Utility Adjustment Work, as described in Section 6.8 and Section 13.8.2, to the extent provided therein;

(d) additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.4.3;

(e) Price adjustments as specified in Sections 12.1.2.2, 12.1.4 and 12.1.5; or

(f) additional costs for Utility Adjustment Work directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 13.8.

13.3.1.3 DB Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and elsewhere in the Contract Documents, and furthermore is subject to DB Contractor's compliance with all notification and other requirements identified herein. DB Contractor shall initiate the Change Order process by delivery of a PCO Notice as described in Section 13.3.2, followed by submittal of a Request for Change Order and supporting documentation to TxDOT.

13.3.2 Procedures

The requirements set forth in this Section 13.3.2 constitute conditions precedent to DB Contractor's entitlement to request and receive a Change Order except those involving (a) a Request for Change Proposal or (b) a Price increase under Section 12.1.4 and Section 12.1.5. DB Contractor understands that it shall be

forever barred from recovering against TxDOT under this Section 13 if it fails to give notice of any act, or omission, by TxDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, or fails to comply with the remaining requirements of this Section 13.3.

13.3.2.1 Delivery of Requests for Partnering and PCO Notices

DB Contractor acknowledges the importance of providing prompt notification to TxDOT upon occurrence of any event or thing entitling DB Contractor to a Change Order under Section 13.3.1. Among other things, such notification serves the purpose of allowing TxDOT to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through either (a) a PCO Notice as described in Section 13.3.2.3 or (b) if permitted by Section 13.3.2.2, a Request for Partnering followed by a PCO Notice if appropriate.

13.3.2.2 Requests for Partnering

The term "Request for Partnering" shall mean a notice delivered by DB Contractor requesting that TxDOT enter into partnering discussions with DB Contractor with regard to an event or situation that has occurred within the scope of Section 13.3.1.2. The Request for Partnering shall reference this Section 13.3.2.2 and shall describe the event or situation as well as action that DB Contractor would like to take with respect thereto. The Parties shall promptly meet and confer for the purpose of determining what action should be taken and also to determine whether the Parties are in agreement as to entitlement to a Change Order. Either Party may at any time terminate partnering discussions by delivery of written notice to the other, and partnering discussions shall automatically terminate 60 days after delivery of the Request for Partnering unless both Parties agree in writing to an extension. Within five Business Days after termination of partnering discussions, if TxDOT has not issued either a Directive Letter or Change Order, DB Contractor must submit a PCO Notice in order to preserve its right to pursue a Change Order. The foregoing process is not available for events or situations involving a delay to the Critical Path. With regard to any such events or situations, DB Contractor must submit a PCO Notice as provided in Section 13.3.2.3.

13.3.2.3 PCO Notices

The term "PCO Notice" shall mean a notice delivered by DB Contractor, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 13.3.1 and stating which

subsection thereof is applicable. The first notice shall be labeled "PCO Notice No. 1" and subsequent notices shall be numbered sequentially.

The PCO Notice shall (a) state in detail the facts underlying the anticipated Request for Change Order, the reasons why DB Contractor believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each TxDOT Consultant and TxDOT representative knowledgeable of the facts underlying the anticipated Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order, (d) cite any and all provisions of the Contract Documents supporting the anticipated Request for Change Order, (e) state in detail the basis for necessary accelerated schedule performance, if applicable, (f) state in detail the basis that the work is not required by this Agreement, if applicable, (g) identify particular elements of performance for which additional compensation may be sought under this Section 13.3.2, (h) identify any potential Critical Path impacts, (i) identify any insurance available to DB Contractor, any deductible or self-insured retention associated with such insurance, and any insurance deemed to be self-insured by DB Contractor under Section 9.2.3, with respect to the event giving rise to the request for additional compensation, and (j) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

If the Request for Change Order relates to a decision that this Agreement leaves to the discretion of a Person or as to which this Agreement provides that such Person's decision is final, the PCO Notice shall set out in detail all facts supporting DB Contractor's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

Written notification provided in accordance with Section 13.8.1.3 or 13.8.4.1 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

Any adjustments made to this Agreement shall not include increased costs or time extensions for delay resulting from DB Contractor's failure to timely provide requested additional information under this Section 13.3.2.3.

13.3.2.4 Waiver

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than 10 days after DB Contractor first discovered (or should have discovered in the exercise

of reasonable prudence) the occurrence described therein, DB Contractor shall be deemed to have waived (a) the right to collect any costs incurred prior to the date of delivery of the Request for Partnering (if applicable) or PCO Notice (if no Request for Partnering was submitted or if the PCO Notice was not timely submitted following termination of partnering discussions) and (b) the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path that accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 13.8.4.1, DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that TxDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

In addition to the limitations set forth above in this Section 13.3.2.4, DB Contractor's failure to provide a PCO Notice within 60 days after DB Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude DB Contractor from any relief, unless DB Contractor can show, based on a preponderance of the evidence, that (a) TxDOT was not materially prejudiced by the lack of notice or (b) TxDOT's Authorized Representative specified in accordance with Section 24.6.1 had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that DB Contractor believed it was entitled to a Change Order with respect thereto. In other words, if the requirements of clause (a) or clause (b) above are satisfied, DB Contractor shall retain the right to receive a Change Order, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice or Request for Partnering, as applicable, and shall be deemed to have waived the right to seek a time extension with respect to any delay in any Critical Path that accrued prior to the date of delivery of the PCO Notice. For situations involving Requests for Partnering, the 60-day period in subclause (b) above shall be extended until two Business Days following termination of the partnering period.

13.3.2.5 Delivery of Request for Change Order

DB Contractor shall deliver a Request for Change Order under this Section 13.3.2.5 to TxDOT within 30 days after delivery of the PCO Notice, or such longer period of time as may be allowed in writing by TxDOT. TxDOT may require design and construction costs to be covered by separate Requests for Change Order. If DB Contractor requests a time extension, then TxDOT, in its discretion, may require DB Contractor to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the non-extended Completion

Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the non-extended Completion Deadline or if DB Contractor believes that the costs associated with such a recovery are prohibitive, then DB Contractor shall recommend a date to be shown in the alternative Change Order form. If DB Contractor fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all of the requirements of Section 13.3.2.6 within the appropriate time period, DB Contractor shall be required to provide a new PCO Notice before it may submit a Request for Change Order.

13.3.2.6 Incomplete Requests for Change Order

Each Request for Change Order provided under Section 13.3.2.5 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature or timing of the occurrence, DB Contractor shall provide an incomplete Request for Change Order that fills in all information capable of being ascertained. Said incomplete request shall (a) include a list of those Change Order requirements that are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a Critical Path as is requested by TxDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Price increase associated therewith, to the extent such amount is then ascertainable.

DB Contractor shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. DB Contractor agrees that it shall give TxDOT or its designee access to any and all of DB Contractor's books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that TxDOT or its designee can investigate the basis for such proposed Change Order. DB Contractor shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. TxDOT may reject the Request for Change Order at any point in the process. TxDOT's failure to respond to a complete Request for Change Order within 15 Business Days of delivery of the request shall not be deemed an acceptance of such request, and DB Contractor shall have the burden of following up with TxDOT on the status of any such Request for Change Order.

13.3.2.7 Importance of Timely Response

DB Contractor acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of PCO Notices and Requests for Change Orders and updates thereto are of vital importance to TxDOT. TxDOT is relying on DB Contractor to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Project Schedule or Price and, if so, whether DB Contractor believes a time extension or Price increase is required hereunder. If an event or situation occurs that may affect the Price or a Completion Deadline, TxDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within TxDOT's funding and time restraints. The following matters (among others) shall be considered in determining whether TxDOT has been prejudiced by DB Contractor's failure to provide timely notice (a) the effect of the delay on alternatives available to TxDOT (that is, a comparison of alternatives that are available at the time notice was actually given and alternatives that would have been available had notice been given within 10 days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence) and (b) the impact of the delay on TxDOT's ability to obtain and review objective information contemporaneously with the event.

13.3.2.8 Review of Subcontractor Claims

Prior to submission by DB Contractor of any Request for Change Order that is based in whole or in part on a request by a Subcontractor to DB Contractor for a price increase or time extension under its Subcontract, DB Contractor shall have reviewed all claims by the Subcontractor that constitute the basis for the Request for Change Order and determined in good faith that each such claim is justified hereunder and that DB Contractor is justified in requesting an increase in the Price and change in Completion Deadlines in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of DB Contractor's analysis of all Subcontractor claims components and shall include a certification signed by DB Contractor's Project Manager stating that DB Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and time requested, has reviewed and verified the adequacy of all backup documentation to be placed in escrow pursuant to Section 22.1, and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Request for Change Order involving Subcontractor Work that is not accompanied by such analysis and certification shall be considered incomplete.

13.3.3 Performance of Disputed Work

If TxDOT refuses to issue a Change Order based on DB Contractor's request, DB Contractor shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 19. DB Contractor shall maintain and deliver to TxDOT, upon request, contemporaneous records, meeting the requirements of Section 13.9, for all work performed that DB Contractor believes constitutes extra work (including non-construction work), until all Claims and Disputes regarding entitlement or cost of such work are resolved.

13.3.4 Value Engineering

13.3.4.1 This Section 13.3.4 enables DB Contractor and TxDOT to take advantage of potential cost savings through changes in the requirements relating to the Work. DB Contractor is encouraged to submit Value Engineering Proposals (VEs) whenever it identifies potential savings for the Project.

13.3.4.2 A VE is a proposal developed and documented by DB Contractor which, as determined by TxDOT in its discretion (a) would modify or require a change in any of the requirements in the Contract Documents in order to be implemented; and (b) reduces the Price, without (c) impairing essential functions or characteristics of the Project, including service life, economy of operation, ease of maintenance, desirability and safety. A VE may not be based solely upon a change in quantities, performance, reliability, or a relaxation of the requirements contained in the Contract Documents.

13.3.4.3 At a minimum, the following information shall be submitted by DB Contractor with each VE:

(a) A statement that the submission is a VE, and a narrative description of the proposed change;

(b) Description of the existing requirements in the Contract Documents which are involved in the proposed change;

(c) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

(d) Itemization of all requirements of the Contract Documents which must be changed if the VE is approved, including proposed changes to those requirements, which changes are subject to the discretion of TxDOT;

(e) A complete cost analysis including: (i) DB Contractor's cost estimate for the subject Work in accordance with the Contract Documents compared to DB Contractor's cost estimate for the subject Work in accordance with the proposed changes, (ii) an estimate of all additional costs that will be incurred by TxDOT, including estimated impact on future maintenance costs, and (iii) costs of development and implementation of the VE by DB Contractor. The cost of any additional Governmental Approvals, ROW or easements, and other costs or impacts to the Project shall be included in the cost analysis;

(f) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as not meeting requirements contained in the Contract Documents, including environmental compliance requirements;

(g) If available, a description of any previous use or tests of the VE and the conditions and results. If the VE was previously submitted on another TxDOT project, indicate the project, similarities and distinctions, and the action taken by TxDOT; and

(h) Date or time by which a Change Order adopting the VE must be issued in order to obtain the maximum cost reduction, which may require justification on the current Project Schedule. Note any effect on the current Project Schedule and next Draw Request.

Any additional information or analysis requested by TxDOT shall be provided in a timely manner, which could include results of field investigations and surveys, design computations and field change sheets.

13.3.4.4 TxDOT Review and Approval

(a) VEs that require excessive time or costs for review, evaluation or investigations, or that are not consistent with TxDOT's design policies and basic design criteria, may be rejected without evaluation.

(b) Upon receipt of a VE, TxDOT will process it, and TxDOT and DB Contractor will meet and confer to determine whether to proceed with further evaluation.

(c) DB Contractor may withdraw all or part of any VE at any time prior to approval. In the event DB Contractor withdraws a VE, DB Contractor shall be liable for costs incurred by TxDOT in reviewing the VE and such costs may be deducted from payments owed to DB Contractor by TxDOT under this Agreement.

(d) TxDOT may reject or approve, in its discretion, in whole or in part, any VE submitted. DB Contractor shall have no Claim for any additional costs or delays resulting from the rejection of a VE, including VE development costs, loss of anticipated profits or increased material or labor costs. Each Party shall bear its own costs in connection with the preparation and review of rejected VEs.

(e) Designs for approved VEs shall be prepared by DB Contractor for incorporation into the Design Documents. Approved VEs will be authorized by, and meet all requirements of an executed Change Order.

(f) Until a Change Order is issued for a VE, DB Contractor shall remain obligated to perform in accordance with the Contract Documents.

13.3.4.5 If TxDOT accepts a VE, the Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by TxDOT, including costs incurred for reviewing the VE and any impact the VE may have on project revenue, plus (b) 50% of Estimated Net Savings. DB Contractor is not entitled to share in either Collateral Savings or Future Contract Savings.

13.3.4.6 If the DB Contractor initiates or secures a Request for Change Proposal that TxDOT believes should be characterized as a VE, and it is later determined through the dispute resolution process that the change meets the technical qualifications for a VE, the Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by TxDOT resulting from the VE plus (b) 75% of Estimated Net Savings. The DB Contractor is not entitled to any cost savings from reductions or other changes to right of way or reimbursable Utilities, nor shall any such savings be considered in determining the Estimated Net Savings of a VE.

13.3.4.7 Designs for approved VEs shall be prepared by DB Contractor for incorporation into the Design Documents and shall be subject to the same design procedures as other aspects of the Project's design.

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

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Cost and Schedule Proposal and Request for Change Order shall be prepared in a form acceptable to TxDOT, and shall meet all applicable requirements of this Section 13.

13.4.2 Scope of Work, Cost Estimate, Delay Analysis and Other Supporting Documentation

DB Contractor shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Cost and Schedule Proposal and Request for Change Order.

13.4.2.1 Scope of Work

The scope of work shall describe in detail satisfactory to TxDOT all activities associated with the Change Order, including a description of additions, deletions and modifications to the existing requirements of the Contract Documents.

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment and markups for overhead and profit, unless TxDOT agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, DB Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and shall include such quotes as backup for DB Contractor's estimate. No markup shall be allowed in excess of the amounts allowed under Sections 13.5.2 and 13.7.5. DB Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

13.4.2.3 Delay Analysis

If DB Contractor claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative

report, in form satisfactory to TxDOT, that compares the proposed new schedule to the Project Schedule.

13.4.2.4 Other Supporting Documentation

DB Contractor shall provide such other supporting documentation as may be required by TxDOT.

13.4.3 Justification

All Requests for Change Orders shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provisions of Section 13 that permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 13.9) that establish the necessity and amount of such proposed change.

13.4.4 DB Contractor Representation

Each Change Order shall be accompanied by a certification under penalty of perjury, in a form acceptable to TxDOT, executed by DB Contractor and stating that (a) the amount of time and compensation requested is justified as to entitlement and amount, (b) the amount of time and compensation requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate and current. Each Change Order involving Work by a Subcontractor for which pricing data is required to be provided under Section 22.1 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 22.1.

13.4.5 Change Order Affecting Capital Maintenance Agreement

Each Change Order shall be signed by DB Contractor in its capacity as both DB Contractor under this Agreement and DB Contractor under the CMA. Each Change Order shall state whether a change order will also be required under the CMA as a result of the change in the Work, and the reasons for such change order. DB Contractor's failure to notify TxDOT that a change order will be required under the CMA shall waive DB Contractor's right to seek such a change order.

13.4.6 Certificate of Interested Parties

In connection with an amendment to this Agreement, including any Change Order or Deviation, DB Contractor shall either (a) provide to TxDOT a

certification that there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) or (b) if there has been a change to the disclosure of Interested Parties or if the value of the amendment is $1,000,000 or greater, file a Form 1295, Certificate of Interested Parties ("Form 1295") with the Texas Ethics Commission as required by Section 2252.908 of the Texas Government Code and Chapter 46 of Title 1 of the Texas Administrative Code (collectively, the "Form 1295 Laws"). DB Contractor shall indicate the CSJ for this Agreement and the applicable Change Order, Deviation or amendment number in the fields provided on Form 1295.

If DB Contractor is required to file a Form 1295 pursuant to this Section 13.4.6 in connection with any amendment to this Agreement, including a Change Order or Deviation, DB Contractor must submit to TxDOT an executed and notarized Form 1295 complying with the requirements of the Form 1295 Laws at the same time it submits the executed amendment for TxDOT's execution. TxDOT will not execute any Change Order or other amendment to this Agreement until it has received either the certification or the Form 1295 as required by this Section 13.4.6; provided, that DB Contractor's submission of such certification or Form 1295 does not obligate TxDOT to execute a Change Order or any other amendment to this Agreement. TxDOT will acknowledge receipt of each certification and Form 1295 submitted by DB Contractor in relation to each amendment to this Agreement executed by TxDOT; however, TxDOT's receipt of a Form 1295 shall not be construed as TxDOT's review, approval, consent or certification as to the contents of such Form 1295, for which DB Contractor is solely responsible.

Additional information regarding Form 1295 may be found at the Texas Ethics Commission website at https://www.ethics.state.tx.us/tec/1295-Info.htm.

13.5 Certain Limitations

13.5.1 Limitation on Price Increases

Any increase in the Price allowed hereunder shall exclude (a) costs caused by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work; and (c) costs for remediation of any Nonconforming Work. Costs incurred for the purpose of mitigating damages as described in clause (b) above, and not otherwise disallowed hereunder, would be reimbursable.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by TxDOT as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.5. Other delay and disruption damages shall be compensable hereunder only in the case of delays that entitle DB Contractor to an extension of a Completion Deadline and qualify as TxDOT-Caused Delays. Without limiting the generality of the foregoing, costs of re-sequencing or rearranging DB Contractor's work plan to accommodate TxDOT-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7.7 and any additional field office and job site overhead costs directly attributable to such delays. In addition, before DB Contractor may obtain any increase in the Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, DB Contractor shall have demonstrated to TxDOT's satisfaction that:

(a) its schedule that defines the affected Critical Path in fact sets forth a reasonable method for completion of the Work; and

(b) the change in the Work or other event or situation that is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work that impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve Substantial Completion or Final Acceptance of a Facility beyond the applicable Completion Deadline); and

(c) the delay or damage was not due to an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, and could not reasonably have been avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (provided that TxDOT has agreed to reimburse DB Contractor for additional costs reasonably incurred in connection with such re-sequencing, reallocation or redeployment); and

(d) the delay for which compensation is sought is not concurrent with any delay for which any DB Contractor-Related Entity is responsible hereunder; and

(e) DB Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to TxDOT.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path, (b) was due to the fault or negligence, or act or failure to act of any DB Contractor-Related Entity, (c) is concurrent with any other unrelated delay to a Critical Path that is DB Contractor's responsibility hereunder, or (d) could reasonably have been avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension unless TxDOT shall have agreed, if requested to do so, to reimburse DB Contractor for its costs incurred, if any, in re-sequencing, reallocating or redeploying its forces). DB Contractor shall be required to demonstrate to TxDOT's satisfaction that the change in the Work or other event or situation that is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work that has impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve Substantial Completion or Final Acceptance of a Facility beyond the applicable Completion Deadline).

13.5.4 Work Performed Without Direction

To the extent that DB Contractor undertakes any efforts outside of the scope of the Work, unless DB Contractor has received a Directive Letter or Change Order signed by TxDOT to undertake such efforts, DB Contractor shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, TxDOT may require DB Contractor to remove or otherwise undo any such work, at DB Contractor's sole cost.

13.6 Change Order Pricing

The price of a Change Order under this Section 13.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the original allocations of the Price to comparable activities, whenever possible. If reference to price allocations is inappropriate and if requested by TxDOT or DB Contractor, negotiation for lump sum or unit price Change Orders shall be on an Open Book Basis and may be based on the pricing contained in the EPDs as well as Subcontractors' bid prices.

13.6.1 Detailed Cost Proposal

DB Contractor may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 13.7 (a) showing all impacts on the Contract Documents from Work additions, deletions and modifications shown in the Change Order being priced and (b) setting out the proposed costs in such a way that a fair evaluation can be made. When the Change Order adds Work to DB Contractor's scope, the increase in the Price shall be negotiated based on estimates or actual costs of labor, material and equipment. When the Change Order deletes Work from DB Contractor's scope, the amount of the reduction in the Price shall be based upon an estimate, including a bill of material and a breakdown of labor and equipment costs. Markup for profit and overhead consistent with Section 13.7.7 shall apply to Work added and deleted by Change Orders.

13.6.2 Identification of Conditions

DB Contractor shall identify all conditions with respect to prices or other aspects of the cost proposal, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

13.6.3 Contents

A negotiated Change Order shall specify costs, scheduling requirements, time extensions and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the Parties may mutually agree to use a multiple-step process involving the issuance of a Change Order that includes an estimated construction cost and that provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost.

13.6.4 Added Work

When the Change Order adds Work to DB Contractor's scope, the increase in the Price shall be negotiated based on estimated costs of labor, material, and equipment or shall be based on actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 13.5.2 and 13.7.7. Risk associated with the Work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Work.

13.6.5 Deleted Work

When the Change Order deletes Work from DB Contractor's scope, the amount of the reduction in the Price shall be based upon DB Contractor's estimated price for such work included in the Proposal, including a bill of material and a breakdown of labor and equipment costs, plus variable overhead and profit associated with the deleted Work. Estimated costs that DB Contractor applied to develop the original Price, as well as markup for profit and variable overhead at the rates DB Contractor applied to develop the Price, as reflected in the EPDs, shall apply for determining the amount of the Price reduction for deleted Work Change Orders. The amount of risk associated with such Work as of the Effective Date by DB Contractor shall be an additional factor in determining the amount of the Price reduction for deleted Work Change Orders. When a reduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the Price reduction. In addition, the following shall be deducted from the Price reduction or reimbursed by TxDOT: (1) reasonable demobilization costs of DB Contractor associated with the deleted Work; (2) reasonable costs associated with terminating related Subcontracts; (3) sums due and payable to DB Contractor in accordance with approved Draw Requests for subsequently deleted Work submitted prior to the date of the Directive Letter requiring that such work be deleted; and (4) the cost of actual Work performed and costs incurred for the deleted Work after the period covered by the most recent Draw Request and prior to the date of the Directive Letter or other notification by TxDOT eliminating the Work.

13.6.6 Change Order Both Adding and Deleting Work

When the Change Order includes both added and deleted Work, DB Contractor shall prepare a statement of the cost of labor, material and equipment for both added and deleted Work. If the cost of labor, material and equipment for the Work added and deleted results in a:

(a) Net increase in cost, the change shall be treated as Work added, and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Price.

(b) Net decrease in cost, the change shall be treated as Work deleted, and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the amount deducted from the Price.

(c) Net change of zero, there will be no change in the Price.

13.6.7 Unit-Priced Change Orders

Unit prices shall be deemed to include all costs for labor, material, overhead, and profit and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Price based on estimated quantities. Upon final determination of the quantities, TxDOT will issue a modified Change Order setting forth the final adjustment to the Price.

13.6.8 All-Inclusive Change Orders

All Change Orders submitted by DB Contractor shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule.

13.6.9 Insurance

Any increase to the Price under any Change Order shall not include: (i) the amount of any insurance available to DB Contractor, (ii) any deductible or self insured retention associated with such insurance, or (iii) the amount of any insurance coverage required under this Agreement that is deemed to be self-insured by DB Contractor under Section 9.2.3. All of the foregoing shall be solely the responsibility of DB Contractor.

13.7 Time-and-Materials Change Orders

TxDOT may at its discretion issue a Time-and-Materials Change Order whenever TxDOT determines that a Time-and-Materials Change Order is advisable. The Time-and-Materials Change Order shall instruct DB Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Price will be determined and the estimated total change in the Price anticipated thereunder. Upon final determination of the allowable costs, TxDOT shall issue a modified Change Order setting forth the final adjustment to the Price.

13.7.1 Labor Costs

The cost of labor for workers used in the actual and direct performance of the Change Order work, whether provided by DB Contractor or a Subcontractor, will equal the sum of the following:

(a) For construction-related labor, (1) the actual cost for direct labor, plus (2) the actual cost of workers' compensation and liability insurance required under this Agreement, health, welfare and pension benefits and Social Security

deductions or 45% of the actual direct labor cost, whichever is less; plus (3) 25% of the cost for direct labor set forth in clause (1) for profit and overhead.

(b) For non-construction-related work (professional services), (1) the actual wages (i.e., the base wage paid to the employee exclusive of any fringe benefits), plus (2) a labor surcharge in the amount of 145%, which shall constitute full compensation for all profit, overhead and all State and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.

13.7.2 Material Costs

Material costs for Change Order work shall be the actual cost of all materials to be used in the performance of the Construction Work, including normal wastage allowance as per industry standards, less salvage value, plus 15% for profit and overhead. The material prices shall be supported by valid quotes and invoices from Suppliers. The cost shall include applicable sales taxes, freight and delivery charges, and any allowable discounts.

13.7.3 Equipment

13.7.3.1 Costs for DB Contractor-owned machinery, trucks, power tools or other similar equipment that are required for Change Order work will be allowed based on the following methodology:

(a) The direct cost of fuel, lubricants, repairs, parts, and depreciation will be considered without any additional compensation percentage for overhead and profit being added; and

(b) The equipment rental rates shall be those tabulated in the most recent version of the *Rental Rate Blue Book*. The rental rates to be used shall be the published monthly rate divided by 176 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying it by the *Rental Rate Blue Book* adjustment rate for the year the equipment was manufactured and by the regional factor contained in the *Rental Rate Blue Book* estimated hourly operating cost rate.

DB Contractor shall be considered to own such items if an ownership interest therein is held by (i) DB Contractor, (ii) any equity participant in DB Contractor, (iii) any Subcontractor performing the Construction Work, or (iv) any Affiliate of DB Contractor, any equity participant in DB Contractor or any such Subcontractor. If the publication of the *Rental Rate Blue Book* should be discontinued for any reason, TxDOT may select a different publication from which to make the described calculations.

13.7.3.2 Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be allowed in an amount equal to the direct rental rate for the equipment plus a 5% markup for overhead and profit.

13.7.3.3 The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Change Order work being performed. The time shall include the reasonable time required to move the equipment to the location of the Change Order work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Change Order work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. Payment for loading and transporting will be made only if the equipment is used for Change Order work and cannot be used to perform other Work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

13.7.4 Subcontracted Work

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to (a) the actual cost to DB Contractor of such work (which shall be charged by the Subcontractor on a time-and-materials basis in accordance with this Section 13.7, unless otherwise approved in writing by TxDOT), plus (b) 5% of such cost. The 5% markup for subcontracted work shall not apply to (i) Subcontracts with Affiliates or (ii) Subcontracts with Suppliers.

