DESIGN-BUILD AGREEMENT

I-2/I-69C INTERCHANGE PROJECT

between

TEXAS DEPARTMENT OF TRANSPORTATION

and

[*DB CONTRACTOR*]

Dated as of: _____, 2019

HIDALGO COUNTY

DESIGN-BUILD AGREEMENT
I-2/I-69C INTERCHANGE PROJECT

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DESIGN-BUILD AGREEMENT

I-2/I-69C INTERCHANGE PROJECT

This Design-Build Agreement (this "**Design-Build Agreement**" or "**DBA**"), dated as of [●], 2019 (the "**Effective Date**"), is entered into by and between:

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

And

DB Contractor: [●], a [*Insert appropriate bracketed text, and delete all bracketed text that is not applicable*] [corporation organized and existing under the laws of the State of [●]] [limited liability company (LLC) organized and existing under the laws of the State of [●]] [partnership, consisting of [*insert partner names and any organizational form*]] [joint venture, consisting of [●] and [●]] [an individual or sole proprietorship owned by [●]],

the location of whose principal office is:

[Address]
[Address].

RECITALS

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

B. TxDOT wishes to enter into an agreement with DB Contractor to develop, design and construct approximately 7.8 miles of improvements along I-2 from just west of 2nd Street to just east of FM 2557 (S. Stewart Road) and I-69C from Nolana Loop to I-2 in the cities of McAllen, Pharr and San Juan, in Hidalgo County, including (i) the full reconstruction of the I-2/I-69C interchange to include two-lane direct connectors in all four directions, (ii) the reconstruction and/or widening of the I-2 general purpose lanes from six to eight lanes (four in each direction) from 2nd Street to the I-2/I-69C interchange, and (iii) operational improvements including the reconfiguration of main lane ramps on I-2 from 2nd Street to FM 2557 (S. Stewart Road) and improvements to the approaches and departures to and from the direct connectors (the "**Project**"). In addition, TxDOT wishes to enter into an agreement with DB Contractor to maintain the Project for specified optional terms.

C. Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the "**Rules**"), TxDOT issued a Request for Qualifications (as amended, the "**RFQ**") on June 8, 2018.

D. TxDOT received three qualification statements on July 31, 2018 and subsequently shortlisted three proposers.

E. On November 7, 2018 TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the "**RFP**") to develop, design and construct and maintain the Project.

F. [*Include appropriate option.*][On or before April 10, 2019 (the "**Proposal Due Date**"), TxDOT received [●] responses to the RFP, including the response of DB Contractor (the "**Proposal**").] [On or before April 10, 2019 (the "**Proposal Due Date**"), TxDOT received one response to the RFP, and that response of DB Contractor (the "**Proposal**") was independently

evaluated to confirm and validate that (1) the project procurement delivered value for the public investment; and (2) no anticompetitive practices were involved in the procurement.]

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

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

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

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

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

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

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

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

SECTION 1. CONTRACT

1.1 Abbreviations

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

DBA	Design-Build Agreement
CMA	Capital Maintenance Agreement

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

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

1.2 Definitions

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

Aesthetic and Landscaping Plan	means the plan DB Contractor prepares in conformance with the Project's final aesthetic concept as more particularly described in Section 23.1.2 of the Design-Build Specifications.
Allowance	shall have the meaning set forth in Exhibit 9 to this DBA.
Basic Configuration	shall have the meaning set forth in Exhibit 1 to this DBA.
Capital Maintenance Agreement	means that certain Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project.
Capital Maintenance Contract Documents or **CMC Documents**	has the meaning set forth in Section 1.2 of the Capital Maintenance Agreement.
Code	has the meaning set forth in Recital A to this DBA.
Contract Documents	has the meaning set forth in Section 1.3 of this DBA.
DB Contractor or **Design-Build Contractor**	means _____, a _____, together with its successors and assigns.
Design-Build Agreement	has the meaning set forth in the preamble hereof.
Design-Build Special Provisions or Special Provisions	means Design-Build Special Provisions to Items 10-28.
Design-Build Specifications	means the Design-Build Standard Specifications, Items 10-28, as modified by the Special Provisions and the CMA Standard Specification Item 9.
Differing Site Conditions Deductible	has the meaning set forth in Section 6.1 of this DBA.
Differing Site Conditions Deductible Cap	has the meaning set forth in Section 6.1 of this DBA.

Dispute Resolution Procedures means the formal process for resolving Disputes described in Section 11.1 and Exhibit 20 to this DBA. None of the Disputes Review Panel Process and Informal Resolution Procedures are included in the Dispute Resolution Procedures.

DRP Rules means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding procedures applicable to the resolution of all claims and disputes of every kind or character arising under agreements such as and including the Contract Documents.

Effective Date has the meaning set forth in the preamble to this DBA.

Final Acceptance Deadline has the meaning set forth in Section 2.4.1 of this DBA.

General Conditions has the meaning set forth in Section 1.3.2 of this DBA.

Indemnified Parties means TxDOT, the State, the Texas Transportation Commission, FHWA, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

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 4.9 of the General Conditions and Exhibit 20 hereof;

(iv) Any claim for indemnity under Section 7.12 of the General Conditions;

(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 Section 4.9 of the General Conditions and Exhibit 20 hereof);

(ix) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in Section 4.9 of the General Conditions and Exhibit 20 hereof do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in Section 4.9 of the General Conditions and Exhibit 20 hereof apply;

(x) Any claim for, or dispute based on, remedies expressly created by statute; and

(xi) Any Dispute that is actionable only against a Surety.

Instructions to Proposers means the Instructions to Proposers issued by TxDOT on November 7, 2018, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

Key Personnel means the positions identified in Exhibit 18 to this DBA.

Lane Closure means closure of any traffic lane, or the reduction in width of any traffic lane to less than the widths specified in Section 26.2.1 of the Special Provisions, 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.

Liquidated Damages means the liquidated damages, including Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, specified in DBA Sections 7.2, 7.3 and 7.4, and General Conditions Sections 8.3.1, 8.6.1 and 8.6.2.

Maintenance Security has the meaning set forth in Section 1.2 of the CMA.

Maintenance Services has the meaning set forth in Section 1.2.2 of the CMA General Conditions.

NCE Cure Period means the period of time DB Contractor has to cure a particular Noncompliance Event as set forth in the Noncompliance Events Table attached to Exhibit 16 to this DBA.

NEPA Approvals means the following TxDOT-Provided Approvals: NEPA Categorical Exclusion.

New Pavement means any pavement areas where DB Contractor constructs or fully reconstructs the Project pavement as required in Sections 2.1.1, 2.3, 2.4.1 and 2.5.1 of Exhibit 1 to this DBA.

Noncompliance Charges means the liquidated amounts specified in Exhibit 16 to this DBA.

Noncompliance Event means any DB Contractor breach or failure to meet one of the requirements as set forth in Exhibit 16 to this DBA.

Noncompliance Events Table means the table set forth in Attachment 1 to Exhibit 16 to this DBA.

Noncompliance Points means the points that may be assessed for certain breaches or failures to perform by DB Contractor, as set forth in Exhibit 16 to this DBA.

NTP1 Maximum Payment Amount means the amount set forth in Section 4.2.2 of this DBA.

NTP1 Payment Bond Amount means the amount set forth in Section 5.1.2 of this DBA.

NTP1 Performance Bond Amount means the amount set forth in Section 5.1.1 of this DBA.

NTP2 Payment Bond Amount means the amount set forth in Section 5.1.4 of this DBA.

NTP2 Performance Bond Amount	means the amount set forth in Section 5.1.3 of this DBA.
Performance and Measurement Table	means Table 27-1 in the Special Provisions.
Persistent DB Contractor Default	has the meaning set forth in Exhibit 16 to this DBA.
Price	has the meaning set forth in Section 1.4 of this DBA.
Project	has the meaning set forth in Recital B to this DBA.
Proposal	has the meaning set forth in Recital F to this DBA.
Proposal Due Date	has the meaning set forth in Recital F to this DBA.
Rehabilitation Pavement Areas	means any pavement areas where DB Contractor performs work to rehabilitate the existing pavement structure rather than performing full depth reconstruction as required in Sections 2.1.2, 2.3, 2.4.2 and 2.5.2 of Exhibit 1 to this DBA.
Request for Proposals (RFP)	has the meaning set forth in Recital E to this DBA.
RFP Documents	means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ and the RFP, including Instructions to Proposers, the Contract Documents, the CMC Documents, the Reference Information Documents and any addenda issued in connection therewith.
RFQ	has the meaning set forth in Recital C to this DBA.
Rules	has the meaning set forth in Recital A to this DBA.
Substantial Completion Deadline	has the meaning set forth in Section 2.4.1 of this DBA.
Time Periods A, B and C	means the periods shown as “A”, “B” and “C”, respectively, on Table 26-1 of the Special Provisions.
TxDOT-Directed Changes	means (a) any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work, which TxDOT has directed DB Contractor to perform as described in and subject to the limitations in Section 4.6.1.2 of the General Conditions), (b) suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 8.4.1 of the General Conditions, (c) any changes in the Work due to Errors in the Signed and Sealed Engineering Data, unless such Errors were known to the DB Contractor prior to the Effective Date, and (d) any material differences between the actual location of a Utility and the location of the Utility shown on a level A or level B SUE report identified in Appendix 2 to Exhibit 3 of the DBA, unless such Error was known to DB Contractor prior to the Effective Date. Notwithstanding the foregoing, TxDOT shall not be liable for any changes in the

	Scope of Work that result in less than $10,000 in increased costs and such changes shall not be considered TxDOT-Directed Changes.
TxDOT-Provided Approvals	means the approvals set forth in the table in Section 3.1 of this DBA.
TxDOT Schematic Design	has the meaning set forth in Recital N to this DBA.
Uncured Noncompliance Points	means Noncompliance Points assessed on account of breaches or failures that remain uncured.
Unidentified Utilities Deductible	has the meaning set forth in Section 6.4 of this DBA.
Unidentified Utilities Deductible Cap	has the meaning set forth in Section 6.4 of this DBA.

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

1.3 Contract Documents and Order of Precedence

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

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

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

1. Amendments and Change Orders to the Design-Build Contract, including all exhibits and attachments thereto;
2. This DBA, including all exhibits hereto, except Exhibit 2 (DB Contractor's Proposal Commitments and ATCs) and Exhibit 3 (List of Reference Information Documents);
3. TxDOT's Design-Build Agreement General Conditions, Items 1-9 dated as of [●] (the "**General Conditions**");
4. Change Orders to TxDOT's Design-Build Standard Specifications or the Special Provisions;
5. The Special Provisions (if any);
6. Exhibit 2 (DB Contractor's Proposal Commitments and ATCs) to this DBA; and
7. TxDOT's Design-Build Standard Specifications, Items 10-28 dated as of [●];
8. Released for Construction Documents to be developed in accordance with the Contract Documents, provided that (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist between the Released for Construction Documents and the other Contract Documents with respect to

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

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

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

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

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

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

1.4 Reference Information Documents

The Reference Information Documents are those documents listed in Exhibit 3, Appendix 1.

1.4.1 Portions of the Reference Information Documents are explicitly referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The Reference Information Documents shall be deemed incorporated in the Contract Documents solely to the extent that they are so referenced, with the same order of priority as the Contract Document in which the reference occurs; provided, however, that DB Contractor shall only be entitled to rely on portions of the Reference Information Documents for increases to the Price and extensions of Completion Deadlines to the extent identified in Exhibit 3, Appendix 2.

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

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

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

SECTION 2. SCOPE OF WORK

2.1 Project Scope; Special Terms and Conditions

2.1.1 Project Scope

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

2.1.2 Intentionally Deleted

2.1.3 Special Utility Provisions

DB Contractor acknowledges that the Price includes the following cost responsibility for Utility Adjustments in accordance with Transportation Code 203.092 as determined by the project type. Specifically, on highways on the National System of Interstate and Defense Highways where the relocation is eligible for federal participation, DB Contractor is responsible for 100% of eligible cost of Adjustments for both Owner-Managed and DB Contractor Managed Utility Agreements. Utility Adjustments on this Project are eligible for federal participation.

2.1.4 Obligations After Final Acceptance

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

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

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

2.2 DB Contractor's Proposal Commitments

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

2.3 DB Contractor's ATCs

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

2.4 Completion Deadlines

2.4.1 Deadlines for Project Completion

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

MILESTONE	COMPLETION DEADLINE
Substantial Completion Deadline	NTP1 plus [●] Days
Final Acceptance Deadline	Date of Substantial Completion plus 120 Days

2.4.2 Time is of the Essence

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

2.4.3 No Time Extension

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

2.5 Job Training Plan

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

2.6 DBE Goals

The Parties acknowledge that the Project is (or may be) funded with federal funds and the approved overall DBE participation goal for the Project is established as 6% of the Price.

2.7 DBE Performance Plan

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

2.8 Prevailing Wages

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

SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS

3.1 TxDOT-Provided Approvals

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

APPROVAL	DATE
NEPA Categorical Exclusion	November 1, 2018
Interstate Access Justification Report	December 21, 2018

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

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

3.2 Project Specific Third-Party Agreements

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

SECTION 4. COMPENSATION

4.1 Price

As full compensation for performance of the Work and all other obligations of DB Contractor under the Contract Documents, TxDOT shall pay DB Contractor the lump sum Price of $[●], subject to adjustment by Change Order in accordance with the Design-Build Contract. Payments shall be made in accordance with the terms and conditions of the General Conditions.

4.1.1 Allowances

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

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

4.2 Limitations on Payments

4.2.1 Maximum Payment Schedule

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

4.2.2 NTP1 Maximum Payment Amount

The "**NTP1 Maximum Payment Amount**" is $10,000,000.

4.3 Price Adjustment Due to Delay in NTPs

4.3.1 Delay in NTP1

4.3.1.1 TxDOT anticipates that it will issue NTP1 concurrently with or shortly after execution and delivery of this DBA, but shall have the right in its 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:

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

where:

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

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

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

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

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

4.3.1.2 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 4.3.1.1 above, with "B" being the CCI for the month in which the Change Order is approved.

4.3.1.3 If NTP1 has not been issued on or before 365 days after the Effective Date, the Parties may mutually agree to terms allowing an extension in time for issuance of NTP1 and adjustment of the Price. DB Contractor shall provide evidence satisfactory to TxDOT, meeting the requirements of Section 4.6.5 of the General Conditions, justifying the amount of any Price increase. If the delay in issuance of NTP1 was not caused in whole or in part by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, and DB Contractor does not wish to negotiate an extension, or if the Parties fail to reach agreement in accordance with this Section 4.3.1.3, then DB Contractor's sole remedy shall be to terminate this Contract in accordance with Section 8.8.9 of the General Conditions.

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

4.3.2 Delay in NTP2

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

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

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

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

where:

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

"C" is 1/3 of the amount paid or owing for Work performed prior to issuance of NTP2;

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

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

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

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

SECTION 5. PERFORMANCE SECURITY

5.1 Bonds

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

5.1.1 The "**NTP1 Performance Bond Amount**" is $10,000,000.

5.1.2 The "**NTP1 Payment Bond Amount**" is $10,000,000.

5.1.3 The "**NTP2 Performance Bond Amount**" is $[*insert the portion of the Price allocable to Construction Work*].

5.1.4 The "**NTP2 Payment Bond Amount**" is $[*insert the portion of the Price allocable to Construction Work*].

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

5.2 Guaranty

5.2.1 As of the Effective Date, a Guaranty [*insert appropriate bracketed text*][is not required.][in the form attached to this DBA as Exhibit 13 shall be delivered and maintained in accordance with this Section 5.2 and the requirements of the Design-Build Contract, and the following shall be the Guarantor(s): [*insert legal names of Guarantor(s)*].]

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

5.2.3 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 CFOs of the DB Contractor, its equity members and any Guarantors.

5.2.4 If at any time during the course of this DBA, the total combined Tangible Net Worth of DB Contractor, its equity members (as applicable) and any Guarantors, is less than $100,000,000, 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 (as applicable) and any Guarantors is at least $100,000,000. 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.

