DESIGN-BUILD AGREEMENT

I-35 NEX CENTRAL PROJECT

between

TEXAS DEPARTMENT OF TRANSPORTATION

and

[*DB CONTRACTOR*]

Dated as of: _____, 20__

Bexar County

Guadalupe County

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DESIGN-BUILD AGREEMENT

I-35 NEX CENTRAL PROJECT

This Design-Build Agreement (this "**DBA**"), dated as of [●] (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 design and construct approximately 9.5 miles of non-tolled improvements along I-35 from the I-35/I-410 North interchange to FM 3009, including the portion of I-410 North from the I-35/I-410 North interchange to 0.3 miles east of Nacogdoches Road and the portion of Loop 1604 from the I-35/Loop 1604 interchange to Nacogdoches Road (the "**Project**" or the "**I-35 NEX Central Project"**). In addition, TxDOT wishes to enter into an agreement with DB Contractor to maintain the Project for an initial specified mandatory term and maintain the Project for additional optional terms.

C. Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the "**Rules**"), TxDOT issued a Request for Qualifications (as amended, the "**RFQ**") on May 20, 2019.

D. TxDOT received four qualification statements on July 29, 2019 and subsequently shortlisted three proposers.

E. On August 14, 2020 TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the "**RFP**") to design, construct and maintain the Project.

F. On or before [●] 2021 (the "**Proposal Due Date**"), TxDOT received [●] responses to the RFP, including the response of DB Contractor (the "**Proposal**").

G. An RFP evaluation committee comprised of TxDOT personnel determined that DB Contractor was the proposer that best met the selection criteria 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 and Qualifying Delay Late Fees if such completion is delayed.

N. The Reference Information Documents include the Schematic Design, which may be used by DB Contractor 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.

CFO	Chief Financial Officer
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.
DBA	Design-Build Agreement
FONSI	Finding of No Significant Impact

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.

Adjustment Standards	means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the Contract Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 4.5.3.5 of the General Conditions. For purposes of the SAWS Utility Adjustment Work, the "Adjustment Standards" shall be the "SAWS Standards," as defined in the SAWS ILA, to the extent that the SAWS Standards are not inconsistent with the terms of the SAWS ILA.
Advance Utility Relocation Agreement	has the meaning set forth in Section 6.4.4.1 of this DBA.
Aesthetic Concept	means the preliminary drawings and supporting information that present the proposed aesthetics concept for the Project as set forth in Section 23.1.1 of the Design-Build Specifications.
Aesthetics and Landscaping Plan	means the plan DB Contractor prepares in conformance with the proposed aesthetic and landscaping treatment for the Project as set forth in Section 23.1.2 of the Design-Build Specifications.
Allowance	means each allowance described in Exhibit 9 to this DBA.
Assembly	means the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement or the SAWS ILA to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment or an amendment to the SAWS ILA, as applicable and as more particularly described in Section 14.3.4.5 of the Design-Build Specifications.
Basic Configuration	has the meaning set forth in Exhibit 1 to this DBA.

Betterment	has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreements or, for the SAWS Utilities, the SAWS ILA; in all other cases, "Betterment" means any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments: (a) any upgrading that is required for accommodation of the Project; (b) replacement devices or materials that are of equivalent standards although not identical; (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size; (d) any upgrading required by applicable Law; (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); (f) any upgrading required by published, current design practices regularly followed by the Utility Owner in its own work; or (g) any upgrading for which there are direct benefits to or are required for the Project. For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.
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.
Chargeable Lane Closure	has the meaning set forth in Section A.2 of Exhibit 15 to this DBA.
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.
CPS Energy	means CPS Energy, a municipally-owned utility of the City of San Antonio.
DB Contractor or **Design-Build Contractor**	means _____, a _____, together with its successors and assigns.
Delay Deductible Aggregate Cap	has the meaning set forth in Section 6.11 of this DBA.
Design-Build Agreement	has the meaning set forth in the preamble hereof.
Design-Build Specifications	means the Design-Build Specifications, items 10-28 included in the RFP.

Differing Site Conditions	means (a) man-made subsurface or man-made latent conditions of an unusual nature, (b) subsurface or surface natural physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract Documents, (c) an Abandoned Utility that is a water or wastewater Utility 18 in. diameter or greater; or (d) an Abandoned Utility that is a Utility duct bank with 4 or more conduits. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities, including Abandoned Utilities (other than as described in clause (c) or (d) above); (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; (vi) any conditions which constitute or are caused by a Relief Event; (vii) any subsurface or surface conditions that are ascertainable from the information included in the RIDs; and (viii) karst and the discovery of Karst Features.
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.
Eminent Domain Delay	has the meaning set forth in Section 6.5 of this DBA.
Final Acceptance Deadline	has the meaning set forth in Section 2.4.1 of this DBA.
Full Roadway Closure	has the meaning set forth in Section C.1 of Exhibit 15 to this DBA.
General Conditions	has the meaning set forth in Section 1.3.2 of this DBA.
I-35 NEX Central Project	has the meaning set forth in Recital B to this DBA.
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.

Initial Maintenance Term Commencement Date has the meaning set forth in Section 1.2 of the CMA.

Instructions to Proposers means the Instructions to Proposers issued by TxDOT on August 14, 2020, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

Karst Feature means caves and mesocavernous voids in landforms and subsurface features produced by dissolution of limestone bedrock.

Karst Investigation Delay has the meaning set forth in Section 6.9.1 of this DBA.

Karst Species Specialist means a specialist in karst invertebrates that is designated by the DB Contractor to assist with the determination of whether a Karst Feature is occupied or presumed occupied by endangered karst invertebrates, as more particularly described in Section 12.3.6 of the Design-Build Specifications.

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 11 feet, or, for traffic lanes with an existing width of less than 11 feet, to less than such lane's existing width, in any portion of the Project or a connecting highway, as applicable, and for any duration, including main lanes, ramps, direct connectors, frontage roads, access roads and cross roads.

Lane Rental Bank has the meaning set forth in Section D of Exhibit 15 to this DBA.

Licensed Professional Geoscientist means the specialist that is designated by the DB Contractor to assist in the mapping of Karst Features and development of Karst Feature closure plans, as more particularly described in Section 12.3.7 of the Design-Build Specifications.