13.7.5 Work Performed by Utility Owners

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Utility Owners entitled to receive reimbursement for their costs from DB Contractor, the Change Order shall provide for compensation to DB Contractor equal to (a) the actual and reasonable amount paid by DB Contractor to the Utility Owner for such work (but not greater than the amount allowed pursuant to the applicable Utility Agreements), plus (b) 5% of such allowed actual amount, less any amounts that may be deducted pursuant to Section 6.8. Backup documentation supporting each cost item for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

13.7.6 Other Direct Costs

For any justified direct cost incurred for Change Order work not covered by the categories of costs contained in Sections 13.7.1 through 13.7.5, DB Contractor shall accept as full payment therefor an amount equal to the actual cost to DB Contractor for such direct cost item without additional markup. Backup documentation supporting each cost item for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

13.7.7 Overhead Items

The markups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of $1,000 or less, consumables (items which are consumed in the performance of the Work which are not a part of the finished product) and other indirect costs of the added or changed Work, as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Work. DB Contractor's markup percentages shall be considered to include:

(a) Supervisory expenses of all types, including salary and expenses of executive officers, supervising officers or supervising employees, excluding only direct supervision of force account work;

(b) Clerical or stenographic employees;

(c) Any and all field, job site and general home office overhead and operating expenses whatsoever;

(d) Subsistence and travel expenses for all personnel, other incidental job burdens, and bonuses not otherwise covered;

(e) Quality assurance and quality control; and

(f) Bond and insurance premiums.

With respect to non-construction-related labor costs, overhead is covered by the labor surcharge and includes such accessories as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

13.7.8 Change Order Data

DB Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs described in

this Section 13.7 with respect to all Work that is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with Professional Services, as well as DB Contractor's costs for Utility Adjustment Work, and (b) all data necessary to show the actual impact (if any) on the Critical Path, the Project Schedule, and Completion Deadlines with respect to all Work that is the subject of a Change Order or a proposed Change Order. Such data shall be provided to TxDOT and any authorized representative of TxDOT reviewing any Claim or Dispute regarding compensation for such Work. DB Contractor hereby waives the right to obtain compensation for any Work for which cost data is required to be provided hereunder if DB Contractor fails to maintain and timely provide to TxDOT cost data meeting the requirements of this Agreement.

13.7.8.1 DB Contractor shall maintain its records in such a manner as to provide a clear distinction between (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Price and (b) the costs of other operations. DB Contractor shall furnish daily, on forms approved by TxDOT, reports of all costs described in the foregoing clause (a). The reports shall itemize all costs for labor, materials, and equipment rental and provide the total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate and actual working hours of operation. All such records and reports shall be made immediately available to TxDOT upon its request. The cost of furnishing such reports is deemed to be included in DB Contractor's overhead and fee percentages.

13.7.8.2 All reports shall be signed by DB Contractor. TxDOT will compare its records with DB Contractor's reports, make the necessary adjustments and compile the costs of Work completed under a Time-and-Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

13.8 Change Orders for Differing Site Conditions, Utilities, Force Majeure Events, Hazardous Materials, Access to ROW and Necessary Basic Configuration Changes

13.8.1 Differing Site Conditions

Subject to the restrictions and limitations set forth in this Section 13, DB Contractor shall be entitled to a Change Order for certain additional costs that are directly attributable to any Differing Site Conditions to the extent permitted in this Section 13.8.1. No time extension shall be available with respect to Differing Site Conditions, and no delay or disruption damages shall be recovered. To the

extent that additional costs are incurred in connection with the Project due to changes in DB Contractor's obligations relating to the Work resulting from the existence of Differing Site Conditions and such costs are not reimbursed by insurance proceeds (except to the extent such non-reimbursement is due to DB Contractor's failure to maintain the insurance required to be maintained under the Agreement), TxDOT and DB Contractor shall share the risk as follows:

13.8.1.1 DB Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to, the first $150,000 in additional costs incurred directly attributable to changes in DB Contractor's obligations hereunder resulting from each separate occurrence of Differing Site Conditions, subject to an aggregate cap of $2,100,000 for such additional costs resulting from the $150,000 "deductible" amounts borne by DB Contractor.

13.8.1.2 TxDOT shall be fully responsible for any additional costs incurred in excess of (1) $150,000 directly attributable to changes in DB Contractor's obligations hereunder resulting from each separate occurrence of Differing Site Conditions and (2) the $2,100,000 cap described in Section 13.8.1.1, and a Change Order shall be issued to compensate DB Contractor for such additional costs.

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

13.8.1.4 DB Contractor hereby acknowledges and agrees that it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions. DB Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. DB Contractor shall track the first $150,000 in costs associated with a Differing Site Condition in accordance with the requirements and limitations in Section 13.7 and shall track the costs incurred in excess of $150,000 in accordance with the requirements and limitations in Section 13.6.

13.8.1.5 Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by DB Contractor with respect to the condition of the Site, justifying the basis for such assumptions,

explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by DB Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any work stoppage in affected areas during the investigation period described above.

13.8.2 Utilities

DB Contractor shall be entitled to a Change Order with respect to certain additional costs and delays relating to Utility Adjustments as specified in Section 6.8 and subject to the restrictions and limitations set forth in Section 6.8 and in this Section 13. In all other respects, DB Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in DB Contractor's obligations relating to the Work resulting from the existence of any Utilities on the Site.

13.8.3 Force Majeure Events

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

13.8.4 Hazardous Materials Management

If compensation is payable to DB Contractor pursuant to Section 6.9 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties or 100% of the Reimbursable Hazardous Materials Costs for the work in question, subject to the limitations set forth in this Section 13.8.4, including the cost-sharing provisions set forth in Section 13.8.4.1.

13.8.4.1 Determination of Reimbursable Amount

DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if TxDOT is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken that would inhibit TxDOT's ability to ascertain, based on a site

inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, DB Contractor may take such limited actions as are required by Law without advance notice to TxDOT but shall provide such notice immediately thereafter (which in no event shall be more than two hours after the incident by phone and 24 hours after the incident by written notice).

In cases involving reimbursement for Hazardous Materials Management under this Section 13.8.4, allowable costs shall be limited to the incremental, reasonable, out-of-pocket costs incurred in performing Hazardous Materials Management after completion of the testing process to determine whether Hazardous Materials are present (deducting any avoided costs, such as the cost of disposal that would have been incurred had Hazardous Materials not been present). All costs related to investigating and characterizing are included in the Price, and DB Contractor shall not be entitled to additional compensation therefor.

Except as otherwise provided and subject to the limitations in this Section 13.8, TxDOT shall compensate DB Contractor for (i) 50% of DB Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Pre-existing Hazardous Materials encountered by DB Contractor that exceed $3,000,000 but do not exceed $4,500,000, (ii) 100% of such total chargeable Pre-existing Hazardous Materials costs that exceed $4,500,000, and (iii) 100% of such total chargeable Hazardous Materials Management costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or a TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

Except as otherwise provided and subject to the limitations in this Section 13, DB Contractor shall be entitled to a Change Order in accordance with Section 13.8.3 to compensate DB Contractor for DB Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Hazardous Materials falling within the definition of Force Majeure Event. Such costs shall be handled in accordance with Section 13.8.3.

DB Contractor shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that DB Contractor demonstrates to TxDOT's satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) DB Contractor's plan for the Hazardous Materials Management represents the approach that is most beneficial to the Project and the public. DB Contractor shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for payment.

13.8.4.2 Time Extensions

DB Contractor shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Hazardous Materials, regardless of the total quantities. If DB Contractor encounters Hazardous Materials for which DB Contractor is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path ("Hazardous Materials Delay"), then DB Contractor shall bear 100% of the risk of such Hazardous Materials Delay up to an amount of 30 days per location and up to an aggregate amount of 120 days for all locations on the Project. If a Hazardous Materials Delay exceeds 30 days in any location, then the risk of such Hazardous Materials Delay in excess of 30 days for that location shall be borne by TxDOT. If aggregate Hazardous Materials Delays exceed 120 days, then the risk of Hazardous Materials Delay in excess of 120 days shall be borne by TxDOT. If a Hazardous Materials Delay is concurrent with another delay that is DB Contractor's responsibility hereunder, then such Hazardous Materials Delay shall be borne 100% by DB Contractor. If a Hazardous Materials Delay at one location is concurrent with another Hazardous Materials Delay at another location, the 30-day period of DB Contractor's responsibility for the delays shall run concurrently. The foregoing shall not preclude DB Contractor from obtaining a time extension with respect to any Hazardous Material that qualifies as a Force Majeure Event. Notwithstanding anything to the contrary contained in this Section 13.8.4, if DB Contractor is prohibited from working at a particular location due to the discovery of Hazardous Materials for which DB Contractor is entitled to a Change Order during the last 12 months prior to the Completion Deadline, then DB Contractor shall be entitled to an extension of the applicable Completion Deadline for any Critical Path delays resulting from such discovery of Hazardous Materials.

13.8.4.3 Limitations on Change Orders

Entitlement to compensation or a time extension shall be limited to Work performed pursuant to DB Contractor's Hazardous Materials Management Plan, Investigative Work Plan and Site Investigation Report for such Hazardous Materials as approved by TxDOT in writing. No compensation or time extension shall be allowed with respect to (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) any costs that could have been avoided, (d) Hazardous Materials on any Additional Properties not expressly described in Section 6.9.1.3, (e) any Hazardous Materials encountered during or in connection with the demolition or removal of buildings, structures, fixtures or other improvements on any parcels within the Site, (f) any Hazardous Materials that do

not fall within the definition of Pre-existing Hazardous Materials or clause (g) of the definition of Force Majeure Event or (g) any Hazardous Materials that fall within the definition of DB Contractor Releases of Hazardous Materials. Utilities (other than Service Lines) shall not be considered "buildings, fixtures or other improvements" for purposes of this Section 13.8.4.

13.8.5 Access to ROW

Subject to the restrictions and limitations set forth in this Section 13, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by failure or inability of TxDOT to (a) deliver the petition for the parcel to DB Contractor within 105 days from the date of the approved Condemnation Package or (b) provide the payment for the parcel within 45 days from the date that the Special Commissioners' award is filed with the Court, in either case in accordance with Section 6.5.2. In addition, subject to the limitations and risk sharing provisions in Section 6.5.3, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as a result of any delay in a Critical Path directly caused by failure or inability of TxDOT to make available within 365 days (a) after approval of a Condemnation Package, (1) the portion of the Remaining Project ROW within the Schematic ROW described in a Condemnation Package or (2) any Additional Properties that must be acquired due to a TxDOT-Directed Change, Force Majeure Event, or a Necessary Basic Configuration Change, described in a Condemnation Package, and (b) after NTP1, the portion of the Schematic ROW that is not the Remaining Project ROW. DB Contractor shall be entitled to a Change Order only to the extent the delay (i) materially adversely affects a Critical Path, (ii) is not mitigated by or susceptible to handling by a work-around or consumption of Project Float, and (iii) is 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 DB Contractor-Related Entities. DB Contractor shall not be entitled to an increase in the Price or reimbursement of any costs incurred as a result of such delays, including any delay or disruption damages.

13.8.6 Necessary Basic Configuration Changes

13.8.6.1 Notwithstanding the fact that this Agreement generally obligates DB Contractor to undertake all work necessary to complete the Project without an increase in the Price, this Section 13.8.6 provides for an increase in the Price to be made in the amount of the increased costs for additional Utility Adjustment Work required on Additional Properties acquired as a result of a Necessary Basic Configuration Change.

13.8.6.2 If DB Contractor commenced any Utility Adjustment Work affected by such modification prior to delivery of an appropriate PCO Notice, the Change Order shall allow TxDOT a credit for the cost of any unnecessary work performed and shall exclude any additional costs associated with redoing the work already performed.

13.8.6.3 DB Contractor shall be responsible for any delays (including those that affect the duration of a Critical Path) and, except as set forth in this Section 13.8.6 and Section 13.8.4, any cost increases resulting from changes in requirements and obligations of DB Contractor relating to the Project due to Errors in the TxDOT Schematic Design.

13.9 Change Order Records

DB Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Price and the costs of other operations. DB Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs of all Work that is the subject of a Change Order or a requested Change Order, specifically including costs associated with Professional Services, as well as Utility Adjustments and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work that is the subject of a Change Order or a proposed Change Order, if the impact on the Project Schedule is in dispute. Such data shall be provided to any dispute resolvers, TxDOT and its authorized representatives as directed by TxDOT, on forms approved by TxDOT. The cost of furnishing such reports is included in DB Contractor's predetermined overhead and profit markups.

13.9.1 Daily Work Reports and Data Collection

DB Contractor shall furnish TxDOT completed daily work reports for each day's Work that is to be paid for on a time-and-materials basis. The daily time-and-materials Work reports shall be detailed as follows:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices, and extensions.

(d) Transportation of materials.

The reports shall also state the total costs to date for the Time-and-Materials Change Order Work.

13.9.2 Supplier's Invoices

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time-and-materials Work reports, or if not available, they shall be submitted with subsequent daily time-and-materials Work reports. Should said Supplier's invoices not be submitted within 60 days after the date of delivery of the materials, TxDOT shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of the applicable Work, less any discounts available.

13.9.3 Execution of Reports

All Time-and-Materials Change Order reports shall be signed by DB Contractor's Project Manager.

13.9.4 Adjustment

TxDOT will compare its records with the completed daily time-and-materials Work reports furnished by DB Contractor and make any necessary adjustments. When these daily time-and-materials Work reports are agreed upon and signed by both Parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. DB Contractor's cost records pertaining to Work paid for on a time-and-materials basis shall be open, during all regular business hours, to inspection or audit by representatives of TxDOT during the life of this Agreement and for a period of not less than five years after the date of Final Acceptance of the Project, and DB Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than DB Contractor, DB Contractor shall make every reasonable effort to ensure that the cost records of each such other Person will be open to inspection and audit by representatives of TxDOT on the same terms and conditions as the cost records of DB Contractor. Payment for such costs may be deleted if the records of such third parties are not made available to TxDOT's representatives. If an audit is to be commenced more than 60 days after the date of Final Acceptance of the Project, DB Contractor will be given a reasonable notice of the time when such audit is to begin.

13.10 Matters Not Eligible for Change Orders and Waiver

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

(a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the TxDOT Schematic Design, subject only to the right to a Change Order to the extent permitted by Section 13.8);

(b) any changes requested by TxDOT as part of the process of reviewing or approving Submittals for consistency with the requirements of the Contract Documents, the Governmental Approvals or applicable Laws;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes that otherwise give rise to a right to a Change Order);

(d) action or inaction of any DB Contractor-Related Entity (unless arising from causes that otherwise give rise to a right to a Change Order);

(e) action or inaction of adjoining property owners or TxDOT's other contractors (unless arising from causes that otherwise give rise to a right to a Change Order);

(f) groundwater levels or subsurface moisture content;

(g) untimely delivery of equipment or material or unavailability, defectiveness, or increases in costs of material, equipment, or products specified by the Contract Documents;

(h) any costs covered by insurance available to DB Contractor, any deductible or self-insured retention associated with such insurance, or any costs that would have been covered by any insurance that is deemed to be self-insured by DB Contractor under Section 9.2.3;

(i) correction of Nonconforming Work and review and acceptance thereof by TxDOT, including rejected Professional Services submittals;

(j) failure by any DB Contractor-Related Entity to comply with the requirements of the Contract Documents, Governmental Approvals or Laws;

(k) delays not on a Critical Path;

(l) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in the issuance of Governmental Approvals that are required to be obtained by DB Contractor, any failure to obtain such Governmental Approvals, and compliance with the terms and conditions of all Governmental Approvals;

(m) delays caused by the untimely provision of access to Project ROW, except to the extent TxDOT has agreed in this Section 13 to be responsible for any such delays;

(n) any increased costs or delays related to any Utility Adjustment Work or failure to timely obtain any approval, work or other action from a Utility Owner, except as allowed by Section 13.8.2;

(o) any situations (other than Force Majeure Events) that, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in this Agreement or arise out of the nature of the Work; and

(p) all other events beyond the control of TxDOT for which TxDOT has not expressly agreed to assume liability hereunder.

DB Contractor hereby assumes responsibility for all such matters and acknowledges and agrees that assumption by DB Contractor of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the circumstances of this Agreement and that contingencies included in the Price in DB Contractor's sole judgment constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

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

13.11 Disputes

If TxDOT and DB Contractor agree that a request to increase the Price or extend any Completion Deadline by DB Contractor has merit, but are unable to agree as to the amount of such Price increase or time extension, TxDOT agrees to mark up the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by DB Contractor to reduce the amount of the Price increase or time extension as deemed appropriate by TxDOT. In such event, TxDOT will execute and deliver the marked-up Change Order to DB Contractor within a reasonable period after receipt of a request by DB Contractor to do so, and thereafter will make payment or grant a time extension based on such marked-up Change Order. The failure of TxDOT and DB Contractor to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time-and-Materials Change Order and the disputed amount of the increase in the Price or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all claims by DB Contractor of any nature arising from or relating to the Work covered by the Change Order. DB Contractor's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by DB Contractor with respect to the Dispute (crediting TxDOT for any corresponding reduction in DB Contractor's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.12 Changes Not Requiring Change Order

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

13.13 No Release or Waiver

13.13.1 No extension of time granted hereunder shall release DB Contractor's Surety from its obligations. Work shall continue and be carried out in accordance with all the provisions of the Contract Documents, and this Agreement shall be and shall remain in full force and effect, unless formally suspended or terminated by TxDOT in accordance with the terms hereof. Permitting DB Contractor to finish the Work or any part thereof after a Completion Deadline, or the making of payments to DB Contractor after such date, shall not constitute a waiver on the part of TxDOT of any rights under this Agreement.

13.13.2 Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by this Agreement after a Completion Deadline, shall be deemed to be a waiver by TxDOT of its right to terminate this Agreement for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

13.13.3 No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Work, and no claim that TxDOT has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, DB Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein or included in any oral request. DB Contractor shall be deemed to have performed such work as a volunteer and at its sole risk and cost. In addition, TxDOT may require DB Contractor to remove or otherwise undo any such work, at DB Contractor's sole risk and cost.

SECTION 14. SUSPENSION

14.1 Suspensions for Convenience

14.1.1 TxDOT may, at any time and for any reason, by written notice, order DB Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that TxDOT deems appropriate for the convenience of TxDOT. DB Contractor shall promptly comply with any such written suspension order. DB Contractor shall promptly recommence the Work upon receipt of written notice from TxDOT directing DB Contractor to resume the Work. Any such suspension for convenience shall be considered a TxDOT-Directed Change, provided that TxDOT shall have the right to direct suspensions for convenience not exceeding 48 hours each up to a total of 96 hours, which shall not be considered a TxDOT-Directed Change. Adjustments of the Price and the Completion Deadlines shall be available for any such TxDOT-Directed Change, subject to DB Contractor's compliance with the terms and conditions set forth in Section 13.

14.2 Suspensions for Cause

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

(a) The existence of conditions unsafe for workers, other Project personnel or the general public;

(b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(c) Performance of Nonconforming Work;

(d) Failure to carry out and comply with Directive Letters;

(e) Certain failures to remove and replace personnel as set forth in Section 7.7.3;

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

(g) Failure to deliver or maintain the Payment Bond, Performance Bond, and any other bonds or security required hereunder; or

(h) Failure to comply with any quality control plan or safety plan required under the Contract Documents.

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

14.3 Responsibilities of DB Contractor During Suspension Periods

During periods that the Work is suspended, DB Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the Project. During any suspension period, DB Contractor shall maintain in a growing condition all newly established plantings, seedings and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during the suspension period. Additionally, DB Contractor shall continue other Work that has been or can be performed at the Site or offsite during the period that the Work is suspended.

SECTION 15. TERMINATION FOR CONVENIENCE; TERMINATION BASED ON DELAY IN NTP1

15.1 Termination for Convenience

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

15.1.2 Within three days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, DB Contractor shall meet and confer with TxDOT for the purpose of developing an interim transition plan for the orderly transition of the terminated Work, demobilization and transfer of the Project to TxDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date DB Contractor receives such notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to TxDOT in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in Section 15.2, all of which provisions and procedures DB Contractor shall immediately follow, regardless of any delay in the preparation or acceptance of the transition plan.

15.1.3 DB Contractor acknowledges and agrees that TxDOT has no obligation to issue NTP1 and further agrees that, unless and until NTP1 is issued, TxDOT shall have no liability to DB Contractor hereunder except as provided under Section 15.9.

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

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

15.2.1 Stop the Work as specified in the notice.

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

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

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

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

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

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

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

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

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

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

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

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

to enforce the provisions of Subcontracts pertaining to the surrender of the terminated Work.

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

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

15.3 Settlement Proposal

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, DB Contractor shall submit a final termination settlement proposal to TxDOT in the form and with the certification prescribed by TxDOT. DB Contractor shall submit the proposal promptly, but no later than 90 days from the effective date of termination, unless DB Contractor has requested a time extension in writing within such 90-day period and TxDOT has agreed in writing to allow such an extension. DB Contractor's termination settlement proposal shall then be reviewed by TxDOT and acted upon, returned with comments, or rejected. If DB Contractor fails to submit the proposal within the time allowed, TxDOT may determine, on the basis of information available, the amount, if any, due DB Contractor because of the termination and shall pay DB Contractor the amount so determined, and DB Contractor shall be bound by TxDOT's determination.

15.4 Amount of Negotiated Termination Settlement

DB Contractor and TxDOT may agree, as provided in Section 15.3, upon the whole or any part of the amount or amounts to be paid to DB Contractor by reason of the total or partial termination of the Work for convenience pursuant to Section 15.1. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Price as reduced by the amount of payments made and the Price of Work not terminated. Upon determination of the settlement amount, this Agreement will be amended accordingly, and DB Contractor will be paid the agreed amount as described in this Section 15.4. Nothing in Section 15.5 prescribing the amount to be paid to DB Contractor in the event that DB Contractor and TxDOT fail to agree upon the whole amount to be paid to DB Contractor by reason of the termination of Work pursuant to Section 15.1 shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to DB Contractor pursuant to this Section 15.4. TxDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve DB Contractor from its obligations with respect thereto (including Warranties) or affect DB Contractor's

obligations under any of the Performance Bond, Payment Bond, Warranty Bond and Guaranty as to such completed or non-terminated Work.

15.5 No Agreement as to Amount of Termination Settlement

If DB Contractor and TxDOT fail to agree upon either all or some portion of the amount to be paid DB Contractor by reason of a Termination for Convenience pursuant to Section 15.1, the amount payable (exclusive of interest charges) shall be determined by TxDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Section 15.4:

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

(a) DB Contractor's actual reasonable out-of-pocket costs, without profit, and including equipment costs only to the extent permitted by Section 13.7.3 for all Work performed, including mobilization, demobilization, Work in progress, and Work done to secure the applicable portion of the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits, or similar items, as established to TxDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies, and equipment to be retained by DB Contractor, for amounts realized by the sale of such items, and for other appropriate credits against the cost of the Work, including those deductions that would be permitted in connection with Final Payment. When, in the opinion of TxDOT's Authorized Representative, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace Nonconforming Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents, and the excessive actual cost shall be disallowed.

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

(c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts and Utility Agreements as provided in Section 15.2.6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination

for Convenience of Work under this Agreement, which amounts shall be included in the cost on account of which payment is made under clause (a) above.

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

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

15.5.3 If a termination hereunder is partial, DB Contractor may file a proposal with TxDOT for an equitable adjustment of the Price for the continued portion of this Agreement. Any proposal by DB Contractor for an equitable adjustment under this Section 15.5.3 shall be requested within 90 days from the effective date of termination unless extended in writing by TxDOT. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Agreement.

15.6 Reduction in Amount of Claim

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

15.7 Payment

TxDOT may from time to time, under such terms and conditions as it may prescribe and in its discretion, make partial payments for costs incurred by DB Contractor in connection with the terminated portion of this Agreement, whenever in the opinion of TxDOT the aggregate of such payments shall be within the amount to which DB Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by DB Contractor to TxDOT upon demand.

15.8 Subcontracts

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

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

15.9 Termination Based on Delay to Issuance of NTP1

If NTP1 has not been issued within 365 days after the Effective Date and this delay is not caused in whole or in part by any act, omission, negligence, intentional

misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, DB Contractor, as its sole remedy, shall have the right to terminate this Agreement, which right shall be exercised by delivery of notice of termination to TxDOT. In such event, TxDOT's sole liability to DB Contractor is to pay DB Contractor the same payment for work product as provided to unsuccessful Proposers pursuant to Section 6.3 of the ITP, provided that all other conditions for such payment are met.

15.10 No Consequential Damages

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

15.11 No Waiver; Release

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

15.11.2 Subject to Section 15.12 below, TxDOT's payment to DB Contractor of the amounts required under this Section 15 shall constitute full and final satisfaction of, and upon payment TxDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands, and Losses, known or unknown, suspected or unsuspected, that DB Contractor may have against TxDOT arising out of or relating to the terminated Work. Upon such payment, DB Contractor shall execute and deliver to TxDOT all such releases and discharges as TxDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

15.12 Dispute Resolution

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

15.13 Allowability of Costs

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

SECTION 16. DEFAULT; REMEDIES

16.1 Default of DB Contractor

16.1.1 Events and Conditions Constituting Default

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

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

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

(c) DB Contractor fails to perform the Work in accordance with the Contract Documents, including (i) conforming to applicable standards set forth therein with respect to the Work, or (ii) refusing to comply with any of the requirements of Section 5.4.3 with respect to the uncovering of Nonconforming Work, or Section 5.6.1 with respect to the correction, removal and replacement of Nonconforming Work;

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

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

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

(g) DB Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and Suppliers and in accordance with applicable Laws, or fails to

make payment to TxDOT when due of any amounts owing to TxDOT under this Agreement;

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

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

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

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

(l) A voluntary or involuntary case or other act or event described in clauses (j) and (k) of this Section 16.1.1 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any member of DB Contractor with a material financial obligation owing to DB Contractor for equity or shareholder loan contributions or (ii) any Guarantor of DB Contractor;

(m) An Event of Default under the CMA;

(n) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to DB Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, this Agreement or any of the other Contract Documents is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute;

(o) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect;

(p) Any final judgment is issued holding DB Contractor or any Guarantor liable for an amount in excess of $100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal False Claims Act; or

(q) DB Contractor fails to resume performance of Work that has been suspended or stopped, within the time specified in the originating notification after receipt of notice from TxDOT to do so or (if applicable) after cessation of the event preventing performance.