5.3 Insurance Special Provisions

DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance coverage in accordance with Section 3.5 of the General Conditions, and in accordance with the insurance policies, coverage, deductibles and limits specified therein.

SECTION 6. CHANGE ORDERS

6.1 Differing Site Conditions

The "**Differing Site Conditions Deductible**" for the Project is the first $50,000 in additional Direct Costs.

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

DB Contractor shall be entitled to an increase in the Price due to Differing Site Conditions only as provided in Section 4.6.9.1 of the General Conditions.

6.2 Relief Events

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

6.2.1 Where TxDOT negotiates a railroad agreement and includes the draft form of such agreement in the Reference Information Documents prior to the Proposal Due Date, if the final executed version of such railroad agreement contains conditions or requirements that differ materially from those contained in the draft form of railroad agreement included in the Reference Information Documents, and such conditions or requirements (a) have a material adverse impact on DB Contractor's obligations under the Contract Documents and (b) were not caused by modifications to the TxDOT Schematic Design that were initiated by DB Contractor, this shall constitute an Other Relief Event and DB Contractor may request a Change Order in accordance with the Other Relief Events provisions set forth in Section 4.6.9.3.2 of the General Conditions, subject to the requirements in Section 4.6 of the General Conditions.

6.3 Hazardous Materials

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

6.3.1 Reimbursable Amount

In accordance with Section 4.6.9.4.1 of the General Conditions, and subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as compensation for (a) 50% of DB Contractor's Reimbursable Hazardous Materials

Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed $10,000 but do not exceed $100,000, (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed $100,000, and (c) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

6.3.2 Time Extensions

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

6.4 Unidentified Utilities

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

The "**Unidentified Utilities Deductible Cap**" for the Project is an aggregate $250,000 for all Unidentified Utilities Deductibles borne by DB Contractor.

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

6.5 Access to Right of Way

DB Contractor shall be entitled to a Change Order for delays to the Critical Path due to failure of TxDOT to make available a portion of the Schematic ROW, or any Additional Properties that must be acquired due to a TxDOT-Directed Change, Force Majeure Event, or a Necessary Basic Configuration Change, as provided in Section 4.6.9.5 of the General Conditions and subject to the requirements of Section 4.6 of the General Conditions.

In addition, notwithstanding anything to the contrary within the Design-Build Contract, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as a result of any delay in the Critical Path directly caused by the failure or inability of TxDOT to make available to DB Contractor the following parcels for the purposes of Construction Work by NTP1: Parcels 1, 1 (OAS), 2 and 3. DB Contractor shall be entitled to a Change Order only to the extent the delay (i) materially adversely affects the 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 the 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.

6.6 Necessary Basic Configuration Changes

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

6.7 Form of Change Order

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

6.8 DB Contractor Reimbursement for Eminent Domain Assistance

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

6.9 Relief for Railroad Delay Due to Uncooperative Railroad

6.9.1 DB Contractor shall use best efforts to obtain the cooperation of each railroad as necessary to negotiate agreements related to railroads impacted by the Project. DB Contractor shall notify TxDOT immediately if (a) DB Contractor is unable (or anticipates that it will be unable), after diligent efforts, to execute an agreement with a railroad within a reasonable time (which, for the avoidance of doubt, shall be no shorter than the longest lead time set forth in Chapter 2, Section 1 of the TxDOT Rail-Highway Operations Manual), (b) DB Contractor reasonably believes for any other reason that any railroad would not permit or undertake the work to be completed within the railroad right of way in a manner consistent with the timely completion of the Project, (c) DB Contractor becomes aware that any railroad 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 railroad with respect to the Project, despite DB Contractor's diligent efforts to obtain such railroad'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 railroad's timely cooperation. DB Contractor shall provide TxDOT with such information as TxDOT requests regarding the railroad'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 railroad's cooperation.

6.9.2 If DB Contractor requests TxDOT's assistance pursuant to Section 6.9.1, DB Contractor shall provide evidence reasonably satisfactory to TxDOT that (a) an agreement with the railroad is necessary, (b) the time for completion of the work within the railroad's right of way required for completion of the Project 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 railroad's cooperation, and (d) the railroad 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 railroad or resolve the dispute; provided, however, that TxDOT shall have no obligation to prosecute any type of 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. 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 Work, except as otherwise expressly set forth in this Section 6.9.

6.9.3 If TxDOT objects in writing to a request for assistance pursuant to Section 6.9.1, based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 6.9.2(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 6.9.1 based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 6.9.2(c) and (d), then DB Contractor shall take such action as DB Contractor deems advisable during the next 30 days to obtain the railroad'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 railroad'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.

6.9.4 DB Contractor shall bear 100% of the risk of Critical Path delays caused by a railroad's failure to timely comply with the requirements of a railroad agreement that has been executed by DB Contractor and such railroad.

6.9.5 The term "**Railroad Delay**" means a delay to a Critical Path that is directly attributable to a railroad's failure to cooperate with DB Contractor where DB Contractor and railroad have not yet executed an agreement addressing such work. DB Contractor shall bear 100% of the risk of each Railroad Delay prior to and during the first 90 days of any such Railroad Delay, provided that such 90-day period shall not commence until TxDOT has received evidence required by Section 6.9.2 that is reasonably satisfactory to TxDOT (which, for the avoidance of doubt, shall include evidence that DB Contractor allocated reasonable time to negotiate and execute an agreement with the railroad as described in Section 6.9.1) and DB Contractor has complied with all other requirements for a Change Order under this Design-Build Contract, including General Conditions Section 4.6. The risk of any Railroad 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 Railroad Delay occurring after expiration of the 90-day period). If a Railroad Delay is concurrent with another delay which is DB Contractor's responsibility under this Design-Build Contract, DB Contractor shall not be entitled to a time extension on account of such Railroad Delay. If a Railroad Delay is concurrent with another Railroad Delay by the same railroad or by another railroad, only one of the delays shall be counted. If a Railroad Delay is concurrent with any other delay for which DB Contractor is entitled to a time extension under General Conditions Section 4.6, the delay shall be deemed a Railroad Delay and the provisions of this Section 6.9.5 shall apply.

6.9.6 No Change Order for delay to a Critical Path shall be allowable pursuant to Section 6.9.5 unless all of the following criteria are met:

(a) the general requirements and conditions for Change Orders set forth in General Conditions Section 4.6 have been met;

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

(c) if applicable, DB Contractor has provided a reasonable plan for the applicable work to the railroad;

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

(e) no other circumstance exists that would delay the affected railroad related work even if the railroad were cooperative; and

(f) the delay is allowable under General Conditions Section 4.6.5.3.

6.9.7 Except as set forth in Section 6.9.5 with respect to certain Railroad Delays, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Railroad. 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 railroad, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on

account of such delays pursuant to Section 6.9.5. Any action or inaction by TxDOT as described in Section 6.9.2 shall have no bearing on the restriction set forth in this Section 6.9.7.

SECTION 7. FEES; LIQUIDATED DAMAGES

7.1 Fees for Early Issuance of NTP2

TxDOT may condition any early issuance of NTP2 pursuant to Section 8.1.1.6 of the General Conditions upon payment by DB Contractor to TxDOT the amount of $3,000 for each day during the period that NTP2 has been issued and any condition to NTP2 remains unsatisfied.

7.2 Liquidated Damages Respecting Delays

7.2.1 The amounts of any liquidated damages for which DB Contractor may be liable pursuant to Section 8.6.1 of the General Conditions shall be as follows:

(a) $61,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days; and

(b) $7,500 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

7.2.2 DB Contractor acknowledges that the liquidated damages described in this Section 7.2 are reasonable in order to compensate TxDOT for damages it will incur as a result of late completion of the Project or portions thereof as set forth in this Section 7.2 and Section 8.6 of the General Conditions.

7.3 Liquidated Damages for Lane Closures

The Liquidated Damages for Lane Closures for which DB Contractor may be liable pursuant to Section 8.6.2 of the General Conditions shall be as set forth in Exhibit 15 to this DBA. DB Contractor acknowledges and agrees that such Liquidated Damages for Lane Closures are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures.

7.4 Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages

7.4.1 As deemed compensation to TxDOT for Losses described in Section 8.3.1.4 of the General Conditions, DB Contractor agrees to pay to TxDOT the following Key Personnel Change Fees amounts in accordance with such section. The Key Personnel Change Fees shall be assessed in the amounts set forth below for changes to Key Personnel during the periods described below. Each period shall be determined by the progress percentages, which are calculated by dividing the DB Contractor's earned to date amount set forth in the most recent approved Draw Request by the Price.

POSITION	KEY PERSONNEL CHANGE FEE PERIODS

	PERIOD 1 (0%-40% Progress Percentage)	PERIOD 2 (40%-60% Progress Percentage)	PERIOD 3 (60%-80% Progress Percentage)	PERIOD 4 (80%-100% Progress Percentage)
Project Manager	$150,000	$150,000	$100,000	$75,000
Construction Manager	$150,000	$150,000	$150,000	$150,000
Design Manager	$150,000	$75,000	$75,000	$25,000
Lead MOT Design Engineer	$150,000	$150,000	$75,000	$25,000
Independent Quality Firm Manager	$150,000	$150,000	$150,000	$150,000
Professional Services Quality Assurance Manager	$150,000	$75,000	$75,000	$25,000
Maintenance Manager	$150,000	$75,000	$75,000	$100,000
Utility Manager	$150,000	$150,000	$100,000	$75,000
Lead Roadway Design Engineer	$150,000	$150,000	$75,000	$25,000
Lead Structural Engineer	$150,000	$150,000	$75,000	$25,000
Lead MOT Implementation Manager	$150,000	$150,000	$100,000	$75,000
Safety Manager	$150,000	$150,000	$150,000	$150,000

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

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)
Project Manager	$21,000

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)
Construction Manager	$23,000
Design Manager	$15,000
Lead MOT Design Engineer	$13,000
Independent Quality Firm Manager	$27,000
Professional Services Quality Assurance Manager	$22,000
Maintenance Manager	$10,000
Utility Manager	$25,000
Lead Roadway Design Engineer	$14,000
Lead Structural Engineer	$14,000
Lead MOT Implementation Manager	$21,000
Safety Manager	$13,000

7.5 Additional Acknowledgements Regarding Liquidated Damages

DB Contractor further agrees and acknowledges that:

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

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

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

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

7.6 Noncompliance Points

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

SECTION 8. KEY SUBCONTRACTORS AND KEY PERSONNEL

8.1 Key Subcontractors

Key Subcontractors for the Project are as set forth in Exhibit 17 to this DBA.

8.2 Key Personnel

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

SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES

9.1 Notices and Communications

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

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

[*DB Contractor / Firm Name*]
[*Address*]
[*Address*]
Attention: [*Name*]
Telephone: [●]
E-mail: [●]

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

[*Firm Name*]
[*Address*]
[*Address*]
Attention: [*Name*]
Telephone: [●]
E-mail: [●]

9.1.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the I-2/I-69C Interchange Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Pharr District
600 W Expy 83
Pharr, Texas 78577
Attention: Pedro Alvarez, P.E.
Telephone: (956) 702-6101
E-mail: pedro.alvarez@txdot.gov

With a copy to:

Texas Department of Transportation
Project Finance, Debt & Strategic Contracts Division
125 East 11th Street
Austin, Texas 78701
Attention: 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
Attention: [*Attorney Name*]
Telephone: (512) 463-8630
E-mail: [●]

9.2 Designation of Representatives

9.2.1 TxDOT and DB Contractor shall each designate Authorized Representative(s) who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Exhibit 19 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 9.1.

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

SECTION 10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties

DB Contractor represents and warrants that:

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

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

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

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

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

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

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

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

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

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

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

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

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

10.1.14 At any time a Guaranty is required to be in place pursuant to the Contract Documents, all required approvals have been obtained with respect to the execution, delivery and performance of such Guaranty, and performance of such Guaranty will not result in a breach of or a default under the applicable Guarantor's organizational

documents or any indenture or loan or credit agreement or other material agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected.

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

10.2 Survival of Representations and Warranties

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

SECTION 11. MISCELLANEOUS PROVISIONS

11.1 Dispute Resolution Procedures

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

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

11.2 Entire Agreement

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

11.3 Severability

If any clause, provision, section or part of the Contract Documents is ruled invalid under Section 11.1 hereof and Sections 4.9 and 4.10 of the General Conditions, or otherwise by a court having proper jurisdiction, then the Parties shall (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

11.4 Survival

DB Contractor's representations and warranties, the dispute resolution provisions contained in Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions, the indemnifications and releases contained in Section 7.12 of the General Conditions, the express rights and obligations of the Parties following termination of this DBA under Section 8.7 and Section 8.8 of

the General Conditions, the provisions regarding invoicing and payment under Section 9.3 of the General Conditions, the obligations regarding Final Reconciliation under Section 9.7 of the General Conditions and all other provisions which by their inherent character should survive termination of this DBA and completion of the Work, shall survive the termination of this DBA and completion of the Work. The provisions of Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions shall continue to apply after expiration or earlier termination of this DBA to all Claims and Disputes between the Parties arising out of the Contract Documents.

11.5 Counterparts

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

11.6 [Joint and Several Liability

[*This Section 11.6 to be included only if DB Contractor is a joint venture*.]Each of the [●], [●] and [●] agree that it is jointly and severally liable for the performance of DB Contractor's liabilities and obligations under the Contract Documents; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of Design-Build Contractor. If any other Party or replacement Party to this DBA is or becomes a joint venture or a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under the Contract Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.]

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

DB CONTRACTOR:
[*DB Contractor*]

By: _____
Name: [●]
Title: [●]

Date: _____

TEXAS DEPARTMENT OF TRANSPORTATION:

By: _____
Name: James M. Bass
Title: Executive Director

Date: _____

EXHIBIT 1

PROJECT SCOPE

1. Project Description

The Project consists of the design and construction of 7.8 miles of improvements along I-2 from just west of 2nd Street to just east of FM 2557 (S. Stewart Road) and I-69C from Nolana Loop to I-2 in the cities of McAllen, Pharr and San Juan, in Hidalgo County, including (i) the full reconstruction of the I-2/I-69C interchange to include two-lane direct connectors in all four directions, (ii) the reconstruction and/or widening of the I-2 general purpose lanes from six to eight (four in each direction) from 2nd Street to the I-2/I69C interchange, and (iii) operational improvements including the reconfiguration of mainlane ramps on I-2 from 2nd Street to FM 2557 (S. Stewart Road) and improvements to the approaches and departures from the direct connectors.