Liquidated Damages	means the liquidated damages, including, Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, specified in DBA Sections 7.2, 7.3 and 7.4, and General Conditions Sections 8.3.1, 8.7.1.1 and 8.7.2.
Maintenance Management System (MMS)	has the meaning set forth in Section 27.5 of the Design-Build Specifications.
Maintenance Performance Bond	has the meaning set forth in Section 1.2.2 of the CMA General Conditions.
Maintenance Security	has the meaning set forth in Section 1.2 of the CMA.
Maintenance Services	has the meaning set forth in Section 1.2.2 of the CMA General Conditions.
Maximum Payment Schedule	means the table of aggregate amounts included in Exhibit 10 to this DBA and the earliest date by which each such aggregate amount shall become due to DB Contractor, which constitute a cap on the aggregate amount of payments, excluding any Milestone Payments, that may be made to DB Contractor hereunder at any specified time.
Milestone(s)	means one or both of Milestone 1 and Milestone 2, as applicable.
Milestone 1	means construction of the work items for Milestone 1 identified in Appendix 1 to Exhibit 1 to this DBA.
Milestone 1 Completion	means achievement of Milestone Completion for Milestone 1.
Milestone 1 Completion Target	means the Milestone Completion Target for Milestone 1 set forth in the table in Section 4.4.3 of this DBA.
Milestone 2	means construction of the work items for Milestone 2 identified in Appendix 1 to Exhibit 1 to this DBA.
Milestone 2 Completion	means achievement of Milestone Completion for Milestone 2.
Milestone 2 Completion Target	means the Milestone Completion Target for Milestone 2 set forth in the table in Section 4.4.3 of this DBA.
Milestone Completion	means, for each Milestone, the satisfaction of the criteria set forth in Section 4.4.4 of this DBA as and when confirmed by TxDOT's issuance of an acknowledgement of Milestone Completion.
Milestone Completion Target(s)	means one or both of the Milestone 1 Completion Target and Milestone 2 Completion Target, as applicable.
Milestone Payment	has the meaning set forth in Section 4.4.1 of this DBA.
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: 2015 Finding of No Significant Impact, 2015 Final Environmental Assessment and Re-evaluation of the 2015 Final EA and FONSI.
New Pavement	means any pavement areas where DB Contractor constructs or fully reconstructs the Project pavement as required in Sections 1.2.1 and 1.5.1 of Exhibit 1 to this DBA.

New Utility	means a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to DB Contractor prior to the Proposal Due Date. The term does not include any Utilities that SAWS has cost responsibility for adjusting pursuant to Section 3.B.2 of the SAWS ILA.
Non-Chargeable Lane Closure	has the meaning set forth in Section A.1 of Exhibit 15 to this DBA.
Noncompliance Charges	means the liquidated amounts specified in Exhibit 16 to this DBA.
Noncompliance Event (NCE)	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.
Notice of Determination	means a notice issued by TxDOT to DB Contractor pursuant to Section 2.1.3 of 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.
Persistent DB Contractor Default	has the meaning set forth in Exhibit 16 to this DBA.
Preliminary Exhibit A	means an approved Exhibit A for Work involving railroad property, that is either included in the Reference Information Documents folders titled "Railroad Documents" or is approved by the applicable railroad after the Effective Date.
[Pre-Proposal Utility Commitment]	[means each commitment made by a Utility Owner that is included in Exhibit 23 to this DBA.]
Price	means the price set forth in Section 4.1 of this DBA, as it may be modified from time to time in accordance with the express provisions of the DBC.
Project	has the meaning set forth in Recital B to this DBA.
Project Overhead Percentage	means 8.5 percent.
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.
Railroad Agreement Delay	has the meaning set forth in Section 6.10.2.1 of this DBA.
Railroad Documents	means the documents listed in Section 6.10.1 of this DBA that are included in a folder labeled “Railroad Documents” in the RIDs.

Reference Information Documents (RIDs)	means (a) those documents listed in Exhibit N to the Instructions to Proposers and provided to Proposers prior to the Proposal Due Date and (b) such additional documents provided by TxDOT to DB Contractor for reference after the Proposal Due Date and prior to the Effective Date. Except as otherwise expressly provided in Exhibit 3 to this DBA, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.
Request for Proposals (RFP)	has the meaning set forth in Recital E to this DBA.
Resurfaced Pavement	means any pavement areas where DB Contractor performs work to mill and overlay the existing pavement as required in Sections 1.2.2, 1.5.2 and 1.6 of Exhibit 1 to this DBA.
Retained Security Amount	has the meaning set forth in Section 5 of Exhibit 4 to this DBA.
RFP Documents	means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, the CMC Documents, the Reference Information Documents and any addenda issued in connection therewith.
Request for Qualifications (RFQ)	has the meaning set forth in Recital C to this DBA.
Rules	has the meaning set forth in Recital C to this DBA.
San Antonio District Utility Requirements	means the utility related drawings, documents and standards provided in the "San Antonio District Utility Requirements" folder in the RIDs.
SAWS	means the San Antonio Water System, a municipally-owned utility of the City of San Antonio.
SAWS Cost Work	has the meaning set forth in the SAWS ILA.
SAWS Delay	has the meaning set forth in Section 6.4.2 of this DBA.
SAWS ILA	means the Interlocal Agreement for the Installation and Adjustment of San Antonio Water System Utilities in connection with the I-35 NEX Central Project, dated [_____].
SAWS Utilities	means all water and wastewater Utilities owned and operated by the City of San Antonio, acting through SAWS.
SAWS Utility Adjustments	means all Utility Adjustments performed pursuant to the SAWS ILA.
SAWS Utility Adjustment Work	means all efforts and costs necessary to complete the SAWS Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by SAWS. The term also includes any reimbursement of SAWS that is DB Contractor's responsibility pursuant to Section 4.5.6 of the General Conditions.
Schematic Design	means the RID titled "I-35 NEX Central Schematic Design" dated 8/13/2020.