16.1.2 Notice and Opportunity to Cure

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

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

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

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

(d) Respecting a DB Contractor Default under clause (l) of Section 16.1.1, a period of 10 days from the date of the DB Contractor Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to TxDOT for the benefit of the Project, in the amount of, as applicable: (i) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of DB Contractor or (ii) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor.

(e) Respecting a DB Contractor Default under clause (m) of Section 16.1.1, any cure period permitted under the terms of the CMA.

16.1.3 Declaration of Event of Default

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

16.2 TxDOT Remedies for DB Contractor Default

16.2.1 Termination for Default

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

(a) TxDOT may deduct from any amounts (including interest thereon as permitted under this Agreement) payable by TxDOT to DB Contractor such amounts payable by DB Contractor to TxDOT, including reimbursements owing, Liquidated Damages, Lane Rental Fees and Key Personnel Change Fees, amounts TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers or other Persons, amounts of any Losses that have accrued, the cost to complete or remediate uncompleted

Work or Nonconforming Work or other damages or amounts that TxDOT has determined are or may be payable to TxDOT under the Contract Documents.

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

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

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

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

may become due DB Contractor or its Surety. If such expense exceeds the sum that would have been payable to DB Contractor under this Agreement, then DB Contractor and each Guarantor shall be liable and shall pay to TxDOT the amount of such excess.

16.2.1.3 In lieu of the provisions of this Section 16.2.1 for terminating this Agreement for default and completing the Work, TxDOT may, in its discretion, pay DB Contractor for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Agreement. No Claim under this Section 16.2.1.3 will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by DB Contractor.

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

16.2.2 DB Contractor Defaults Related to Safety

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

16.2.3 Damages

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

16.2.3.2 If TxDOT suffers damages as a result of a DB Contractor Default due to a DB Contractor-Related Entity's acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval, then, subject to Section 17, TxDOT shall be entitled to recovery of such damages from DB Contractor regardless of whether such acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval ripens into an Event of Default.

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

16.2.3.4 TxDOT's remedies with respect to Nonconforming Work shall include the right to accept such Work and receive payment as provided in Section 5.6.2 in lieu of the remedies specified in this Section 16.2.

16.2.4 Performance Security

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

entitled to do so under the bond, letter of credit, guaranty or other performance security.

16.2.5 Other Rights and Remedies; Cumulative Remedies

Subject to Section 17.5 and 17.6, TxDOT shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at law or in equity, and each right and remedy of TxDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TxDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies.

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

16.3.1 If an Event of Default consists solely of DB Contractor's failure to achieve Substantial Completion or Final Acceptance of a Facility by the applicable Completion Deadline, TxDOT's sole remedy for such Event of Default shall be the right to assess Liquidated Damages, provided that (a) such Event of Default does not delay such Substantial Completion beyond 365 days after the applicable Substantial Completion Deadline or such Final Acceptance beyond 180 days after the applicable Final Acceptance Deadline, as applicable, and (b) DB Contractor continues to diligently perform the Work despite such Event of Default.

16.3.2 The fact that TxDOT has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude TxDOT from exercising its other rights and remedies respecting the delay set forth in Section 16.2 other than the right to collect other damages due to the delay, except that TxDOT agrees not to exercise such other rights and remedies respecting the delay so long as (a) the Project Schedule demonstrates that DB Contractor is capable of achieving (i) Substantial Completion of each Facility within 365 days after the applicable Substantial Completion Deadline and (ii) Final Acceptance of each Facility within 180 days after the applicable Final Acceptance Deadline, as applicable, and (b) DB Contractor diligently performs the Work in accordance with said schedule. Nothing in this Section 16.3 shall prejudice any other rights or remedies that TxDOT may have due to any other Event of Default during such 365-day period or 180-day period, as applicable.

16.3.3 If Substantial Completion of a Facility has not occurred within 365 days after the applicable Substantial Completion Deadline or if Final

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

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

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

SECTION 17. LIQUIDATED DAMAGES, LANE RENTAL FEES AND LIMITATION OF LIABILITY

17.1 Liquidated Damages Respecting Delays

17.1.1 DB Contractor shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Substantial Completion and Final Acceptance of a Facility by the applicable Completion Deadline, as the same may be extended pursuant to this Agreement. The amounts of such liquidated damages are as follows:

(a) For Facility 1&2A, (i) $60,000 for each day after the applicable Substantial Completion Deadline and through the date of Substantial Completion of Facility 1&2A, but not to exceed 365 days, and (ii) $2,590 for each day after the applicable Final Acceptance Deadline and through the date of Final Acceptance of Facility 1&2A;

(b) For Facility LE, (i) $2,590 for each day after the applicable Substantial Completion Deadline and through the date of Substantial Completion of Facility LE, but not to exceed 365 days, and (ii) $2,590 for each day after the applicable Final Acceptance Deadline and through the date of Final Acceptance of Facility LE; and

Liquidated damages shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this Agreement, and shall continue to accrue until the date of Substantial Completion or Final Acceptance of the applicable Facility or until termination of this Agreement. Other than TxDOT's rights to damages arising from termination under Section 16.3.3(a), liquidated damages shall constitute TxDOT's sole right to damages for such delay.

DB Contractor acknowledges that the liquidated damages described in this Section 17.1 are reasonable in order to compensate TxDOT for damages it will incur as a result of late completion of portions thereof as set forth in this Section 17.1. Such damages include (a) loss of use, enjoyment and benefit, as applicable, and connecting TxDOT transportation facilities by the general public, (b) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the applicable Substantial Completion Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities, and (c) additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these

damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.2 Liquidated Damages for Lane Closures and Lane Rental Fees

17.2.1 DB Contractor shall be liable for and pay to TxDOT liquidated damages for Lane Closures ("Liquidated Damages for Lane Closures") and Lane Rental Fees assessed against DB Contractor as described in Section 18.3.2 of the Technical Provisions and in the amounts set forth in Exhibit 17.

17.2.2 DB Contractor acknowledges and agrees that Liquidated Damages for Lane Closures and Lane Rental Fees are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures. Such damages include (a) loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, (b) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities, and (c) additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it and such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances as of the Effective Date.

17.3 [RESERVED]

17.4 Additional Acknowledgements Regarding Liquidated Damages

DB Contractor further agrees and acknowledges that:

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

17.4.2 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Section 17.1.

17.4.3 As of the Effective Date, the amounts of Liquidated Damages represent good faith estimates and evaluations by the Parties as to the actual potential damages that TxDOT would incur as a result of late Substantial

Completion of a Facility or late Final Acceptance of a Facility, and do not constitute a penalty.

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

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

17.4.6 Liquidated Damages are not intended to, and do not, liquidate DB Contractor's liability under the indemnification provisions of Section 18.1, even though Third Party Claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to the Liquidated Damages.

17.5 Payment; Satisfaction; Waiver; Non-Exclusive Remedy

17.5.1 DB Contractor shall pay any Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees owing under this Section 17 within 20 days after TxDOT delivers to DB Contractor TxDOT's invoice or demand therefor, such invoice or demand to be issued not more often than monthly. For clarification, this provision does not excuse DB Contractor from including all amounts of Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees owed to TxDOT within its Draw Request in accordance with Section 12.2.2, regardless of whether DB Contractor has received TxDOT's invoice.

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

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

17.5.4 Subject to Section 16.3, TxDOT's right to, and imposition of, Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees are in addition, and without prejudice, to any other rights and remedies available to

TxDOT under this Agreement, at law or in equity respecting the breach, failure to perform or DB Contractor Default that is the basis for the Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees, or any other breach, failure to perform or DB Contractor Default, except for recovery of the monetary damage that the Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees are intended to compensate.

17.6 Limitation of DB Contractor's Liability

Notwithstanding any other provision of the Contract Documents, to the extent permitted by applicable Law, TxDOT will not seek indemnification and defense under Section 18 or to recover damages from DB Contractor resulting from breach of this Agreement (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of (a) all those costs reasonably incurred by TxDOT or any Person acting on TxDOT's behalf in completing or correcting the Work or having the Work completed or corrected by another Person, including the cost of the work required or arising under the Warranties; (b) an amount equal to $100,000,000 (which amount shall specifically include any Liquidated Damages, Key Personnel Change Fees, or Lane Rental Fees paid pursuant to this Section 17); (c) any amounts paid by or on behalf of DB Contractor that are covered by insurance proceeds; and (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, recklessness, bad faith, gross negligence or intentional misconduct on the part of any DB Contractor-Related Entity.

17.7 Limitation on Consequential Damages

17.7.1 Notwithstanding any other provision of the Contract Documents and except as set forth in this Section 17.7.1 and in Section 17.7.2, to the extent permitted by applicable Law, neither party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and each party hereby releases the other party from any such liability.

17.7.2 The foregoing limitations on DB Contractor's liability for punitive, indirect, incidental or consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 9, (ii) covered by the proceeds of insurance actually carried by or insuring DB Contractor under policies solely with respect to the Project and the Work, regardless of whether

required to be carried pursuant to Section 9, or (iii) DB Contractor is deemed to have self-insured the Loss pursuant to Section 9.2.3;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness, bad faith or gross negligence on the part of any DB Contractor-Related Entity;

(c) DB Contractor's indemnities set forth in Section 18.1 or elsewhere in the Contract Documents;

(d) DB Contractor's obligation to pay Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees in accordance with Sections 17.1 and 17.2 or any other provision of the Contract Documents;

(e) Losses arising out of DB Contractor Releases of Hazardous Materials; and

(f) Any other consequential damages arising from a breach of this Agreement by DB Contractor that occurs prior to Final Acceptance of the Project, subject to a cap in the amount of $1,000,000.

SECTION 18. INDEMNIFICATION

18.1 Indemnity by DB Contractor

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

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

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

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

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

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

PAYMENT FOR THE WORK MADE TO OR EARNED BY ANY DB CONTRACTOR-RELATED ENTITY;

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

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

(h) THE CLAIM OR ASSERTION BY ANY OTHER (i) CONTRACTOR THAT ANY DB CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, EXCEPT WHERE THE DB CONTRACTOR-RELATED ENTITY WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (ii) CONTRACTOR THAT ANY DB CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, OR MISCONDUCT OF ANY DB CONTRACTOR-RELATED ENTITY;

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

(j) (i) ANY DB CONTRACTOR-RELATED ENTITY'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT TxDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN TxDOT AND A THIRD PERSON, WHERE TxDOT HAS DELEGATED PERFORMANCE OF THE

OBLIGATION TO DB CONTRACTOR UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF ANY DB CONTRACTOR-RELATED ENTITY THAT RENDER TxDOT UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT TxDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN TxDOT AND A THIRD PERSON WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO DB CONTRACTOR;

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

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

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

(n) ANY CLAIM BY A DB CONTRACTOR-RELATED ENTITY ARISING OUT OF, RELATING TO, OR RESULTING FROM THE PERFORMANCE BY TxDOT OF MATERIAL INSPECTION AND TESTING SERVICES PURSUANT TO SECTION 5.4.1 AND EXHIBIT 23.

18.1.2 Subject to the releases and disclaimers herein, including all the provisions set forth in Section 3.1.8 of this Agreement, DB Contractor's indemnity obligation shall not extend to any third-party Loss to the extent caused by:

(a) the negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party,

(b) TxDOT's material breach of any of its obligations under the Contract Documents;

(c) An Indemnified Party's material violation of any Laws or Governmental Approvals; or

(d) An unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Technical Provisions, but only where prior to occurrence of the third-party Loss (i) DB Contractor complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement created a potentially unsafe condition or (ii) DB Contractor knew of and reported to TxDOT the potentially unsafe requirement.

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

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

18.2 Defense and Indemnification Procedures

18.2.1 Subject to Section 18.2.6, if any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 18.1, TxDOT shall by writing as soon as practicable after receipt of the claim (a) inform DB Contractor of the claim, (b) send to DB Contractor a copy of all written materials TxDOT has received asserting such claim, and (c) notify DB Contractor that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless DB Contractor accepts the tender of the claim in accordance with Section 18.2.3. As soon as practicable after DB Contractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies. TxDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

18.2.2 If the insurer under any applicable insurance policy accepts the tender of defense, TxDOT and DB Contractor shall cooperate in the defense as

required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 18.2.3 shall apply.

18.2.3 If the defense is tendered to DB Contractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that DB Contractor:

(a) Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b) Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

18.2.4 If DB Contractor accepts the tender of defense under Section 18.2.3(a), DB Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and DB Contractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

(a) DB Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall fully cooperate in said defense, provide to DB Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and DB Contractor concerning such defense.

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

18.2.6 The Indemnified Party may assume its own defense by delivering to DB Contractor written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

(a) A conflict exists between it and DB Contractor that prevents or potentially prevents DB Contractor from presenting a full and effective defense;

(b) DB Contractor is otherwise not providing an effective defense in connection with the claim; or

(c) DB Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

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

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

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

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

18.2.8 The Parties acknowledge that while Section 18.1 contemplates that DB Contractor will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and

liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 18.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third-party claim.

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

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 General Dispute Resolution Provisions

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

19.2 Partnering

19.2.1 Schedule; Participation

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

19.2.2 Confidentiality

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

19.3 Dispute Resolution Procedures

19.3.1 Disputes Governed by These Procedures

(a) The Parties agree, in accordance with 43 Texas Administrative Code Section 9.6, to be bound by and subject to the procedures established in this Section 19.3 as an agreement regarding dispute resolution procedures that shall survive expiration or earlier termination of the Term and thereafter for so long as either Party has any obligation originating under the Contract Documents.

(b) The provisions of this Section 19.3 are intended to accord with Section 201.112 of the Code and the DRP Rules promulgated thereunder.

(c) As used in this Section 19.3, the phrase "the procedures established in this Section 19.3" includes the procedures established in this Section

19.3, the Disputes Board Agreement, the DRP Rules, the Code, and the Texas Government Code.

(d) All Disputes arising under the Contract Documents shall be resolved pursuant to the Informal Resolution Procedures and, if not resolved thereby, the Dispute Resolution Procedures, except the following: (i) any equitable relief sought in Travis County, Texas District Court that TxDOT is permitted to bring against DB Contractor under Section 19.3.1.1; and (ii) Ineligible Matters.

(e) Any disagreement between the Parties as to whether the Informal Resolution Procedures and/or the Dispute Resolution Procedures apply to a particular Dispute shall be treated as a Dispute for resolution in accordance with this Section 19.3.

(f) With respect to any Dispute for resolution in accordance with the procedures established in this Section 19.3, the Parties agree that (i) such Dispute must be asserted in writing to the other Party prior to the running of the applicable statute of limitations and (ii) provided that this is done, the applicable statute of limitations shall be tolled until the 30th day after conclusion of the last such procedure applicable to such Dispute.

(g) TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against DB Contractor, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law.

(h) The Dispute Resolution Procedures shall not apply to the following (collectively, "Ineligible Matters"):

(i) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;

(ii) Any claim or dispute that does not arise under the Contract Documents;

(iii) Any claim that is not actionable against TxDOT by DB Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 19.4;

(iv) Any claim for indemnity under Section 18;

(v) Any claim for injunctive relief;

(vi) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;

(vii) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;

(viii) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Section 19);

(ix) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this Section 19.3 do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in this Section 19.3 applicable;

(x) Any claim for, or dispute based on, remedies expressly created by statute; and

(xi) Any Dispute that is actionable only against a Surety.

19.3.2 Informal Resolution As Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by a district court, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the informal resolution procedures described in Section 19.3.3 other than Section 19.3.3.3 (collectively, the "Informal Resolution Procedures"). Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for the Informal Resolution Procedures applicable to any subsequently arising Disputes.

19.3.3 Informal Resolution Procedures

19.3.3.1 Notice of Dispute to Designated Agent

(a) A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a written notice on the responding Party's designated agent. Unless otherwise indicated by written notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing:

(i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute;

(ii) The date of the act, inaction or omission giving rise to the Dispute;

(iii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

(iv) A reference to any pertinent provision(s) from the Contract Documents;

(v) If applicable and then known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

(vi) If applicable, an analysis of the Project Schedule and Completion Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Completion Deadlines);

(vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

(viii) The claiming Party's desired resolution of the Dispute; and

(ix) Any other information the claiming Party considers relevant.

(b) The notice shall be signed by the designated representative of the Party asserting the Dispute, and shall constitute a certification by the Party asserting the Dispute that:

(i) The notice of Dispute is served in good faith; and

(ii) To the then current knowledge of such Party, except as to matters stated in the notice of Dispute as being unknown or subject to discovery, (A) all supporting information is reasonably believed by the Party asserting the Dispute to be accurate and complete and (B) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the Party asserting the Dispute reasonably believes it is entitled; and

(iii) The designated representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

(c) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing as appropriate, including execution of Change Orders or other documentation as needed, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

(d) The Party asserting the Dispute shall not be prejudiced by its initial statement of the Dispute and shall have the ability at any time during the Informal Resolution Procedures and Dispute Resolution Procedures to modify its statement of the Dispute and/or the amount of money or other right, remedy or relief sought.

19.3.3.2 Fast-Track Disputes

With respect to any Dispute that the Parties mutually designate as a Fast-Track Dispute, the Informal Resolution Procedures shall be abbreviated in that the procedure contemplated in Section 19.3.3.3 shall not be required.

19.3.3.3 CEO / Executive Director Meetings

Commencing within 10 Business Days after the notice of Dispute is served and concluding 10 Business Days thereafter, the Chief Executive Officer of DB Contractor and the Executive Director or the assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, DB Contractor and TxDOT shall memorialize the resolution in writing, including execution of Change Orders or other documentation as appropriate, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

19.3.3.4 Failure to Resolve Dispute With Informal Resolution Procedures

If a Dispute is not timely resolved under the Informal Resolution Procedures, then within 15 days (seven days for Fast-Track Disputes) after the conclusion of the time periods for Informal Resolution Procedures, if such Dispute was not resolved to the Parties' satisfaction: (a) the Parties may mutually agree to initiate mediation in accordance with Section 19.3.7; or (b) either Party

may refer the Dispute to the Disputes Board for resolution pursuant to Section 19.3.4.2.

19.3.4 Disputes Board; Finality of Disputes Board Decision

19.3.4.1 Disputes Board Agreement

(a) The Parties executed the Disputes Board Agreement on the effective date therein. The Disputes Board Agreement governs all aspects of the Disputes Board, as well as all rights and responsibilities of the Parties with respect to the Disputes Board, that are not otherwise addressed in this Section 19.3, the DRP Rules and the Code.

(b) If the composition of either Party's Disputes Board Member Candidates List has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement.

(c) The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue written findings of fact, written conclusions of law, and a written decision to TxDOT and DB Contractor.

(d) The Disputes Board shall have the authority to resolve any Dispute other than Ineligible Matters and any actions for equitable relief in district court that TxDOT is permitted to bring against DB Contractor under Section 19.3.1.1.

(e) The Disputes Board shall not have the authority to order that one Party compensate the other Party for attorneys' fees and expenses.

(f) If a Disputes Board Decision awards an amount payable by one Party to the other, such amount became or shall become due and payable on the date required for payment in accordance with the applicable DRP governed agreement. If the date of payment is not specified in a DRP governed agreement, the payment shall be due ten days after the date the Final Order Implementing Decision for such decision becomes final under Section 19.3.6 (or, if the tenth day is not a Business Day, the next Business Day).

(g) Except for those matters subject to Section 19.8, interest at LIBOR on an amount payable by one Party to the other shall accrue beginning on the date such amount was due and continuing until the date such amount is paid.

(h) If the notice of Dispute fails to meet the certification requirements under Section 19.3.3.1(b), on motion of the responding Party the

Disputes Board shall suspend proceedings on the Dispute until a correct and complete written certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

19.3.4.2 Submission of Dispute to Disputes Board

(a) Within 15 days (seven days for Fast-Track Disputes) after the end of the last time period under the Informal Resolution Proceedings, either Party may refer a Dispute to the Disputes Board for resolution by serving written notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 19.3.3.1(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a written response upon the claiming Party's designated agent. The response shall include the same information as the notice of Dispute issued under Section 19.3.3.1(a), to the extent applicable; shall be signed by the designated representative of the responding Party; and shall constitute a certification by the responding Party that:

(i) The response to the claiming Party's notice of Dispute is served in good faith;

(ii) All supporting information is reasonably believed by the responding Party to be accurate and, except as otherwise reasonably explained in the response, complete; and

(iii) The responding Party disputes the amount of money or other right, remedy or relief to which the claiming Party believes it is entitled.

(b) Neither Party may attempt to seek resolution of a Dispute by the Disputes Board or litigate the merits of any Dispute in court if such Dispute is not timely referred to the Disputes Board within the 15 day time period under Section 19.3.4.2(a) above, except for Ineligible Matters and Disputes for which TxDOT is entitled to seek relief in court.

(c) The responding Party shall also assert in its response any challenge it may then have to the Dispute Board's authority to resolve the Dispute if the responding Party then believes in good faith that the Dispute is an Ineligible Matter.

19.3.4.3 Finality of Disputes Board Decision

Upon completion of the remainder of the procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

19.3.5 SOAH Administrative Hearings and Final Orders

19.3.5.1 Appeal of Disputes Board Decision

(a) If, within 20 days after the Disputes Board's issuance of the Disputes Board Decision to TxDOT and DB Contractor (the "Appeal Period"), either Party is dissatisfied with the Disputes Board Decision due to a good faith belief that Disputes Board Error occurred, (i) DB Contractor may request the Executive Director to seek and/or (ii) TxDOT may seek a formal administrative hearing before SOAH pursuant to Texas Government Code, Chapter 2001, and Section 201.112 of the Code, solely on the grounds that Disputes Board Error occurred. Upon receipt of DB Contractor's request for a formal administrative hearing before SOAH, the Executive Director shall, as a purely ministerial act, refer the matter to SOAH within ten Business Days after receipt of DB Contractor's request.

(b) If DB Contractor does not request, and TxDOT does not seek for itself, a formal administrative hearing before SOAH under Section 19.3.5.1(a) within the Appeal Period, then within ten Business Days after the expiration of the Appeal Period, the Executive Director shall issue the Final Order Implementing Decision as a purely ministerial act. If the Executive Director fails to issue the Final Order Implementing Decision within this ten Business Day time period, the Disputes Board Decision shall become effective as the Final Order Implementing Decision for all purposes on the next Business Day.

(c) Neither Party may attempt to:

(i) Seek an administrative hearing before SOAH on any Dispute after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH;

(ii) Seek rehearing in any forum of a Dispute that is the subject of a Disputes Board Decision after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH; or

(iii) Resubmit to the Disputes Board or litigate in court any Dispute that was the subject of and resolved by a prior final Disputes Board Decision.

19.3.5.2 Appeal of Disputes Board Error to SOAH

"Disputes Board Error" means one or more of the following:

(a) The Disputes Board failed, in any material respect, to properly follow or apply the procedures for handling, hearing and deciding on the Dispute established under this Section 19.3 and such failure prejudiced the rights of a Party; or

(b) The Disputes Board Decision was procured by, or there was evident partiality among the Disputes Board Members due to, a Conflict of Interest, Misconduct, corruption or fraud.

19.3.5.3 SOAH Proceeding and ALJ Proposal For Decision

(a) Upon referral to SOAH of the question of whether Disputes Board Error occurred, the ALJ shall conduct a hearing solely on the question of whether Disputes Board Error occurred. The Disputes Board's written findings of fact, conclusions of law and Disputes Board Decision; any written dissenting findings, recommendations or opinions of a minority Disputes Board Member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue to the Executive Director and DB Contractor the ALJ's written proposal for decision as to whether Disputes Board Error occurred.

(b) Each Party may file exceptions to the proposal for decision with the ALJ no later than seven days after issuance of the ALJ's proposal for decision and, in response to a Party's exceptions, the other Party may file a reply to the excepting Party's exceptions with the ALJ no later than 14 days after issuance of the proposal for decision. The ALJ shall review all exceptions and replies and notify TxDOT and DB Contractor no later than 21 days after issuance of the proposal for decision whether the ALJ recommends any changes to the proposal for decision, amends the proposal for decision in response to exceptions and replies to exceptions, and/or corrects any clerical errors in the proposal for decision. The ALJ shall reissue its written proposal for decision to the Executive Director and TxDOT, together with written findings of fact and conclusions of law, if revised from those previously furnished to the Parties.

(c) Unless a Party in good faith challenges the Disputes Board's authority to resolve the Dispute because the Dispute is an Ineligible Matter (i) in the proceedings before the Disputes Board, (ii) as a Disputes Board Error

during the Appeal Period, (iii) in the SOAH proceeding or (iv) in exceptions to the ALJ's proposal for decision timely filed under Section 19.3.5.3(b) above, any objection to the Disputes Board's authority to resolve the applicable Dispute shall be deemed waived by such Party.

19.3.5.4 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision:

(i) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that Disputes Board Error occurred, the Executive Director shall issue a Final Order Vacating Decision. A "Final Order Vacating Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code); ruling that the Disputes Board Decision is invalid, void and of no force and effect; and remanding the Dispute to the Disputes Board for reconsideration. If the nature of the Disputes Board Error was a Conflict of Interest, Misconduct, fraud or corruption of a Disputes Board Member, the remanded Dispute will be reconsidered by a reconstituted Disputes Board after removal of such Disputes Board Member; or

(ii) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that no Disputes Board Error occurred, the Executive Director shall issue a Final Order Implementing Decision. A "Final Order Implementing Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code), and approving and fully implementing the Disputes Board Decision.

(b) The Parties agree and acknowledge that the Executive Director's issuance of either type of Final Order is a purely ministerial function of the Executive Director. If the Executive Director fails to issue one or the other type of Final Order within the foregoing 28 Day time period, then on the next Business Day:

(i) If the ALJ determined that Disputes Board Error occurred, a Final Order Vacating Decision shall be deemed to have been issued for all purposes by the Executive Director which (A) adopted the ALJ's proposal for decision; (B) ruled that the Disputes Board Decision is invalid, void and of no force and effect; and (C) remanded the Dispute to the Disputes Board for reconsideration

(or, if the nature of the Disputes Board Error was a Conflict of Interest or Misconduct of a Disputes Board Member, a reconstituted Disputes Board after removal of such Disputes Board Member) without Disputes Board Error; or

(ii) If the ALJ determined that no Disputes Board Error occurred, a Final Order Implementing Decision shall be deemed to have been issued for all purposes by the Executive Director which adopted the ALJ's proposal for decision and fully implemented the Disputes Board Decision.