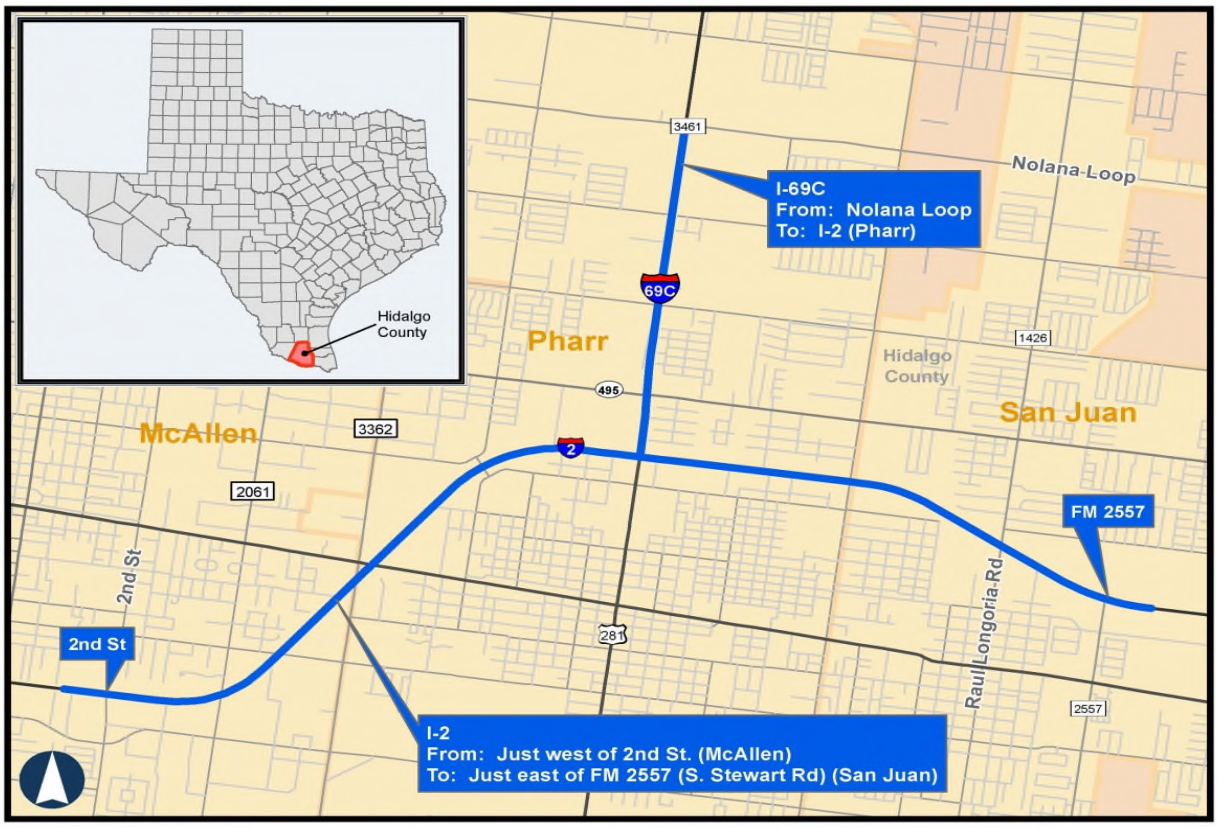

Figure 1-1: Project Map

2. Project Scope

DB Contractor shall be responsible for all Work required for performance of design and construction of all areas included within the scope of the Project. DB Contractor shall be responsible for performing utility design and relocation for all utilities.

As further described in Section 2.1.1 of the Design-Build Agreement, any material change to the Basic Configuration must be submitted for TxDOT review and written approval.

Basic Configuration shall mean the following elements defining the Project as set forth in this Section 2 of Exhibit 1 and reflected on the TxDOT Schematic Design:

(a) the Schematic ROW;
(b) the number of lanes;
(c) the approximate location of ramps;
(d) the approximate location of passing lanes; and
(e) the approximate location of interchanges and the type of interchanges.

All references in this Exhibit 1 to roadway alignments and station values are reflected in the TxDOT Schematic Design. Any design modifications that require alignment changes and different station values must reflect the footprint of the improvements, including the beginning and ending limits, depicted in the TxDOT Schematic Design.

2.1. Mainlanes

2.1.1. New Pavement

DB Contractor shall design and construct the mainlanes as shown in the TxDOT Schematic Design and described below (New Pavement):

- Along I-2: Sta. 1411+00 to Sta. 1530+00
- Along I-69C: Sta. 829+58 to I-2 Direct Connectors/Ferguson Ave overpass

2.1.2. New Pavement

DB Contractor's design shall consist of widening existing mainlane pavement as needed to accommodate the Basic Configuration shown in the TxDOT Schematic Design. Widening to accommodate the Basic Configuration shall be constructed for the limits described below:

- Along I-2: Sta. 1348+00 to Sta. 1411+00
- Along I-2: Sta. 1530+00 to Sta. 1651+19
- Along I-69C: Sta. 805+00 to Sta. 829+58

All existing mainlane pavement within the limits described below shall be considered Rehabilitation Pavement Areas for which DB Contractor shall design and construct milling and overlay:

- Along I-2: Sta. 1345+00 to Sta. 1411+00
- Along I-2: Sta. 1530+00 to Sta. 1651+19
- Along I-69C: Sta. 770+00 to Sta. 829+58

2.2. Bridges

DB Contractor shall design and construct new bridge structures and widen existing bridge structures necessary to accommodate the Basic Configuration. The beginning and ending stations of bridges shown in the approved schematic is approximate. Final bridge limits will be determined by the DB Contractor's design in accordance with the requirements set forth in the Contract Documents.

2.2.1. New Bridges (Eastbound and Westbound along I-2)

a) S. Jackson Rd / Rio Valley Switching Company Railroad / Business 83

b) Cage Blvd (US 281)

2.2.2. New Bridges (Braided Ramps)

a) RWEJAX bridge over RWXJAC (Westbound between Business 83 and Jackson Ave.)

b) RWXVET bridge over RWENEB (Westbound between Veterans Blvd. and FM 1426)

c) REEVET bridge over REXNEB (Eastbound between Veterans Blvd. and FM 1426)

2.2.3. New Bridges (Direct Connectors)

a) Direct Connector #1 (Westbound I-2 to Northbound I-69C); Structure shall include mainlane overpass at Ferguson Ave.

b) Direct Connector #2 (Eastbound I-2 to Northbound I-69C;) Structure shall include mainlane overpass at Ferguson Ave.

c) Direct Connector #3 (Southbound I-69C to Eastbound I-2) Structure shall include mainlane overpass at Ferguson Ave.

d) Direct Connector #4 (Southbound I-69C to Westbound I-2;) Structure shall include mainlane overpass at Ferguson Ave.

2.2.4. Bridge Widenings

a) I-2: S. McColl Rd. (Eastbound and Westbound). At this location the DB Contractor is required to reconstruct and replace the bridge approach slab at both abutment locations, including removing all existing backfill and replacing with new Cement Stabilized Backfill.

b) I-2: E. Jackson Ave. (Eastbound and Westbound). At this location the DB Contractor is required to reconstruct and replace the bridge approach slabs at both abutment locations, including removing all existing backfill and replacing with new Cement Stabilized Backfill.

c) I-2: Veterans Blvd. (Eastbound)

d) I-2: FM 1426 (Eastbound)

e) I-69C: Sioux Rd. (Northbound)

2.2.5. Bridge Removals

a) I-2 EB and WB mainlane bridge at S. Jackson Rd. / Rio Valley Switching Company Railroad / Business 83

b) I-2 EB and WB mainlane bridge at Sugar Road

c) I-2 EB and WB mainlane bridge at Cage Blvd (US 281)

d) All existing direct connectors between I-2 and I-69C Interchange.

2.3. Ramps

Ramps shall be removed or constructed, as indicated, at the following locations:

2.3.1. Northbound Ramps – I-69C/US 281

a) Reconstruction of existing entrance ramp RNE495 (New Pavement); and

b) Remove existing entrance ramp between E. Sioux Rd. and Ferguson Ave.

2.3.2. Southbound Ramps – I-69C/US 281

a) Removal of existing entrance and exit Ramps between FM 3461 (Nolana Loop) and E. Sioux Rd.

b) Construction of an X ramp configuration between FM 3461 (Nolana Loop) and E. Sioux Rd (New Pavement):

   1. Exit ramp RSXSIO
   2. Entrance ramp RSENOL

c) Removal of existing exit ramp between E. Sioux Rd. and Ferguson Ave.

2.3.3. Eastbound Ramps – I-2/US 83

a) Design and construction of exit ramp REXMCC between begin of project and S. McColl Rd. (New Pavement).

b) Pavement Rehabilitation of existing entrance ramp REE2ND to remain in place (Modify cross sectional elements as needed).

c) Removal of exit ramp between S. McColl Rd and E. Jackson Ave.

d) Removal of existing exit and entrance Ramps between E. Jackson Ave. and S. Jackson Rd. and design and construction of exit ramp REXJAX and entrance ramp REEJAC (New Pavement).

e) Removal of exit and entrance ramps between Business 83 and Sugar Rd. and design and construction of exit Ramp REXSUG (New Pavement).

f) Removal of Exit Ramp between Sugar Rd. and Cage Blvd (US 281).

g) Design and reconstruction of existing entrance ramp REESUG between Sugar Rd. and Cage Blvd (New Pavement).

h) Design and reconstruction of existing exit ramp (REXVET) east of Cage Blvd (New Pavement).

i) Design and reconstruction of existing entrance ramp (REE281) located between Direct Connector #3 and west of Veterans Rd. (New Pavement).

j) Removal of existing exit and entrance ramp west of Veterans Blvd.

k) Removal of existing exit and entrance ramps between Veterans Blvd and FM 1426 and design and construction of braided ramps REEVET and two lane REXNEB (New Pavement).

l) Removal of existing exit ramp and design and construction of exit ramp REXCES east of FM 1426 (New Pavement).

2.3.4. Westbound Ramps – I-2/US 83

a) Pavement rehabilitation of existing exit ramp RWX2ND to remain in place. (Modifications to cross sectional elements may be required.)

b) Removal of existing entrance ramp between S. McColl Rd. and E. Jackson Ave.

c) Removal of existing entrance and exit ramps between E. Jackson Ave. and S. Jackson Rd. and the design and construction of Braided Ramps RWXJAC (two lane) and RWEJAX (New Pavement).

d) Removal of existing entrance and exit ramps between Business 83/Center Ave. and Sugar Rd. and design and construction of entrance ramp RWESUG (New Pavement).

e) Removal of existing entrance and exit ramp between Cage Blvd. (US 281) and Sugar Rd.

f) Design and reconstruction of exit ramp RWXSUG west of Cage Blvd. (US 281) (New Pavement).

g) Design and reconstruction of entrance ramp RWEVET located East of Cage Blvd (New Pavement).

h) Removal of exit and entrance ramp between Cage Blvd. (US 281) and Veterans Blvd. and design and construction of exit ramp RWX281 (New Pavement).

i) Removal of existing entrance and exit ramps between Veterans Blvd. and FM 1426 and design and construction of braided ramps RWXVET and RWENEB (New Pavement).

j) Removal of existing entrance ramp east of FM 1426 and design and construction of entrance ramp RWECES (New Pavement).

2.4. Frontage Roads

DB Contractor shall design and construct frontage roads along the existing alignments. The design shall consist of milling and overlay and widening frontage road pavement, as needed, to accommodate the Basic Configuration shown in the TxDOT Schematic Design.

DB Contractor shall design and construct continuous sidewalks along all frontage roads along I-2 (STA 1336+78 to STA 1651+19) and along I-69C (STA 770+00 to the I-2/Cage Blvd. intersection) excluding areas within the Rio Valley Switching Company Railroad ROW. These sidewalks shall be designed according to the requirements described in Item 28.

2.4.1. New Pavement Areas

DB Contractor shall design and construct frontage road widening to accommodate the basic configuration as shown on the TxDOT Schematic Design and as described below (New Pavement):

2.4.2.1 I-2 Eastbound

a) Widen at 2nd Street.

b) Widen between Exit and Entrance Ramps REXMCC and REE2ND (auxiliary lane).

c) Extension of S. McColl Rd. Turnaround bay: Widen extend to approx. STA 171+00.

d) Extension of Jackson Ave. Turnaround bay: Widen extend to approx. STA 200+00.

e) Construction of N. Jackson Rd. turnaround.

f) Widen between Exit and Entrance Ramps REXJAX and REEJAC (auxiliary lane).

g) Extension of Cage Blvd. Turnaround bay: Widen to extend to approx. STA 311+00.

h) Widening from Ramp REXNEB to FM 1426: Widening to accommodate additional lane from the ramp to STA 414+50 and to extend turnaround bay from approx. STA 414+50 to approx. STA 418+50.

i) Widen as necessary to match Ramps throughout the project limits (REXSUG, REESUG, REXVET, REE281, REEVET, REXNEB, REXCES).

2.4.2.2 I-2 Westbound

a) Widen at 2nd Street.

b) Extension of McColl Rd. Turnaround bay: Widen to extend turnaround to approx. STA 196+75.

c) Extension of Jackson Ave. Turnaround bay: Widen to extend turnaround to ramp RWXJAC.

d) Remove existing N. Jackson Rd. Turnaround from WB IH-2 Frontage Road to EB IH-2 Frontage Road.

e) Construct N. Jackson Rd. Turnaround bay from approx. STA 254+00 (WB Frontage Road) to approx. STA 247+00 (EB Frontage Road).

f) Intersection with Sugar Rd.

g) Extension of Cage Blvd. (US 281) Turnaround bay: Widen to extend turnaround to approx. STA 331+00.

h) Extension of Veterans Blvd. Turnaround bay: Widen to extend turnaround to approx. STA 387+75.

i) Extension of FM 1426 Turnaround bay: Widen to extend turnaround to approx. STA 431+00.

j) Widen as necessary to match Ramps throughout project limits (RWXJAC, RWEJAX, RWESUG, RWXSUG, RWEVET, RWX281, RWXVET, RWENEB, RWECES).

2.4.2. Rehabilitation Pavement Areas

All frontage road and existing intersection pavement within the limits described below shall be considered Rehabilitation Pavement Areas for which DB Contractor shall design and construct pavement milling and overlay:

k) Along I-69C Northbound: From STA 808+75 to I-2/Cage Blvd. intersection.

l) Along I-69C Southbound: From STA 808+90 to I-2/Cage Blvd. intersection.

m) Along I-2 Eastbound: From STA 184+60 to Exit Ramp REXCES, approximate STA 461+00.

n) Along I-2 Westbound: From STA 187+60 to Ramp RWECES, approximate STA 461+50.

2.5. Cross Streets

2.5.1. New Pavement Areas

DB Contractor shall design and construct cross street pavement as shown in the TxDOT Schematic Design and as described below (New Pavement):

a) Reconstruction of Sugar Rd (north of I-2) from W. Polk Ave. to the WB Frontage Road (including both intersections).

2.5.2. Rehabilitation Pavement Areas

DB Contractor's design shall include cross street pavement as described below (Rehabilitation Pavement Areas) for which DB Contractor shall design and construct widening, milling, and overlay:

a) Widening, milling, and overlay of Sugar Rd/W. Polk Ave. for the limits shown in the TxDOT Schematic Design.

2.6. Retaining Walls

At a minimum, DB Contractor shall design and construct new retaining walls at all locations shown on the TxDOT Schematic Design.

EXHIBIT 2

Appendix 1: DB Contractor's Proposal Commitments

Appendix 2: ATCs

APPENDIX 1 TO EXHIBIT 2

DB CONTRACTOR'S PROPOSAL COMMITMENTS

[To be inserted from Proposal]

No.	Proposal Location	Proposal Commitment
1		
2		
3		
4		
5		

APPENDIX 2 TO EXHIBIT 2

ATCs

EXHIBIT 3

Appendix 1: List of Reference Information Documents

Appendix 2: Portions of Reference Information Documents Incorporated in the Contract Documents for Purposes of DB Contractor Relief

APPENDIX 1 TO EXHIBIT 3

List of Reference Information Documents

APPENDIX 2 TO EXHIBIT 3

Portions of Reference Information Documents Incorporated in the Contract Documents for Purposes of DB Contractor Relief

- The documents under the folder titled "Geotechnical Information" in the RIDs to the extent set forth in Section 4.6.9.1 of the General Conditions.
- The documents under the folder titled "Signed and Sealed Engineering Data" shall constitute the Signed and Sealed Engineering Data.
- The documents under the folder titled "Utility Strip Map" in the RIDs to the extent set forth in Section 4.5.1 of the General Conditions and Section 4.6.9.2 of the General Conditions.
- The documents under the folder titled "Level B SUE" for the purpose of subsection (d) of the definition of TxDOT-Directed Change.

EXHIBIT 4

CMC AMENDMENTS

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

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

   4.6.5.6 **Change Order Affecting Capital Maintenance Agreement**

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

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

   7.6.1.1 DB Contractor shall be responsible for maintenance of the Work and the Site in accordance with Item 27 of the Design-Build Specifications. Upon Final Acceptance, TxDOT shall assume the maintenance obligations for the Project; provided, however, DB Contractor shall be responsible for the Maintenance Services pursuant to the terms of the CMC Documents. DB Contractor shall be relieved from responsibility for maintenance of all other portions of the Project except that DB Contractor shall be responsible for (a) maintenance of improvements owned by third parties until control of and maintenance responsibility for such improvements has been formally transferred to the third parties; (b) maintenance of mitigation sites in accordance with the Environmental Compliance and Mitigation Plan required by Item 27.6.8 of the Design-Build Specifications and any other extended maintenance responsibilities set forth in the Design-Build Specifications; and (c) maintenance within any work zones that DB Contractor implements during the performance of corrective Work in accordance with the Warranty under Section 3.8. This Section 7.6.1.1 shall not apply to, or limit, DB Contractor's obligations under the CMC Documents.