Special Event	means any event described in Section H of Exhibit 15 to this DBA, as such list may be modified by TxDOT in accordance with Exhibit 15 to this DBA.
Subcontractor Dispute	has the meaning set forth in Exhibit 20 to this DBA.
Substantial Completion Deadline	has the meaning set forth in Section 2.4.1 of this DBA.
Third Party Agreement	means any agreement or memorandum of understanding between TxDOT and a third party that governs or impacts the Work. The term "Third Party Agreement" does not include Governmental Approvals, TxDOT issued permits and approvals, agreements with municipalities in their capacity as Utility Owners, Utility Agreements, the SAWS ILA, the Advance Utility Relocation Agreement with CPS Energy or railroad agreements.
Time Period A	means the period shown as "A" on Table 15-3 in Exhibit 15 to this DBA.
Time Period B	means the period shown as "B" on Table 15-3 in Exhibit 15 to this DBA.
Time Period C	means the period shown as "C" on Table 15-3 in Exhibit 15 to this DBA.
TxDOT-Directed Changes	means (a) any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work, which TxDOT has directed DB Contractor to perform as described in and subject to the limitations in Section 4.6.1.2 of the General Conditions), (b) suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total in accordance with Section 8.4.1 of the General Conditions, (c) any changes in the Work due to Errors in the Signed and Sealed Engineering Data, unless such Errors were known to the DB Contractor prior to the Effective Date, and (d) any material differences between the actual location of a Utility and the location of the Utility shown on a level A SUE report identified in Exhibit 3 of the DBA, unless such Error was known to DB Contractor prior to the Effective Date. Notwithstanding the foregoing, TxDOT shall not be liable for any changes in the scope of Work that result in less than $10,000 in increased costs and such changes shall not be considered TxDOT-Directed Changes.
TxDOT-Provided Approvals	means the approvals set forth in the table in Section 3.1 of this DBA.
Ultimate Project Configuration	means the project as depicted on the RID titled "I-35 NEX Ultimate Schematic Design" dated 7/17/2020.
Uncured Noncompliance Points	means Noncompliance Points assessed on account of breaches for failures that remain uncured.
Unidentified Utility(ies)	means any Utility impacted by the Project (other than a Service Line or Abandoned Utility) that is neither an Identified Utility nor a New Utility, including any Utility that would be a New Utility but for the fact that it is an extension of an Identified Utility. The term does not include any Utilities that SAWS has cost responsibility for adjusting pursuant to Section 3.B.2 of the SAWS ILA.
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.

Utility Adjustment	means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously Abandoned Utilities as well as of newly Abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance or use of the Project; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad or any of the work described in an Advance Utility Relocation Agreement. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.
Utility Adjustment Work	means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by the Utility Owners, provided that any SAWS Utility Adjustment Work performed by SAWS is not part of the Utility Adjustment Work. The term also includes any reimbursement of Utility Owners that is DB Contractor's responsibility pursuant to Section 4.5.6 of the General Conditions. Any Utility Adjustment Work furnished or performed by DB Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.
Utility Agreement	means a PUAA or UAAA, as the context may require. The SAWS ILA and the Advance Utility Relocation Agreement are not Utility Agreements.
Utility Management Plan	means the plan setting forth procedures by which DB Contractor will manage the Utility Adjustment Work and SAWS Utility Adjustment Work as more particularly described in Section 4.2.8 of the General Conditions.
Widening	means any pavement area where DB Contractor constructs or fully reconstructs shoulders and widening/extension of the travel lane pavement section into the shoulder as required in Sections 1.2.1 and 1.5.1 of Exhibit 1 to this DBA.
Work	means all of the work required under the Contract Documents, all administrative, Professional Services, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by DB Contractor, reimbursement of Utility Owners for Utility Adjustment Work or SAWS Utility Adjustment Work, as applicable, furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, landscaping, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by DB Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project, except for those efforts that such Contract Documents expressly specify will be performed by Persons other than the DB Contractor-Related Entities.

Capitalized terms used in the Contract Documents but not otherwise defined in this DBA shall have the meaning set forth in Section 1.2 of the General Conditions. If any definition set forth above is also included in Section 1.2 of the

General Conditions, to the extent such definitions conflict, the definition in Section 1.2 of the General Conditions is hereby amended by the definition set forth above.

1.3 Contract Documents and Order of Precedence

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

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

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

1. Amendments and Change Orders to the Design-Build Contract, including all exhibits and attachments thereto;

2. This DBA, including all exhibits hereto, except Exhibit 2 (DB Contractor's Proposal Commitments and ATCs);

3. TxDOT's Design-Build Agreement General Conditions, Items 1-9 dated as of [●] (the "**General Conditions**");

4. Change Orders to the Design-Build Specifications;

5. Exhibit 2 (DB Contractor's Proposal Commitments and ATCs) to this DBA;

6. The Design-Build Specifications; and

7. Released for Construction Documents to be developed in accordance with the Contract Documents, provided that (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist between the Released for Construction Documents and the other Contract Documents with respect to requirements of the Released for Construction Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (c) any Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other Contract Documents to the extent that the conflicts are specifically identified to TxDOT by DB Contractor and such Deviations are approved by TxDOT in writing.

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

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

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

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

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

1.4 Reference Information Documents

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

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

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

1.4.4 Except as provided in Section 1.4.1, TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. DB Contractor shall

have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

SECTION 2. SCOPE OF WORK

2.1 Project Scope; Special Terms and Conditions

2.1.1 Project Scope

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

2.1.2 Termination Based on Delayed Issuance of NTPs

Section 8.9.9 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 8.9.9 of the General Conditions and (ii) stricken text is hereby deleted from Section 8.9.9 of the General Conditions:

8.9.9 Termination Based on Delay to Issuance of NTPs~~1~~

8.9.9.1 If NTP1 has not been issued within 365 days after the Effective Date and this delay is not caused in whole or in part by any act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, DB Contractor, as its sole remedy, shall have the right to terminate this Design-Build Contract, which right shall be exercised by delivery of notice of termination to TxDOT. In such event, TxDOT's sole liability to DB Contractor is to pay DB Contractor the same payment for work product as provided to unsuccessful Proposers pursuant to the ITP, provided that all other conditions for such payment are met.

8.9.9.2 If NTP2 has not been issued within 365 days after the 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(s) to NTP2), DB Contractor may conditionally elect to terminate this Design-Build Contract by providing TxDOT with written notice of such conditional election. If DB Contractor delivers a written notice of its conditional election to terminate, TxDOT shall have the choice of either accepting such notice of termination or continuing this Design-Build Contract in effect by delivering to DB Contractor written notice of TxDOT's choice not later than 30 days after receipt of DB Contractor's notice. If TxDOT does not deliver written notice of its choice within such 30-day period, then it will be deemed to have accepted DB Contractor's election to terminate this Design-Build Contract. In such event, the termination shall be deemed a termination for convenience and handled in accordance with this Section 8.9; provided however the maximum amount of liability by TxDOT shall be $40,000,000. In no event, shall DB Contractor be entitled to payment of more than $40,000,000, including for Work performed, if NTP2 is not issued. If TxDOT delivers timely written notice choosing to continue this Design-Build Contract in effect, then the Price adjustment provisions described in Section 4.3.2 of the DBA, as applicable, shall be extended and continue in effect for the duration of the delay in issuance of NTP2, as applicable, or until earlier termination of this Design-Build Contract.