19.3.6 Judicial Appeal of Final Orders Under Substantial Evidence Rule

Each issued or deemed issued Final Order Implementing Decision and Final Order Vacating Decision shall be considered a final order for purposes of DB Contractor's ability to seek judicial appeal thereof under Section 201.112(d) of the Code under the substantial evidence rule. TxDOT and DB Contractor hereby agree that (a) pursuant to Section 2001.144(a)(4) of the Texas Government Code, each Final Order Implementing Decision and Final Order Vacating Decision shall be final (and therefore eligible for appeal under Section 201.112(d) of the Code) on the date such final order is issued or deemed issued by the Executive Director and (b) pursuant to Section 2001.145 of the Texas Government Code, TxDOT and DB Contractor hereby agree that the filing of a motion for rehearing shall not be a prerequisite for appeal of such final orders under Section 201.112(d) of the Code.

19.3.7 Mediation

DB Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation for resolution. The Parties shall use diligent efforts to convene and conclude any such mediation within 30 days after they agree to refer the Dispute to mediation. DB Contractor and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party can, on or after the 31st day, cease participating in such mediation. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 19.3 for processing a Dispute are tolled, day for day, during mediation.

19.3.8 Confidential Information

19.3.8.1 Subject to the Public Information Act, all discussions, negotiations, and Informal Resolution Procedures between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations,

or Informal Resolution Procedures, shall, to the extent allowed by law, be considered confidential and not subject to disclosure by either Party.

19.3.8.2 With respect to all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board, an administrative hearing before an ALJ or a judicial proceeding in court:

(a) All information that has been deposited into Escrow pursuant to Section 5.12.3 of the ITP shall be treated as confidential to the extent allowed by law by the Parties and the Disputes Board, the ALJ and the court, as applicable, and, further, shall be subject to a protective order issued by the Disputes Board, the ALJ or the court, as applicable, to protect such information from disclosure to third Persons.

(b) Either or both Parties may also request a protective order in any Disputes Board proceeding, SOAH administrative hearing or judicial proceeding to prohibit disclosure to third Persons of any other information that such Party or Parties believe(s) is confidential. Whether such a protective order will be issued by the Disputes Board, the ALJ or the court, as applicable, shall be determined under the standards set forth in the Texas Rules of Evidence, the Texas Rules of Civil Procedure, Section 223.204 of the Code and the Public Information Act.

19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

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

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

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

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

19.5 [RESERVED]

19.6 Subsequent Proceedings

19.6.1 Exclusive Jurisdiction and Venue

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

19.6.2 Admissibility of Disputes Resolution Proceedings

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

19.7 Continuation of Disputed Work

At all times during the dispute resolution procedures set forth in this Agreement, DB Contractor and all Subcontractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its discretion. DB Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work even if DB Contractor's position in connection

with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.8 Records Related to Claims and Disputes

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

19.9 Interest

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

In the event a DB Contractor elects to pursue a formal Dispute with TxDOT under this Section 19, TxDOT shall notify DB Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. A payment becomes overdue and begins to accrue interest in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251.

19.10 Attorney Fees

A party shall pay the attorneys fees of the other party for Disputes brought pursuant to this Section 19 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

SECTION 20. COMPLETION AND ACCEPTANCE; EARLY OPENING

20.1 Substantial Completion

20.1.1 Requirements

20.1.1.1 TxDOT will issue a written Certificate of Substantial Completion at such time as Substantial Completion for a Facility occurs.

20.1.1.2 In determining whether Substantial Completion has occurred for each Facility, TxDOT may consider and require satisfaction of the following criteria:

(a) Whether all major safety features are installed and functional, including guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(b) Whether required illumination is installed and functional;

(c) Whether required signs and signals are installed and functional;

(d) Whether the need for temporary traffic controls or for Lane Closures at any time has ceased (except for any then required for maintenance activities, and except for temporary Lane Closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);

(e) Whether all lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and access roads) set forth in the Released for Construction Documents are in their final configuration and available for public use;

(f) Whether required ITS are installed and functional; and

(g) Whether DB Contractor has otherwise completed the Work in accordance with the Contract Documents and Released for Construction Documents, including the construction of noise/sound walls, such that the Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items and other items

of work that do not affect the ability to safely open for such normal use by the traveling public.

20.1.1.3 The Parties shall disregard the status of the vegetative ground cover landscaping and aesthetic features, except noise/sound walls, included in the Released for Construction Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 20.1.1.2(d).

20.1.2 Notification of Substantial Completion

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

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

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

20.2 Punch List

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

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

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

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

20.3 Final Acceptance

20.3.1 Promptly after achieving Substantial Completion of a Facility, DB Contractor shall perform all remaining Work for the applicable Facility, including (a) completion of all Punch List items, (b) all landscaping other than vegetative ground cover, and (c) aesthetic features other than noise/sound walls. DB Contractor shall prepare and adhere to a timetable for planting and establishing the vegetative ground cover landscaping for the applicable Facility, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for vegetative ground cover landscaping to be planted prior to Final Acceptance of the applicable Facility.

20.3.2 TxDOT will issue a Certificate of Final Acceptance for a Facility at such time as all of the following conditions have been satisfied for the applicable Facility:

(a) TxDOT has issued the Certificate of Substantial Completion;

(b) All Punch List items shall have been completed and delivered to the reasonable satisfaction of TxDOT;

(c) All aesthetic and landscaping features (other than vegetative ground cover landscaping) for the Project have been completed in accordance with Section 15 of the Technical Provisions and the plans and designs prepared in accordance therewith;

(d) TxDOT has received the as-built schedule as required by Section 2.1.1.6 of the Technical Provisions;

(e) TxDOT has received a complete set of the Record Documents in form and content required by Section 2.2.6.6 of the Technical Provisions;

(f) All Utility Adjustment Work and other work that DB Contractor is obligated to perform for or on behalf of third parties with respect to the Project has been accepted by such third parties, and DB Contractor has paid for all work by third parties that DB Contractor is obligated to pay for, other than disputed amounts;

(g) All component parts, plans and documentation of the Project Management Plan required to be prepared, submitted and approved prior to Final Acceptance have been so prepared, submitted and approved;

(h) All Submittals required by the Project Management Plan or Contract Documents to be submitted to and approved by TxDOT prior to Final Acceptance have been submitted to and approved by TxDOT, in the form and content required by the Project Management Plan or Contract Documents;

(i) All manufacturers' warranties, guarantees, instruction sheets, parts lists, and other product data have been submitted to TxDOT;

(j) All personnel, supplies, equipment, waste materials, rubbish and temporary facilities of each DB Contractor-Related Entity shall have been removed from the Project ROW, DB Contractor shall restore and repair all damage or injury arising from such removal to the satisfaction of TxDOT, and the Site shall be in good working order and condition;

(k) DB Contractor shall have delivered to TxDOT a certification representing that there are no outstanding claims of DB Contractor or claims, Liens or stop notices of any Subcontractor, Supplier, laborer, Utility Owner or other Persons with respect to the applicable Work, other than any previously submitted unresolved claims of DB Contractor and any claims, Liens or stop notices of a Subcontractor, Supplier, laborer, Utility Owner or other Persons being contested by DB Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by TxDOT and, with respect to all claims, Liens or stop notices of a Subcontractor, Supplier, laborer, Utility Owner and other Person, shall include a representation by DB Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings that shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts that may give rise to a claim;

(l) DB Contractor has paid in full all liquidated damages or other fees or charges, including Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees that are owing to TxDOT pursuant to this Agreement and are not in Dispute, and has provided to TxDOT reasonable security for the full amount of all liquidated damages or other fees or charges, including Liquidated Damages, Key Personnel Change Fees, and Lane Rental Fees that may then be the subject of an unresolved Dispute.

(m) There exists no uncured DB Contractor Defaults; and

(n) All of DB Contractor's other obligations under the Contract Documents (other than obligations that by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived.

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

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

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

20.4 Early Opening

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

20.5 Clayton Act Assignment

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

SECTION 21. [RESERVED]

SECTION 22. RECORDS AND AUDITS; OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

22.1 Escrowed Proposal Documents

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

22.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by DB Contractor, TxDOT and TxDOT Consultants any dispute resolver in accordance with Section 19, in connection with approval of the Project Schedule, negotiation of Change Orders and resolution of Claims or Disputes under the Contract Documents, and also as described in Section 22.1.6. TxDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

22.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of DB Contractor and shall be considered to be in DB Contractor's possession, subject to TxDOT's and TxDOT Consultants' right to review the EPDs as provided in this Section 22.1. DB Contractor will have and control the keys to the filing cabinet containing the EPDs. TxDOT acknowledges that DB Contractor may consider that the EPDs constitute trade secrets or proprietary information. TxDOT shall have the right to copy the EPDs for the purposes set forth in this Section 22.1, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to EPDs that constitute trade secrets or proprietary information, which confidentiality agreement shall explicitly acknowledge that it is subject to applicable Law (including the Public Information Act).

22.1.3 Representation

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

22.1.4 Contents of EPDs

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

22.1.5 Form of EPDs

Except as otherwise provided in the RFP, DB Contractor shall submit the EPDs in such format as is used by DB Contractor in connection with its Proposal. DB Contractor represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of DB Contractor prior to delivery, and that the EPDs meet the requirements of Section 22.1.4, DB Contractor further represents and warrants that all EPDs provided were or will be personally examined prior to delivery by an authorized officer of DB Contractor, and that they shall meet the requirements of Section 22.1.4.

22.1.6 Review by TxDOT to Confirm Completeness

TxDOT may at any time conduct a review of the EPDs to determine whether they are complete. If TxDOT determines that any data is missing from an

EPD, DB Contractor shall provide such data within three Business Days after delivery of TxDOT's request for such data. At that time of its submission to TxDOT, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. DB Contractor shall have no right to add documents to the EPDs except upon TxDOT's request. The EPDs associated with any Change Order or Price adjustment under this Agreement shall be reviewed, organized and indexed in the same manner described in Section 5.12.3 of the ITP.

22.2 Financial Reporting Requirements

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

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

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

22.2.2.2 Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were

considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP is required; and

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

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

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

22.2.5 All reports and information delivered by DB Contractor under Sections 22.2.3 and 22.2.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

22.3 Subcontract Pricing Documents

DB Contractor shall require each Major Subcontractor to submit to DB Contractor a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract work included in any Change Order), immediately prior to executing the Subcontract and each Subcontract change order, to be held in the same manner as the EPDs and which shall be accessible by TxDOT, DB Contractor and Dispute resolvers, on terms substantially similar to those contained herein. Each Major Subcontract shall include a

representation and warranty from the Subcontractor, for the benefit of DB Contractor and TxDOT, stating that its submission in the EPDs, constitutes all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of DB Contractor and TxDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to DB Contractor and TxDOT in connection with any Claim made by such Subcontractor.

22.4 Maintenance and Inspection of Records

22.4.1 Except for EPDs (which shall be maintained as set forth in Section 22.1), DB Contractor shall keep and maintain in Dallas County, Texas, or in another location TxDOT approves in writing, all books, records and documents relating to the Project, Project Right of Way, Utility Adjustments, or Work, including copies of all original documents delivered to TxDOT. DB Contractor shall keep and maintain such books, records, and documents in accordance with applicable provisions of the Contract Documents, and review of the Project Management Plan, and in accordance with Good Industry Practice. DB Contractor shall notify TxDOT where such records and documents are kept.

22.4.2 DB Contractor shall make all its books, records, and documents available for inspection by TxDOT and its authorized representatives and legal counsel at DB Contractor's principal offices in Texas or at TxDOT's project office for EPDs, at all times during normal business hours, without charge. DB Contractor shall provide copies thereof to TxDOT, or make available for review to TxDOT (a) as and when expressly required by the Contract Documents or (b) for those not expressly required, upon request and at no expense to DB Contractor; provided, however, that any costs associated with such copies shall be reasonable. TxDOT may conduct any such inspection upon 48 hours' prior written notice or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 22.4.2 are subject to the following:

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

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

22.5 Audits

22.5.1 In addition to all of TxDOT's other rights set forth herein, including under Section 5.4.2, TxDOT shall have such rights to review and audit DB Contractor, its Subcontractors and their respective books and records as and when TxDOT deems necessary in connection with Claims or Disputes or for purposes of verifying compliance with the Contract Documents and applicable Law. Without limiting the foregoing, TxDOT shall have the right to audit the Project Management Plan and compliance therewith, including the right to inspect Work and activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. TxDOT may conduct any such audit of books and records upon 48 hours' prior written notice or unannounced and without prior notice where there is good faith suspicion of fraud.

22.5.2 All Claims or Disputes filed against TxDOT shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit within (i) 60 days after Final Acceptance of the Project or (ii) 60 days after termination of this Agreement. Thereafter, TxDOT shall provide 20 days' notice to DB Contractor, any Subcontractors or their respective agents before commencing an audit. DB Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. DB Contractor, Subcontractors or their agents shall cooperate with the auditors. Failure of DB Contractor, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the books and records of DB Contractor, Subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder. At a minimum, DB Contractor shall make the following documents available to the auditors:

(a) Daily time sheets and supervisor's daily reports;

(b) Union agreements;

(c) Insurance, welfare, and benefits records;

(d) Payroll registers;

(e) Earnings records;

(f) Payroll tax forms;

(g) Material invoices and requisitions;

(h) Material cost distribution work sheet;

(i) Equipment records (list of company equipment, rates, etc.);

(j) Subcontractors' (including Suppliers) invoices;

(k) Subcontractors' and agents' payment certificates;

(l) Canceled checks (payroll, Subcontractors and Suppliers);

(m) Job cost report;

(n) Job payroll ledger;

(o) General ledger;

(p) Cash disbursements journal;

(q) Project Schedules;

(r) All documents that relate to each and every Claim or Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and

(s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

22.5.3 Full compliance by DB Contractor with the provisions of this Section 22.5 is a contractual condition precedent to DB Contractor's right to seek relief under Section 19.

22.5.4 Any rights of the FHWA to review and audit DB Contractor, its Subcontractors and their respective books and records are set forth in Exhibit 3.

22.5.5 TxDOT's rights of audit include the right to observe the business operations of DB Contractor and its Subcontractors to confirm the accuracy of books and records.

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

22.5.7 DB Contractor's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in Section 2 of the Technical Provisions.

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

22.6 Public Information Act

22.6.1 DB Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by DB Contractor, are subject to the provisions of the Public Information Act. To the extent that this Agreement involves the exchange or creation of "public information" (as such term is defined by the Texas Public Information Act) that TxDOT collects, assembles or maintains or has the right of access to, and is not otherwise excepted from disclosure under the Public Information Act, DB Contractor is required, at no additional charge to the State, to make any such information available in PDF format, which is accessible by the public. If DB Contractor believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is excepted from disclosure under the Public Information Act, DB Contractor shall be

solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 22.6 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. DB Contractor is advised to contact legal counsel concerning such Law and its application to DB Contractor.

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

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

22.7 Ownership of Documents

Subject to this Section 22.7, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents shall be considered "works made for hire" for which TxDOT owns the copyright. Design Documents shall

become TxDOT's property upon preparation; Construction Documents shall become TxDOT's property upon delivery to TxDOT; and other documents prepared or obtained by DB Contractor in connection with the performance of its obligations under the Contract Documents, including studies, manuals, Record Documents, technical and other reports and the like, shall become the property of TxDOT upon DB Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to TxDOT upon preparation or receipt thereof by DB Contractor. DB Contractor shall maintain all other documents described in this Section 22.7 in accordance with the requirements of Section 22.4 and shall deliver copies to TxDOT as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set for each Facility delivered to TxDOT as a condition to Final Acceptance of each Facility.

22.8 Intellectual Property

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

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

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

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

22.8.3 Subject to the license and rights granted to TxDOT pursuant to Section 22.8.2, TxDOT shall not at any time sell any Proprietary Intellectual Property of DB Contractor or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

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

22.8.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a State Highway or other road, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of TxDOT or any such State or regional Governmental Entity in connection with the Project or another State Highway or other road, tolled or untolled. All such sublicenses shall be subject to Section 22.8.6.

22.8.6 Subject to Section 22.5, TxDOT shall:

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

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

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

22.8.7 Notwithstanding any contrary provision of this Agreement, in no event shall TxDOT or any of its directors, officers, employees, consultants or agents be liable to DB Contractor, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 22.8.6 if such breach is not the result of gross negligence or intentional misconduct. DB Contractor hereby irrevocably waives all claims to any such damages.

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

22.8.9 With respect to any Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, owned by a Person other than DB Contractor, including any Affiliate, and other than TxDOT or a Governmental Entity acting as a Subcontractor, DB Contractor shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for DB Contractor and TxDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any State Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 22.8.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to TxDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by TxDOT set forth in Sections 22.8.3 through 22.8.6 shall also apply to TxDOT's licenses in such Proprietary Intellectual Property.

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

23.1 Cooperation with Other Contractors

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

23.2 Interference by Other Contractors

If DB Contractor asserts that any of TxDOT's other contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then, DB Contractor's sole remedy shall be to seek recourse against such other contractors.

23.3 Coordination with Utility Owners and Adjacent Property Owners

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

SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement. Any amendment must be accompanied by either (a) a certification by DB Contractor that there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 431 T.A.C. § 46.43) that was made by DB Contractor in the most recent Form 1295 provided to TxDOT by DB Contractor or (b) if there has been a change to the disclosure of Interested Parties or the value of the amendment is $1,000,000 or greater, a current Form 1295 completed by DB Contractor, each as required in Section 13.4.6.

24.2 Waiver

24.2.1 No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party.

24.2.2 The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.2.3 Except as provided otherwise in the Contract Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents.

24.2.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both

Parties, such interpretation and implementation thereof will not be binding in the event of any future Claims or Disputes.

24.3 Independent Contractor

24.3.1 DB Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as creating any relationship between TxDOT and DB Contractor other than that of Project owner and independent contractor.

24.3.2 Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and DB Contractor and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture, or similar relationship exists. While the term "Design-Build" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture, or similar relationship to share net profits or net losses, or to give TxDOT control or joint control over DB Contractor's financial decisions or discretionary actions concerning the Project and the Work.

24.3.3 In no event shall the relationship between TxDOT and DB Contractor be construed as creating any relationship whatsoever between TxDOT and DB Contractor's employees. None of DB Contractor, any Subcontractor, nor any of their respective employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the Contract Documents, DB Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that DB Contractor or any Subcontractor hires to perform or assist in performing the Work.

24.4 Successors and Assigns; Change of Control

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

24.4.2 TxDOT may transfer and assign all or any portion of its rights, title and interests in and to the Contract Documents, including rights with respect to the Payment and Performance Bonds, Guarantees, letters of credit and other security for payment or performance:

(a) without DB Contractor's consent, to any other public agency or public entity as permitted by Law;

(b) without DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT; and

(c) to any other Person with the prior written approval of DB Contractor.

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

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

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

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

24.4.7 Assignments and transfers of DB Contractor's interest permitted under this Section 24.4 or otherwise approved in writing by TxDOT shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to TxDOT, in which the transferee, without condition or

reservation, assumes all of DB Contractor's obligations, duties and liabilities under this Agreement and the other Contract Documents then in effect and agrees to perform and observe all provisions thereof applicable to DB Contractor. Each transferee shall take DB Contractor's interest subject to, and shall be bound by, the Project Management Plan, the Major Subcontracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by TxDOT in writing in its good faith discretion.

24.5 Change of Organization or Name

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

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

24.6 Designation of Representatives; Cooperation with Representatives

24.6.1 TxDOT and DB Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents ("Authorized Representative"). Exhibit 18 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 24.11. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the administration, design and construction of the Project and negotiate on behalf of each of the Parties, but who do not have authority to bind TxDOT or DB Contractor.

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

24.7 Survival

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

and payment under Section 12.2, the obligations regarding Final Reconciliation under Section 12.4, and all other provisions which by their inherent character should survive termination of this Agreement and completion of the Work, shall survive the termination of this Agreement and completion of the Work. The provisions of Section 19 shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the Contract Documents.

24.8 Limitation on Third Party Beneficiaries

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

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

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

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

24.9.3 In no event shall TxDOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Site during the period DB Contractor has operation and control of the Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity. DB Contractor expressly acknowledges and agrees that TxDOT's rights in this Agreement to take any action with respect to the Project,

including the right to review, comment on, disapprove or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward DB Contractor or any other Person, all of which are hereby expressly disclaimed.

24.10 Governing Law

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

24.11 Notices and Communications

24.11.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication or posted to TxDOT's SharePoint site for the Project followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in Sections 24.11.2 and 24.11.3, as applicable (or to such other address as may from time to time be specified in writing by such Person).

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

_____
_____
_____
_____
Telephone: _____
Facsimile: _____
E-mail: _____

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

_____
_____
_____
_____
_____
_____
E-mail: _____

24.11.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding The Southern Gateway Project and delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
Attention: Kelly Selman, P.E.
Telephone: (214) 320-6189
E-mail: kelly.selman@txdot.gov

With a copy to:

Texas Department of Transportation
Project Finance, Debt & Strategic Contracts Division
125 East 11th Street
Austin, Texas 78701
Attn: Mr. Benjamin Asher
Telephone: (512) 463-8611
E-mail: benjamin.asher@txdot.gov

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

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

24.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private

carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile, by posting to TxDOT's dedicated SharePoint site for the Project, or by email after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by DB Contractor's Authorized Representative and technical representatives designated by TxDOT.

24.12 Taxes

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

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

24.13 Interest on Amounts Due and Owing

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

24.14 Integration of Contract Documents

TxDOT and DB Contractor agree and expressly intend that, subject to Section 24.15, this Agreement and other Contract Documents constitute a single,

non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.15 Severability

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

24.16 Headings

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

24.17 Entire Agreement

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

24.18 Counterparts

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

24.19 Joint and Several Liability

Each of [●, ●, and ●] agree that it is jointly and severally liable for the performance of DB Contractor's liabilities and obligations under this Agreement; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of Design-Build Contractor. If any other Party or replacement Party to this Agreement is or becomes a joint venture or

a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under this Agreement, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.

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

DB Contractor:	**TEXAS DEPARTMENT OF TRANSPORTATION**
[DB Contractor]	
By_____	By: _____
Name:_____	James M. Bass
Title:_____	Executive Director

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
ACM	Asbestos-containing material
ADA	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
ADT	Average Daily Traffic
ALJ	Administrative Law Judge
ANSI	American National Standards Institute
APS	Accessible Pedestrian Signal
AREMA	American Railway Engineering and Maintenance of Way Association
ARI	Annual Recurrence Interval
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 Practices
CADD	Computer Aided Drafting and Design
CAP	(Environmental) Compliance Action Plan
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CEMP	Construction Environmental Monitoring Plan
CORS	Continuous Operating Reference Stations
CEPP	Comprehensive Environmental Protection Program

CMP	Construction Monitoring Plan
CFR	Code of Federal Regulations
CGP	Construction General Permit
CLOMR	Conditional Letters of Map Revisions
CMA	Capital Maintenance Agreement
CP	Communication Plan
CPM	Critical Path Method
CQCM	Construction Quality Control Manager
CQMP	Construction Quality Management Plan
CRCP	Continuously Reinforced Concrete Pavement
CSBE	Cement Stabilized Backfill Embankment
CSJ	Control Section Job
CTB	Cement Treatment Base
CTMS	Computerized Traffic Management System
CWA	Clean Water Act
DB	Design-Build
DBE	Disadvantaged Business Enterprise
DMS	Dynamic Message Signs
DRP	Dispute Resolution Procedure
DSS	Decent, Safe and Sanitary (dwelling)
DUC	DB Contractor Utility Coordinator
DWU	Dallas Water Utility
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Document Management System
EMS	Environmental Management System
EMT	Electrical Metallic Tubing
ENR	Engineering News Record
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits, Issues and Commitments

EPTP	Environmental Protection Training Program
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIS	Flood Insurance Study
FM	Farm to Market Road
FPS-21	Flexible Pavement System version 21
FWCA	Fish and Wildlife Coordination Act
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
GPK	GEOPAK
GPS	Global Positioning System
HCR	Highway Construction Report
HEC	Hydraulic Engineering Circular
HEC-RAS	Hydraulic Engineering Center's – River Analysis System
HMMP	Hazardous Materials Management Plan
HPS	High Pressure Sodium
HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IEMP	Incident and Emergency Management Plan
IQF	Independent Quality Firm
IQFM	Independent Quality Firm Manager
IRI	International Roughness Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IWP	Investigative Work Plan
LAN	Local Area Network

LIBOR	London Interbank Offered Rate
LBP	Lead Based Paint
LCCA	Life-Cycle Cost Analysis
LED	Light-Emitting Diode
LOMR	Letters of Map Revision
LPA	Local Public Agency
LRFD	Load and Resistance Factor Design
MBTA	Migratory Bird Treaty Act
MDMP	Maintenance Document Management Plan
MMP	Maintenance Management Plan
MMS	Maintenance Management System
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPLS	Multiple Protocol Label Switching
MS4	Municipal Separate Storm Sewer System
MSDS	Material Safety Data Sheet
MSE	Mechanically Stabilized Earth
NAVD	North American Vertical Datum
NBI	National Bridge Inventory
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NHPA	National Historical Preservation Act
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NTCIP	National Transportation Communications for ITS Protocol
NTP	Notice to Proceed
NTP1	Notice to Proceed 1
NTP2	Notice to Proceed 2
OCC	Operations Control Center

OSHA	Occupational Safety and Health Administration
OSR	Old San Antonio Road
PA	Programmatic Agreement
PBS	Project Baseline Schedule
PBS1	Preliminary Project Baseline Schedule
PBS2	Preliminary Baseline Schedule 2
PBS3	Preliminary Baseline Schedule 3
PC	Point of Curvature
PCC	Point of Compound Curvature
PCO	Potential Change Order
PDF	Portable Document Format
PE	Registered Professional Engineer
PFC	Permeable Friction Course
PI	Plasticity Index or Point of Intersection, as appropriate
PICP	Public Information and Communications Plan
PM	Project Manager
PMP	Project Management Plan
POB	Point of Beginning
POC	Point of Commencing
PRC	Point of Reverse Curvature
PSL	Project Specific Location
PSQAF	Professional Services Quality Assurance Firm
PSQAM	Professional Services Quality Assurance Manager
PSQCM	Professional Services Quality Control Manager
PSQMP	Professional Services Quality Management Plan
PT	Point of Tangency
PUA	Possession and Use Agreement
PUAA	Project Utility Adjustment Agreement
PVC	Polyvinyl Chloride
PVR	Potential Vertical Rise
QA	Quality Assurance

QAP	Quality Assurance Plan
QC	Quality Control
QMP	Quality Management Plan
RCP	Reinforced Concrete Pipe
RDVCS	Regional Data and Video Communications System
RFC	Release (or Released) for Construction
RFI	Request For Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Documents
ROD	Record of Decision
ROE	Right of Entry
ROW	Right of Way
ROWIS	Right of Way Information System
ROW AM	Right of Way Acquisition Manager
RP	Recycling Plan
RPLS	Registered Professional Land Surveyor
RQD	Rock-Quality Designation
SDMS	Single-Line Dynamic Message Signs
SF	Square Foot
SFHA	Special Flood Hazard Area
SH	State Highway
SHPO	State Historic Preservation Officer
SHSD	Standard Highway Sign Design for Texas
SI	System Integrator / Serviceability Index
SICP	Snow and Ice Control Plan
SIRS	Site Investigation Reports
SMA	Stone Matrix Asphalt
SOAH	Texas State Office of Administrative Hearings
SSTR	Single Slope Traffic Railing
SUE	Subsurface Utility Engineering

SW3P	Storm Water Pollution Prevention Plan
SWEP	Severe Weather Evacuation Plan
SWMM	Storm Water Management Model
SWSF	Storm Water Storage Facilities
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
THC	Texas Historical Commission
TIA	Time Impact Analysis
TMC	Traffic Management Center
TMP	Traffic Management Plan
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TOM	Thin Overlay Mixture
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TREC	Texas Real Estate Commission
TRM	Texas Reference Marker
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAFM	Utility Adjustment Field Modification
UAR	TxDOT Utility Accommodation Rules
UCS	Unconfined Compressive Strength
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Agreement
UM	Utility Manager
US	United States Highway
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard

USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
UTM	Universal Transverse Mercator
UTP	Unshielded Twisted Pair
UTR	Utility Tracking Report
VAB	Vehicle Arresting Barrier
VE	Value Engineering Proposal
VGA/HDMI	Video Graphics Adaptor/High Definition Multimedia Interface
WBS	Work Breakdown Structure
XML	Extensible Markup Language

Abbreviated Utility Assembly shall mean the collection of plans and other information and materials that 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 or a Recovery Schedule.