3. A new Subsection 8.7.1.1(q) is added to the General Conditions as follows:

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

4. A new Subsection 8.7.1.2(e) is added to the General Conditions as follows:

   (e) Respecting a DB Contractor Default under clause (q) of Section 8.7.1.1, any cure period permitted under the terms of the CMC Documents.

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

   9.4.3 **Withholding for Maintenance Security**

   TxDOT shall retain from the Final Payment, and if it reasonably appears there will be insufficient funds at Final Payment, from progress payments, $[*insert amount of Maintenance Security*] as security for the provision of the Maintenance Security required under Section 3.3 of the CMA General Conditions. DB Contractor shall have the option at any time to deliver an irrevocable letter of credit in the amount of $[*insert amount of Maintenance Security*] in lieu of the retained sums in a form and on terms acceptable to TxDOT in its discretion. TxDOT shall release the retained $[*insert amount of Maintenance Security*] or letter of credit, as applicable, to DB Contractor upon the provision of the Maintenance Security required under Section 3.3 of the CMA General Conditions, which shall be no later than 120 days prior to the Initial Maintenance Term Commencement Date. In the event TxDOT does not receive the Maintenance Security required under Section 3.3 of the CMA General

Conditions by the deadline set forth therein, DB Contractor shall forfeit as liquidated damages and not as a penalty such sums, or if a letter of credit is provided in lieu of retained amounts, TxDOT shall have the right to draw on the letter of credit.

EXHIBIT 5

JOB TRAINING PLAN

EXHIBIT 6

DBE PERFORMANCE PLAN
(to be replaced by the TxDOT-approved DB Contractor DBE Performance Plan)

[Insert DB Contractor Name Here]

DBE Performance Plan & Subcontracting Plan

Project: [Insert Project Name Here]

Prepared by: [Insert name here] , [Insert title here]

Initial Draft: [Insert date here]

Revision 1: [Insert date here]

[Include additional revisions and dates, as applicable]

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5	Standard Subcontract Document
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DBE Performance Plan & Subcontracting Plan

The [Insert DB Contractor Name] shall update the DBE Performance Plan quarterly or more frequently as requested by the Department.

Items in italics are recommendation and for information only.

This DBE Performance Plan is a pre-approved sample template listing the items that must be included in the DBE Performance Plan per TxDOT's programmatic contract documents. Although this is a pre-approved sample template, it is the DB Contractor's responsibility to comply with Contract Document requirements related to the Departments DBE Program.

1. Definitions

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

2. Policy Statement

It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26 and Department's DBE Program apply to this Design-Build Contract as follows.

The DB Contractor will solicit DBEs through reasonable and available means (reasonable and available means as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program), or show Good Faith Efforts to meet the DBE goal for this Design-Build Contract.

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

The requirements of this Special Provision must be physically included in any subcontract including all tiers of subcontracts.

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

3. Disadvantaged Business Enterprises (DBE) Commitment

[Insert DB Contractor Name] is committed to fully integrating meaningful DBE participation into our team for this TxDOT [Insert Project name here] (Project) through outreach, technical assistance/supportive services, compliance monitoring and reporting. [Insert DB Contractor Name] proposes to accomplish maximum DBE participation through an organized outreach, solicitation, and subcontracting plan.

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

The overall Project DBE participation goal is [Insert project DBE participation goal percentage] which includes design and construction. [Insert DB Contractor Name] commits to:

1) Submitting commitments on DBE design firms within 60 days of NTP1 (contract execution) and

2) Submitting commitments on DBE construction firms prior to the commencement of construction. Should an existing DBE firm receive additional work, the DB Contractor will submit a revised DBE commitment form for the firm to the Department.

[Insert DB Contractor Name] is committed to implementing the Project's DBE program in accordance with the federal and local guidelines found in 49 CFR Part 26 and the Department's DBE program. The [Insert DB Contractor Name] team is aware of its obligations as stated in 26 CFR 26.53(e) and Department's DBE Special Provision (Attachment 3-2). [Insert DB Contractor Name] is committed to complying with all DBE program regulations.

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

4. Anticipated Areas of Consulting & Contracting Opportunities

[Signing	*Erosion Protection*	*Design Survey support*
Illumination	*Storm Sewer*	*Subsurface utility services*
Signals	*Waterline*	*Design support*
Striping	*Sanitary Sewer*	*Environ support services*
Painting	*Sidewalk*	*Utility relocation design*
Barricades	*Driveways*	*Design Quality Services*
Guardrail	*Riprap*	*Environmental Compliance*
Crash Attenuators	*Misc. Concrete*	*Construction Quality Control*
Sod/Seeding	*Re-Steel (furnish & place)*	*Construction Quality Acceptance*
Landscaping	*Geotechnical Services]*	

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

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

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

https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340

5. Outreach

Our outreach programs in partnership with the Department will include:

- [Good faith efforts performed to date.
- During the Proposal phase, DBEs were interviewed and selected for professional services.
- A DBE project information meeting.
- Incorporation of opportunities in project website.
- Project and contracting advertisements in local and minority publications.
- Collaboration with other organizations to present/advertise project opportunities.
- Collaboration with TxDOT's Programs for DBE's such as PAVED, TBOD and the local TUCP.
- Participation at DBE-related events and conferences.
- Provision of project plans at plan rooms maintained by minority and women business organizations.
- Project Marketing Collateral.
- One-on-one Meeting with interested firms.
- Project Presentations.]

6. Professional Services Procurement

a. General

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

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

[DB Contractor to insert approach here to include steps in providing information to potential DBE firms, as well as, how the DB Contractor expects to receive information from the DBE firms…]

b. Proposal Phase Solicitations

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

- [List DBE firms here]

c. Execution Phase Solicitations

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

(a) Added scope to the Project;

(b) Scope that was not fully defined during the Proposal preparation;

(c) Additional assistance or resources were determined to be necessary to support the Project schedule; and

(d) The inability to successfully negotiate a scope of service or fee with a previously selected firm.

DBE Goal is based on the value of the executed contract. The DBE participation value may increase, or decrease based on changes to the project contract value.

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

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

(a) Use our corporate vendor list;

(b) Contacts develop from outreach events;

(c) Use of the Department's DBE directory;

(d) Use of the TUCP, the local DBE certifying agency;

(e) Coordination with other subcontractor advocacy groups; and

(f) Local DBE organizations

(4) Any DBE firm selected must have their certification verified through the TUCP directory.

d. **Proposal Evaluation & Negotiation**

(1) The following criteria will be used for professional services:

[At a minimum the following items will be checked by the DB Contractor]

(a) Ability to provide the number of qualified personnel to complete the required tasks on time;

(b) Possess the requisite licenses for both the firm and personnel to authorize participation;

(c) Documentation of design project completion on time and within budget;

(d) Quality of previous project work completed, including references from past project owners (clients);

(e) Ability to start when required; and

(f) Consideration of the DBE goal for the Project.

(2) Attempt to negotiate scope, schedule of values, terms, conditions, and price with the selected proposer.

(3) If the negotiations stall or fail, repeat the process.

7. Construction Subcontractor Procurement

a. **General**

It is prevalent practice in the design-build procurement process for the Design-Builder to solicit pricing from the subcontracting community based on 30% (or less) plans. [Therefore, DB Contractor to insert approach here to include plan development stage and potential risk to the DBE subcontractor…]

b. **Bid Package Development**

(1) *[Insert DB Contractor process to include approach to providing fully developed plans to the subcontracting community, direction on how a bid package will be developed, etc.…]*

c. **DBE Identification & Solicitations**

(1) [Solicitations will contain the following information regarding the requested price proposal:

- *Project information*
- *Scope or items of work*
- *Date proposal is due*
- *Where to view plans and specs*

- *Where and how to submit price proposal*
- *To whom the proposal should be directed*
- *To whom all questions should be directed*
- *A CPM schedule illustrating when the work is to be performed*
- *Environmental, Permits, Issues, & Commitment (EPIC) Sheets associated with the work to be performed*

(2) *First time responders to a [Insert DB Contractor Name] solicitation will be required to complete a subcontractor questionnaire and participate in an interview to determine qualifications, capabilities and capacity to avoid potential issues such as DBEs failing to perform a commercially useful function. If selected, the DBE firm will be required to use Department's Compliance Monitoring and Tracking System to report work progress.*

(3) *Every effort will be made to allow two weeks to respond to any price proposal solicitation however this cannot be guaranteed. Exceptions may be granted on a case basis for non-critical items at the discretion of [Insert DB Contractor Name].*

(4) *Responsiveness – [Insert DB Contractor Name] will attempt to contact any subcontractor that did not respond to the solicitation. The reason for not quoting, if provided, will be documented.]*

d. **Proposal Evaluation**

(1) *[Insert DB Contractor process for evaluating bid proposals]*

8. Subcontract Agreement

a. Subcontract agreements (Subcontract) shall identify, define, and include those specific services, items, terms, and conditions that are consistent with the Contract and the scope of work including anticipated duration. The Department will monitor and ensure a commercially useful function (CUF) review is performed. These reviews are for the purpose of ensuring that the DBE is performing and managing the work.

b. The Subcontract will be prepared and submitted with all required conditions and attachments for execution.

c. The following items are clearly defined and included in all professional services subcontracts:

(1) Identification of parties;

(2) Definition of work (scope, methods, end results);

(3) Definition of Client's responsibility;

(4) Provisions for contract changes;

(5) Compensation;

(6) Method of payment; and

(7) Federally required provisions.

d. The following terms and items are included in all construction subcontracts:

(1) Parties to the contract;

(2) Contract start and end dates;

(3) Scope of Work, including deliverables;

(4) DBE Special Provision;

(5) Schedule of Values;

(6) Payment due dates;

(7) Terms and conditions relating to premature contract termination;

(8) Terms and conditions relative to undue delays;

(9) Means to resolve claims and deputes;

(10) Indemnification terms and conditions; and

(11) Federally required provisions.

e. Any exceptions taken by the Subcontractor with regards to any of the business terms and conditions of the subcontract document will be negotiated (that is in the purview to negotiate).

f. Upon complete execution of the document, a copy will be provided to the Department.

9. Execution of the Work

a. DBE Responsibilities

(1) Subcontracted work will be executed in a professional manner.

(2) The subcontractor will be an independent business and employer under the laws of Texas and will assume all the rights and responsibilities accordingly.

(3) The subcontractor will be required to diligently and faithfully execute the work covered by its agreement.

(4) The subcontractor will comply with all of the requirements of its subcontract and the Contract.

(5) The subcontractor will be required to provide monthly progress in the Department's Compliance Monitoring and Tracking System.

b. Administration

(1) The subcontractor will report monthly, in the Department's Compliance Monitoring and Tracking System, at an agreed upon recurring monthly date, their progress quantities for the previous pay period for verification by and concurrence of the Project Manager, Deputy Project Manager, or the Construction Manager.

(2) The subcontractor will be required to carry the requisite insurance outlined in the Contract. Good Faith Efforts (GFE) in accordance with 49CFR25, Appendix A, Item F must be followed prior to rejecting a DBE proposal for failure to provide insurance as outlined in the Contract.

(3) The subcontractor will comply with administrative obligations imposed by federal requirements.

(4) The subcontractor will be required to submit any applicable reports, in the Department's Compliance Monitoring and Tracking System, such as but not limited to:

(a) Monthly progress quantities;

(b) Daily quality control reports;

(c) Certified payrolls; and

(d) DBE participation reports.

c. **Direction and Management**

(1) The subcontractor will receive overall schedule and work priorities from Project Manager, Deputy Project Manager, or Construction Manager.

(2) The subcontractor is an independent business and will be required to plan, manage, oversee, and execute their contracted work in accordance with project schedule and the direction of the Project Manager, Deputy Project Manager, or Construction Manager.

(3) The subcontractor will be a licensed participant in the contractor's document management software at a security level deem appropriate by the Project Manager, Deputy Project Manager, or Construction Manager.

d. **Quality**

(1) The subcontractor will be obligated to abide by the Project Quality Management Plan (QMP).

(2) The subcontractor will be accountable for their deficient work and responsible for the implementation of the approved correction or remedy.

(3) The subcontractor will be responsible for initiating their own technical submittals associated with the items of work.

e. **Environment**

(1) Protection of the environment is a priority for every project. The Subcontractor shall abide by the Project Comprehensive Environmental Protection Plan (CEPP).

(2) The subcontractor will be required to attend the project environmental briefing/training.

(3) The subcontractor will be required to comply with all environmental commitments on the project that have direct bearing on its work.

(4) The subcontractor will comply with all applicable permits, laws, and regulations governing this project and the work subcontracted.

f. **Safety**

(1) The subcontractor is required to have its own safety program or model one after the contractor's.

(2) The subcontractor will insure their safety program is no less stringent than the Project Safety & Health Plan.

(3) The subcontractor will comply with the Project Safety & Health Plan.

(4) The subcontractor will participate in project safety briefings.

(5) The subcontractor shall be responsible for the safety of its employees.

(6) The subcontractor shall comply with all local, state, and federal safety requirements and regulations.

g. **Commercially Useful Function (CUF)**

(1) Field supervision to monitor DBE work performance to verify compliance with subcontract documents paying particular attention to whether the DBE is using its own forces and equipment. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Report any activity of concern to DBE Program Coordinator or DBE Program Manager.

(2) Work with the Department on DBE work schedules so that a CUF review can be scheduled and conducted early in the project.

(3) Follow-up with the Department on CUF findings.

(4) Assist the Department as necessary on CUF monitoring throughout the course of the project.

(5) In the event of a non-CUF finding, consult with the Department on:

(a) Impacts to the project goal and the need for additional DBE credit.

(b) Whether other administrative actions are appropriate.

h. **Assistance to DBEs**

(1) [Insert DB Contractor Name] shall not provide any assistance to the DBE in the general performance of its work. The term assistance is defined in the broadest possible sense:

(a) Labor, equipment, or materials;

(b) Supervision;

(c) Ordering materials for the DBE from their suppliers;

(d) Fuel; and

(e) Any other item one would reasonably expect a viable subcontractor to provide for themselves.

(2) The only exceptions permitted by specification and allowed by [Insert DB Contractor Name] are under emergency conditions where:

(a) The safety of workers and the public is at risk;

(b) The work in progress is subject to a total loss (i.e. lose a concrete pour); and

(c) The traveling public will be seriously impacted, and excessive travel delays incurred.

(3) In the event of any emergencies as defined by Section 9.h(2), the Project Manager or is designated representative is required to call in a report to Compliance Manager outlining the circumstances and the assistance rendered. The Department will be notified immediately. A DBE EMERGENCY ASSISTANCE – CALL IN LOG will be completed. The DBE Liaison Officer will assess the value of the assistance. The value of the assistance will be deducted from the Project DBE monthly progress report.

(4) [Insert DB Contractor Name] serves as an advocate for all its subcontractors (DBE and non-DBE) with the Department in the event of changes, change orders, and payment.

(5) Joint Checks for DBEs

(a) The request for a joint check request must emanate from the DBE and/or their supplier. The request must be on the DBE's letterhead or equivalent. If no joint check agreement is provided to [Insert DB Contractor Name], the Subcontractor will utilize the Contractor's version. If a joint check agreement is provided by the DBE and/or their vendor, the Chief Financial Officer (CFO) must review and edit as necessary to maintain compliance with the DBE special provision and provides sound legal protection for [Insert DB Contractor Name].

(b) Prior to any joint check being issued, its use must be approved by the Department. CFO will prepare a request using the Department's Form 2178 signed by the DBE Liaison Officer. The form will be submitted to the Department by fax or email. Copies of the DBE's request, the joint check agreement and the associated Department Form 2178 will remain on file for audit purposes.

(c) CFO prepares the joint check in the amounts acceptable to the DBE and their supplier. The check will be sent to the DBE in a manner requested by the DBE (i.e. US Mail, Fed-Ex, etc.) All requirements shown on Department Form 2178 will be followed as well as those outlined in governing laws, rules, and regulations. Under no circumstances will the check be mailed directly to the supplier or will the DBE be required to endorse the check on our premises for [Insert DB Contractor Name] direct mailing to the supplier.