2.1.3 Special Utility Provisions

2.1.3.1. Cost Responsibility

DB Contractor acknowledges that the Price includes the following cost responsibility for Utility Adjustments in accordance with Texas Transportation Code § 203.092 as determined by the project type. 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.

2.1.3.2. Amendments to the General Conditions Regarding Utility Provisions

Exhibit 24 sets forth certain amendments to the General Conditions regarding Utility Adjustments.

2.1.4 Obligations After Final Acceptance

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

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

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

2.1.5 Project-Specific Amendments to the General Conditions

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

2.1.5.2. Section 8.1.1.4 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 8.1.1.4 of the General Conditions:

> 8.1.1.4 TxDOT anticipates issuing NTP2 concurrently with (a) TxDOT's approval, in its good faith discretion, of all the component parts, plans and documentation of the Project Management Plan, Quality Management Plan and the PBS2, and (b) availability for occupancy of field office(s) and core office space in accordance with Sections 10.1.1 and 10.1.2 of the Design-Build Specifications. Issuance of NTP2 authorizes DB Contractor to perform all other Work and activities pertaining to the Project; provided however, DB Contractor is not authorized to conduct and complete final design and commence construction work for the Project until completion of the environmental review process, including obtaining all approvals, required under NEPA. Additionally, DB Contractor shall obtain all applicable State and federal environmental permits and approvals before starting construction of the portion of the Project requiring the permit or approval.

2.1.5.3. Section 8.5.2(b) of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 8.5.2(b) of the General Conditions and (ii) stricken text is hereby deleted from Section 8.5.2(b) of the General Conditions:

> 8.5.2(b) Activities
>
> For each activity in the Project Schedule, DB Contractor shall:

- Assign a unique identification number;
- Provide a logical activity description so that the scope of Work is identifiable and progress on each activity can be measured. The scope and location of the Work shall be included in the activity description, and a list of abbreviations used in activity descriptions shall be provided by DB Contractor if requested;
- Assign quantities of Work to construction activities;
- For the Payment Activities identified on Attachment 8-1 assign values as further described in Section 8.5.2(h);
- Provide a duration based on the quantity divided by a reasonable anticipated production rate and a list of anticipated production rates for major Work elements. Inclement weather days shall not be accounted for in the activity durations;
- Include separate activities for cure time and assign to a cure calendar, unless otherwise approved by TxDOT;
- ~~Include a monthly contract administration activity for schedule monitoring in the amount of $20,000;~~
- Use the activity "Percent Complete Type" setting in P6 of "Physical Percent Complete", unless otherwise approved by TxDOT; TxDOT approval time should be set to calendar days and set to "Duration % Complete", as this is a set time of review; and
- Assign a predecessor and successor relationship for each activity, except for NTP1 and Substantial Completion milestone(s).

DB Contractor also shall include a separate monthly schedule administration activity in the amount of $20,000 for monitoring, maintaining and submitting to TxDOT a Project Schedule in accordance with the Contract Documents.

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.

SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE DEADLINES	
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 61 for trainees described in Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions.

2.6 DBE Goals

The Parties acknowledge that the Project is (or may be) funded with federal funds and the approved DBE participation goals for the Project are established as 20% of the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners and 13% of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners.

2.7 DBE Performance Plan

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

2.8 Prevailing Wages

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

2.9 Project-Specific NTPs

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

SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS

3.1 TxDOT-Provided Approvals

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

APPROVAL	DATE
2015 Finding of No Significant Impact	July 2, 2015
2015 Final Environmental Assessment (EA)	July 2, 2015
Re-evaluation of the 2015 Final EA and FONSI	September 23, 2019
Interstate Access Justification Report Approval	[April 2021]
Design Exception Report Approval	[December 2020]

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

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

3.2 Project Specific Third Party Agreements

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

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

SECTION 4. COMPENSATION

4.1 Price

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

4.1.1 Allowances

4.1.1.1. DB Contractor acknowledges and agrees that the Price includes all Allowances. 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 $40,000,000.

4.3 Price Adjustment Due to Delay in NTPs

4.3.1 Delay in NTP1

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

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

where:

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

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

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

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

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

4.3.1.2. 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 8.9.9 of the General Conditions.

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

4.3.2 Delay in NTP2

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

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

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

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

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.

4.4 Milestone Payments

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

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

4.4.2.1. $100,000 for each day, up to a maximum of 120 days, after Milestone 1 Completion through the date of the Milestone 1 Completion Target.

4.4.2.2. $87,500 for each day, up to a maximum of 160 days, after Milestone 2 Completion through the date of the Milestone 2 Completion Target.

4.4.3 The Milestone Completion Targets are set forth below:

Milestone	Milestone Completion Target
Milestone 1	NTP1 plus 1,670 days
Milestone 2	NTP1 plus 2,190 days

4.4.4 In determining whether Milestone Completion for a Milestone has occurred, TxDOT will require satisfaction of the following criteria:

(a) DB Contractor has completed the Work with respect to Milestone 1 or Milestone 2, as applicable, described in Appendix 1 to Exhibit 1 to this DBA in accordance with the Contract Documents and the Released for Construction Documents;

(b) All lanes of traffic (including elevated lanes, mainlanes, ramps, and direct connectors) set forth in the Released for Construction Documents are in their final configuration and available for public use. With respect to Milestone 2, Milestone Completion requires that the crossovers are constructed and available for public use;

(c) The Milestone Work is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public;

(d) All major safety features for the subject Milestone Work are installed and functional, including guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(e) All required utility services for the subject Milestone Work are provided for signage, illumination, and ITS;

(f) All associated drainage, signage, and illumination for the subject Milestone Work are installed and functional; and

(g) All ITS infrastructure and equipment for the subject Milestone Work has been installed and is operational.

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

4.4.6 If Milestone Completion for a Milestone is achieved before the applicable Milestone Completion Target, DB Contractor shall include the amount of the Milestone Payment for the applicable Milestone, as calculated above, as a distinct line item in the Draw Request for the month following the date DB Contractor achieved Milestone Completion.