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

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

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements

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

Adjacent Work shall mean any project, work, improvement or development to be planned, designed or constructed that could or does impact the Project 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 6.8.3.5 of the Agreement.

Administrative Settlement Committee shall mean a committee appointed by the District Engineer or his designee consisting of the ROW Administrator or his designee and two or more members who will analyze pertinent information and reach consensus on whether an administrative settlement should or should not be recommended.

Aesthetics and Landscaping Plan shall mean the plan DB Contractor prepares in conformance with the Project's final aesthetic concept as more particularly described in Section 15.1.2 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 that 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 10 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 TxDOT, as authorized by the FHWA by letter dated September 19, 2014 (FHWA Risk Based Stewardship and Oversight Modifications).

Alternate Procedure List shall mean the list of Utilities to be Adjusted (and related information), 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 permits required under the Antiquities Code of Texas enacted in 1969, to be obtained from the Texas Historical Commission as per Section 4.3.2.9 of the Technical Provisions.

Appeal Period has the meaning set forth in Section 19.3.5.1(a) of the Agreement.

Assembly shall mean the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement or the City of Dallas Utility Agreement to cover all Utility Adjustments addressed in the corresponding

Utility Adjustment Agreement Amendment or any amendment to the City of Dallas Utility Agreement, as more particularly described in Section 6.3.4.5 of the Technical Provisions.

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

Basic Configuration shall mean the following:

(a) the Schematic ROW;

(b) the number of lanes as set forth in the TxDOT Schematic Design;

(c) the approximate location of ramps as set forth in the TxDOT Schematic Design;

(d) minimum lengths of the auxiliary lanes as set forth in the TxDOT Schematic Design;

(e) minimum turn lane storage lengths as set forth in the TxDOT Schematic Design;

(f) the approximate location of interchanges and the type of interchanges as set forth in the TxDOT Schematic Design;

(g) the geometric design of the I-35E mainlanes, express lanes, and ramps from Marsalis Avenue to Ewing Avenue to accommodate construction of the Ultimate Deck Plaza, as shown in the Local Enhancements Concept Plan (regardless of whether construction of the Ultimate Deck Plaza is included in the LE Work Package); and

(h) the specific requirements set forth in clauses (a), (b), and (c) of Section 1.2.1 of the Technical Provisions.

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 Replacement Utility Property Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Project ROW, in each case as required for a Utility Adjustment.

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

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreements; 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 that is required for accommodation of the Project;

(b) replacement devices or materials that are of equivalent standards although not identical;

(c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) any upgrading required by applicable Law;

(e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) any upgrading required by the Utility Owner's written "standards" meeting the requirements described in Section 6.1.2.2 of the Technical Provisions; or

(g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

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

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

Business Days 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 DB Contractor for DB Contractor to perform maintenance for the Project.

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

Category 1 Defect shall mean those Defects classified as Category 1 Defects in Section 19.3.2.2 of the Technical Provisions.

Category 2 Defect shall mean those Defects classified as Category 2 Defects in Section 19.3.2.2 of the Technical Provisions.

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

Certificate of Substantial Completion shall mean the certificate issued by TxDOT indicating that a Facilityhas 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.

City of Dallas Non-Reimbursable Utility Adjustments shall mean all Utility Adjustments for City of Dallas Utilities that are not City of Dallas Reimbursable Utility Adjustments.

City of Dallas Reimbursable Utility Adjustments shall mean all Utility Adjustments required by the improvement of I-35E (including any Utility Adjustments performed along I-35E or along stub outs on roadways intersecting I-35E) for City of Dallas Utilities. The Utility Adjustment Work associated with City of Dallas Reimbursable Utility Adjustments shall be included in the Work and the Price, pursuant and subject to Section 6.8.

City of Dallas Utilities shall mean all Utilities owned by the City of Dallas.

City of Dallas Utility Agreement shall mean the utility adjustment agreement between TxDOT and the City of Dallas with respect to the performance of Utility Adjustment Work for City of Dallas Utilities.

City of Dallas Utility Delay shall have the meaning set forth in Section 6.8.

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.

Code shall have the meaning set forth in Recital A.

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

Commercial Rules has the meaning set forth in the Disputes Board Agreement.

Commission means the Texas Transportation Commission.

Completion Deadlines shall mean the Substantial Completion Deadlines or Final Acceptance Deadlines set forth in Section 4.2.1 and 4.2.2 of the Agreement, as the case may be.

Comprehensive Environmental Protection Program (CEPP) shall mean the document obligating DB Contractor to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment as further described in Section 4.3 of the Technical Provisions.

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

Conflict of Interest means, with respect to any individual who is or is proposed to be a Disputes Board Member, any one or more of the following:

(a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

(b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the Contract Documents or any Subcontract (except that such individual's interest in

receiving, and receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Project shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

(c) Such individual has or had substantial prior involvement in any aspect of the Agreement, a Subcontract or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;

(d) Such individual knows of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

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 Subcontract.

Construction Documents shall mean all Released for Construction Documents, 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 Environmental Monitoring Plan (CEMP) 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 4.3.7 of the Technical Provisions.

Construction General Permit (CGP) shall mean a permit under the TPDES program for the management of storm water discharges from construction sites as more particularly described in Section 4.3.1 of the Technical Provisions.

Construction Manager shall mean the senior staff member responsible for ensuring that the Project is constructed in accordance with the Project requirements, as more particularly described in Section 2.1.3.3 of the Technical Provisions.

Construction Quality Control Manager (CQCM) shall mean the person assigned by DB Contractor with responsibility to cause the methods and procedures contained in the approved CQMP to be implemented and followed by DB Contractor's construction staff in the performance of the Work, as more particularly described in Section 2.2.7.1.1 of the Technical Provisions.

Construction Quality Management Plan (CQMP) shall mean the plan that establishes quality control and quality assurance procedures for the Work, as more particularly described in Section 2.2.7 of the Technical Provisions.

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

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

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

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

Customer Groups shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, including regulatory and law enforcement agencies, 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, transportation authorities and providers affected by the Project (such as local airports, transit operators, toll authorities, and highway concessionaires), community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.), major traffic generators that could be affected by closures or construction (including, for example, universities, hospitals and major employers) and sponsors/coordinators of major regional special events, and other Persons or entities affected by the Project, including those identified in the Technical Provisions.

Dallas District Standards shall mean the set of standard drawings or details prepared by the TxDOT Dallas District for use on projects within the district.

Days or **days** shall mean calendar days unless otherwise expressly specified.

DB Contractor or **Design-Build Contractor** shall mean _____, a _____, together with its successors and assigns.

DB Contractor Default has the meaning set forth in Section 16.1.1 of the 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-Related Entities shall mean: (a) DB Contractor, (b) DB Contractor's shareholders, partners, joint venturers 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 Releases of Hazardous Materials means: (a) Releases of Hazardous Materials, or the exacerbation of any such releases, attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity; (b) Releases 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.

Defect means, in connection with the Maintenance Work, a deficiency in an Element, whether by design, construction, installation, repair, rehabilitation, reconstruction, operation, damage or wear, affecting the condition, use, functionality or operation of any Element, which would cause or have the potential to cause one or more of the following:

a) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users of the Project;

b) A structural deterioration of the affected Element or any other part of the Project affected by it;

c) Damage to the property or equipment of TxDOT or a third party;

d) Damage to the environment; or

e) Failure of the Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table.

Defect Remedy Period means, for a particular Defect, the time period for rectifying such Defect as set forth in either (a) for a Category 1 Defect, the column headed "Cat. 1 Hazard Mitigation" or "Cat. 1 Permanent Remedy," or (b) for a Category 2 Defect, the column headed "Cat. 2 Permanent Repair" in the Performance and Measurement Table.

Demolition and Abandonment Plan shall mean the plan prepared by DB Contractor that 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 or any 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 13 controlling criteria found in Chapter 1, Section 2, of the TxDOT *Roadway Design Manual*. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

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

Design Manager shall mean the individual position responsible for ensuring design Work is completed and design requirements are met, as more particularly described in Section 2.1.3.2 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 noncontrolling category as identified in the TxDOT *Roadway Design Manual*.

Deviations shall mean (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions or (b) a change in the Work or other requirements of the Contract Documents issued under Section 13.12 of the Agreement. "**Deviation**" includes a Design Exception.

Differing Site Condition shall mean (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports

included in the Reference Information Documents listed in Exhibit 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. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities; (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.

Disclosure Statements shall have the meaning set forth in the Disputes Board 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 19.3.3 and 19.3.4 of the Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

Disputes Board has the meaning set forth in the Disputes Board Agreement.

Disputes Board Agreement means the agreement in the form attached to the Agreement as Exhibit 20.

Disputes Board Chair has the meaning set forth in the Disputes Board Agreement.

Disputes Board Decision has the meaning set forth in the Disputes Board Agreement.

Disputes Board Error has the meaning set forth in Section 19.3.5.2 of the Agreement.

Disputes Board Member means an individual serving as one of the three members of the Disputes Board.

Disputes Board Member Candidate Evaluation Period has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Candidates List has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Joinder Agreement has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Qualifications has the meaning set forth in the Disputes Board Agreement.

Drainage Design Report shall mean the report documenting all components of the Project's drainage system as more particularly described in Section 12.2 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 CMA.

DRP Rules means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act and effective under Rule §9.6 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding dispute resolution procedures applicable to the resolution of all claims and disputes of every kind or character arising under comprehensive development agreements such as and including the Contract Documents.

DWU Change Order shall have the meaning set forth in Section 6.8.

Effective Date shall mean the date set forth on page 1 of the Agreement or such other date as shall be mutually agreed upon in writing by TxDOT and DB Contractor.

Electronic Content Management System (ECMS) 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 2.1.4.1 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, further subdivided by Performance Section where appropriate.

Emergency means any unplanned event within the Project Right of Way that (a) presents an immediate or imminent threat to the long-term integrity of any part of the infrastructure of the Project, to the environment, to property adjacent to the Project or to the safety of Users or the public; or (b) is recognized by the Texas Department of Public Safety as an emergency.

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

Engineer shall have the meaning set forth in Section 1.4.2 of the Agreement.

Engineer of Record shall mean the professional described in Section 2.2.6.2.2 of the Technical Provisions.

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 4.2 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 Compliance and Mitigation Plan (ECMP) shall mean 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 persons 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 Code).

Environmental Management System (EMS) 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 Protection Training Plan (EPTP) shall mean that program to be initiated by DB Contractor and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the Environmental Commitments and environmental requirements set forth in all Environmental Laws and

Environmental Approvals applicable to the Project as more particularly described in Section 4.3.3 of the Technical Provisions.

Environmental Site Assessment shall mean a report prepared by an environmental professional as described in Section 7.3.5.1(k) 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.

Equity Member means (a) each entity with a direct equity interest in DB Contractor (whether as a member, partner, joint venture member or otherwise) and (b) each entity with a 10% or greater indirect interest in DB Contractor. Notwithstanding the foregoing, if DB Contractor is a publicly traded company, shareholders with less than a 10% interest in DB Contractor shall not be considered Equity Members.

Error shall mean a mistake, miscalculation, error, omission, inconsistency, inaccuracy, deficiency, or other defect.

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 22.1 of the Agreement.

Estimated Net Savings means the difference between the cost of performing the Work according to the Contract Documents and the agreed-upon cost to perform the Work as modified by the VE, less the actual costs of studying and preparing the VE as substantiated by DB Contractor and approved by TxDOT in accordance with the Change Order procedures set forth in Section 3 of the Agreement; provided, that (i) in determining Estimated Net Savings, DB Contractor's profit shall not be considered part of the cost and (ii) TxDOT may disregard the original contract proposal estimates for any Work that, in the discretion of TxDOT, do not represent a fair measure of the value of the Work.

Evaluating Party has the meaning set forth in the Disputes Board 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. This interest includes all rights, whether the property interest is occupied or not and is affected by the Project. This also may include rights purchased by a utility company for a future installation.

Expendable Materials shall mean (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, and 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).

Facility means any of Facility 1&2A and Facility LE or both, as applicable.

Facility 1&2A means the portion of the Project consisting of both Section 1 and Section 2A.

Facility 1&2A Lane Rental Bank shall have the meaning set forth in Exhibit 17 to the Agreement.

Facility LE means the portion of the Project consisting of the LE Work Package.

Facility LE Phase I Lane Rental Bank shall have the meaning set forth in Exhibit 17 to the Agreement.

Facility LE Phase II Lane Rental Bank shall have the meaning set forth in Exhibit 17 to the Agreement.

Fast-Track Dispute means a dispute so designated by the Parties in respect of Section 19.3.3.2 of the Agreement.

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 for each Facility 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 for such Facility.

Final Acceptance of the Project 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 for both Facilities, as and when confirmed by TxDOT's issuance of Certificates of Final Acceptance for both Facilities.

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

Final Design Submittal shall mean the submittal by DB Contractor for review and comment by TxDOT of Design Documents certified by the PSQCM demonstrating compliance with the Contract Documents and incorporating all previous Submittal review comments, as more particularly described in Section 2.2.6.3.4 of the Technical Provisions.

Final Order means the order issued by the Executive Director pursuant to Section 19.3.5.1 or 19.3.5.4 of the Agreement.

Final Order Implementing Decision has the meaning set forth in Section 19.3.5.4(a)(ii) of the Agreement.

Final Order Vacating Decision has the meaning set forth in Section 19.3.5.4(a)(i) of the Agreement.

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

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

Financial Proposal has the meaning set forth in the ITP.

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 applicable Substantial Completion Deadline or Final Acceptance Deadline. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

Force Majeure Event shall mean any of the events listed in clauses (a) through (j) (and no other events, including those listed in clauses (i) through (viii) below) that 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 (1) an act, omission, negligence, recklessness, intentional misconduct of or, (2) breach of contract or Law or violation of any Governmental Approval by, 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 any DB Contractor-Related Entity:

(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 DB Contractor's action or inaction or DB Contractor's means and methods of construction;

(b) Any epidemic in the Dallas area;

(c) Any blockade, rebellion, war, riot, act of sabotage, act of terrorism, 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 as a 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 that: (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 that: (1) occurs after the Proposal Due Date (and

for Third Party Releases of Hazardous Materials, also after the date TxDOT makes the parcel available to DB Contractor for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;

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

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

(j) The circumstances expressly described as entitling DB Contractor to request a Change Order for a Force Majeure Event in Section 6.10.1.2 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 that might otherwise be considered a force majeure event:

(i) any fire or other physical destruction or damage, or delays to the Project that occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, or storm, except as specified in clause (a) above;

(ii) except as provided in clause (c) 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 of or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clauses (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 Materials, 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 that has the effect of modifying a Utility Owner's required specifications, standards of practice 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.

Form 1295 shall have the meaning set forth in Section 13.4.6 of the Agreement.

Form 1295 Laws shall have the meaning set forth in Section 13.4.6 of the Agreement.

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

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

Geotechnical Engineering Reports shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.2.2 of the Technical Provisions.

Good Industry Practice shall mean the exercise of the degree of skill, diligence, prudence, and foresight that 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 memorandum of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, or provided by TxDOT in its capacity as a regulatory agency for issuing State regulatory permits, which authorize or pertain to the Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

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

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

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

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) that 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 by-product 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 that 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, stockpiling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation 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 disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.3.5 of the Technical Provisions.

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

Highway Service Systems means TxDOT's or Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems, serving street or highway purposes.

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 (i) is an overhead Utility, or (ii) has any appurtenance above ground within the Schematic ROW, so long as, in either case, the Utility is existing as of the Proposal Due Date or which commenced installation prior to the Proposal Due Date;

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

(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, foundations 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 the public right of way, and it is in fact located on the 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 any unplanned event within the Project ROW that causes a localized disruption to the free flow of traffic on, or safety of users of, the Project.

Incident and Emergency Management Plan has the meaning set forth in Section 19.3.1 of the Technical Provisions.

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 or accommodation of the Project:

(a) Service Line Utility Adjustments including appurtenances (excluding any Service Line Utility Adjustment for which the owner of the affected real property has been compensated pursuant to Section 7 of the Technical Provisions, 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);

(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, TxDOT Consultants, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Independent Quality Firm (IQF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its discretion) responsible for managing the quality assurance program for the Construction Work and performing independent quality assurance material testing, inspection, and audits of the CQMP. The initial approved IQF is [●].

Independent Quality Firm Manager (IQFM) shall mean the person appointed by the IQF who is responsible for management and quality assurance functions, as more particularly described in Section 2.2.7.2.3 of the Technical Provisions.

Ineligible Matters has the meaning set forth in Section 19.3.1(h) of the Agreement.

Informal Resolution Procedures has the meaning set forth in Section 19.3.2 of the Agreement.

Instructions to Proposers (ITP) shall mean the Instructions to Proposers issued by TxDOT on November 10, 2016 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 or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including 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.

ITS Implementation Plan shall mean a plan prepared by DB Contractor for approval as part of the Final Design Submittal to demonstrate system interoperability with other TMCs in the region as more particularly described in Section 17.3.4 of the Technical Provisions.

Job Training Plan and Small Business Opportunities Plan shall mean the plans set forth in Exhibit 8 to the Agreement.

Key Personnel shall mean the following positions: (1) Project Manager; (2) Construction Manager; (3) Design Manager; (4) Lead Roadway Design Engineer; (5) Lead Structural Engineer; (6) Lead Maintenance of Traffic Engineer; (7) Professional Services Quality Assurance Manager; (8) Independent Quality Firm Manager; (9) Environmental Compliance Manager; (10) Safety Manager; and (11) Public Information Coordinator.

Key Personnel Change Fee shall mean the fee assessed in accordance with Sections 7.4.4 of the Agreement.

Key Subcontractor shall mean the Subcontractors identified on Exhibit 21 to the Agreement.

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, access roads and cross roads.

Lane Rental Fees shall mean the fees for Lane Closures specified in Section 17.2, Section 18.3.2 of the Technical Provisions, and Exhibit 17 to the Agreement.

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.

LE Base Scope shall mean the Professional Services Local Enhancements as set forth in LE Scope Items 1 and 2 in Exhibit 22 and Section 22 of the Technical Provisions.

LE Line Item Price shall mean the price identified for each LE Scope Item as set forth in Exhibit 22.

LE Maximum Scope shall mean all LE Scope Items set forth in Exhibit 22.

LE NEPA Approval shall mean the final Categorical Exclusion for the Local Enhancements.

LE Scope Item shall mean each item of scope related to the Local Enhancements identified as an individual line item in Exhibit 22 and described in Section 22 of the Technical Provisions.

LE Work Package shall mean the LE Base Scope and each additional LE Scope Item set forth in the LE Work Package Notice, if any.

LE Work Package Deadline has the meaning set forth in Section 4.1.7 of the Agreement.

LE Work Package Maximum Price shall mean $[*Insert dollar amount for LE Work Package Maximum Price ("A+B") included in Form M-1.2 of the Proposal.]*

LE Work Package Notice has the meaning set forth in Section 4.1.7 of the Agreement.

Lead Roadway Design Engineer shall mean the person designated by DB Contractor responsible for ensuring the design of the roadway is completed and design criteria requirements are met, as more particularly described in Section 11.1.1 of the Technical Provisions.

Lead Structural Engineer shall mean the person designated by DB Contractor responsible for overseeing the design and construction of all structural elements of the Project such that each is complete and design requirements are met, as more particularly described in Section 13.1.1 of the Technical Provisions.

Lead Maintenance of Traffic Engineer shall mean the person responsible for ensuring the Traffic Management Plan is completed and design criteria are met, as more particularly described in Section 18 of the Technical Provisions.

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 14.3.1 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 the liquidated damages specified in Sections 17.1 and 17.2 of the Agreement.

Liquidated Damages for Lane Closures has the meaning set forth in Section 17.2.1 of the Agreement.

Local Enhancements shall have the meaning set forth in Section 22 of the Technical Provisions.

Local Enhancements Conceptual Plan means the conceptual plan for the Local Enhancements as shown in the RID.

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 Limits means the limits of DB Contractor's maintenance responsibilities shown on Attachment 19-3 to the Technical Provisions and as may be amended by DB Contractor in accordance with Section 19.1.3 of the Technical Provisions.

Maintenance Management Plan (MMP) shall mean the plan prepared by DB Contractor that defines the processes and procedures for the maintenance of the Project for the Term of Agreement, as more particularly described in Section 19.2.1 of the Technical Provisions.

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

Maintenance Records means all data in connection with the Maintenance Work, including (a) all inspection and inventory records, whether generated by DB Contractor or a third party, (b) any communication to or from TxDOT or a third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with the Maintenance Work that TxDOT requires DB Contractor to use, implement or operate.

Maintenance Safety Plan shall mean the safety plan prepared by DB Contractor as part of the Maintenance Management Plan as described in Section 19.3.5 of the Technical Provisions.

Maintenance Security shall have the meaning set forth in Exhibit 1 of the CMA.

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

Maintenance Term shall mean the Initial Maintenance Term, Second Maintenance Term, or Third Maintenance Term, as applicable under the CMA.

Maintenance Work shall mean the scope of work described in Section 19.1 of the Technical Provisions.

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

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

Management Plans shall mean all of the management plans listed in Section 2 of the Technical Provisions.

Maximum Payment Schedule shall mean the table of aggregate amounts included in Exhibit 5 and the earliest date by which each such aggregate amount shall become due to DB Contractor, which constitute a cap on the aggregate amount of payments that may be made to DB Contractor hereunder at any specified time.

Misconduct means, with respect to any individual who is a Disputes Board Member, any one or more of the following:

(a) Any ex parte communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other ex parte communication prohibited under R-10 of the Commercial Rules;

(b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Project;

(c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or

(d) A material lack of the requisite experience under Section 4.1 of the Disputes Board Agreement that was not and could not reasonably have

been discovered by the Nominating Party or the Evaluating Party at the time such individual was proposed and approved for inclusion on the Nominating Party's Disputes Board Member Candidates List, including, by way of example and not limitation, a situation where such individual has materially misrepresented his or her experience to the Parties.

Mobilization Payment Activity Amount shall mean the value included in the Proposal (line item 38 of Form M-2.1) and subsequently allocated to the mobilization activity in the Schedule of Values. Such amount shall not exceed 10% of the Price, payable in installments according to Section 12.3.4.1 of the Agreement.

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.

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 4.4.6 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 the direct result of an Error in the TxDOT Schematic Design (with the understanding that a change shall be deemed "necessary" only if the Error creates a situation in which DB Contractor is unable to meet the requirements of the Contract Documents without a material change in the Basic Configuration), (b) in the reasonable determination of TxDOT, necessitates the acquisition of real property falling outside of the Schematic ROW, (c) could not be avoided by the exercise of caution, due diligence, or reasonable efforts by DB Contractor, such as the construction of retaining walls or other reasonable mitigation efforts, and (d) will not be avoided through the granting of a waiver, Deviation or design exception from requirements of the Contract Documents by TxDOT.

NEPA Approvals shall mean the Sections 1 and 2A NEPA Approval and the LE NEPA Approval.

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 6.10.1 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.

Nominating Party has the meaning set forth in the Disputes Board Agreement.

Nonconforming Work shall mean Work that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law or the Released for Construction 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 Sections 4.3.1 and 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 4.1.5 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.

Office of Public Involvement is the headquarters-level office that serves as the central clearinghouse on all guidelines, policies, and procedures regarding public involvement throughout TxDOT.

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

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

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

Pavement Design Report shall mean the formal engineering document prepared by a Registered Professional Engineer that details the pavement design analysis, data, policies, and other considerations used in the development of the proposed pavement structure as further described in Section 8 of the Technical Provisions.

Payment Activity shall mean a Project Baseline Schedule activity with a portion of the Price allocated to it.

Payment Bond shall mean the NTP1 Payment Bond described in Section 8.1.2 or the 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 or the NTP2 Performance Bond described in Section 8.1.3, as applicable.

Performance and Measurement Table means Table 19-1 in Section 19 of the Technical Provisions.

Performance Requirements means, for each Element in connection with the Maintenance Work, requirements set forth in the Performance and Measurement Table. A Performance Requirement is achieved if the stated Target is met or exceeded.