10. Payment

a. Monthly Progress Payments

(1) Monthly progress payments will be made by the 10th business day following payment received by [Insert DB Contractor Name] for the items of work performed by the subcontractor. Payment to each DBE subcontractor will be recorded in the Department's Compliance Monitoring and Tracking System. All DBE subcontractors are required to pay their subcontractors within 10 business days following payment received by the DB Contractor.

(2) A number of instances can impact payment time that are outside the control of the DB Contractor or higher tier Consultant:

(a) The failure of the subcontractor to provide an invoice in a timely manner;

(b) Quality issues with the subcontractor's work;

(c) Apparent prompt pay or violations of other federally required provisions;

(d) Failure to pay vendors for materials purchased and used in the project;

(e) The Department's failure to provide copies of pay estimates in a timely manner; and

(f) Delays by the Department in payments to the DB Contractor.

b. **Withholding Progress Payments**

(1) Progress payments may be withheld for any violation or breach of a subcontract requirement such as but not limited to:

(a) Failure to comply with prompt pay requirements;

(b) Failure to be responsive to the Department or [Insert DB Contractor Name]; or

(c) Failure to comply with any subcontract provision that creates a non-compliance with the Contract.

(2) Efforts by [Insert DB Contractor Name] will be made to expeditiously remedy any impediments so that payments can be made as soon as possible.

(3) Any payment dispute will be reflected and reported monthly in the Department's tracking system.

11. Reporting

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

a. **DBE Commitment Schedule**

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

b. **Monthly Reporting Schedule**

DBE monthly progress will be reported via the Department's Compliance Monitoring and Tracking System within 15-days after the end of a calendar month.

c. **Quarterly DBE Progress Tracking**

A quarterly report will be generated which will track commitments, progress, and projected outcomes for DBE participation. The report will track areas available for participation to guide solicitations when construction packages are ready for distribution.

d. **Final DBE Report Schedule**

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

e. **DBE Truckers**

If truckers are to be used towards the project goal, in addition to all the required forms, the DBE Trucking Utilization Form 2660 will be submitted for approval by the District and prior to hauling services performed for DBE credit. A request can occur via the Department's Compliance Monitoring and Tracking System as an attachment or manual submission.

The [Insert DB Contractor Name] shall update the DBE Performance Plan quarterly or more frequently as requested by the Department. If the Project's Preliminary Baseline Schedule is updated impacting the DBE firm schedule, [Insert DB Contractor Name] will issue a new schedule to the DBE firm.

12. Good Faith Efforts Documentation

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

13. Termination

a. Termination for convenience of a DBE subcontractor is NOT allowed unless the prime contract is terminated for convenience by the Owner.

b. Termination may occur due to the direction of the Department.

c. Termination for breach of contract may be for any action(s) include but are not limited to:

(1) Safety/OSHA violations;

(2) Environmental violations;

(3) Illegal or illicit conduct (misappropriation, etc.);

(4) Failure to perform work according to the Department's specifications;

(5) Violation of DBE rules and regulations (i.e. commercially useful function, etc.);

(6) Nonpayment of employees or bills (materials);

(7) Non-responsive to the project schedule;

(8) Failure to provide adequate resources;

(9) Unprofessional conduct; and

(10) A subcontractor removal request by the Department.

d. Any actions that could lead to termination for a DBE subcontractor must be documented and forwarded to the Department for concurrence. DB Contractor must adhere to the requirements set forth in Attachment 3-2 – DBE Special Provision.

e. Adequate opportunities must be afforded to the DBE to remedy deficiencies in accordance with the terms of the subcontract.

f. Consultation with and approval by the Department must occur prior to taking any termination action for a DBE subcontractor.

14. Replacement

If the DBE is part of the project goal and the DBE quits and/or is terminated, [Insert DB Contractor Name] should solicit new quotations for the remaining work from other DBEs or solicit quotations for other work available for DBEs. [Insert DB Contractor Name] will document the termination/substitution requests in the Department's Compliance Monitoring and Tracking System.

Submit to the Department for approval following the "Contract Award" procedures.

If no DBEs can be found to fulfill the goal, document and submit "Good Faith Efforts" in the Department's Compliance Monitoring and Tracking System using Form 2603 (See Sections 6, 7, and 12 for procedures).

15. DBE Program Oversight

a. DB Contractor:

(1) DBE Liaison Officer – [Insert name here], [Insert title here]

(2) Program Administration – [Insert name here], [Insert title here]

(3) Project Manager – [Insert name here]

(4) Deputy Project Manager – [Insert name here]

(5) Construction Manager – [Insert name here]

(6) Document Manager – [Insert name here]

b. The Department:

(1) District DBE Coordinator

(2) District Project Manager

Appendix 7

Design Build Projects:
DBE Compliance and Monitoring Process

1-3-2018
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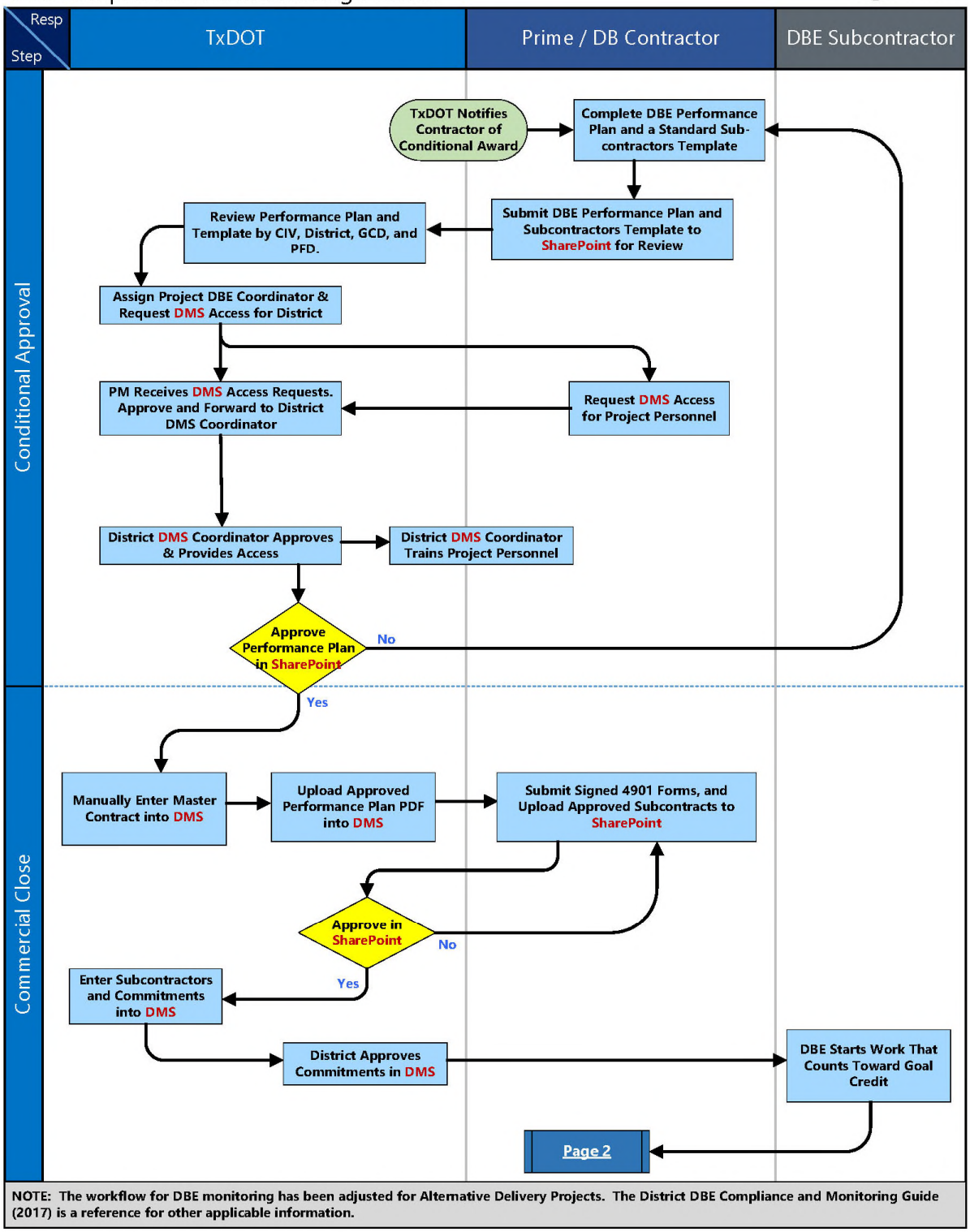

NOTE: The workflow for DBE monitoring has been adjusted for Alternative Delivery Projects. The District DBE Compliance and Monitoring Guide (2017) is a reference for other applicable information.

Appendix 7, Cont'd

Design Build Projects:
DBE Compliance and Monitoring Process

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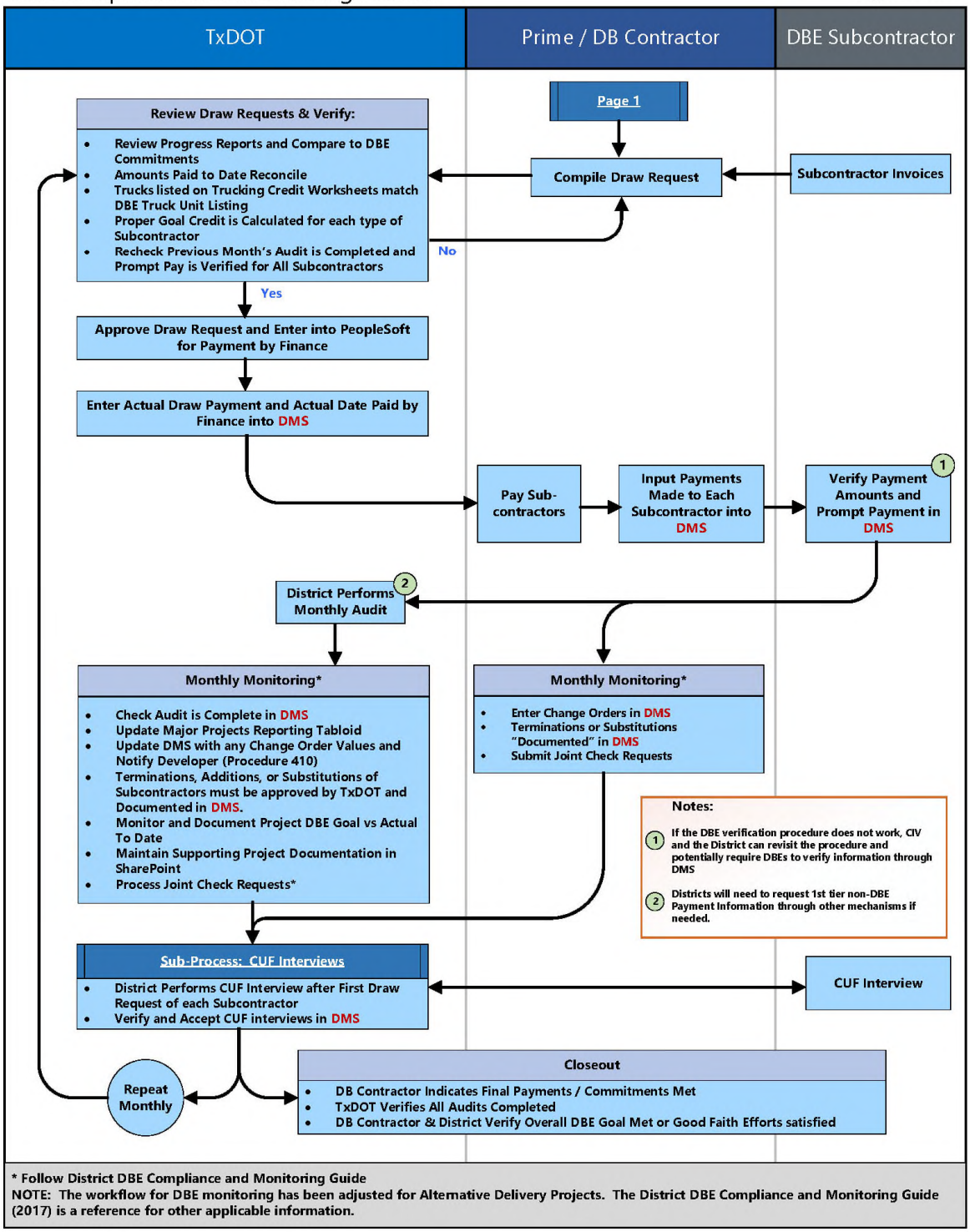

* Follow District DBE Compliance and Monitoring Guide
NOTE: The workflow for DBE monitoring has been adjusted for Alternative Delivery Projects. The District DBE Compliance and Monitoring Guide (2017) is a reference for other applicable information.

EXHIBIT 7

PREVAILING WAGE RATES

EXHIBIT 8

DB CONTRACTOR OBLIGATIONS RELATED TO PROJECT-SPECIFIC THIRD PARTY AGREEMENTS

DB Contractor will assume and execute TxDOT's responsibilities and duties, with the exception of any rights or obligations with respect to TxDOT approvals, as defined in the following Third Party Agreements:

- Municipal Maintenance Agreement, by and between the State of Texas and the City of Pharr, dated as of March 5, 2013;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of San Juan, dated as of February 12, 2013;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of McAllen, dated as of February 11, 2013; and
- Municipal Maintenance Agreement, by and between the State of Texas and the City of Pharr, dated as of February 12, 2001.

EXHIBIT 9

ALLOWANCES

The Price includes an aesthetics allowance in the amount of $600,000, which shall be used to cover the costs of aesthetics treatments and aesthetics enhancements as defined and described in Item 23 of the Design-Build Specifications and Special Provisions to Item 23. The aesthetics allowance amount shall not be used for items that are not required for standard construction, in accordance with Item 23 of the Design-Build Specifications and Special Provisions to Item 23. The aesthetics allowance shall not be used to cover the costs of any aesthetics elements of the Project that are otherwise included in the Price, as described in Item 23 of the Design-Build Specifications and Special Provisions to Item 23.

EXHIBIT 10

MAXIMUM PAYMENT SCHEDULE

EXHIBIT 11

MAXIMUM REIMBURSEMENT AMOUNTS FOR EMINENT DOMAIN ASSISTANCE

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

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

EXHIBIT 12

FORM OF BONDS

Appendix 1: Form of Performance Bond

Appendix 2: Form of Payment Bond

Appendix 3: Form of Warranty Bond

APPENDIX 1 TO EXHIBIT 12

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

I-2/I-69C INTERCHANGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for I-2/I-69C Interchange Project, duly executed and delivered as of [●] (the "DBC") on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, 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 $_____, 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 3.4.3 of the General Conditions.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, 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 DBC; 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 DBC, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If 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 DBC, 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 DBC, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBC. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBC, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages under the DBC.

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

_____
or secretary attest

By: _____
Name
Title:
Address:

NTP2 RIDER

To be attached to and
form a part of Bond
No.

Type of
Bond: **Performance Bond**

dated
effective

(MONTH-DAY-YEAR)

[DB Contractor]

, as Principal,

(PRINCIPAL)

and by , as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of $_____ [ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work effective upon issuance by the Obligee of NTP2 under the DBC].

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

APPENDIX 2 TO EXHIBIT 12

FORM OF PAYMENT BOND

[To be replaced by actual Payment Bond]

I-2/I-69C INTERCHANGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for I-2/I-69C Interchange Project, duly executed and delivered as of [●] (the "DBC") on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, 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 $[●], 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 3.4.4 of the General Conditions.

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

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

2. 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 DBC].

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

APPENDIX 3 TO EXHIBIT 12

FORM OF WARRANTY BOND

[To be replaced with actual Warranty Bond]

I-2/I-69C INTERCHANGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for I-2/I-69C Interchange Project, duly executed and delivered as of [●] (the "DBC"), on the terms and conditions set forth therein; and

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

NOW, THEREFORE, Principal and _____, a _____ ("Surety") *[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 DBC.