4.4.7 In no event shall the achievement of Milestone Completion constitute Substantial Completion or Final Acceptance of the applicable Milestone or Project or waive the requirements thereof**.**

4.4.8 Amendments to General Conditions Regarding Milestone Payments

4.4.8.1. Section 9.2 of the General Conditions is amended as follows, provided underlined text is hereby added to Section 9.2 of the General Conditions:

9.2 Maximum Payment Schedule

The Project Schedule shall provide for payment<u>, excluding any Milestone Payments,</u> to be made solely on the basis of progress by DB Contractor, subject to a cap on payments shown on the Maximum Payment Schedule established for the Project. <u>The Milestone Payments shall be paid in accordance with Section 4.4 of the Design-Build Agreement, and not as progress payments.</u> The Maximum Payment Schedule shall not limit payment for Change Order Work unless otherwise specified in the Change Order. In other words, at no time shall DB Contractor's cumulative total progress payments (including mobilization payments but exclusive of payments for Change Order Work) exceed the cumulative total expenditure permitted by the Maximum Payment Schedule. The Maximum Payment Schedule shall be calculated based on the monthly expenditure rate set forth in Exhibit 10 to the Design-Build Agreement. If DB Contractor and TxDOT mutually agree in writing to a different expenditure rate at any time, then such revised rate shall thereafter be the Maximum Payment Schedule for the Project. The Maximum Payment Schedule shall be revised from time to time thereafter upon request by TxDOT or by DB Contractor on its own initiative, as appropriate to account for any changes in the Price as evidenced by Change Orders or amendments. The aggregate amount of progress payments to DB Contractor hereunder shall not exceed the amount allowed by the Maximum Payment Schedule at any time, exclusive of payments for Change Order Work.

4.4.8.2. Section 9.3.6 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 9.3.6 of the General Conditions and (ii) stricken text is hereby deleted from Section 9.3.6 of the General Conditions:

9.3.6 Payment by TxDOT

Within 10 Business Days after TxDOT's receipt of a complete Draw Request, TxDOT shall notify DB Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. DB Contractor may include such

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

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 **$40,000,000.**

5.1.2 The **"NTP1 Payment Bond Amount"** is **$40,000,000.**

5.1.3 **The "NTP2 Performance Bond Amount"** is $[*insert the portion of the Price allocable to Construction Work less the portion of the price allocable to Construction Work performed by Utility Owners*].

5.1.4 **The "NTP2 Payment Bond Amount"** is $[*insert the portion of the Price allocable to Construction Work less the portion of the price allocable to Construction Work performed by Utility Owners*].

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:

☐ is not required; *or*

☐ 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): _____

_____

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 $275,000,000, 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 $275,000,000. 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

Except as is otherwise specified in this Section 5.3, DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance coverage in accordance with Section 3.5 of the General Conditions, and in accordance with the insurance policies, coverage, deductibles and limits specified therein.

SECTION 6. CHANGE ORDERS

6.1 Differing Site Conditions

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

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

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

6.2 Relief Events

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

6.2.1 With respect to any TxDOT-Provided Approvals that had not yet been obtained as of the Proposal Due Date, if such approvals contain conditions or requirements that differ materially from the Environmental Commitments 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 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 Relief Event 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, unless otherwise specified in this Section 6.3.

6.3.1 Reimbursable Amount

In accordance with Section 4.6.9.4.1 of the General Conditions, and subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as compensation for (a) 50% of DB Contractor's Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed $14,000,000 but do not exceed $40,000,000, (b) 100% of Reimbursable Hazardous Materials

Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed $40,000,000, and (c) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

6.3.2 Time Extensions

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

6.4 Utilities

6.4.1 Unidentified Utilities

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

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

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

6.4.2 SAWS Delays

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

6.4.3 [Pre-Proposal Utility Commitments

[*[Include if there are any Pre-Proposal Utility Commitments for the Project*][Exhibit 23 to the DBA includes Pre-Proposal Utility Commitments concerning certain Utility Adjustments that are necessary for the Project. If the final executed

PUAA or UAAA for the adjustment of a Utility that is the subject of a Pre-Proposal Utility Commitment includes material changes to the scope of the work for the Utility Adjustment from the scope of the work agreed to by the Utility Owner in the Pre-Proposal Utility Commitment, DB Contractor may request a Change Order for certain costs and for delays to the Critical Path resulting from such changed scope of the work for the Utility Adjustment to the extent permitted by this Section 6.4.3. If TxDOT, in its good faith discretion, issues a Change Order, the Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs and disruption damages, if any, incurred as a result of the changed scope of work. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. DB Contractor's entitlement to a Change Order is subject to the following:

(a) DB Contractor shall notify TxDOT immediately if DB Contractor reasonably believes that the Utility Owner would not undertake or permit the Utility Adjustment(s) in a manner consistent with the scope of work in the Pre-Proposal Utility Commitment and the timely completion of the Project, in order to provide TxDOT with a reasonable opportunity to assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation with the Pre-Proposal Utility Agreement.

(b) DB Contractor's Request for Change Order must document and prove the changes to the scope of work in the Pre-Proposal Utility Commitment and that the scope of work in the Pre-Proposal Commitment was agreed to in good faith between DB Contractor and the Utility Owner.

(c) DB Contractor shall not be entitled to a Change Order for any changes to the scope of work for a Utility Adjustment if the scope of work includes additional work or higher standards than are required by the Utility Accommodation Rules.

(d) Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.

(e) Any Request for Change Order submitted pursuant to this Section 6.4.3 shall be subject to approval by TxDOT in its good faith discretion.]

6.4.4 Advance Utility Relocations

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

6.4.4.2. Subject to the limitations and restrictions in Section 4.6 of the General Conditions, DB Contractor shall be entitled to a Change Order for certain costs and delays to the Critical Path directly attributable to the failure of [CPS Energy] to relocate the Utilities as shown in the Advance Utility Relocation Agreement or by the applicable "Adjustment Completion Date" for the relocation of the Utilities set forth in Section 14.1.2.6.1 of the Design-Build Specifications. DB Contractor shall not be entitled to a Change Order unless such failure (a) has a material negative cost or schedule impact on DB Contractor's obligations under the Contract Documents, and (b) was not caused by the acts or omissions of DB Contractor, including modifications to the Schematic Design that were initiated by DB Contractor. In no event shall DB Contractor be entitled to a Change Order due to delays or costs attributable to the limitations described in Section 14.1.2.6.1 of the Design-Build Specifications on DB Contractor's ability to perform Construction Work. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs resulting from the changed Utility relocation. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section

4.6.6.2.2 of the General Conditions. Except to the extent that this Section 6.4.4.2 allows compensation for Project Overhead, Change Orders under this Section 6.4.4 shall not include compensation for delay or disruption damages.