Performance Section means a defined section of the Project for the purpose of audit, inspection and measurement during performance of Maintenance Work. A Performance Section includes all travel lanes including mainlanes, ramps and

access roads of the roadway operating in one direction over a length of 0.1 miles, together with all Elements associated with such 0.1 mile length.

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 (PUA) shall have the meaning set forth in Section 7.4.1 of the Technical Provisions.

Pre-existing Hazardous Materials shall mean Hazardous Materials that meet all of the following criteria:

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

(b) The Hazardous Materials are not required to be removed and disposed of due to a DB Contractor Release of Hazardous Materials.

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

Preliminary Design Submittal shall mean the work product required under Section 2.2.6.3.3 of the Technical Provisions.

Preliminary Project Baseline Schedule (PBS1) 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.

Professional Services shall mean all Work performed under the Agreement other than Construction Work, including the following services and Work: (a) design, engineering, and architecture; (b) right of way acquisition services; (c)

surveying; (d) Utility Adjustment design; (e) schedule management; (f) DBE management; (g) cost management; (h) administration of insurance, bonds and warranties; (i) public information and communications; and (j) environmental permitting and compliance services.

Professional Services Quality Assurance Firm (PSQAF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its discretion) responsible for the quality assurance program as set forth in the PSQMP for all Professional Services and performing independent quality assurance reviews of Professional Services submittals and audits of the PSQMP. The initial approved PSQAF is ____. [*Insert from Proposal*]

Professional Services Quality Assurance Manager (PSQAM) shall mean the person appointed by the PSQAF who is responsible for management and quality assurance functions for Professional Services, as more particularly described in Section 2.2.6.2.3 of the Technical Provisions.

Professional Services Quality Control Manager (PSQCM) shall mean the person assigned by DB Contractor with responsibility to cause the methods and procedures contained in the approved PSQMP to be implemented and followed by DB Contractor's design staff in the performance of the Work as more particularly described in Section 2.2.6.2.1 of the Technical Provisions.

Professional Services Quality Management Plan (PSQMP) shall mean the plan prepared by DB Contractor setting forth the internal quality control and quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Section 2.2.6 of the Technical Provisions.

Progress Report shall mean the monthly report that DB Contractor must prepare and submit to TxDOT as more particularly described in Section 2.1.2 of the Technical Provisions.

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

Project Baseline Schedule (PBS) shall mean either PBS2) or PBS3, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

Project Baseline Schedule 2 (PBS2) shall mean the Project Baseline Schedule that is a condition to NTP2, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

Project Baseline Schedule 3 (PBS3) shall mean the Project Baseline Schedule that is a condition to commencement of the Construction Work, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

Project Management Plan (PMP) shall mean the document approved by TxDOT, describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in Section 2 of the Technical Provisions.

Project Manager (PM) shall mean the individual more particularly described in Section 2.1.3.1 of the Technical Provisions, 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 Right of Way or Project ROW 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 of the logic-based critical path schedules (the Project Baseline Schedule, the Project Schedule Update and the Project Recovery Schedule) for all Work leading up to and including Final Acceptance of the Project, 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 of the Technical Provisions. Unless otherwise stated, Project Schedule shall mean the version of the Project Baseline Schedule or the Project Schedule Update most recently approved by TxDOT.

Project Schedule Update shall mean the update of the Project Schedule at the level of detail of PBS3 to reflect the current status of the Project, as more particularly described in Section 2.1.1.3 of the Technical Provisions. The Project Schedule Update shall include, where required, a Recovery Schedule in accordance with Section 4.5 of the Agreement.

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

Project Utility Adjustment Agreement (PUAA) shall mean an agreement between DB Contractor and a Utility Owner that sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented and as more particularly described in Section 6 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 Adjustments 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 Adjustments addressed therein.

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

Proposal Due Date shall mean April 10, 2017, the deadline for submission of the Financial Proposal to TxDOT.

Proposer shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on November 10, 2016, 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 that does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

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

Public Information and Communications Plan (PICP) shall mean the plan setting forth procedures by which DB Contractor works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 3.2.1 of the Technical Provisions.

Public Information Coordinator shall mean the person designated by DB Contractor to manage DB Contractor's public information activities as more particularly described in Section 3.2.2 of the Technical Provisions.

Punch List shall mean for each Facility, the itemized list of the Work that remains to be completed after Substantial Completion of a Facility has been achieved and before Final Acceptance of such Facility, 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 of the Technical Provisions.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-13.

Record Documents shall mean the Released for Construction Documents updated to reflect the as constructed project and documented changes made during construction, organized as a complete record of Plans, supporting calculations, and details that accurately reflect the actual condition of the constructed Work, including all plans, studies, and reports that are prepared, signed, and sealed by a Registered Professional Engineer in the performance of the Work.

Recovery Schedule shall mean the schedule included as part of the Project Schedule Update that 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 (PE) 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%

markups allowed under Section 13.7.1 of the Agreement shall be reduced to 12.5% and 130%, and the 15% markup 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.

Relocation Plan means a documented relocation plan for owner-occupants or tenants' that fulfills the requirement set forth in the TxDOT *Right of Way Manual*, Volume 3, Chapter 8 (Relocation Program Planning and Construction).

Remaining Project ROW shall mean (a) the portion of the Schematic ROW for which DB Contractor shall be responsible for acquisition activities as described in Exhibit 24 of the Agreement, and (b) the Additional Properties; but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.

Replacement Housing Calculation shall mean the opportunity to provide a 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) that 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 seek clarifications regarding the content of the Construction Documents.

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.

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 or **Request for Qualifications** shall have the meaning as set forth in Recital C of the Agreement.

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

Right of Way Acquisition Manager or ROW Acquisition Manager (ROW AM) shall mean DB Contractor's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project ROW.

Right of Way Acquisition Management Plan or ROW Acquisition Management Plan shall mean DB Contractor's written plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for acquisition of real property for all parcels of land necessary to construct, obtain access to and operate the Project and any Additional Properties, prepared under the Project Management Plan (PMP) approved by TxDOT.

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

Right of Way Maps or ROW Maps means and consists of right of way maps prepared for the Project and contained in the Reference Information Documents, depicting within the boundary lines shown therein the land or property that TxDOT has made or will make available for the Project.

Rules shall mean Chapter 9 of Title 43, Texas Administrative Code.

Safety and Health Plan shall have the meaning as set forth in Section 2.4 of the Technical Provisions.

Safety Manager shall mean the person assigned by Design-Build Contractor with responsibility to carry out the Safety and Health Plan and all safety-related activities, including training and enforcement of safety operations, as more particularly described in Section 2.4.1 of the Technical Provisions.

Schedule of Values shall mean the Price, as may be amended by Change Orders, broken down and allocated to the Project Baseline Schedule rolled up to a WBS Level 3, 4, or 5 as appropriate.

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 on the TxDOT 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.

Section 1 means the portion of the Project described as Section 1 in Section 1.2.1 of the Technical Provisions.

Section 2A means the portion of the Project described as Section 2A in Section 1.2.1 of the Technical Provisions.

Sections 1 and 2A NEPA Approval means the Finding of No Significant Impact for Section 1 and Section 2A, issued by TxDOT on December 27, 2016, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

Service Lines shall mean a Utility line, up to and including the meter, 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 an individual line to a larger system. However, unless noted otherwise in the Technical Provisions, this term excludes any line that supplies an active feed from a Utility Owner's facility(ies) to supply, activate or energize TxDOT's or a Governmental Entity's Highway Service System. Such line, including its actual connection to the Utility facility, shall instead be considered to be part of the applicable Highway Service System.

Severe Weather Evacuation Plan shall have the meaning set forth in Section 19.6.3 of the Technical Provisions.

Shift Safety Representative has the meaning set forth in Section 2.4.1 of the Technical Provisions.

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 Investigation Report shall mean the report required by Section 4.3.1(c) of the Technical Provisions.

Snow and Ice Control Plan shall have the meaning set forth in Section 19.6.2 of the Technical Provisions.

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 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.

Specialist Inspection shall have the meaning set forth in Section 19.4.3 of the Technical Provisions.

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 pertaining to the Work and required under the Contract Documents or the Project Management Plan to be delivered or submitted to TxDOT, except any submitted to TxDOT in connection with applying for, processing or obtaining a Governmental Approval.

Substantial Completion shall mean for each Facility, 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 for such Facility.

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

Supplier shall mean any Person not performing work at or on the Site that 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.

Sustainability Plan means DB Contractor's plan to meet the sustainability goals for the Project, as more particularly described in Section 2.11 of the Technical Provisions.

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, including goodwill, patents, and 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.

Targets shall mean the target value for the measurement record set forth in the column titled "Target" of the Performance and Measurement Table.

Technical Provisions (TP) means the document titled "Technical Provisions The Southern Gateway Project" issued with the Agreement and having

the priority set forth in Section 1.2.1 of the Agreement, 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.

Time Impact Analysis (TIA) means a delay analysis performed in accordance with the requirements of Section 2.1.1.5 of the Technical Provisions.

Time Period A shall mean the period shown as "A" on Table 18-5 of the Technical Provisions.

Time Period B shall mean the period shown as "B" on Table 18-5 of the Technical Provisions.

Time Period C shall mean the period shown as "C" on Table 18-5 of the Technical Provisions.

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

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

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

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

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

(a) TxDOT-Directed Changes;

(b) failure 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 (which, for the avoidance of doubt, does not include Submittals and matters governed by Section 3.1.5 of the Agreement), 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

(c) 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 (h) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct DB Contractor to suspend the Work.

TxDOT Consultants shall mean any firm or persons under contract to TxDOT to perform services for or on the behalf of TxDOT.

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

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-Provided Approvals shall mean the approvals described in Exhibit 4 to the Agreement.

TxDOT's Recoverable Costs means:

(a) The costs of any assistance, action, activity or Work undertaken by TxDOT that 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 due date under the applicable terms of the Contract Documents and continuing until paid.

TxDOT Release 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 ROW Utility Manual shall mean the ROW 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.

TxDOT Schematic Design shall mean the roadway conceptual plans for the Work that depict a refinement of the diagrammatic/schematic plans presented in the environmental documentation for The Southern Gateway Project approved by TxDOT and FHWA and included in the RID and the Local Enhancements Conceptual Plan.

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.

Ultimate Deck Plaza has the meaning set forth in Section 22.1 of the Technical Provisions.

Unidentified Utility(ies) shall mean any Utility impacted by the Project (other than a Service Line) that is neither an Identified Utility nor a New Utility, including any Utility that 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.

USACE Individual 404 Permits shall mean the individual permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33

U.S.C. §1344) for the placement of dredged and fill material into waters of the United States, based upon the TxDOT Schematic Design and the Schematic ROW.

Users means the registered owner of a vehicle traveling on the Project or any portion thereof.

Utility(ies) or **utility(ies)** shall mean a public, private, cooperative, municipal or government line, facility or system used for the carriage, transmission or distribution of cable television, electric power, telephone, telegraph, water, salt water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility(ies)" or "utility(ies)" also includes radio towers or transmission towers (including cellular). Oil and gas gathering lines and production supply lines are included in this definition and are classified as a Utility.

When used in the context of Utility Adjustments, the term specifically excludes:

(a) Storm water facilities providing drainage for the Project ROW, and

(b) TxDOT's or a Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems serving street or highway purposes (including ITS and intelligent vehicle highway system facilities).

The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line up to and including the meter, connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

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

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

Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

Utility Adjustment Agreement Amendment (UAAA) shall mean an agreement between DB Contractor and the Utility Owner that amends a Project Utility Adjustment Agreement, as more particularly described in Section 6.1.3.2 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 Utility 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 that is DB Contractor's responsibility pursuant to Section 6.8 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, UAAA, or the City of Dallas Utility Agreement, 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 that DB Contractor is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Utility 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 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 Design Coordinator (UDC) shall mean the Registered Professional Engineer designated by 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 6.8.2 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 Management Plan shall mean the plan setting forth procedures by which DB Contractor will manage the Utility Adjustment Work as more particularly described in Section 6.1 of the Technical Provisions.

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 6.8.5.2 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 6.8.2.3 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 those documents depicting proposed or existing Utilities listed in Section 4 (Utilities) of the Reference Information Document Index.

Utility Tracking Report shall mean the report prepared by DB Contractor and that 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 Proposals (VEs) means those DB Contractor proposals more particularly described in Section 13.3.4 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 4.4.9 of the Technical Provisions.

Work shall mean all of the work required under the Contract Documents, including for the LE Work Package as it may be revised in accordance with Section 4.1.7 of the Agreement, all administrative, Professional Services, 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, landscaping, 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 of the Project, except for those efforts that such Contract

Documents expressly specify will be performed by Persons other than the DB Contractor-Related Entities.

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

[END OF DEFINITIONS]

EXHIBIT 2

DB CONTRACTOR'S PROPOSAL COMMITMENTS AND ATCS

Appendix 1: **Proposal Commitments**

Appendix 2: **ATCs**

Appendix 1

Proposal Commitments

[To be provided from the Proposal]

Description	Substantial Completion Deadlines
Proposal Commitment Date for Substantial Completion of Facility 1&2A	NTP1 plus ____ calendar days *[Insert number of Proposed Schedule Days from Form O in the Price Proposal.]*
Proposal Commitment Date for Substantial Completion of Facility LE	NTP1 plus __ calendar days *[Insert sum of the number of Proposed Schedule Days for Substantial Completion of Facility 1&2A above, plus another 120 calendar days.]*

Proposal Commitments

No.	Proposal Location	Proposal Commitment
1		
2		
3		
4		
5		

Appendix 2

DB Contractor's ATCs

The following table lists DB Contractor's Alternative Technical Concepts (ATCs), which are described in further detail in the ATC submittals, that DB Contractor may incorporate into the Project. The Deviations set forth in the ATC submittals are approved by TxDOT subject to satisfaction of any conditions set forth in the letters from TxDOT to DB Contractor. Such Deviations, subject to satisfaction of any listed "conditions," expressly supersede any conflicting provisions in the Technical Provisions, as provided in Section 1.2.2 of the Design-Build Agreement. DB Contractor is responsible for and bears the schedule and cost risk associated with (a) any ATC that would require further environmental evaluation of the Project, (b) obtaining any third-party approvals (including Governmental Approvals) required to implement the ATC, and (c) the acquisition of any additional rights of way, and obtaining any necessary Environmental Approvals required to implement the ATC. Moreover, DB Contractor is not entitled to a Change Order for time or money as a result of (i) Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way, or (ii) any delay, inability or cost associated with the acquisition of any rights of way required to implement the ATC. The ATCs, to the extent utilized by DB Contractor, shall otherwise meet all requirements of the Technical Provisions.

[To be provided from the Proposal]

EXHIBIT 3

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	3
Attachment 2 – FHWA Form 1273	26
Attachment 3 – Wage Determination of the Secretary of Labor	4
Attachment 4 – Equal Employment Opportunity	7
Attachment 5 – Affirmative Action	6
Attachment 6 – Lobbying Certification	2
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 - Certification of Nondiscrimination in Employment	1
Attachment 9 - On-the-Job Training Program	4

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) "contracting officer," or "authorized representative," such references shall be construed to mean TxDOT or its Authorized Representative;

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

(c) "contract," "prime contract," "Federal-aid construction contract," or "design-build contract," such references shall be construed to mean the DB 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 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 that 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.

USE OF UNITED STATES-FLAG VESSELS

a. DB Contractor shall comply with the requirements of 46 CFR Part 381 whenever transporting by oceanic shipment any equipment, material, or commodities acquired solely for the Project, and not to replenish existing inventories independent of the Design-Build Agreement.

b. For such shipments, DB Contractor agrees:

(i) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Design-Build Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; and

(ii) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) of this section to both TxDOT's Authorized Representative (through DB Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

c. DB Contractor shall insert the substance of this provision in all Subcontracts.

ATTACHMENT 2 TO EXHIBIT 3

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273

TABLE OF CONTENTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

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 A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be

required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT 3 TO EXHIBIT 3

FEDERAL PREVAILING WAGE RATE

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 01-06-2017.

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/6/17	ZONE TX08 1/6/17	ZONE TX11 1/6/17	ZONE TX12 1/6/17	ZONE TX14 1/6/17	ZONE TX16 1/6/17	ZONE TX18 1/6/17	ZONE TX34 1/6/17	ZONE TX35 1/6/17	ZONE TX37 1/6/17	ZONE TX38 1/6/17	ZONE TX40 1/6/17	ZONE TX41 1/6/17	ZONE TX54 1/6/17	ZONE TX56 1/6/17	ZONE TX63 1/6/17
1428	Agricultural Tractor Operator						$12.69					$12.35			$11.75		
1300	Asphalt Distributor Operator	$14.87	$13.48	$13.88	$15.72	$15.58	$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	$14.05	$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	$11.65	$12.12	$11.64	$11.44	$12.69	$12.05	$11.34	$11.67	$11.40	$12.59	$12.36	$11.78
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	$11.21	$10.33	$10.08	$11.99		$11.04	$11.62		$11.74	$11.41	$10.30		$10.23	$10.60	$12.68	$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	$13.55	$12.46	$13.16	$12.85	$12.64	$12.56	$12.77	$12.44	$14.12	$13.04	$13.38	$12.64	$12.80	$12.79	$12.98	$13.32
1318	Concrete Pavement Finishing Machine Operator				$16.05		$15.48			$16.05		$19.31				$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											$16.34				$11.71	
1333	Concrete Saw Operator				$14.67					$14.48	$17.33					$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less				$18.22		$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	$17.27		$15.87			$17.27		$14.67			$16.42	$14.97	$13.87
1343	Crane Operator, Lattice Boom Over 80 Tons				$20.52		$19.38			$20.52		$17.49			$25.13	$15.80	
1306	Crawler Tractor Operator	$13.96	$16.63	$13.62	$14.26		$15.67			$14.07	$13.15	$13.38			$14.60	$13.68	$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						$11.67										
1445	Directional Drilling Operator				$20.32		$17.24										
1139	Electrician	$20.96		$19.87	$19.80		$26.35		$20.27	$19.80		$20.92				$27.11	$19.87
1347	Excavator Operator, 50,000 pounds or less	$13.46	$12.56	$13.67	$17.19		$12.88	$14.38	$13.49	$17.19		$13.88			$14.09	$12.71	$14.42
1348	Excavator Operator, Over 50,000 pounds		$15.23	$13.52	$17.04		$17.71			$16.99	$18.80	$16.22				$14.53	$13.52
1150	Flagger	$9.30	$9.10	$8.50	$10.28	$8.81	$9.45	$8.70		$10.06	$9.71	$9.03	$8.81	$9.08	$9.90	$10.33	$8.10
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	$13.93
1360	Foundation Drill Operator, Crawler Mounted				$17.99					$17.99						$17.43	
1363	Foundation Drill Operator, Truck Mounted		$16.86	$22.05	$21.51		$16.93			$21.07	$20.20	$20.76		$17.54	$21.39	$15.89	$22.05
1369	Front End Loader Operator, 3 CY or Less	$12.28	$13.49	$13.40	$13.85		$13.04	$13.15	$13.29	$13.69	$12.64	$12.89			$13.51	$13.32	$12.17

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/6/17	ZONE TX08 1/6/17	ZONE TX11 1/6/17	ZONE TX12 1/6/17	ZONE TX14 1/6/17	ZONE TX16 1/6/17	ZONE TX18 1/6/17	ZONE TX34 1/6/17	ZONE TX35 1/6/17	ZONE TX37 1/6/17	ZONE TX38 1/6/17	ZONE TX40 1/6/17	ZONE TX41 1/6/17	ZONE TX54 1/6/17	ZONE TX56 1/6/17	ZONE TX63 1/6/17
1372	Front End Loader Operator, Over 3 CY	$12.77	$13.69	$12.33	$14.96		$13.21	$12.86	$13.57	$14.72	$13.75	$12.32			$13.19	$13.17	$13.02
1329	Joint Sealer																
1172	Laborer, Common	$10.30	$9.86	$10.08	$10.51	$10.71	$10.50	$10.24	$10.58	$10.72	$10.45	$10.30	$10.25	$10.03	$10.54	$11.02	$10.15
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	$12.90
1187	Mechanic	$20.14	$15.47	$17.47	$17.74	$17.00	$17.10			$17.68	$18.94	$18.58	$17.00	$16.61	$18.46	$16.96	$17.47
1380	Milling Machine Operator	$15.54	$14.64	$12.22	$14.29		$14.18			$14.32	$14.35	$12.86			$14.75	$13.53	$12.80
1390	Motor Grader Operator, Fine Grade	$17.49	$16.52	$16.88	$17.12	$18.37	$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	$16.20	$17.07	$14.63	$18.50		$16.02	$16.44	$15.12	$16.85	$14.47	$17.39	$14.23	$15.53
1413	Off Road Hauler			$10.08	$12.26		$11.88			$12.25		$12.23			$13.00	$14.60	
1196	Painter, Structures					$21.29	$18.34						$21.29			$18.62	
1396	Pavement Marking Machine Operator	$16.42		$13.10	$13.55		$19.17	$12.01		$13.63	$14.60	$13.17		$16.65	$10.54	$11.18	$13.10
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															$14.95	
1205	Pipelayer		$11.87	$14.64	$13.17	$11.17	$12.79		$11.37	$13.24	$12.66	$13.24	$11.17	$11.67		$12.12	$14.64
1384	Reclaimer/Pulverizer Operator	$12.85			$11.90		$12.88			$11.01		$10.46					
1500	Reinforcing Steel Worker	$13.50	$14.07	$17.53	$16.17		$14.00			$16.18	$12.74	$15.83		$17.10		$15.15	$17.72
1402	Roller Operator, Asphalt	$10.95		$11.96	$13.29		$12.78	$11.61		$13.08	$12.36	$11.68			$11.71	$11.95	$11.50
1405	Roller Operator, Other	$10.36		$10.44	$11.82		$10.50	$11.64		$11.51	$10.59	$10.30		$12.04	$12.85	$11.57	$10.66
1411	Scraper Operator	$10.61	$11.07	$10.85	$12.88		$12.27		$11.12	$12.96	$11.88	$12.43		$11.22	$13.95	$13.47	$10.89
1417	Self-Propelled Hammer Operator																
1194	Servicer	$13.98	$12.34	$14.11	$14.74		$14.51	$15.56	$13.44	$14.58	$14.31	$13.83		$12.43	$13.72	$13.97	$14.11
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									$15.96							
1515	Spreader Box Operator	$12.60		$13.12	$14.71		$14.04			$14.73	$13.84	$13.68		$13.45	$11.83	$13.58	$14.05
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	$13.41
1612	Truck Driver Transit-Mix				$14.14					$14.14							
1600	Truck Driver, Single Axle	$12.74	$10.82	$10.75	$13.04	$11.61	$11.79	$13.53	$13.16	$12.31	$13.40	$10.30	$11.61		$11.97	$11.46	$10.75
1606	Truck Driver, Single or Tandem Axle Dump Truck	$11.33	$14.53	$11.95	$12.95		$11.68		$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	$13.42		$12.81	$13.16		$12.86	$16.22	$12.50			$13.80	$12.27	$12.50
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		$14.02		$14.86		$15.97		$13.74	$14.84					$13.78		
1520	Work Zone Barricade Servicer	$10.30	$12.88	$11.46	$11.70	$11.57	$11.85	$10.77		$11.68	$12.20	$11.22	$11.51	$12.96	$10.54	$11.67	$11.76

Notes:
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's 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.

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		

01-06-2017

ATTACHMENT 4 TO EXHIBIT 3

SPECIAL PROVISION

000-006

Standard Federal Equal Employment OpportunityConstruction Contract Specifications (Executive Order 11246)

1.1. 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).

1.2. 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.

1.3. 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 equal employment opportunity (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.

1.4. The Contractor shall implement the specific affirmative action standards provided in Section 1.7.1 through 1.7.16 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.

1.5. 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.

1.6. 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.

1.7. 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:

1.7.1. 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 will 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.

1.7.2. 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.

1.7.3. 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.

1.7.4. 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.

1.7.5. 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 Section 1.7.2 above.

1.7.6. 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.

1.7.7. 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 on-site 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.

1.7.8. 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.

1.7.9. 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.

1.7.10. 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.

1.7.11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

1.7.12. 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.

1.7.13. 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.

1.7.14. 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.

1.7.15. 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.

1.7.16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

1.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 1.7.1 through Section 1.7.16). 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 Section 1.7.1 through Section 1.7.16 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.

1.9. 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).

1.10. 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.

1.11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

1.12. 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.

1.13. 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.

1.14. 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.

1.15. 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).

1.16. 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, %	**Goals for female participation in each trade, %**
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 will 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 will 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 must

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

County	Participation, %	County	Participation, %
Gaines	19.5	Jim Wells	44.2
Galveston	28.9	Johnson	18.2
Garza	19.5	Jones	11.6
Gillespie	49.4	Karnes	49.4
Glasscock	18.9	Kaufman	18.2
Goliad	27.4	Kendall	49.4
Gonzales	49.4	Kenedy	44.2
Gray	11.0	Kent	10.9
Grayson	9.4	Kerr	49.4
Gregg	22.8	Kimble	20.0
Grimes	27.4	King	19.5
Guadalupe	47.8	Kinney	49.4
Hale	19.5	Kleberg	44.2
Hall	11.0	Knox	10.9
Hamilton	18.6	Lamar	20.2
Hansford	11.0	Lamb	19.5
Hardeman	11.0	Lampasas	18.6
Hardin	22.6	LaSalle	49.4
Harris	27.3	Lavaca	27.4
Harrison	22.8	Lee	24.2
Hartley	11.0	Leon	27.4
Haskell	10.9	Liberty	27.3
Hays	24.1	Limestone	18.6
Hemphill	11.0	Lipscomb	11.0
Henderson	22.5	Live Oak	44.2
Hidalgo	72.8	Llano	24.2
Hill	18.6	Loving	18.9
Hockley	19.5	Lubbock	19.6
Hood	18.2	Lynn	19.5
Hopkins	17.2	Madison	27.4
Houston	22.5	Marion	22.5
Howard	18.9	Martin	18.9
Hudspeth	49.0	Mason	20.0
Hunt	17.2	Matagorda	27.4
Hutchinson	11.0	Maverick	49.4
Irion	20.0	McCulloch	20.0
Jack	17.2	McLennan	20.7
Jackson	27.4	McMullen	49.4
Jasper	22.6	Medina	49.4
Jeff Davis	49.0	Menard	20.0
Jefferson	22.6	Midland	19.1
Jim Hogg	49.4	Milam	18.6

County	Participation, %	County	Participation, %
Mills	18.6	Shackelford	10.9
Mitchell	10.9	Shelby	22.5
Montague	17.2	Sherman	11.0
Montgomery	27.3	Smith	23.5
Moore	11.0	Somervell	17.2
Morris	20.2	Starr	72.9
Motley	19.5	Stephens	10.9
Nacogdoches	22.5	Sterling	20.0
Navarro	17.2	Stonewall	10.9
Newton	22.6	Sutton	20.0
Nolan	10.9	Swisher	11.0
Nueces	41.7	Tarrant	18.2
Ochiltree	11.0	Taylor	11.6
Oldham	11.0	Terrell	20.0
Orange	22.6	Terry	19.5
Palo Pinto	17.2	Throckmorton	10.9
Panola	22.5	Titus	20.2
Parker	18.2	Tom Green	19.2
Parmer	11.0	Travis	24.1
Pecos	18.9	Trinity	27.4
Polk	27.4	Tyler	22.6
Potter	9.3	Upshur	22.5
Presidio	49.0	Upton	18.9
Rains	17.2	Uvalde	49.4
Randall	9.3	Val Verde	49.4
Reagan	20.0	Van Zandt	17.2
Real	49.4	Victoria	27.4
Red River	20.2	Walker	27.4
Reeves	18.9	Waller	27.3
Refugio	44.2	Ward	18.9
Roberts	11.0	Washington	27.4
Robertson	27.4	Webb	87.3
Rockwall	18.2	Wharton	27.4
Runnels	20.0	Wheeler	11.0
Rusk	22.5	Wichita	12.4
Sabine	22.6	Wilbarger	11.0
San Augustine	22.5	Willacy	72.9
San Jacinto	27.4	Williamson	24.1
San Patricio	41.7	Wilson	49.4
San Saba	20.0	Winkler	18.9
Schleicher	20.0	Wise	18.2
Scurry	10.9	Wood	22.5

County	Participation, %
Yoakum	19.5
Young	11.0
Zapata	49.4
Zavala	49.4

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 that 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 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.