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 DBC;

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 DBC), through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBC, and pay to the Obligee the amount of damages as described in Paragraph 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 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 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 DBC, 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 DBC, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBC. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBC, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and

c. Liquidated Damages under the DBC.

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 [●] by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

RECITALS

A. _____, as design-build contractor ("DB Contractor"), and TxDOT are parties to that certain Design-Build Contract (the "DBC") pursuant to which DB Contractor has agreed to develop, design, and construct the I-2/I-69C Interchange Project (the "Project"). Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

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

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

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

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

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

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of DB Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not DB Contractor is joined therein. TxDOT may maintain successive actions for other defaults of

Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

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

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

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

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

4. <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 DBC, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation

provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of DB Contractor; or (iv) any defenses, set-offs or counterclaims that DB Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against DB Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by, Guarantor, DB Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of DB Contractor under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 8.7.1.3 of the General Conditions; (f) any defense based upon any act or omission of TxDOT that directly or indirectly results in or aids the discharge or release of DB Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any

provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

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

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

If to TxDOT: Texas Department of Transportation
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

With copies to: Texas Department of Transportation
Office of General Counsel
_____
Attention:_____
Telephone:_____
Facsimile:_____

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

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

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

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

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

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

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

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

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

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

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

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

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to DB Contractor under the DBC except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of DB Contractor and any other defense to formation of the DBC, and (c) defenses available to DB Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 8.7.1.3 of the General Conditions.

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

_____
a _____

By:_____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 14

CHANGE ORDER FORMS

Appendix 1: Form of Request for Change Order

Appendix 2: Form of Change Order

APPENDIX 1 TO EXHIBIT 14

FORM OF REQUEST FOR CHANGE ORDER

REQUEST FOR CHANGE ORDER NO. _____
CONTRACT NO. _____

SECTION I

Originator: _____ **Date:** _____

- **Title:** _____

Contract No: _____

- **DB Contractor Name:** _____

DESCRIPTION:

_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR CHANGE ORDER:

_____
_____

_____
DB Contractor Authorized Representative

Date: _____

SECTION II

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

Payment Activity/Project Schedule Items Added/Deducted:

Activity No.	Description	Amount
_____	_____	_____

This Request for Change Order is for (check the applicable categories below):

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

Section IIA[1]

Lump sum price is $_____

Section IIB[2]

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

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

Section IIC[3]

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

A. DB Contractor Labor (construction)
   1. Wages (unburdened) $ _____
   2. Insurance and taxes[4] (35% of A.1) $ _____

B. DB Contractor and Subcontractor Labor (professional services)
   1. Wages (unburdened) $ _____

---

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

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

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

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

	2.	Labor surcharge (145% of B.1, which includes overhead and profit)	$ _____
C.	Materials (with taxes, freight and discounts)		$ _____
D.	Equipment[5] (includes 15% overhead and profit)		$ _____
E.	Subcontracts (Force Account basis)		$ _____
F.	Utility Owner Direct Costs		$ _____
G.	Overhead and Profit		
	1.	Labor[6] (25% of A.1)	$ _____
	2.	Materials (15% of C)	$ _____
	3.	Subcontracts (5% of E)	$ _____
	4.	Utility Owner Direct Costs (5% of F)	$ _____
H.	Grand Total		$ _____

SECTION III[7]

The status of the Substantial Completion Deadline is as follows:

- ☐ Unaffected by this Request for Change Order
- ☐ Affected by (increasing) (decreasing) the Substantial Completion Deadline by _____calendar days.

The status of the Final Acceptance Deadline is as follows:

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

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

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

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

Justification for Request for Change Order with reference to the Design-Build Agreement:

_____
_____
_____

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

[5] Tabulated in accordance with the most recent version of the Rental Rate Blue Book and General Conditions Section 4.6.8.3.1
[6] For overhead, superintendence, profit, and small tools (see General Conditions Section 4.6.8.1)
[7] Revise list of Completion Deadlines if applicable to the Project

_____
_____
_____

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

(a) the above three sections represent a true and complete summary of all aspects of this Request for Change Order;

(b) the amount of time and/or compensation requested is justified as to entitlement and amount;

(c) this Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;

(d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and

(e) There has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is $1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

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

_____
DB Contractor Authorized Representative

Date: _____

SECTION IV (Reviewed/Approved by TxDOT District Engineer)

_____
TxDOT District Engineer
Date: _____

Comments:
_____
_____
_____

SECTION V (Reviewed by FHWA Project Representative, if applicable)

_____
FHWA Project Representative

Date_____

Comments:
_____
_____
_____

SECTION VI (Reviewed by TxDOT Chief Engineer, if applicable)[8]

_____
TxDOT Chief Engineer

Date_____

Comments:

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

SECTION VII (Reviewed by Chief Financial Officer, if applicable)[9]

_____
TxDOT Chief Financial Officer

Date_____

Comments:

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

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

SECTION VIII (Reviewed by TxDOT Executive Director, if applicable)[10]

_____

TxDOT Executive Director

Date_____

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

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

APPENDIX 2 TO EXHIBIT 14

FORM OF CHANGE ORDER

CHANGE ORDER NO. _____ CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

- **Title: _____**

Contract No: _____

- **DB Contractor Name: _____**

DESCRIPTION:

_____
_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON 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 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 Force Account Change Order (provide information in Section IIC below)

Section IIA[1]

Lump sum price is $_____

Section IIB[2]

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

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

Section IIC[3]

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

I. DB Contractor Labor (construction)
   3. Wages (unburdened) $ _____
   4. Insurance and taxes[4] (35% of A.1) $ _____

J. DB Contractor and Subcontractor Labor (professional services)
   3. Wages (unburdened) $ _____

---

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

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

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

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

4. Labor surcharge (145% of B.1, which includes overhead and profit) $ _____

K. Materials (with taxes, freight and discounts) $ _____

L. Equipment[5] (includes 15% overhead and profit) $ _____

M. Subcontracts (Force Account basis) $ _____

N. Utility Owner Direct Costs $ _____

O. Overhead and Profit
5. Construction Labor[6] (25% of A.1) $ _____
6. Materials (15% of C) $ _____
7. Subcontracts (5% of E) $ _____
8. Utility Owner Direct Costs (5% of F) $ _____

P. Not to Exceed Amount $ _____

SECTION III[7]

The status of the Substantial Completion Deadline is as follows:

- ☐ Unaffected by this Change Order
- ☐ Affected by (increasing) (decreasing) the Substantial Completion Deadline by _____calendar days.

The status of the Final Acceptance Deadline is as follows:

- ☐ Unaffected by this Change Order
- ☐ Affected by (increasing) (decreasing) the Final Acceptance Deadline by _____calendar days after Substantial Completion.

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

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

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

Justification for Change Order with reference to the Contract Documents:
_____
_____
_____

Change order required under Capital Maintenance Contract? Yes_____/No_____
If yes, state reason:
_____
_____

[5] Tabulated in accordance with the most recent version of the Rental Rate Blue Book and General Conditions Section 4.6.8.3.1
[6] For overhead, superintendence, profit, and small tools (see General Conditions Section 4.6.8.1)
[7] Revise list of Completion Deadlines if applicable to the Project

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

(a) the above three sections represent a true and complete summary of all aspects of this Change Order;

(b) the amount of time and/or compensation requested is justified as to entitlement and amount;

(c) this Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;

(d) the cost and pricing data forming the basis for the Change Order is complete, accurate and current; and

(e) There has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is $1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

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

_____

DB Contractor Authorized Representative

Date: _____

SECTION IV (Reviewed by TxDOT District Engineer)

_____

TxDOT District Engineer
Date: _____

Comments:

_____

_____

_____

SECTION V (Reviewed by FHWA Project Representative, if applicable)

_____
FHWA Project Representative

Date_____

Comments:

_____
_____
_____

SECTION VI (Reviewed by TxDOT Chief Engineer, if applicable)[8]

_____
TxDOT Chief Engineer

Date_____

SECTION VII (Reviewed by Chief Financial Officer, if applicable)[9]

_____
TxDOT Chief Financial Officer

Date_____

Comments:

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

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

SECTION VII (Reviewed by TxDOT Executive Director, if applicable)[10]

_____

TxDOT Executive Director

Date_____

Comments:
[*Include if signature not required*] [Not Applicable - This Change Order is less than $10 million and does not exceed the $30 million cumulative threshold. Upon concurrence by the Project Finance, Debt and Strategic Contracts Division Director and General Counsel Division, the District Engineer will have final approval of the Change Order for execution.]_____
_____
_____

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

EXHIBIT 15

LIQUIDATED DAMAGES FOR LANE CLOSURES

The Liquidated Damages for Lane Closures for which DB Contractor may be liable pursuant to Section 8.6.2 of the General Conditions and Section 7.3 of the DBA are established as set forth in Tables 15-1 to 15-3. The Liquidated Damages for Lane Closures set forth below shall apply to the extent such Lane Closures are not permitted as described in Design-Build Special Provision to Item 26, Section 26.2.2.2.

Table 15-1: Liquidated Damages for Lane Closures in Each Direction of I-2 Mainlanes

I-2 Mainlanes Closures in each direction	**Time Period A** Liquidated Damages Per Hour	**Time Period B** Liquidated Damages Per Hour	**Time Period C** Liquidated Damages Per Hour
One Lane Closed	N/A	N/A	N/A
Two Lanes Closed	$34,000	$9,000	$2,000
Three Lanes Closed – Full Freeway Closure	$67,000	$18,000	$4,000

Table 15-2: Liquidated Damages for Lane Closures in Each Direction of I-69C Mainlanes

I-69C Mainlanes Closures in each direction	**Time Period A** Liquidated Damages Per Hour	**Time Period B** Liquidated Damages Per Hour	**Time Period C** Liquidated Damages Per Hour
One Lane Closed	$26,000	$7,000	$1,500
Two or more Lanes Closed	$52,000	$14,000	$3,000

Table 15-3: Liquidated Damages for Lane Closures on I-2/I-69C Interchange Direct Connector Ramps

I-2/I-69C Interchange Direct Connector Ramps	**Time Period A** Liquidated Damages Per Hour	**Time Period B** Liquidated Damages Per Hour	**Time Period C** Liquidated Damages Per Hour
One Lane Closed – Full Closure	$26,000	$7,000	$1,500

EXHIBIT 16

NONCOMPLIANCE POINTS PROVISIONS

1. Noncompliance Points System

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

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

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

2. Assessment Notification and Cure Process

2.1 Electronic Database and Notification Initiated by DB Contractor

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

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

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

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

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

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

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

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

(h) Indicate status of cure, whether the item is open, cured (by DB Contractor), verified and closed (by the PSQAF or IQF), rejected by TxDOT, or disputed by DB Contractor;

(i) Indicate the date and exact time of cure (if any);

(j) Provide either as an attachment or as a cite, documentation otherwise submitted to TxDOT of the cure (if any); and

(k) Provide such other information as may be required by the electronic database.

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

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

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

2.1.5. Each Project Schedule Update required to be submitted to TxDOT pursuant to Section 8.5.1.2.5 of the General Conditions shall include a report of all Noncompliance Events occurring during the preceding month and on the Project to date. The Project Schedule Update shall (a) include all information required to be entered in the electronic database as described in Section 2.1.1, (b) identify whether each Noncompliance Event was initiated by DB Contractor, the PSQAF, IQF or TxDOT, (c) identify for each Noncompliance Event for which a cure is available, whether the cure has occurred, and whether the PSQAF or IQF has certified acceptance of the cure, and (d) if any Noncompliance Event is in dispute, identify the anticipated date of its resolution.

2.2 Notification Initiated by TxDOT

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

2.3 NCE Cure Periods

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

2.3.2. The NCE Cure Periods set forth in the Noncompliance Events Table shall be the only cure period for DB Contractor applicable to the Noncompliance Events. If any NCE Cure Period set forth in the Noncompliance Events Table differs from a cure period set forth in Section 8.7.1.2 of the General Conditions that might otherwise apply to the Noncompliance Event,

such NCE Cure Period set forth in the Noncompliance Events Table shall control for purposes of the assessment of Noncompliance Points under this Exhibit 16.

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

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

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

2.4 Notification of Cure

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

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

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

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

2.4.5 Should DB Contractor prevent, frustrate, or impede TxDOT's ability to make a determination regarding the cure of a Noncompliance Event, then such action shall be considered as covering work and shall be subject to Section 5.10.1.3 of the General Conditions, and DB Contractor shall not be entitled to any increase in the Price or to any time extension for delays due to uncovering the Work.

3. Assessment of Noncompliance Points

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

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

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

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

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

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

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

4. Trigger Points for Persistent DB Contractor Default

4.1 A Persistent DB Contractor Default, entitling TxDOT to require submittal of DB Contractor's remedial plan under Section 8 of this Exhibit 16, shall exist any time prior to Substantial Completion when (a) 100 or more Noncompliance Points have been assessed in any consecutive 365-day period; or (b) 250 or more Noncompliance Points, cured or uncured, have been assessed in any consecutive 1,095-day period. For the purpose of this determination all assessed Noncompliance Points shall be included, regardless of whether the breaches or failures giving rise to the Noncompliance Event were cured.

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

5. Special Provisions for Certain Noncompliance Events

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

5.2 If any such Noncompliance Event occurs, then:

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

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

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

6. Provisions Regarding Dispute Resolution

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

6.2 DB Contractor may object to TxDOT's rejection of any certification of completion of a cure given pursuant to Section 2.4.3 by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its notice of rejection.

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

6.4 If DB Contractor gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the procedures for resolving Disputes in the DBC, including the Disputes Review Panel Process, Informal Resolution Procedures and Dispute Resolution Procedures.

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

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

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

7. Noncompliance Charges

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

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

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

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

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

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

8.2 Upon the occurrence of a Persistent DB Contractor Default, DB Contractor shall, within 45 days after notice of the Persistent DB Contractor Default, prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by DB Contractor to improve its performance and reduce (a) DB Contractor's cumulative

number of Noncompliance Points assessed under Section 4 to the point that such Persistent DB Contractor Default is cured and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent. TxDOT may require that such actions include improving DB Contractor's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of Subcontractors, and delivering security to TxDOT. For the avoidance of doubt, the achievement by DB Contractor of the requirements set forth above shall not relieve DB Contractor from the obligation to submit and act upon a remedial plan.

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

8.4 DB Contractor's failure to deliver to TxDOT the required remedial plan within such 45-day period shall constitute a material DB Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material DB Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a 30-day cure period. If either of the events remains uncured within the period specified in this Section 8.4, TxDOT may declare that an Event of Default has occurred in accordance with Section 8.7.1 of the General Conditions.

9. General Conditions Amendments

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

9.1 A new subsection (r) is hereby added to Section 8.7.1.1 of the General Conditions as follows:

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

9.2 New subsections (f) and (g) are hereby added to Section 8.7.1.2 of the General Conditions:

> (f) Respecting a DB Contractor Default under clause (r)(i) of Section 8.7.1.1, a period of five days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default;
>
> (g) Respecting a DB Contractor Default under clause (r)(ii) of Section 8.7.1.1, a period of 30 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default.

9.3 Section 8.7.1.3 of the General Conditions is hereby amended as set forth below:

> 8.7.1.3 If any DB Contractor Default described in Section 8.7.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 8.7.1.2, or if the circumstances described in Section 8.4 of Exhibit 16 to the DBA exist, TxDOT may declare that an "**Event of Default**" has occurred and notify DB

Contractor to discontinue the Maintenance Services. The declaration of an Event of Default shall be in writing and given to DB Contractor and the Surety.