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

6.4.5 Amendments to General Conditions Regarding Utilities

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

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

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

(c) certain additional costs relating to Utility Adjustment Work, as described in Section 4.5 and Section 4.6.9.2, to the extent provided therein, additional costs for Utility Adjustment Work directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 4.6.9, and certain additional costs relating to agreements with Utilities to the extent provided in Sections 6.4.2, [6.4.3] and 6.4.4 of the Design-Build Agreement;

6.5 Access to Right of Way

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

6.6 Necessary Basic Configuration Changes

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

6.7 Form of Change Order

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

6.8 DB Contractor Reimbursement for Eminent Domain Assistance

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

6.9 Karst Feature Investigations

6.9.1 Time Extensions

Subject to Section 4.6 of the General Conditions and this Section 6.9, DB Contractor shall be entitled to an extension of applicable Completion Deadlines for delays to a Critical Path attributable to performance of presence/absence surveys at a Karst Feature required by Section 12.2.5.6 of the Design-Build Specifications, and the need to work around locations subject to temporary no-work restrictions due to performance of such surveys ("**Karst Investigation Delay**"). A Karst Investigation Delay begins on the date DB Contractor notifies TxDOT, in accordance with Section 12.2.5.6 of the Design-Build Specifications, that a Karst Feature contains suitable habitat for endangered karst invertebrates and ends upon the earlier of (a) completion of the presence/absence surveys required under Section 12.2.5.6 of the Design-Build Specifications for such Karst Feature and (b) discovery of any species listed as a Threatened or Endangered Species at the Karst Feature location. DB Contractor shall bear 100% of the risk of Karst Investigation Delays up to 30 days per individual Karst Feature and up to a cumulative total of 120 days for all Karst Feature locations. If a Karst Investigation Delay exceeds 30 days for a particular Karst Feature, then the risk of such Karst Investigation Delay in excess of 30 days for that Karst Feature shall be borne by TxDOT. If aggregate Karst Investigation Delays for which DB Contractor is 100% responsible exceed 120 days, then the risk of Karst Investigation Delays in excess of 120 days shall be borne by TxDOT. If a Karst Investigation Delay at one location is concurrent with another Karst Investigation Delay at one or more other locations, the 30-day period of DB Contractor's responsibility for the delays at the locations shall run concurrently and only one of the concurrent Karst Investigation Delays shall apply to the 120-day cap.

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

6.9.2 Limitations on Change Orders for Karst Feature Investigations

DB Contractor shall provide TxDOT with such information, reports and certificates as may be requested by TxDOT to enable a determination regarding eligibility for a time extension with respect to a Karst Investigation Delay. DB Contractor shall be deemed to have waived the right to a time extension for a Karst Investigation Delay if: (a) DB Contractor does not evaluate the applicable Karst Feature for the presence of suitable habitat for endangered karst invertebrates within 24 hours of discovery of a Karst Feature; or (b) DB Contractor does not notify TxDOT within 24 hours of its determination that a Karst Feature contains suitable habitat for endangered karst invertebrates, both in accordance with Section 12.2.5.6 of the Design-Build Specifications. Furthermore, no time extension shall be allowed for a Karst Investigation Delay with respect to: (x) any Karst Features that could have been avoided by reasonable design modifications or construction techniques; or (y) Karst Features on any DB Contractor-Designated ROW. DB Contractor shall not be entitled to any time extension for investigations, evaluations or assessments of a Karst Feature

prior to a determination that the applicable Karst Feature contains suitable habitat for endangered karst invertebrates and DB Contractor's notification of such determination to TxDOT. DB Contractor shall not be entitled to delay or disruption damages resulting from a Karst Investigation Delay.

6.9.3 Amendments to General Conditions Regarding Karst Relief

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

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

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

> (k) Karst Investigation Delays to the extent permitted under Section 6.9 of the Design-Build Agreement.

6.10 Railroad Agreements

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

DB Contractor shall perform the Work in compliance and conformity with all construction and maintenance agreements and Preliminary Exhibit As for the Project and shall be responsible for the performance of TxDOT's obligations under the construction and maintenance agreement, except to the extent a construction and maintenance agreement or Preliminary Exhibit A requires modification due to an ATC included in Appendix 2 to Exhibit 2 or due to DB Contractor's design. In such event, DB Contractor shall be responsible for obtaining the required modifications to the construction and maintenance agreement or Preliminary Exhibit A in accordance with Section 6.10.2.1. In the event of a conflict between an approved Preliminary Exhibit A or construction and maintenance agreement and the Design-Build Specifications, the approved Preliminary Exhibit A or construction and maintenance agreement shall govern and control.

6.10.1 Railroad Documents

The following documents ("Railroad Documents") were included in a folder labeled "Railroad Documents" in the Reference Information Documents prior to the Proposal Due Date: [I-35 NEX UPRR Exhibit A 09/28/2020]. If the final executed version of a construction and maintenance agreement with a railroad contains conditions or requirements that differ materially from those contained in the applicable Railroad Documents pertaining to that railroad, and such changed conditions or requirements (a) increase DB Contractor's Direct Costs by more than $10,000 or result in a delay to the Critical Path and (b) were not caused by the acts or omissions of DB Contractor, including modifications to the Schematic Design or the Railroad Documents that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order for certain costs and for delays to the Critical Path resulting from such material changes in conditions and requirements to the extent permitted by this Section 6.10.1. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs to comply with the changed conditions or requirements. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order

will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.2.3 and Section 4.6.6.3.

6.10.2 Railroad Agreement Delay

6.10.2.1. TxDOT shall be responsible for negotiating and entering into construction and maintenance agreements necessary for the Schematic Design, provided that DB Contractor shall be responsible for cooperating and coordinating with TxDOT, including by providing any schematics, plans or other information within 14 days of a request by TxDOT or the railroad for such schematics, plans or other information. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor shall be responsible for obtaining any approvals from railroads or agreements with railroads, including construction and maintenance agreements or modifications thereto, that are necessary to implement an ATC included in Appendix 2 to Exhibit 2 or are due to DB Contractor's design. The term "Railroad Agreement Delay" means a delay to a Critical Path that is directly attributable to the failure of TxDOT and a railroad to execute a construction and maintenance agreement within the time periods set forth in this Section 6.10.2.1, as applicable. DB Contractor shall be entitled to a time extension extending affected Completion Deadlines for delays to the Critical Path and increasing the Price for certain additional costs incurred directly attributable to a Railroad Agreement Delay as follows:

> In the event a Preliminary Exhibit A (draft or final) pertaining to the applicable construction and maintenance agreement was included in the RIDs prior to the Proposal Due Date, then DB Contractor shall be entitled to a time extension extending the applicable Completion Deadlines for any Railroad Agreement Delay if the construction and maintenance agreement is not executed within 365 days after the Effective Date. For Change Orders extending a Completion Deadline in accordance with this Section 6.10.2.1, DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2 of the General Conditions. Except to the extent that this Section 6.10.2.1 allows compensation for Project Overhead, Change Orders under this Section 6.10.2.1 shall not include compensation for delay or disruption damages.