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.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

ATTACHMENT 8 TO EXHIBIT 3

SPECIAL PROVISION TO ITEM 000

000-003L

Certification of Nondiscrimination in Employment

By signing this proposal, the Bidder certifies that Bidder 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 Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder 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

SPECIAL PROVISION

On-the-Job Training Program for Design-Build and Comprehensive Development Agreement Projects

This training special provision is the Department's implementation of 23 U.S.C. § 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of DB Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

1. DB Contractor shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.

2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R. § 230.111:

    1) Dollar value of the construction services contract;

    2) Duration of the construction work activity;

    3) Geographic location;

    4) Availability of minorities, women, and disadvantaged for training;

    5) The potential for effective training;

    6) Type of work;

    7) Total normal workforce that the average proposer could be expected to use;

    8) The need for additional journeymen in the area;

    9) Recognition of the suggested minimum goal for the State; and

    10) A satisfactory ratio of trainees to journeymen expected to be on DB Contractor's workforce during normal operations.

Construction Cost Estimate		
From	**To**	**Trainees**
$0	$9,999,999.99	0
$10,000,000	$19,999,999.99	1
$20,000,000	$39,999,999.99	2
$40,000,000	$59,999,999.99	3
$60,000,000	$79,999,999.99	4
$80,000,000	$99,999,999.99	5
$100,000,000	$119,999,999.99	6
Thereafter for each increment of $20 million, goal is increased by one trainee.		

3. The OJT program trainee goal for this project is [●] trainees.

4. DB Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.

5. In the event that DB Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. DB Contractor should insure that this training special provision is made applicable to such subcontract. However, DB Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

6. DB Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. DB Contractor shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.

7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower-level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of DB Contractor and aims to train and upgrade employees to journey worker status.

9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard

training programs for each skilled construction trade classification are located in the OJT program manual.

10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

11. The number of trainees shall be distributed among the work classifications on the basis of DB Contractor's needs and the availability of journey workers in the various classifications.

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

13. At or before contract execution, DB Contractor must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how DB Contractor intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.

14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.

15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

16. The OCR must approve all proposed apprentices and trainees before training begins. DB Contractor must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for

reimbursement. DB Contractor shall provide each trainee with a copy of the training program he or she will follow.

17. On a monthly basis, DB Contractor shall submit the Federal OJT Monthly Reporting Form to the Department's Strategic Projects office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, DB Contractor is required to make a good-faith effort to replace the trainee within 30 calendar days of the termination.

18. DB Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

19. If requested, DB Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

    This reimbursement will be made regardless of whether DB Contractor receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit DB Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to DB Contractor if the trainees are concurrently employed on a federal-aid project and when DB Contractor contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

    No payment shall be made to DB Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by DB Contractor and evidences a lack of good faith on the part of DB Contractor in meeting the requirements of this Training Special Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

ATTACHMENT 10 TO EXHIBIT 3

SPECIAL PROVISION

000-2711

Important Notice to Contractors

By the 20th day of each month, report to the Engineer the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor related incidents and injuries that involved a third party.

An "incident" is defined as any work-related occurrence that had the potential to cause bodily harm but caused only damage to vehicles, equipment, materials, etc.

An "injury" is defined as an OSHA recordable injury.

Use the form prescribed by the Department for submitting this information. Failure to submit this information to the Engineer by the 20th day of each month will result in the Department taking actions including but not limited to withholding estimates and suspending the work. This reporting will not be paid for directly but will be considered subsidiary to items of the Contract.

EXHIBIT 4

TxDOT-PROVIDED APPROVALS

1. NEPA Approvals

EXHIBIT 5

MAXIMUM PAYMENT SCHEDULE

Exhibit 5-1: Facility 1&2A

Exhibit 5-2: Facility LE

EXHIBIT 5-1

MAXIMUM PAYMENT SCHEDULE – FACILITY 1&2A

[To be provided from Form M-4.1 from the Proposal.]

EXHIBIT 5-2

MAXIMUM PAYMENT SCHEDULE – FACILITY LE

[TxDOT to provide Maxmium Payment Schedule for LE Base Scope, which will be adjusted (as needed) in accordance with Section 4.1.7 of the Agreement upon finalization of the LE Work Package.]

EXHIBIT 6

DBE SPECIAL PROVISIONS
FOR NON-TRADITIONAL CONTRACTS

000---___

Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts

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 for this Agreement is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts," of this Special Provision shall apply to this Agreement. If there is no DBE goal, Article B, "Race-Neutral DBE Participation," of this Special Provision shall apply to this Agreement.

Article A. Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts.

1. Policy. In the performance of this Agreement DB Contractor shall comply with 49 CFR Part 26, the Department's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended. For a conflict between the language of this Special Provision and 49 CFR Part 26, the Department's DBE Program, or 43 Texas Administration Code, Chapter 9, Sections 9.200 – 9.242, as amended, 49 CFR Part 26, the Department's DBE Program, or 43 TAC, Chapter 9, Sections 9.200 – 9.242 as applicable, shall control.

a. DB Contractor, its Contractors and Subcontractors must meet the DBE goal set out in the Agreement by obtaining commitments from eligible DBEs or DB Contractor must show acceptable evidence of Good Faith Efforts, as described in 49 CFR Part 26, Appendix A to Part 26 – Guidance Concerning Good Faith Efforts, to meet the DBE goal.

b. DB Contractor shall solicit DBEs through reasonable and available means.

c. None of the DB Contractor, its Contractors, or Subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. DB

Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by DB Contractor to carry out these requirements is a material breach of this Agreement that may result in the termination of this Agreement or such other remedy as the Department deems appropriate.

d. DB Contractor will include this Special Provision in all Contracts and Subcontracts entered into by DB Contractor. DB Contractor will also require any Contractor and Subcontractor to include this Special Provision in any Contract or Subcontract that the Contractor or Subcontractor enters into under this Agreement.

e. By signing this Agreement DB Contractor certifies that the DBE goal as stated in the Agreement will be met by obtaining commitments from eligible DBEs or that DB Contractor will provide acceptable evidence of good-faith effort to meet the commitment within the time frame set out below.

2. Definitions. The definition for terms used in this Special Provision can be found in Exhibit 1 of this Agreement, 49 CFR, Part 26 or 43 TAC § 9.202, Definitions. Terms not defined in Exhibit 1 of this Agreement, 49 CFR, Part 26, or 43 TAC § 9.202 will for the purpose of this Special Provision be defined by the term's common usage.

3. DB Contractor's Responsibilities. These requirements must be satisfied by DB Contractor. Failure of DB Contractor to meet these requirements may result in the issuance of Sanctions by the Department, in accordance with Section 7.c.

a. DB Contractor shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Agreement, including DB Contractor's exercise of good-faith efforts. Each DBE Performance Plan must at a minimum include the following: specific categories of services and work anticipated for DBE participation on the Project; schedule for submission of DBE commitment agreements based on DB Contractor's initial project schedule; good-faith efforts performed to date; good faith efforts that will be exercised by DB Contractor following execution of the Agreement to achieve the DBE participation goal for the Project; and the name, qualifications, responsibilities and contact information for DB Contractor's

DBE liaison officer (DBE Liaison Officer). The DBE Performance Plan must be submitted to the Department not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of this Agreement. The DBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement.

At the time of submission of the DBE Performance Plan, DB Contractor shall also submit the completed commitment form for the applicable type of commitment for each DBE that will be used to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan and to be updated monthly and submitted to the Department along with other monthly reports required under this Special Provision, Section A.6.a.

b. Should DB Contractor to whom the Agreement 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.

c. DB Contractor shall designate a DBE Liaison Officer who will administer DB Contractor's DBE program and who will be responsible for all aspects of DB Contractor's DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues.

d. A DB Contractor who cannot meet the Agreement 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.

e. DB Contractor shall utilize the specific DBEs listed on the commitment form to perform the work and supply the materials for which each is listed unless DB Contractor obtains the Department's written consent. The Department will provide written consent only if it concurs that DB Contractor has good cause, as established under 49 C.F.R. § 26.53(f)(3), to terminate the DBE. Unless the Department's written consent is provided, DB Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBE listed on the commitment form. Note that the forms referenced in this Exhibit 6 may be found on TxDOT's website at:

http://www.txdot.gov/business/resources/doing-business/dbe-forms.html

f. DB Contractor must comply with 49 CFR Part 26 and 43 TAC § 9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. This includes written notification to the DBE and the Department and providing the DBE five days in which to respond to DB Contractor's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if DB Contractor or Contractor cannot demonstrate that the provisions of 49 CFR § 26.53 and 43 TAC § 9.229, DBE Substitutions and Terminations, have been followed. Terminating a DBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

f. If the Department approves the termination of the DBE Contractor, DB Contractor, Contractor, or Subcontractor shall make a good-faith effort to replace the terminated DBE Contractor with another DBE to perform at least the same amount of work, to the extent needed to meet the Agreement goal. DB Contractor shall submit the applicable commitment form for the substitute DBE. DB 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. Good faith efforts shall be documented by DB Contractor, and documentation of such good faith efforts shall be submitted within seven days upon request by the Department, in accordance with 49 CFR § 26.53(g).

4. Eligibility of DBEs.

a. 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 Civil Rights Division. An update of the Directory can be found on the Internet at https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=6132.

b. Only DBEs certified at the time the commitments are submitted are eligible to be included in the information furnished by DB Contractor as required under this Special Provision.

c. For purposes of the DBE goal on this project, DBEs are only allowed to perform work in the categories of work for which they are certified with the appropriate NAICS code designation.

d. Only DBEs certified at the time of execution of a Contract or Subcontract 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 detailed in 49 CFR § 26.55, 43 TAC § 9.231, Computing Work Performed by a DBE, 43 TAC § 9.232, Commercially Useful Function, 43 TAC § 9.233, Commercially Useful Function by DBE Trucking Firm, and 43 TAC § 9.234, Counting Materials or Supplies Provided by DBE Manufacturer or Regular Dealer, shall be counted by DB Contractor toward the DBE goal.

6. Records and Reports.

a. DB Contractor shall submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE contracting or material supply activity is completed.

b. DB Contractor shall submit a final summary report of DBE payments upon completion of the Project. DB Contractor will not receive final payment until this final report has been received and approved by the Department. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.

c. 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.

d. Negative reports are required when no activity has occurred in a monthly period.

e. DB Contractor shall provide copies of Contracts, Subcontracts and agreements and other documentation upon request.

f. DB Contractor must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the Project.

g. A copy of all reports submitted to the Department and all supporting documentation must be retained for a period of three 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.

7. Compliance of DB Contractor.

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

b. DB Contractor shall receive credit toward the DBE goal based on actual payments to the DBE. DB Contractor shall notify the Department if DB Contractor withholds or reduces payment to any DBE. DB Contractor shall submit an affidavit detailing the payments made to DBEs prior to receiving final payment for this Agreement.

c. DB Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or seek sanctions under 43 TAC § 9.237, Determination of Noncompliance; Sanctions.

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 Subcontracts 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 to the Department each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

2. 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 Department deems appropriate.

EXHIBIT 7

DB CONTRACTOR'S DBE PERFORMANCE PLAN

[To be provided prior to execution of DB Agreement]

EXHIBIT 8

DB CONTRACTOR'S JOB TRAINING PLAN/ SMALL BUSINESS OPPORTUNITY PLAN

[To be provided prior to execution of DB Agreement]

EXHIBIT 9

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

SOUTHERN GATEWAY PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a DB Agreement for The Southern Gateway Project, duly executed and delivered as of _____, 2017 (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") ***[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]***, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $35,000,000, 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, Key Personnel Change Fees, and Lane Rental Fees, as specified in the Contract Documents, but not to exceed the Bonded Sum.

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

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

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 15 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, Key Personnel Change Fees, and Lane Rental Fees 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 $_____ ***[Insert amount that is 10% of the Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

_____

_____

_____

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

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

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

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

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____ By:_____
or secretary attest Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of
Bond: **Performance Bond**

dated
effective
(MONTH-DAY-YEAR)
[DB Contractor]
, as Principal,
(PRINCIPAL)

and by , as Surety,
in favor of **Texas Department of Transportation**
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of $_____ [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]

SOUTHERN GATEWAY PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a DB Agreement for The Southern Gateway Project, duly executed and delivered as of _____, 2017 (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") ***[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]***, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $35,000,000, 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 $_____ ***[Insert amount that is 10% of the Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

_____

_____

_____

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

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

Principal: _____

_____

By: _____

_____

Its: _____

(Seal)

Surety: _____

_____

By: _____

_____

Its: _____

(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____ By:_____

or secretary attest

Name

Title:

Address:

NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of
Bond: **Payment Bond**

dated
effective
(MONTH-DAY-YEAR)
[DB Contractor]
, as Principal,
(PRINCIPAL)

and by , as Surety,
in favor of **Texas Department of Transportation**
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of $_____ [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 11

FORM OF RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO.

SOUTHERN GATEWAY PROJECT

KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR, as Principal, and the undersigned surety ***[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]***, 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 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 any way affect its obligation on this bond. The surety 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]

SOUTHERN GATEWAY PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a DB Agreement for The Southern Gateway 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 of each Facility and reduction or release of the Performance Bond and Payment Bond as set forth in the Contract, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the Contract Documents after Final Acceptance of each Facility, including payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety") ***[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]***, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $_____ ***[Insert amount that is 10% of the Price]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the 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 of the Project.

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 therefor to the Obligee or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefor.

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, Key Personnel Change Fees, and Lane Rental Fees 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 $_____ ***[Insert amount that is 10% of the Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

_____ By:_____
or secretary attest
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").

RECITALS

A. _____, as design-build contractor ("DB Contractor"), and TxDOT are parties to that certain DB Agreement (the "Agreement") pursuant to which DB Contractor has agreed to develop, 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 _____. 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 DB Contractor arising out of, in connection with, under or related to the Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

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

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

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

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

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between DB Contractor and TxDOT or their respective successors and assigns, with respect to

any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of DB Contractor from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by DB Contractor of the Guaranteed Obligations.

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

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

4. <u>Liability of Guarantor</u>.

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

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

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of DB Contractor, if and as permitted by the 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 DB Contractor; or (iv) any defenses, set-offs or counterclaims that DB Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. <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 DB Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by, Guarantor, DB Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations,

has destroyed the Guarantor's rights of subrogation and reimbursement against DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of DB Contractor under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the Agreement; (f) any defense based upon any act or omission of TxDOT that directly or indirectly results in or aids the discharge or release of DB Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

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

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

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

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

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

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

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and

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 Dallas District Office 4777 East Highway 80 Mesquite, Texas 75150 Attention: Kelly Selman, P.E. Telephone: (214) 320-6189 E-mail: kelly.selman@txdot.gov
With copies to:	Texas Department of Transportation Office of General Counsel 125 East 11th Street Austin, Texas 78701 Telephone: (512) 463-8630 Facsimile: (512) 475-3070 E-mail: jack.ingram@txdot.gov
If to Guarantor:	_____ _____ _____ Attention:_____ Telephone:_____ Facsimile:_____

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

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

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

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

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

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

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

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

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

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

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

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to DB Contractor under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of DB Contractor and any other defense to formation of the Agreement, and (c) defenses available to DB Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the Agreement.

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 of the Project, 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 including the perils of loss or damage by fire, collapse, lightning, explosion, vandalism and malicious mischief, civil commotion, aircraft, earthquake, earth movement, flood, storm, windstorm, hurricane, tornado, subsidence, and terrorism. Such policy shall contain extensions of coverage that are typical for a project of the nature of the Project including coverage for physical damage resulting from faulty workmanship, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions 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 or in the course of inland transit on land to the Site, (ii) all existing property and improvements that are within the construction work zone or are or will be affected by the construction Work, subject to the sublimit set forth in clause (c)(iii) below, and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence no less than the greater of the maximum probable loss, as determined by the DB Contractor's insurance advisor and agreed to by TxDOT, or $25,000,000, without risk of co-insurance. The policy may include the following sublimits: (i) for earth movement and flood, not less than $5,000,000; (ii) for the peril of named windstorm, not less than $10,000,000; (iii) for existing property and improvements, not less than $2,000,000; (iv) for "soft cost expense" not less than $2,000,000; and (v) for valuable papers and restoration of data, plans and drawings, not less than $250,000.

(d) TxDOT shall be named as an insured on the policy as its interests may appear. DB Contractor also may, but is not obligated to, include other Subcontractors as insureds as their respective interests appear.

(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, or 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; provided, however, that for the perils of windstorm, flood and earthquake, the deductible may be expressed as a percentage of the policy limit, not to exceed five percent (5%).

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 with DB Contractor as a named insured, 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 DB Contractor and 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 (provided that the completed operations coverage must be kept in force for the shorter of 10 years after Substantial Completion or the length of any applicable statute of limitation and statute of repose periods);

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 04 13 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) No exclusion for claims arising from professional services except CG 22 80 or equivalent;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 14.

(c) The policy shall have limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate per policy period with the general aggregate limit to apply on a per-project basis.

(d) The Indemnified Parties shall be named as additional insureds, using ISO Forms CG 20 10 04 13 and ISO form CG 20 37 04 13 or their equivalents. If requested by any railroad impacted by the Project, such railroad shall also be named as an additional insured in accordance with this clause (d) or otherwise in accordance with the requirements of such railroad.

(e) The policy shall have a deductible or self-insured retention no greater than $1,000,000 per occurrence.

3. Automobile Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, borrowed and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) DB Contractor shall be the named insured under its automobile liability policy.

(c) DB Contractor's policy shall have a combined single limit per policy period of not less than $1,000,000.

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

(e) The Indemnified Parties shall be additional insureds under the policy.

4. 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 DB Contractor:

(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;

(v) Coverage for loss, clean-up costs and related legal expense because of a pollution condition arising from the named insured's goods, products, or waste during the course of transportation by a carrier to or from: (A) A job site where contracting services are being performed; or (B) a covered location, including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay as a result of a claim first made against the insured during the policy period.

(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 conditions are released or dispersed as a result of the performance of covered operations.

(c) DB Contractor shall maintain limits no less than $3,000,000 per occurrence and in the aggregate for the term of the Agreement. If coverage is written on a claims-made basis the policy shall include a three-year extended reporting period.

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

(e) The Indemnified Parties shall be named as additional insureds on the policy. The specific scope of services required under the DB Agreement shall be listed on the certificate of insurance.

5. 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 to be procured and kept in force with DB Contractor listed as named insured, professional liability insurance as specified in subparagraphs (a) through (d) below. DB Contractor may satisfy such insurance requirement via either a series of annual practice policies or a project-specific policy covering the period of design and construction and remaining in effect for five years thereafter; however, the coverage need not extend beyond 10 years in total.

(a) The insurance policy shall provide coverage of liability of DB Contractor and the party performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services or activities for the Project, including for bodily injury or property damage; provided, that such insurance policy need not provide coverage of liability of any party that only performs Professional Services listed in clauses (f), (g), (h), or (i) of the definition of Professional Services.

(b) Each policy shall have a limit of not less than $5,000,000 per claim and in the aggregate. If a project-specific policy is purchased, the aggregate limit need not reinstate annually.

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

(d) Such insurance shall provide an indemnified party endorsement for the benefit of the Indemnified Parties with regard to third party claims for bodily injury or property damage.

If the professional liability insurance policy does not list DB Contractor as a named insured, in addition to the policy or policies specified above, DB Contractor shall maintain (or procure) and keep in force either a Contractor's Protective Professional Indemnity policy or a Contractor's Professional Liability Insurance policy with coverage of not less than $5,000,000.

In addition, if not already covered by the professional liability insurance policy, DB Contractor shall cause each other Subcontractor that provides Professional Services for the Project, except any Subcontractor that only performs Professional Services listed in clauses (f), (g), (h), or (i) of the definition of Professional Services, to procure and keep in force professional liability insurance, covering its professional services practice as follows:

Estimated Total Professional Services Contract Value	Minimum Limit of Insurance
>$10,000,000	$3,000,000 per claim and aggregate
>$5,000,000 to $10,000,000	$2,000,000 per claim and aggregate
$1,000,000 to $5,000,000	$1,000,000 per claim and aggregate
<$1,000,000	$500,000 per claim and aggregate

Such insurance to be carried by the Subcontractor for the period of design and construction and three years thereafter.

Subject to TxDOT review and approval, DB Contractor may propose a more cost-effective alternative structure for providing necessary professional liability insurance utilizing either separate insurance policies for the DB Contractor and the lead design firm or use of Contractor's Professional Protective Liability Insurance.

6. Workers' Compensation and Employer's Liability 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 and employer's liability insurance in conformance with applicable Law. DB Contractor shall be the named

insured on this policy. The workers' compensation insurance policy shall contain the following endorsements:

(a) A voluntary compensation endorsement;

(b) An alternative employer endorsement;

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

(d) U.S. Longshore and Harbor Workers' Compensation Act and Jones Act coverage (if work is over or adjacent to navigable waters); and

(e) Employer's liability insurance limits of $1,000,000 per accident or disease.

7. Umbrella Liability

DB Contractor shall procure and maintain umbrella liability insurance on a following-form basis over the commercial general liability, automobile liability and employer's liability insurance policies. The umbrella policy shall have a per occurrence and aggregate limit of at least $25,000,000.

8. Railroad Protective Liability Insurance

DB Contractor shall procure and keep in force, or cause to be procured and kept in force, prior to performing any Work across, under or adjacent to the railroad's tracks or railroad right-of-way, Railroad Protective Liability Insurance Policy with limits and coverage terms and conditions as required by the operating railroad with the railroad as the named insured. DB Contractor shall submit a copy of the railroad protective liability insurance policy to TxDOT prior to any entry by DB Contractor upon operating railroad property.

9. Subcontractors' Insurance

At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that performs work at the site (except those providing material deliveries), Subcontractors that are fabricators (even if work is performed off-site), and Subcontractors providing professional services (including design, testing, and inspection, even if some or all services are performed off-site), to provide:

(a) Commercial General Liability Insurance with limits of at least $600,000 per occurrence and in the aggregate with the general aggregate limit to apply on a per project basis.

(b) Automobile Liability Insurance with a combined single limit of at least $600,000.

(c) Workers' Compensation and Employer's Liability Insurance with statutory coverage for worker's compensation and a $500,000 limit per accident or disease for employer's liability. Policy should include, if work is over or next to navigable waters, coverage for U.S. Longshore and Harbor worker's Act and Jones Act claims.

Each subcontractor insurance policy (other than professional liability and workers' compensation) shall include each of the Indemnified Parties as additional insureds. Each such policy shall also be endorsed to provide that coverage is primary and non-contributory and that there is a waiver of subrogation in favor of the Indemnified Parties. Each policy shall also provide that 30 days' notice of non-renewal or cancellation (10 days for non-payment) shall be provided to TxDOT. Each such subcontractor insurance policy must be issued by an insurer authorized to conduct business in Texas and having a minimum current policyholder's management and financial size category rating of not less than A-, VII according to A.M. Best's Insurance Reports Key Rating Guide.

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 _____ to _____ the period:
month/day/year month/day/year

B1. Original Contract Amount – Facility 1&2A	
C1. Approved Change Order Amounts – Facility 1&2A	
D1. Revised Contract Amount – Facility 1&2A (B1+C1)	$0.00
E1. Cumulative Amount Earned to Date Based on the Schedule of Values – Facility 1&2A	
F1. Cumulative Maximum Payment Schedule Allowance – Facility 1&2A (this period from Exhibit 5)	
G1. Cumulative Amount of Previous Draw Requests – Facility 1&2A	
H1. Amount Qualified for Payment this Period – Facility 1&2A (Lesser of "E1-G1" or "F1-G1") (includes Landscaping Allowance Work described below)	$0.00
B2. Original Contract Amount – Facility LE	
C2. Approved Change Order Amounts – Facility LE	
D2. Revised Contract Amount – Facility LE (B2+C2)	$0.00
E2. Cumulative Amount Earned to Date Based on the Schedule of Values – LE	
F2. Cumulative Maximum Payment Schedule Allowance – Facility LE (this period from Exhibit 5)	
G2. Cumulative Amount of Previous Draw Requests – Facility LE	
H2. Amount Qualified for Payment this Period – Facility LE (Lesser of "E2-G2" or "F2-G2") (includes Landscaping Allowance Work described below)	$0.00
I. Retainage Percentage this Draw Request for Record Drawings (1% of "H1+H2")	$0.00
J. Deduction from progress payment per Section 12.3.2 of the Agreement (this Draw Request)	$
K. Deduction due to offset for Lane Rental Fees (this Draw Request)	$
L. Deduction due to offset for Key Personnel Change Fees (this	$

Draw Request)	
M. Deduction due to offset for Liquidated Damages (this Draw Request)	$
N. Total deductions (“I” + “J” + “K” +”L” + “M”)	$
O. Current Amount Due ((“H1+H2”) - “N”)	$

Printed Name	Signature	month/day/year
DB Contractor’s Authorized Representative		

Printed Name	Signature	month/day/year
TxDOT’s Project Manager		

Printed Name	Signature	month/day/year
Texas Department of Transportation		

(Note: See Sheet 5 of 5 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, that is the subject of this Draw Request has been checked and/or inspected in accordance with the respective Quality Management Plan;
- Except as specifically noted in this certification, all Work that is both the subject of this Draw Request and for which an audit or inspection has been performed conforms to the requirements of the Contract Documents;
- [The Professional Services quality program] [The Construction quality program] and all of the measures and procedures provided therein are functioning properly and are being followed; and
- [The Professional Services percentages] [The construction percentages] indicated are accurate, correct, and are based on the Schedule of Values. All quantities for which payment is requested on a unit price basis are accurate.