Noncompliance Events Table						
Ref No.	**Main Heading**	**Sub-heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**NCE Cure Period**
1	General	Records and Documents	Make all books, records and documents available for inspection by TxDOT or its Authorized Representatives as required by the Contract Documents, including Section 5.13 of the General Conditions.	1	A	1 Day
2	General	Insurance Coverage	Provide TxDOT with a copy of any insurance certificate or evidence of payment of any premium all in accordance with Section 3.5.2.3 of the General Conditions and Section 5.3 of the DBA.	2	B	7 Days
3	General	Implement Directive Letter	Proceed immediately to implement the requirements of a Directive Letter in accordance with Section 4.6.1.2 of the General Conditions.	3	A	7 Days
4	General	Key Personnel	Meet the requirements for Key Personnel set forth in the Contract Documents, with the exception of Key Personnel changes and unavailability, which are subject to the requirements of Section 7.4 of the DBA.	3	B	1 Day
5	General	Noncompliance Events	Notify TxDOT of the occurrence of any Noncompliance Event specified in this Noncompliance Events Table and as required by the Contract Documents, including this Exhibit 16.	2	C	None
6	General	Maintain a Noncompliance Event Database	Maintain a fully functional and up to date Noncompliance Events Database accessible to TxDOT in accordance with this Exhibit 16.	2	A	7 Days
7	General	TxDOT Review of Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity, as required by the Contract Documents, including Section 5.2.6 of the General Conditions and Section 3 of the DBA.	1	A	7 Days
8	General	Provide Safe and Unrestricted access to the Project	Provide TxDOT or its Authorized Representative with safe and unrestricted access to the Project in accordance with Section 5.10.1.2.5 of the General Conditions.	1	B	1 Day
9	General	Inspections	Provide proper notice to TxDOT before proceeding with the Work, or failure to follow a requirement relating to DB Contractor hold point as required by the Contract Documents, including Attachment 4-2 of the General Conditions and in accordance to the QMP.	1	C	None
10	General	Inspections	Comply with the requirements of the Quality Management Plan as regards the timing, quantities represented or frequency of testing as required by the Contract Documents, including Section 4.3 of the General Conditions.	2	B	2 Days

Noncompliance Events Table						
Ref No.	**Main Heading**	**Sub-heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**NCE Cure Period**
11	General	Submittals	Prepare, implement, maintain, update or timely deliver, or otherwise be compliant with any Submittal requirement within the Contract Documents. This Noncompliance Event shall not apply to failure to timely deliver a Submittal described more specifically in another line item in this Exhibit 16 (for which Noncompliance Points shall be assessed in accordance with the particular line item).	1	B	7 Days
12	General	Submittals	Resolve TxDOT Submittal comments or objections by modifying a Submittal, or failure to provide a written justification as to why modification to a Submittal based on a comment or objection by TxDOT is not required, as required by the Contract Documents including Section 5.2 of the General Conditions.	4	C	None
13	General	Submittals	Maintain an accurate and complete daily log of all inspections performed, or failure to submit a daily QA inspection, test results, QC inspection report, process control material sampling/test results, or control chart, as required by the Contract Documents, including Section 4.3.2 of the General Conditions and Attachment 4-2 to the General Conditions.	1	A	1 Day
14	Project Management	Project Management Plan	Have the relevant part of the Project Management Plan approved by TxDOT prior to commencement of any Work governed by that portion of the Project Management Plan, or failure to comply, or cause a Subcontractor to comply, with a requirement, process, or procedure in the Project Management Plan, as required by the Contract Documents including Section 4.2 of the General Conditions	2	B	7 Days
15	Project Management	Document Management System	Establish and maintain a document management system as required by and in accordance with the Contract Documents, including Section 4.2.1.2 of the General Conditions.	2	A	7 Days
16	Project Management	Submit or Revise PMP when Required	Develop and submit a part of, or change or addition or revision to, the PMP at the time required all in accordance to Section 4.2 of the General Conditions.	1	B	7 Days
17	Project Management	Audit PMP when Required	Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Attachments 4-1 and 4-2 to the General Conditions.	1	B	7 Days
18	Project Management	Safety and Health Plan	Observe a requirement of the Safety and Health Plan, or to carry out any Work in contravention of (or in absence of) the Safety and Health Plan or in a manner that represents a hazard to project workers or the general public, as required by the Contract Documents, including Section 4.2.3 of the General Conditions.	3	C	None

Noncompliance Events Table						
Ref No.	**Main Heading**	**Sub-heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**NCE Cure Period**
19	Project Management	Comply with Progress Meetings	Comply with the requirements for any Project meeting, including for meeting attendance, proper issuance of an agenda, draft or final meeting minutes, or to accurately integrate TxDOT comments with the meeting minutes as required and in accordance with the Contract Documents, including Section 11.2 of the DB Standard Specifications.	1	A	2 Days
20	Contracting and Labor Practices	Adopt Policies of Ethical Standards	Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 8.2.5 of the General Conditions.	2	B	14 Days
21	Contracting and Labor Practices	Comply with DBE Reporting Requirements	Comply with the reporting requirements or any requirement of the DBE Performance Plan in accordance with Section 3 of the General Conditions and Exhibit 6 to the DBA.	2	B	14 Days
22	Reporting	Federal Reporting Requirements	Report compliance with, or to comply with the reporting requirements of, any of the Federal Requirements, as required by the Contract Documents including Section 3.2 of the General Conditions.	2	B	30 Days
13	Reporting	DB Contractor Reporting Requirements	Comply with any of the reporting, recording keeping, or documentation requirements, including quality reporting requirements, monthly and annual reporting, or any Subcontractor reporting requirements, as required by and in accordance with the Contract Documents, including Section 9.3 of the General Conditions.	1	B	14 Days
24	Invoicing	Invoicing and Draw Request	Submit a Draw Request, with all required information as required by the Contract Documents, including Section 9.3 of the General Conditions.	2	A	7 Days
25	Change Orders	Cost and Schedule Proposal	Submit a timely and sufficient cost and schedule proposal in response to a Request for a Change Proposal, as required by the Contract Documents including Section 4.6.1.2 of the General Conditions, or as otherwise agreed to by TxDOT in writing.	2	A	7 Days
26	Environmental Compliance	Comply with Dust Control Requirements	Take measures to minimize or mitigate the effects of dust in accordance with Section 12.4 of the Design-Build Specifications.	1	B	4 Hours
27	Environmental Compliance	Maintain and Update CEPP	Maintain and update the complete Comprehensive Environmental Protection Program (CEPP) as required by Section 12 of the Design Build Specifications and Section 4.2.4 of the General Conditions.	2	A	7 Days
28	Environmental Compliance	Notify TxDOT of Hazardous Materials	Notify TxDOT of Hazardous Materials or as Recognized Environmental Condition as set forth in Section 12.5 of the DB Standard Specifications.	2	B	1 Day
29	Utility Adjustments	Maintain Utility Service	Maintain a utility service fully operational in accordance with Section 14.4.10 of the Design-Build Specifications.	3	A	14 Days

Noncompliance Events Table						
Ref No.	**Main Heading**	**Sub-heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**NCE Cure Period**
30	Utility Adjustments	Maintain Records for Utility Adjustments	Maintain a complete set of records for each utility Adjustment in accordance with Section 14.1.4 of the DB Standard Specifications.	1	B	14 Days
31	Maintenance Management System	Maintenance Management System	Establish, use and maintain or provide information updates to the Maintenance Management System in accordance to the Contract Documents, including Section 27.2.1 of the DB Standard Specifications	1	A	2 Days
32	Maintenance Services	Ensure Timely Hazard Mitigation of Category 1 Defect	Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications.	3	B	Defect Remedy Period
33	Maintenance Services	Ensure Timely Hazard Mitigation of Category 1 Defect	Perform a permanent remedy to a Category 1 Defect in accordance with Section 27.3 of the Design Build Specifications.	3	B	Defect Remedy Period
34	Maintenance Services	Ensure Timely Permanent Remedy of Category 2 Defect	Address a Category 2 Defect such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications.	1	B	Defect Remedy Period
35	Maintenance Services	Prevent a Category 1 Defect from Deteriorating	Prevent a Category 2 Defect from deteriorating to become a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications.	4	C	None
36	Maintenance Services	Comply with Incident Management Plan	Comply with a requirement in respect of the Incident and Emergency Management Plan (IEMP) as required by and in accordance with the Contract Documents, including Section 27.6.1 of the Design-Build Specifications	4	B	7 Days
37	Maintenance Services	Inspections	Conduct any scheduled inspections, or to perform General Inspections at the required frequency, as required by and in accordance with the Contract Documents, including Section 27.4 of the Design-Build Specifications.	2	B	3 Days
38	Maintenance Services	Maintenance Records	Create a Maintenance Record as required by and in accordance with the Contract Documents, including Section 27 of the Design-Build Specifications	1	A	2 Days
39	Traffic Management	Submit and Update a Traffic Management Plan	Prepare, submit to TxDOT for its approval or keep updated a Traffic Management Plan in accordance to Section 4.2.10 of the General Conditions.	4	B	7 Days
40	Traffic Management	Lane Closure	Provide a Lane Closure notice, or report to TxDOT no later than 24 hours after its occurrence, any Lane Closure together with its duration and any applicable Liquidated Damages, as required by the Contract Documents, and Section 26.2.2 of the DB Standard Specifications.	2	B	1 Days

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

EXHIBIT 17

KEY SUBCONTRACTORS

[*To Be Inserted From Proposal*]

EXHIBIT 18

KEY PERSONNEL

POSITIONS	INDIVIDUAL
Project Manager	
Construction Manager	
Design Manager	
Lead Maintenance of Traffic (MOT) Design Engineer	
Independent Quality Firm Manager	
Professional Services Quality Assurance Manager	
Maintenance Manager	
Utility Manager	
Lead Roadway Design Engineer	
Lead Structural Engineer	
Lead MOT Implementation Manager	
Safety Manager	

EXHIBIT 19

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representatives: *(To be provided by TxDOT)*

DB Contractor's Authorized Representatives: *(To be provided by DB Contractor)*

EXHIBIT 20

DISPUTES RESOLUTION REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

4. **Subsequent Proceedings.**

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

    b. **Admissibility of Disputes Resolution Proceedings**. The 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.

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

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

7. **Interest.**

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

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

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

EXHIBIT 21

OPERATING PROCEDURES

1. GENERAL

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

These procedures are for the purpose of providing guidelines for operation of the DRP. They are based on the DBC and current practice of Dispute Review Panels, and are intended to be flexible to meet circumstances that may arise during the life of the Project.

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

The parties should not default in their normal responsibility to settle issues by indiscriminately referring disputes to the DRP. The DRP will encourage the parties to resolve issues without resorting to the Dispute Review Panel procedure.

As provided in Section 4.9 of the General Conditions, except for their participation in the DRP's activities, neither the DB Contractor nor TxDOT will solicit or receive advice or consultation on job site construction from the DRP or its members on matters dealing with the conduct of the work or resolution of problems. During hearings and site visits, no Panel member will express any opinion concerning the merit of any facet of a controversy or a potential dispute.

The parties will furnish to each of the Panel members all documents necessary for the DRP to perform its functions including regular written reports, baseline CPM and updates and other relevant data.

The DRP encourages the use of e-mail to transmit agenda, reports and documents of reasonable size.

It must be emphasized and firmly understood that individual Board members are not the "representative of" or "advocate for" the party which nominated them. The entire DRP must function as an objective, impartial, and independent body at all times. In order to avoid any suggestion of partiality, there must be no individual communication concerning the project between Panel members and employees of the DB Contractor or TxDOT or of their agents and/or sub-contractors during the life of the Project. The Parties will direct any matters needing attention between meetings of the DRP to the Chairman of the DRP who shall be the only person to deal directly with the designated contact persons for the TxDOT and the DB Contractor.

The DRP will at all times be impartial, unbiased and neutral in all of its actions. There will be no ex parte communication, rendering of advice or other consultations between any Panel member and TxDOT or any DB Contractor-Related Entities.

2. FREQUENCY OF MEETINGS

The DRP will meet initially at 3-month intervals and at such other times as requested by the Parties. If conditions warrant, the Chairman, in consultation with the Parties, may reduce or increase the time between meetings to better serve the Parties. Factors

to be considered include work progress, occurrence of unusual events and the number and complexity of potential Disputes. The ensuing DRP meeting will be scheduled at each DRP regular meeting.

The DRP requests cooperation of the Parties to the end that no changes be requested to scheduled meeting dates unless absolutely necessary and unavoidable.

In the event that a member of the DRP is unable to attend a scheduled meeting, the Panel Chairperson will attempt to reschedule the meeting. Should rescheduling not be possible, the other two members will attend the meeting without the third.

3. AGENDA FOR MEETINGS

The Panel Chairperson will develop an agenda for each meeting and submit the draft agenda to the Parties 14 calendar days prior to the scheduled meeting date for review and suggested changes.

The Chairman will send the approved agenda, a memo confirming the DRP meeting and the DRP member travel schedules to the Parties and the DRP members.

The agenda will provide an opportunity for the DRP to hear a round table discussion by the Parties on the status of the work, a brief discussion of any issues and include ample time for a site visit.

At the conclusion of the meeting, the DRP will conduct a field observation of active sections of the Work accompanied by representatives of both the DB Contractor and TxDOT. The Parties will point out all areas of the Project that are subject to a potential issue.

4. MINUTES OF MEETINGS

The Parties may request the Panel Chairperson to prepare a summary of regular meetings, and if no request is made, the Panel Chairperson at his or her discretion may prepare a summary of regular meetings. If minutes are prepared, the Minutes will be circulated to all parties for comments, additions and corrections. Minutes as so amended will be adopted at the next meeting.

5. PROCEDURES FOR DISPUTE HEARINGS

5.1 Procedure to Take a Dispute to the DRP

After the parties have diligently attempted to negotiate to settle a Dispute pursuant to Section 4.9.5 of the General Conditions, either Party may refer it to the DRP. After all requirements of the DBC are met, the referring Party transmits a written notice meeting the requirements of Section 4.9.5.3 of the General Conditions to the Panel and the other Party.

The scope of the hearing and subsequent recommendation can be merit (entitlement) only, merit with guidelines for quantum if merit is found, or merit with quantum amount if merit is found. DRPs usually hear entitlement and, if appropriate, give guidelines for quantum. If the Parties cannot then negotiate quantum, the DRP considers quantum and issues an appropriate recommendation following a second hearing.

All hearings will be held at the job site except as agreed by the Parties.

The Panel, in a meeting or conference call with the Parties, will determine whether the hearing should be in conjunction with the next meeting or at a specially scheduled meeting, and agree on a date and time required for documentation and hearing preparation. Then the Panel Chairperson, in conference with the parties, will set dates for completion of each of the documents described below.

Pursuant to Section 4.9.8 of the General Conditions, discovery shall only be permitted at the discretion of the Panel.

The parties may submit documentary evidence for the hearing, which shall be exchanged by the Parties in accordance with Section 4.9.8 of the General Conditions. The Panel may also request that the Parties jointly prepare a statement of dispute and stipulated facts and a common reference document.

1. Statement of Dispute and Stipulated Facts

An agreed simple statement of the dispute on a single page ideally limited to one paragraph.

2. Common Reference Document (CRD)

A common set of exhibits prepared jointly by the parties to facilitate DRP review and understanding of the referring Party's written notice and other Party's response, and to minimize confusion during the hearing. The CRD should include stipulations to as many facts, dates, quantities, etc., as possible. The CRD should include all documents that either Party wants to use in support of their position. The Parties are encouraged to include visual aids, exhibits, charts or summaries of documents in order to facilitate the DRP's understanding of the issues, and to avoid the submission of voluminous records that are not necessary for the DRP's understanding and consideration.

To the greatest extent possible, the Parties should assemble all documents in chronological order. Large documents (submittals, daily records, photographs, etc.) may be included as appendices. It facilitates DRP review and is helpful during the hearing if the documents are assembled in subsections with a descriptive tab on each, e.g.:

A. Correspondence, in chronological order.

B. Contract Documents: Portions of specifications, drawings, geotechnical reports, change orders, etc. that are pertinent to the dispute.

C. Job Records: Pertinent shift, daily and weekly reports, diary pages, submittals, schedules, drawings, pictures, etc.

D. Reports: Any reports prepared specifically for the dispute by outside parties, consultants, etc.

E. Other

A master index should be prepared and all pages should be numbered sequentially (e.g., Bates stamp) in the lower right hand corner.

Other than the list of representatives described below, the Parties may not send the DRP any further exhibits or correspondence regarding the Dispute, without prior approval, between the time of submittal of the above pre-hearing documentation and the hearing.