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

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

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

(b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that DB Contractor took advantage of Float time available early in the Project Schedule with respect to the affected railroad;

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

(d) no other circumstance exists that would delay the affected railroad related work even if the construction and maintenance agreement was obtained.

6.11 Delay Deductible Aggregate Cap

The "**Delay Deductible Aggregate Cap**" for the Project is 18% [of the number of days from NTP1 until the Substantial Completion Deadline] for all Delay Deductibles borne by DB Contractor.

6.12 Milestone Completion Delays

DB Contractor shall be entitled to an extension of a Milestone Completion Target for delays due to a Force Majeure Event or a TxDOT-Caused Delay only to the extent set forth in this Section 6.10. In the event TxDOT issues a Change Order to DB Contractor to extend the Substantial Completion Deadline due to a Force Majeure Event or a TxDOT-Caused Delay and such Force Majeure Event or TxDOT-Caused Delay causes delay to the critical path for Milestone Completion of one or more Milestones, the Milestone Completion Target for the affected Milestone may be extended by one day for each day of delay to the critical path for Milestone Completion of the applicable Milestone. In no event shall the number of days by which a Milestone Completion Target is extended exceed the number of days remaining, as of the date the Force Majeure Event or TxDOT-Caused Delay began, until the Milestone Completion Target. As used in this Section 6.10, "critical path" means, for each Milestone, the activities and durations associated with the longest chains of logically connected activities through the Project Schedule to achieve the applicable Milestone, with the least amount of positive slack or the greatest amount of negative slack. DB Contractor may request an extension of a Milestone Completion Target by submitting a Request for Change Order in the form of Appendix 1 to Exhibit 14 with modifications to address the request to extend the applicable Milestone Completion Target.

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 $1,000 for each day during the period that NTP2 has been issued and any condition to NTP2 remains unsatisfied.

7.2 Liquidated Damages and Fees Respecting Delays

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

(a) $92,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days; and

(b) $31,200 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

7.2.2 The amounts of any Qualifying Delay Late Fees for which DB Contractor may be liable pursuant to Section 8.7.2 of the General Conditions shall be as follows:

(a) $46,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed [●] days (the number of days in the Delay Deductible Aggregate Cap); and

(b) $15,600 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

7.3 Liquidated Damages for Lane Closures and Lane Rental Charges

The Liquidated Damages for Lane Closures and Lane Rental Charges for which DB Contractor may be liable pursuant to Section 8.7.2 of the General Conditions shall be as set forth in Exhibit 15 to this DBA. DB Contractor acknowledges and agrees that such Liquidated Damages for Lane Closures and Lane Rental Charges are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures.

7.4 Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages

7.4.1 Key Personnel Change Fees

As deemed compensation to TxDOT for Losses described in Section 8.3.1.4 of the General Conditions, DB Contractor agrees to pay to TxDOT the Key Personnel Change Fees amounts set forth in the table below in accordance with such section. For purposes of calculating the Key Personnel Change Fees, the percentage of "Progress" will be determined by dividing DB Contractor's earned-to-date amount, set forth in DB Contractor's most recently approved Draw Request, by the Price.

POSITION	KEY PERSONNEL CHANGE FEES (0-40% PROGRESS)	KEY PERSONNEL CHANGE FEES (>40-60% PROGRESS)	KEY PERSONNEL CHANGE FEES (>60-80% PROGRESS)	KEY PERSONNEL CHANGE FEES (>80-100% PROGRESS)
Project Manager	$420,000	$420,000	$310,000	$210,000
Construction Manager	$380,000	$380,000	$380,000	$190,000
Design Manager	$220,000	$160,000	$110,000	$50,000
Independent Quality Firm Manager	$340,000	$340,000	$340,000	$170,000
Lead Structural Engineer	$190,000	$140,000	$90,000	$40,000
Lead Maintenance of Traffic (MOT) Design Engineer	$190,000	$140,000	$90,000	$40,000
Professional Services Quality Assurance Manager	$220,000	$160,000	$110,000	$50,000
Lead MOT Implementation Manager	$220,000	$220,000	$220,000	$110,000
Utility Manager	$170,000	$170,000	$170,000	$40,000
Safety Manager	$190,000	$190,000	$190,000	$90,000

7.4.2 Key Personnel Unavailability Liquidated Damages

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

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day) FROM NTP1 to COMMENCEMENT of CONSTRUCTION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day) FROM COMMENCEMENT of CONSTRUCTION to FINAL ACCEPTANCE
Project Manager	$36,000	$36,000
Construction Manager	$17,000	$34,000
Design Manager	$20,000	$10,000
Independent Quality Firm Manager	$15,000	$31,000
Lead Structural Engineer	$18,000	$9,000
Lead Maintenance of Traffic (MOT) Design Engineer	$18,000	$9,000
Professional Services Quality Assurance Manager	$21,000	$10,000
Lead MOT Implementation Manager	$10,000	$21,000
Utility Manager	$16,000	$16,000
Safety Manager	$9,000	$19,000

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

DB Contractor further agrees and acknowledges that:

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

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

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

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

7.6 Noncompliance Points

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

SECTION 8. IDENTIFIED SUBCONTRACTORS AND KEY PERSONNEL

8.1 Identified Subcontractors

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

8.2 Key Personnel

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

SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES

9.1 Notices and Communications

9.1.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication or posted to TxDOT's 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-35 NEX Central Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

San Antonio District Office
4615 NW Loop 410
San Antonio, Texas 78229-0928
Attention: Mario Jorge, PE
Telephone: (210) 615-1110
E-mail: Mario.Jorge@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: Jack Ingram
Telephone: (512) 463-8630
E-mail: Jack.Ingram@txdot.gov

9.2 Designation of Representatives

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

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

SECTION 10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and Warranties

DB Contractor represents and warrants that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.2 Survival of Representations and Warranties

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

SECTION 11. MISCELLANEOUS PROVISIONS

11.1 Dispute Resolution Procedures

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

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

11.2 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 8.8 and Section 8.9 of the General Conditions, the provisions regarding invoicing and payment under Section 9.3 of the General Conditions, the obligations regarding Final Reconciliation under Section 9.7 of the General Conditions and all other provisions which by their inherent character should survive termination of this DBA and completion of the Work, shall survive the termination of this DBA and completion of the Work. The provisions of Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions shall continue to apply after expiration or earlier termination of this DBA to all Claims and Disputes between the Parties arising out of the Contract Documents.