Exceptions:

_____

_____

_____

_____ _____

Name:_____ Date

[PSQAF] [IQF] Representative

DRAW REQUEST NO. _____ CERTIFICATION

The undersigned hereby certifies that all Work that is the subject of this Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in this certification.

Exceptions:

_____

_____

_____

_____ _____

Name:_____ Date

DB Contractor's Authorized Representative

DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- ☐ Monthly Progress Report as described in Section 2.1.2 of the Technical Provisions;
- ☐ A monthly Project Schedule Update as described in Section 2.1.1.3 of the Technical Provisions;
- ☐ Certification by the DB Contractor's authorized representative;
- ☐ Monthly report of personnel hours;
- ☐ Draw Request data sheets and documents that support and substantiate the amount requested;
- ☐ DBE utilization reports;
- ☐ Traffic incident reports;
- ☐ Cash flow curves and comparison to the Maximum Payment Schedule;
- ☐ Description of any Liquidated Damages, Key Personnel Change Fees, Lane Rental Fees, or any other amounts owed to TxDOT;
- ☐ Certifications by the Professional Services Quality Assurance Firm, if applicable; and
- ☐ Certifications by the Independent Quality Firm, if applicable.

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 Authorized Representative

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 benefits2 (55% of A.1) $ _____

B. DB Contractor and Subcontractor Labor (professional services)

1. Wages (Raw) $ _____
2. Labor benefits1 (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 for Facility 1&2A is as follows:

☐ Unaffected by this Change Order Proposal

☐ Affected by (increasing) (decreasing) the date of Substantial Completion for Facility 1&2A by _____ calendar days.

☐ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Substantial Completion for Facility LE is as follows:

☐ Unaffected by this Change Order Proposal

☐ Affected by (increasing) (decreasing) the date of Substantial Completion for Faciliyt LE by _____ calendar days.

☐ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance for Facility 1&2A is as follows:

☐ Unaffected by this Change Order Proposal

☐ Affected by (increasing) (decreasing) the date of Final Acceptance for Facility 1&2A by _____ calendar days.

☐ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance for Facility LE is as follows:

☐ Unaffected by this Change Order Proposal

☐ Affected by (increasing) (decreasing) the date of Final Acceptance for Facility LE 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 for Facility 1&2A: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

2. Substantial Completion for Facility LE: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

3. Final Acceptance for Facility 1&2A: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

4. Final Acceptance for Facility LE: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

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

(a) the above three sections represent a true and complete summary of all aspects of this Request for Change Order;

(b) the amount of time and/or compensation requested is justified as to entitlement and amount;

(c) this Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, that may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;

(d) the cost and pricing data forming the basis for the Change Order is complete, accurate and current; and

(e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is $1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295.

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 TxDOT's Project Manager)

_____

TxDOT's Project Manager

Date: _____

SECTION V (Reviewed by TxDOT's Dallas District Engineer)

_____

TxDOT's Dallas District Engineer

Date: _____

SECTION VI (Reviewed by TxDOT's Executive Director)

_____

TxDOT's Executive Director

Date: _____

SECTION VII (Reviewed by FHWA Project Representative)

_____

FHWA Project Representative

Date: _____

EXHIBIT 17

LIQUIDATED DAMAGES FOR LANE CLOSURES AND LANE RENTAL FEES

Any Lane Closure listed below will be subject to the amounts of Liquidated Damages for Lane Closures and Lane Rental Fees shown below in Table 17-1 to Table 17-3, excepting those Lane Closures with specific allowable closure durations, as specified in Section 18.3.1.3 of the Technical Provisions and only for the provided durations:

Table 17-1: Liquidated Damages for Lane Closures and Lane Rental Fees – I-35E North of US 67

Northbound or Southbound I-35E – North of US 67	**Time Period A** Liquidated Damages Per Hour	**Time Period B** Lane Rental Fees Per Hour	**Time Period C** Lane Rental Fees Per Hour
One Lane Closed	$10,000	$50	$50
Two Lanes Closed	$20,000	$10,000	$500
Three Lanes Closed	$75,000	$50,000	$1,000
Four Lanes Closed (Full Main Lane Closure)	$100,000	$80,000	$20,000

Table 17-2: Liquidated Damages for Lane Closures and Lane Rental Fees – I-35E South of US 67

Northbound or Southbound I-35E – South of US 67	**Time Period A** Liquidated Damages Per Hour	**Time Period B** Lane Rental Fees Per Hour	**Time Period C** Lane Rental Fees Per Hour
One Lane Closed	$5,000	$50	$50
Two Lanes Closed	$10,000	$10,000	$500
Three Lanes Closed (Full Main Lane Closure)	$50,000	$40,000	$10,000

Table 17-3: Liquidated Damages for Lane Closures and Lane Rental Fees – US 67

Northbound or Southbound US 67	**Time Period A** Liquidated Damages Per Hour	**Time Period B** Lane Rental Fees Per Hour	**Time Period C** Lane Rental Fees Per Hour
One Lane Closed	$10,000	$5,000	$50
Two Lanes Closed (Full Main Lane Closure)	$50,000	$40,000	$10,000

Table 17-2 also applies to Southbound I-35E through the interchange with US 67. Table 17-3 also applies to each direction of US 67 through the interchange with I-35E and also to Northbound I-35E where it is two lanes through the interchange with US 67.

Liquidated Damages for Lane Closures and Lane Rental Fees shall be assessed in quarter-hour increments for any Lane Closure during the Term and more particularly during the Warranty Term, as described in Section 11.1.2. The assessment of Liquidated Damages for Lane Closures and Lane Rental Fees shall be for Lane Closures during which one or more lanes (including main lanes, ramps to/from such roadway, and direct connectors) are closed or have a width that is less than the minimum requirements for permitted Lane Closures set forth in Section 18 of the Technical Provisions.

Liquidated Damages for Lane Closures and Lane Rental Fees shall apply to any Lane Closure that occurs in connection with the performance of Work as described above and shall be assessed every hour or part thereof for each lane closed. DB Contractor shall report to TxDOT on a daily basis any Lane Closures or reduced widths that give rise to Liquidated Damages for Lane Closures or Lane Rental Fees.

Provision of liquidated damage values for Time Period A does not imply TxDOT's consent to closing freeway or ramp lanes during the peak periods (Time Period A) and DB Contractor is not permitted to schedule Lane Closures during Time Period A.

The first $15,000,000 of cumulative Lane Rental Fees incurred by DB Contractor with respect to Lane Closures on Facility 1&2A as described in this Exhibit will not be assessed against DB Contractor (the "Facility 1&2A Lane Rental Bank"). The first $2,500,000 of cumulative Lane Rental Fees incurred by DB Contractor with respect to Lane Closures as described in this Exhibit caused by

construction of LE Scope Items listed in lines 30, 31, 32, 33, 35, or 36 of Exhibit 22 to the extent any such LE Scope Item is included in the LE Work Package, and incurred after Substantial Completion for Facility 1&2A and before Substantial Completion for Facility LE, will not be assessed against DB Contractor (the "Facility LE Phase I Lane Rental Bank"). The first $2,500,000 of cumulative Lane Rental Fees incurred by DB Contractor with respect to Lane Closures as described in this Exhibit caused by construction of LE Scope Items listed in lines 42, 43, 44, 45, or 47 of Exhibit 22, to the extent any such LE Scope Item is included in the LE Work Package, and incurred after Substantial Completion for Facility 1&2A and before Substantial Completion for Facility LE, will not be assessed against DB Contractor (the "Facility LE Phase II Lane Rental Bank").

EXHIBIT 18

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT's Authorized Representatives

TxDOT's Executive Director

TxDOT's Dallas District Engineer,

and their designees

DB Contractor's Authorized Representative

[_____]

EXHIBIT 19

LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

[To be provided by TxDOT]

The Southern Gateway

TABLE OF CONTENTS – SUMMARY
RFP Reference Information Documents (RID)
November 10, 2016

Exhibit 20

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "**Agreement**") is made and entered into this ____ day of ____, 2017, (the "**Effective Date**") by and between the Texas Department of Transportation ("**TxDOT**"), and ("**DB Contractor**"). TxDOT and DB Contractor are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. TxDOT and DB Contractor are parties to that certain Design-Build Agreement for the Southern Gateway Project, dated as of the Effective Date (the "**DB Agreement**") and the other Contract Documents, all of which collectively comprise a comprehensive DB Agreement under Chapter 223 of the Code.

B. Section 19.3 of the DB Agreement, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the Contract Documents.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Contract Documents, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Contract Documents.

1.2 Reference Section of DB Agreement. Section 19.3 of the DB Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Agreement to a "Section" mean the Section contained in this Agreement.

Section 2. Purpose and Role of the Disputes Board; Binding Disputes Board Decision.

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory,

or facilitating body and has no role other than as expressly described in this Agreement and in Section 19.3 of the DB Agreement. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.

3.1 Selection of Disputes Board Member Candidates and Disputes Board Members.

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications (as defined in Section 4 below) and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a "**Disputes Board Member Candidates List**"). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of DB Contractor previously approved or deemed approved by TxDOT on or before the Effective Date and (b) DB Contractor accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by DB Contractor on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 19.3.4.2 of the DB Agreement, a Dispute is referred by TxDOT or DB Contractor to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received, as applicable (or within 7 days after notice of a Fast-Track Dispute is given or received, as applicable), appoint and engage one of the preapproved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by DB Contractor and (c) a third individual selected pursuant to Section 3.1.3 below. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board Member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1 (each such agreement, upon execution, being

referred to herein as a "**Disputes Board Member Joinder Agreement**" and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment shall, within 15 days after their appointment (or within 7 days after their appointment, if the Dispute for resolution by the Disputes Board is a Fast-Track Dispute), select the third Disputes Board Member (the **"Disputes Board Chair"**) from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. If the two Disputes Board Members appointed by DB Contractor and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either DB Contractor or TxDOT or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the qualified and approved candidates remaining on the Parties' Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board Members or the Chief Administrative Judge (or within 7 days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board's issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

3.2 Replacing Candidates on a Party's Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the **"Nominating Party"**) until complete Disclosure Statements on such individual are furnished to the other Party (the **"Evaluating Party"**) and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party's Disputes Board Member Candidates List. **"Disclosure Statements"** shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after receipt of a proposed candidate's Disclosure Statements by the Evaluating Party (the **"Disputes Board Member Candidate Evaluation Period"**), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within fifteen days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed

candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of Section 3.2.3, if the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination "**For Cause**" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member For Cause or the death or resignation of a Disputes Board Member, the Disputes Board shall not proceed with the resolution of the

applicable Dispute until a replacement Disputes Board Member has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and DB Contractor may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or DB Contractor may unilaterally terminate the appointment of any Disputes Board Member For Cause.

Provided, however, that if a Disputes Board Member's appointment is terminated For Cause and a Party disagrees that such Disputes Board Member should have been terminated For Cause, such Party may, within 5 Business Days after notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the proprietary of such termination.

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

Section 4. Qualifications and Conduct of Disputes Board Members.

"Disputes Board Member Qualifications," as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party's Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to

disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the Design-Build Agreement, in any Subcontract or the Project or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party's Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party's approval or deemed approval of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual's lack of qualifications under Section 4.1 (except if such individual's lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the DB Agreement or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "**Commercial Rules**" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstances has or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A **"Small Claim"** is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is $100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Members shall be released from further service. Thereafter, in the context of the Disputes Board Chair's resolution

of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 19.3 of the DB Agreement to the "Disputes Board" or the "Disputes Board Members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than $100,000, and TxDOT or DB Contractor as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of $100,000; provided, however, that the amount of $100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the

Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on an Dispute (other than a Fast-Track Dispute, in which case within 5 days after the final hearing the Fast-Track Dispute), the Disputes Board Chair shall issue the Dispute Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board that are confidential pursuant to Section 19.3.8 of the DB Agreement. Each Disputes Board Member shall maintain the privacy of Confidential Materials pursuant to Section 19.3.8 of the DB Agreement. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

Section 6. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 19.3 of the DB Agreement.

Section 7. TxDOT and DB Contractor Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the Contract Documents. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon DB Contractor) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 DB Contractor Responsibilities. DB Contractor shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating DB Contractor's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time require for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 19.3.4.1 of the DB Agreement.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the DB Agreement and thereafter for so long as either Party has any obligation originating under the Contract Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket

costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and DB Contractor for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and DB Contractor, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and DB Contractor, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

Section 10. Nonassignability.

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and DB Contractor.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or DB Contractor. No Disputes Board Member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities Under the Contract Documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the Contract Documents and, subject to the terms and conditions of the Contract Documents, by Law.

11.3 Damages Waiver. Neither TxDOT nor DB Contractor will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 19.3 of the DB Agreement and any other relevant provisions of the Contract Documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 19.3 of the DB Agreement or any other relevant provision of the Contract Documents, the DB Agreement or other DRP governed agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 24.11 of the DB Agreement. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

DB Contractor:

[DB Contractor]

By_____
Name:_____
Title:_____

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
James M. Bass
Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "Agreement") is entered into this _____ day of _____, _____ by and between _____ [Specify TxDOT or DB Contractor] (the "Appointing Party"), and _____, an individual (the "Disputes Board Member").

RECITALS

A. TxDOT and DB Contractor are parties to that certain Design-Build Agreement for the Southern Gateway Project, dated as of the Effective Date (the "**DB Agreement**") and the other Contract Documents, all of which collectively comprise a design-build agreement under Chapter 223 of the Code.

B. Section 19.3 of the DB Agreement, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the Contract Documents.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in Section 19.3, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Contract Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 19.3 of DB Agreement. The Disputes Board Agreement and Section 19.3 of the DB Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance with the terms and conditions of Section 19.3 of the DB Agreement, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his or resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and DB Contractor, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and DB Contractor that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 19.3 of the DB Agreement;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 19.3.8 of the DB Agreement.

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or DB Contractor that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and DB Contractor.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or DB Contractor. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or DB Contractor have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor DB Contractor shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the

subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

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

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

Appointing Party:
[TxDOT or DB Contractor]

By_____
Name:_____
Title:_____

Disputes Board Member

By: _____
Name:_____
Address:
_____
_____
_____
_____

Annex 1
to
Disputes Board Member Joinder Agreement

Fees, Costs, and Expenses

[*to be attached*]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The "Expedited Procedures" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "Procedures for Large, Complex Commercial Disputes" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at $500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 19.3 of the DB Agreement, Section 19.3 of the DB Agreement shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party, who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(a) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the Contract Documents.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists

of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least 5 Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least

three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. A Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising is discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute.

Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses, including the Independent Engineer.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents

or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both of the Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before

the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 24.11 of the DB Agreement.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 19.3 of the DB Agreement, including, but not limited to, specific performance of any obligation under the Contract Documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 19.3.4.1(e) of the DB Agreement.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4.1(e) of the DB Agreement.

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a "consent Disputes Board Decision."

R-37. Acceptance of Delivery of Disputes Board Decision

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 24.11 of the DB Agreement.

R-38. Correction of Errors in Disputes Board Decision

Within 5 Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already

decided. The other Party shall be given 5 Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4.1(e) of the DB Agreement).

R-42. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

R-43. No Suspension for Nonpayment

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 24.11 of the DB Agreement, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds $10,000, exclusive of interest and arbitration costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within 7 days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) exchange and premarking of those documents which each Party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a "Scheduling and Procedure Order"). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 19.3 of the DB Agreement.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 19.3 of the DB Agreement.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such

production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Exhibit 21

KEY SUBCONTRACTORS

[To Be Inserted From Proposal]

Exhibit 22

LE SCOPE ITEMS AND LE LINE ITEM PRICES

[*Insert table from Form M-2.2 of the Proposal.*]

Exhibit 23

TERMS OF TxDOT MATERIAL INSPECTION AND TESTING SERVICES

TxDOT agrees to perform certain material inspection and testing services as requested by DB Contractor and subject to the terms set forth below. Material inspection and testing to be performed by TxDOT consists of the following:

- Various inspected materials fabricated off-site (structural steel bridge components, pre-cast concrete stressed/non-stressed products, and miscellaneous fabricated products).
- Selected roadway monitored materials (as described in page 2) from approved/monitored sources (i.e., Quality Monitored Materials and Material Producer List qualified materials).
- Other materials inspection and testing as agreed upon in writing by TxDOT and DB Contractor.

Inspections will be performed in reasonable compliance with the specifications and instructions supplied by DB Contractor in its Work Request, utilizing the form attached as Appendix 2 hereto, and subject to the terms and conditions described below. Inspections will be performed only at locations in Texas where TxDOT routinely provides resident inspection services for its own highway materials. Out-of-state inspections for DB Contractor may be performed as requested by DB Contractor. DB Contractor will reimburse TxDOT for all associated travel costs, including airfare, per diem, vehicle rentals, and other directly related costs. TxDOT will only perform tests listed in the TxDOT Inspection & Testing Rates Table attached to this Exhibit 23, as amended from time to time. Out-of-state inspections for DB Contractor will be performed only when TxDOT has employees scheduled to conduct inspections for TxDOT projects at the requested locations.

As inspection and testing services are performed by TxDOT, written inspection/test reports will be provided to DB Contractor in accordance with TxDOT's existing policies for providing such reports. Reports will include the date, time, location, and nature of services performed. Monitored Materials will not be furnished with inspection/test reports.

Prior to the commencement of the Construction Work, DB Contractor shall provide TxDOT with a single point of contact for this scope of services. TxDOT will direct all invoices, test reports, questions and other issues to this point of contact. DB Contractor shall provide written notification of a change to the point of contact.

INSPECTED MATERIALS:

Unless agreed upon otherwise by TxDOT and DB Contractor, TxDOT will only perform inspection services for DB Contractor at structural steel fabrication plants, commercial precast prestressed and non-stressed concrete products plants, and other

miscellaneous fabrication plants where TxDOT routinely provides such inspection and testing services for its own highway materials or for others. TxDOT reserves the right to prioritize or reschedule any inspection and testing services according to the following:

- Inspection and testing services may be cancelled or deferred due to unavailability of TxDOT personnel to perform the necessary inspection
- Inspections for DB Contractor will be given lower priority than inspections performed by TxDOT for TxDOT projects
- Inspections for DB Contractor may be rescheduled to coincide with the inspection of products for TxDOT projects.

TxDOT may perform additional technical materials acceptance services for DB Contractor to be agreed upon by both parties. These services are defined as additional inspection, testing, or technical materials acceptance services beyond what is performed during the routine in-plant inspection process. DB Contractor will compensate TxDOT for all direct costs or expenses associated with the performance of these additional services, based upon actual costs of salaries and travel expenses incurred.

DB Contractor and its fabricators will abide by the nonconformance report (NCR) process utilized by TxDOT for disposition of products that do not meet the requirements of DB Contractor's specifications provided in the Work Request. The current TxDOT NCR process for handling various NCR conditions is described in Appendix 1. TxDOT, in its discretion, may revise the TxDOT NCR process.

A minimum of two weeks prior to TxDOT performing any inspections, DB Contractor will submit Work Requests to TxDOT. Each Work Request will be for a single fabricator and will include the following:

- Project information (i.e., contract number, CSJ, etc.)
- Work description
- Type and estimated quantity of materials to be inspected
- Fabricator information (name, contact person, physical location)
- Desired date of inspection
- Signature/name and telephone number of DB Contractor's authorized representative
- TxDOT 2014 Specification Item or Special Specification to be used for inspection
- List of DB Contractor's amendments to TxDOT 2014 Specification Item
- DB Contractors Special Specifications
- Complete set of necessary design drawings, material specifications, and shop drawing files in PDF format to perform inspection of the material

MONITORED MATERIALS:

TxDOT maintains certain materials for TxDOT use. Additionally, certain products or Manufacturers/Suppliers are monitored as being TxDOT compliant. These materials are described in one of the following categories:

- **QM**: Quality Monitoring Program. Materials in Program sent directly to projects. Materials supplied with documentation of program compliance.
- **MPL**: Material maintained on approved list (Material Producer List). No additional testing necessary unless directed by Engineer.
- **WA**: Warehouse Agreements to stock Pre-Tested materials.
- **PJT**: Approve on the basis of project samples.

DB Contractor will not receive a test report for these above-listed Monitored Materials.

TEST REPORTS AND INVOICES

TxDOT will send a monthly invoice to DB Contractor for services performed pursuant to this Exhibit 23. The test reports will be sent to DB Contractor's point of contact.

PAYMENTS:

DB Contractor will pay TxDOT's fees for performance of the materials testing and inspection services as shown in the TxDOT Inspection & Testing Rates Table in effect at the time the service is performed. Information regarding TxDOT's Inspection & Testing Rates Table is attached as Appendix 3. Payments must be remitted by DB Contractor within 30 days after receipt of TxDOT's invoice to:

Construction Division/ Texas Department of Transportation
Attn: Construction Division/BMS (RA/200-2nd fl.)
125 E. 11th Street
Austin, TX 78701-2483

Appendix 1 to Exhibit 23

NCR Process
Nonconformance Report (NCR) Process for Structural Steel Bridge Products

The NCR process for handling various NCR conditions in the Structural Steel Fabrication Branch includes:

NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide noncompliance information to DB Contractor's point of contact. Upon review of the information regarding the noncompliance, DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in PDF format.

- Misplaced components beyond specification tolerances.
- Extreme cases of additional, missing, elongated, etc. holes due to poor workmanship.
- Material/design substitutions/changes after shop drawings have been approved.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Sweep, camber, and twist beyond specification limits.
- Welding procedures, processes, and defects.
- Misdrilled holes (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Additional splices in flanges and webs (may need to contact Designer if non-traditional member).
- Base metal defects.
- Assembly of members.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Weld pick-ups.
- Minor heat corrections for sweep/camber.
- Weld defects (up to two times per location – generally).
- Painting issues.

Nonconformance Report (NCR) Process for Steel Non-Bridge Structures

The NCR process handling various NCR conditions in the Miscellaneous Products Fabrication Branch for steel non-bridge structures includes:

NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide nonconformance information to DB Contractor's point of contact. Upon review of the information regarding the noncompliance, DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in PDF format.

- Fabrication discrepancies beyond specification tolerances (mislocated and/or oversized holes for structural fasteners and/or anchor bolts, etc.).
- Proposed material substitutions for steel components.

NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters

- Welding procedures, welding repair procedures, procedure qualification records.
- Misdrilled holes, bent surfaces (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Proposed paint system substitutions.
- Base metal defects.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Galvanized weldment tests.
- Minor heat corrections.
- Weld defect repairs permitted by the AWS D1.1 Structural Welding Code.
- Painting and galvanizing issues.

Nonconformance Report (NCR) Process for Commercially Produced Precast Concrete Products

The NCR process for handling various NCR conditions in the Precast Concrete Fabrication Branch includes:

NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide noncompliance information to DB Contractor's point of contact. Upon review of the information regarding the noncompliance, DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in PDF format.

- Major honeycombed and/or spalled concrete exposing prestressing strand.
- Modification to prestressed concrete bridge beams (cutting 6-12 inches off beam ends).
- Thin top slab on prestressed concrete box beams (internal void floating).
- Thick bottom slabs on prestressed concrete U-beams and box beams (excessive dead load).
- Low-strength concrete.

NCRs handled by CSTM&P, Precast Concrete Fabrication Branch, Austin Headquarters

- Horizontal misalignment – coordinate with prime contractor and District personnel.
- Minor honeycombed/spalled concrete with exposed reinforcing and prestressing steel.
- Damage over traffic lanes requiring concrete repair material (not allowed).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Minor beam modification – drilling anchor holes, cutting up to 6 inches off beam ends (coordinated with prime contractor and District personnel).
- Concrete damage in the bearing area of beams – shifting bearing pad away from beam end to reduce amount of bearing area affected by damage (coordinated with prime contractor and District personnel).
- Concrete temperature and/or curing violations.

NCRs handled by TxDOT plant inspectors (In-House Repair)

- Honeycombed/spalled concrete not extending beyond the first plane of reinforcing steel and not over traffic lanes.
- Damage to prestressed bridge deck panels.
- Damage to non-prestressed products.

Appendix 2 to Exhibit 23

Work Request

Ms. Miranda Unruh
TxDOT - Construction Division
Materials & Pavements Section
125 East 11th Street
Austin, Texas 78701-2483

Re: Southern Gateway Project
Project Limits:
County:
CSJ No. _____
WORK REQUEST

Dear Ms. Unruh,

We are requesting fabrication inspection of the following materials:

DB Contractor provided specification number
Railing PR1 (150 LF)
Bid Item XXX

The fabricator:

Company Name
Company Address

Company Contact Person:

The date of the inspection:

DB Contractor insert requested inspection date

Additional inspection information or request:

If you have any questions concerning this matter, please feel free to call me at (DB Contractor insert office phone number).

Sincerely,

DB Contractor Quality Manager

cc: DB Contractor to provide PDF of necessary design files

Appendix 3 to Exhibit 23

TxDOT Inspection & Testing Rates

Charges will be based on rates in effect at the time inspection and testing services are performed.

TxDOT's current Inspection and Testing Rates are published at:

http://ftp.dot.state.tx.us/pub/txdot-info/cst/inspection_testing.pdf

Exhibit 24

REMAINING PROJECT ROW

ROW Acquisition

Parcels to be acquired by DB Contractor: 5, 15, 22, 23, 32-50.

Relocation Assistance

Parcels for which DB Contractor is responsible for relocation: 16, 23, 25, 40, 47, 49

[Note: all parcel references in this Exhibit 24 are subject to update prior to the Technical Proposal Due Date.]