5.2 List of Representatives

At least two weeks prior to the hearing date, the Parties exchange and submit to the DRP a list of the representatives and, if permitted by the Panel, testifying witnesses that each party intends to have present at the hearing. Only a limited number of representatives from each party should attend the hearing. The list of representatives and, if permitted, witnesses should contain the following information: the person's name, title, professional affiliation, and, if the person is a testifying witness, a brief summary of the matters that the person will address.

5.3 Presentation of Dispute

The hearing will be informal. The DRP will conduct the proceedings. The referring Party will make an initial presentation of its case, followed by the respondent. Then, one or more rebuttals to any assertion by the other party may be presented until the Panel determines that all aspects of the Dispute have been adequately covered. The Panel members may ask questions, request clarification, or ask for additional data. In large or complex cases, the hearing may be continued as necessary in order to consider and fully understand all the evidence presented by both parties.

One person for each party should be designated as the primary presenter, although other individuals may give portions of the presentations as required.

The Board members will control the hearings and guide the discussion of issues by questioning the Parties or focusing their presentation in order to expeditiously obtain all information that the DRP deems necessary to make its findings and recommendations.

Only one person, who has been recognized by the Panel Chairperson, may speak at a time. The Parties should address the Panel members, not each other. Except in summation, repetitious discussion is discouraged.

No questions or interruptions by one party will be allowed during the other party's presentation. Dialogue between the parties will be allowed only in exceptional situations and with the approval of the Panel Chairperson. At its discretion, the DRP may permit questioning of one party by another party if it facilitates the clarification of an issue. The Panel Chairperson will control and limit such questioning and response.

Panel members may interrupt to ask presenters to repeat statements that were not understood and may request pauses when presentations are too fast for adequate note taking. The DRP may also interrupt presentations when necessary to clarify a point or receive an explanation, which might be lost if left to a later time. The DRP may ask for additional factual documentation.

Documents and/or exhibits that were not included with the pre-hearing submissions will usually be inadmissible. If the DRP decides to permit their introduction, the hearing will be extended as necessary for the other Party to review the new information and to consider its position and present a rebuttal. If necessary the hearing may be adjourned and reconvened at a future date.

In exceptional cases a hearing transcript by a court reporter may be utilized if requested by either Party and if the DRP deems that a transcript will expedite its deliberations. No audio or video recording will be permitted. In the event that only one party requests a court reporter, that Party shall bear the cost, including the furnishing of one copy of the transcript to the non-requesting Party and to each Panel member. Otherwise the cost shall be shared equally.

Paper reproductions of overheads and computer screens such as Power Point, shall be provided to the DRP members prior to their use in the hearing.

5.4 Redundant Evidence and Oral Statements

The DRP may limit the presentation of documents or oral statements when it deems them to be irrelevant or redundant, or when it determines such material is of no added value to the DRP in understanding the facts and circumstances of the dispute and arriving at its findings and recommendations.

5.5 Disputes Involving Subcontractors

The DRP will not consider Disputes between Subcontractors and the DB Contractor unless they are actionable by the DB Contractor against TxDOT and actually "passed-through" to TxDOT.

The DB Contractor must clearly identify the portions of the Dispute in all pre-hearing submissions that involve a Subcontractor(s) and the identity of the Subcontractor(s). The DB Contractor must ensure that all Subcontractor documents are timely exchanged and submitted to the DRP as part of the DB Contractor's package, all as above described.

At any hearing regarding a Dispute that includes one or more Subcontractor Disputes, the DB Contractor will have a senior Subcontractor representative with direct and actual knowledge of the Dispute present. Such representative may assist in or make the presentation of the Subcontractor issues and answer questions.

5.6 DRP Deliberations

After the Dispute hearing is concluded, the DRP will meet to formulate findings and its recommendations for resolution of the Dispute. All deliberations will be conducted in private and will be confidential. The DRP may request post-hearing submittals including exhibits, job records, and written responses to DRP post-hearing questions directed in writing to either of the Parties. All such post-hearing submittals and written answers to directed questions sent to the DRP are to be simultaneously sent to the other Party.

5.7 Recommendation

Written recommendations will be forwarded to the Parties in accordance with the provisions of Section 4.9.11 of the General Conditions.

The DRP will make every reasonable attempt to formulate a unanimous recommendation but in the event that is not possible, a minority or dissenting recommendation will be prepared and included with the majority recommendation. All DRP recommendations will include information and expanded rationales to aid the parties in fully understanding them.

If requested by either Party following delivery of the recommendation, the DRP shall meet with TxDOT and the DB Contractor to provide additional clarification of its recommendation.

Pursuant to Section 4.9.13 of the General Conditions, DRP recommendations will not be admissible as evidence in any subsequent dispute resolution proceedings.

6. OTHER

The DRP reserves the right, with the agreement of the Parties, to revise the above procedures depending upon the circumstances of any particular Dispute.

EXHIBIT 22

DISPUTES REVIEW PANEL AGREEMENT

THIS DISPUTES REVIEW PANEL AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, among: the Texas Department of Transportation, hereinafter referred to as "TxDOT", _____, hereinafter referred to as "DB Contractor", and the three members of the Disputes Review Panel, hereinafter referred to as the "Panel", consisting of _____, _____, and _____ hereinafter referred to as the "Panel Chairperson". TxDOT, DB Contractor, and the members of the Panel may be referred to individually herein as a "Party" or collectively as the "Parties". All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated _____ between TxDOT and DB Contractor (the "DBC").

WHEREAS, TxDOT is now engaged in the development of the I-2/I-69C Interchange Project ("Project"); and

WHEREAS, the DBC provides for DB Contractor to develop, design and build the Project and further provides for the establishment and operation of a Panel to assist in resolving certain disputes, claims and other controversies as specified therein; and

WHEREAS, the Panel is comprised of three members, one who was selected by TxDOT, one who was selected by DB Contractor, and the Panel Chairperson who was selected by the first two members and approved by TxDOT and DB Contractor.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, or attached and incorporated and made a part hereof, the Parties agree as follows:

I. DESCRIPTION OF WORK

The DBC provides for establishment of the Panel to assist in the resolution of Disputes between TxDOT and DB Contractor. The purpose of the Panel is to fairly and impartially consider the Disputes placed before it, and to provide written Panel Recommendations to both TxDOT and DB Contractor, for resolution of these Disputes. The members of the Panel shall perform the services necessary to participate on the Panel in accordance with the scope of work set forth herein.

II. SCOPE OF SERVICES

The scope of services of the Panel includes the following.

A. Adopting Operating Procedures:

At the first regular meeting after the effective date of this Agreement, the Panel will meet with DB Contractor and TxDOT to establish the rules and procedures ("Operating Procedures") which will govern the Panel's participation in the Project as set forth in the General Conditions Section 4.9. In establishing the Operating Procedures, the Parties shall first consider the Form of Operating Procedures included in Appendix _ to the Design-Build Agreement and make any revisions necessary to the effective operation of the Panel and efficient resolution of Disputes. The agreed upon Operating Procedures shall not conflict with any provisions of the DBC. The Panel may establish any internal rules and procedures not covered in the DBC.

B. Conducting Regular Progress Meetings:

All regular meetings are expected to be held at or near the Project site. The regular progress meetings shall be held no less frequently than quarterly through Final Acceptance, although TxDOT and DB Contractor may request more frequent meetings, consistent with the construction activities and the matters under consideration and Dispute. Each meeting is expected to consist of a round table discussion and a field inspection of the work being performed on the Project. A member of TxDOT's staff is expected to conduct the round table discussion, and the round table discussion attendees are expected to include selected personnel from TxDOT and DB Contractor. The agenda for each meeting will be set by the Panel in accordance with Section 4.9.3.2 of the General Conditions.

C. Advisory Opinions:

If requested by TxDOT and DB Contractor, the Panel shall provide TxDOT and DB Contractor with an oral advisory opinion after concurrent submissions by TxDOT and DB Contractor of brief written summaries of the issue(s) in Dispute, pertinent facts and circumstances, and relevant provisions of the Contract Documents. The submissions from TxDOT and DB Contractor shall meet the requirements of and advisory opinions shall be provided in accordance with Section 4.9.6 of the General Conditions and any applicable provisions of the Operating Procedures.

D. Conducting Hearings on Disputes:

Upon receipt by the Panel of a Dispute, either from TxDOT or DB Contractor, the Panel shall convene a hearing to review and consider the Dispute in accordance with the procedures set forth in Section 4.9 of the General Conditions of the DBC and the Operating Procedures. Both TxDOT and DB Contractor shall be given a full and adequate opportunity to present their evidence at these hearings in accordance with Section 4.9 of the General Conditions of the DBC.

It is expressly understood that all Panel members are to act impartially and independently in the consideration of facts and conditions surrounding any dispute. Ex parte contact with representatives of TxDOT or DB Contractor is prohibited and is grounds for removal of the Panel member from the Panel.

III. PANEL RESPONSIBILITIES

The Panel is organized in accordance with Section 4.9 of the General Conditions of the DBC for the purposes described therein. A copy of Section 4.9 is attached hereto as Appendix 1 and is incorporated by reference herein. The Panel is intended to provide recommendations for resolving disputes, claims and other controversies between TxDOT and DB Contractor, arising under the DBC. The Panel will conduct hearings regarding Disputes under the DBC, including determining compensation payable with respect to such Disputes. If requested by TxDOT and DB Contractor, the Panel may provide Panel Recommendations on merit only, with compensation to be determined later if TxDOT and DB Contractor are unable to resolve the Dispute.

The Panel Recommendations shall be based on the pertinent provisions of the General Conditions and other Contract Documents and the facts and circumstances involved in the Dispute. Panel Recommendations shall be furnished in writing to TxDOT and DB Contractor.

Each Panel member represents, warrants and covenants on his/her behalf that he/she:

(a) Has been provided with a copy of the DBC and other Contract Documents and has taken the time necessary to become familiar with and understand Section 4.9 of the General Conditions;

(b) Satisfies the requirements for Panel membership set forth in Section 4.9 of the General Conditions;

(c) Shall not seek or accept other employment by TxDOT, any firm under contract with TxDOT, the DB Contractor, any Guarantor or any DB Contractor-Related Entity during the term of this Agreement or within one calendar year after his/her termination, withdrawal, or the termination of this Agreement;

(d) Shall not discuss employment, nor make any agreement regarding employment with TxDOT, the DB Contractor, any Guarantor or any DB Contractor-Related Entity during the term of this Agreement;

(e) Shall not take any other action that would result in disqualification from service as a Panel member; and

(f) Shall immediately notify TxDOT and the DB Contractor if circumstances arise which impair his/her qualification as a Panel member.

The Panel members shall conduct all Panel business in accordance with this Agreement and Section 4.9 of the General Conditions. In the event of any conflict between this Agreement and Section 4.9 of the General Conditions, Section 4.9 of the General Conditions shall control.

All Panel members are to act independently in the consideration of facts and conditions surrounding any Dispute. The Panel members acknowledge that neither TxDOT nor DB Contractor are permitted to seek the Panel members' advice or consultation, ex parte, although either TxDOT or DB Contractor may seek such advice or consultation from the entire Panel, at a Panel meeting, after first giving notice to all parties who might thereafter be parties before the Panel in a Dispute involving that matter. A Panel member who has ex parte contact with TxDOT or DB Contractor or their representatives shall be subject to removal from the Panel for cause.

Each Panel member further covenants to TxDOT and the DB Contractor that he/she:

(a) Shall be bound by and perform his/her obligations in accordance with the procedures set forth in Section 4.9 of the General Conditions;

(b) Shall protect the confidentiality of information provided by TxDOT and DB Contractor; and

(c) Shall disclose during the term of this Agreement any potential conflicts of interest related to such Panel member as described in Section 4.9.2.5 of the General Conditions.

IV. DB CONTRACTOR RESPONSIBILITIES

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, DB Contractor shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or the resolution of problems.

The DB Contractor shall furnish to each Panel member one copy of all documents it has, other than those furnished by TxDOT, which are pertinent to the performance of the Panel.

V. TxDOT'S RESPONSIBILITIES

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, TxDOT shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or resolution of problems.

TxDOT shall furnish the following:

A. Contract Documents and Other Documents

TxDOT shall furnish each Panel member one copy of (a) the DBC and all related Contract Documents, including, but not limited to, the Design-Build Standard Specifications, any modifications or amendments to the Contract Documents, (b) Project Schedule Updates, and (c) other documents, as agreed by TxDOT and DB Contractor that are pertinent to the performance of the DBC, and necessary to the Panel's work.

B. Coordination

TxDOT will, in cooperation with DB Contractor, coordinate the operations of the Panel.

C. Services

TxDOT and DB Contractor will arrange for or provide conference facilities at the Project Office or TxDOT's facilities, and will provide secretarial and copying services.

VI. TIME FOR BEGINNING AND COMPLETION

The Panel shall begin operation upon execution of this Agreement and written authorization by TxDOT, and shall terminate its activities upon later of (a) completion of all work required to be performed by DB Contractor under the DBC (including, unless the DBC is terminated earlier, work required pursuant to the Warranties) or (b) conclusion of any proceedings before the Panel.

Except for choosing a Panel Chairperson by the Party-appointed members, the Panel members shall not begin any work under the terms of this Agreement until authorized in writing by TxDOT.

VII. PAYMENT

Invoices of the Panel members for services performed and all direct expenses of the Panel incurred without mark-up shall be paid by DB Contractor subject to approval by TxDOT and DB Contractor. Payments shall constitute full compensation for work performed and services rendered, and for all materials, supplies and incidentals necessary to serve on the Panel. TxDOT shall reimburse the DB Contractor for one half of these fees and expenses.

A. Payment for Services and Expenses

The Party-appointed members will be reimbursed for their time and expenses devoted to choosing the Panel Chairperson.

Direct expenses will be reimbursed at the actual cost to the Panel member. These expenses may include, but are not limited to, travel expenses from the Panel member's point-of-departure to the initial point-of-arrival (including automobile mileage at the standard IRS rate in effect at the time the trip is taken, parking, airfare, automobile rental, food and lodging), printing, long distance telephone, postage and courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting date. All expenses shall be subject to TxDOT standard requirements.

B. Payments

Each Panel member may submit invoices for payment for work completed not more often than once per month during the progress of work. Such invoices shall be in a format approved by TxDOT and DB Contractor, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Panel member together with direct expenses. Satisfactorily submitted invoices shall be paid within 30 days.

C. Inspection of Cost Records

The Panel members shall keep, available for inspection by representatives of TxDOT or DB Contractor for a period of four years after final payment, the cost records and accounts pertaining to this Agreement.

VIII. ASSIGNMENT

Panel members shall not assign any of the work of this Agreement.

IX. TERMINATION OF AGREEMENT

This Agreement may be terminated by mutual agreement of TxDOT and DB Contractor at any time upon not less than four weeks' prior written notice to the Panel members.

Panel members may withdraw from the Panel by providing four weeks' prior written notice to the other Parties. Panel members may be terminated for or without cause as specified in the DBC.

Each of TxDOT and DB Contractor shall be entitled to replace the Panel member selected by such Party without cause and without agreement of the other Parties (other than approval of the replacement). The Panel Chairperson may be replaced without cause only with the agreement of TxDOT and DB Contractor.

Should the need arise to appoint a replacement Panel member, the replacement member shall be appointed in the same manner as the original member was appointed. The selection of a replacement Panel member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 20 days. This Agreement will be amended to indicate changes in Panel membership.

X. LEGAL RELATIONS

The Parties hereto mutually understand and agree that each Panel member, in the performance of its duties on the Panel, is acting in the capacity of an independent agent and not as an employee of either TxDOT or DB Contractor.

The Panel members are absolved of any personal or professional liability arising from the activities and recommendations of the Panel. TxDOT and DB Contractor each agree to hold harmless each Panel member from such liability to the extent permitted by law.

XI. MISCELLANEOUS

This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

PANEL MEMBER

By: _____

PANEL MEMBER

By: _____

PANEL MEMBER

By: _____

DB CONTRACTOR:

_____

By: _____

Title:

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Title:_____