11.5 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]*	**TEXAS DEPARTMENT OF TRANSPORTATION**
By:_____ Name: [●] Title: [●] Date:_____	By:_____ Name: James M. Bass Title: Executive Director Date:_____

EXHIBIT 1

PROJECT SCOPE

The Project is generally described to consist of approximately 9.5 miles of non-tolled improvements along I-35 from the I-35/I-410 North interchange to FM 3009, including the portion of I-410 North from the I-35/I-410 North interchange to 0.3 miles east of Nacogdoches Rd. and the portion of Loop 1604 from the I-35/Loop 1604 interchange to Nacogdoches Rd. The Schematic Design portrays the Project in more detail. The Project is located in the cities of San Antonio, Live Oak, Selma and Schertz, in Bexar and Guadalupe Counties.

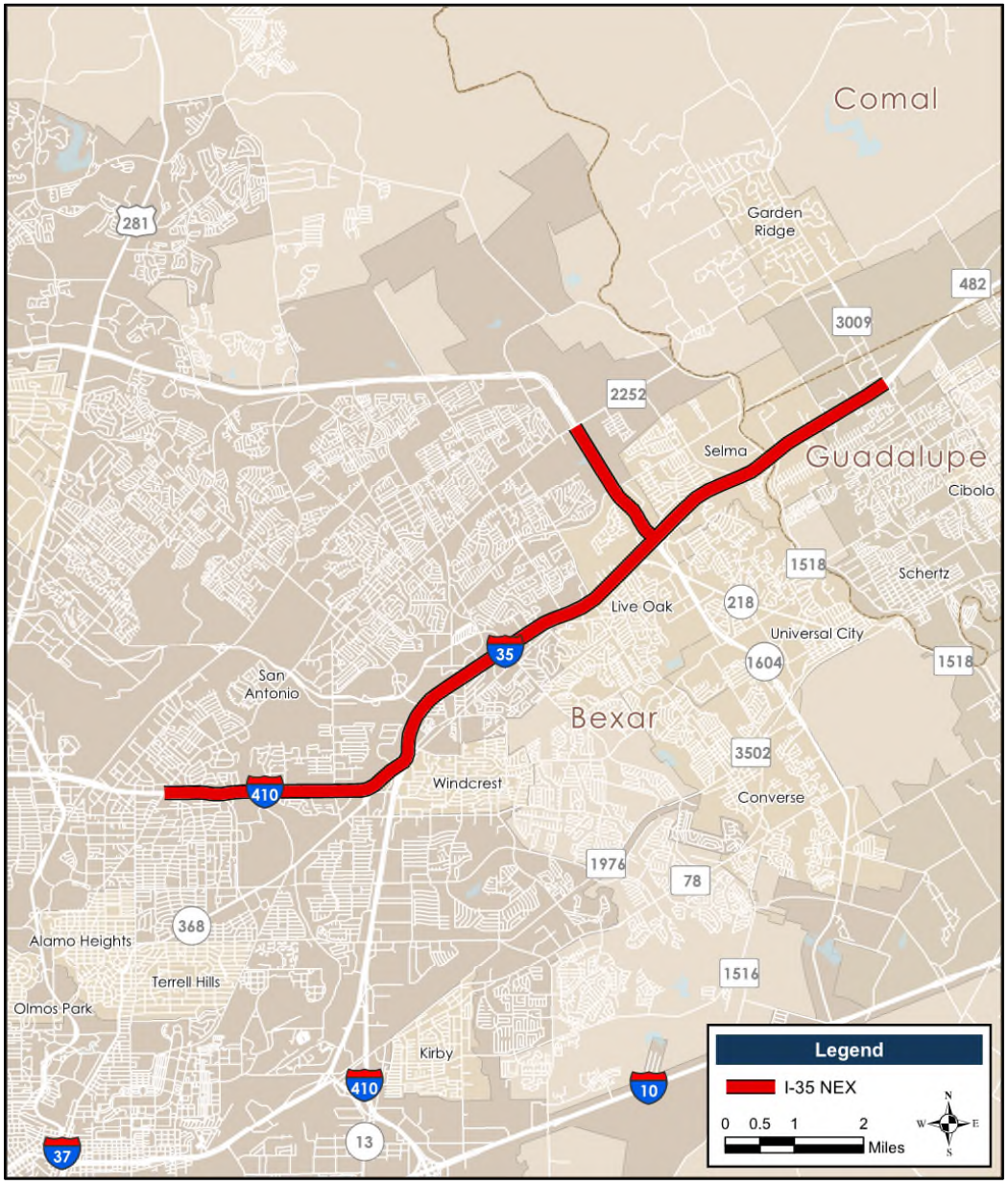

Figure 1-1: Project Map

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.

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

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

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

The Work shall conform to the Basic Configuration and be consistent with the Schematic Design. DB Contractor shall design and construct the elements of the Work described below. Limits of the Work are depicted in the Reference Information Document entitled, "Project Components Construction Limits".

1. Elements of the Work

Elements of the Work include (i) the construction of two general purpose and one high-occupancy vehicle (HOV) elevated lanes in each direction from the I-35/I-410 North interchange to FM 1518 along I-35, with HOV lane drops in the vicinity of Loop 1604 to allow entering and exiting the HOV lane, to include two-lane direct connectors in three directions and a two-lane transitioning to one-lane direct connector in one direction along I-410 at the I-35/I-410 North interchange, and to include a two-lane direct connector in one direction and a two-lane transitioning to one-lane direct connector in three directions at the I-35/Loop 1604 interchange, (ii) the reconstruction and/or widening of the Loop 1604 general purpose lanes and bridges from Nacogdoches Rd. to east of Biltmore Lakes and widening of the I-35 general purpose lanes from north of Olympia Pkwy. to south of FM 3009, and (iii) operational improvements, including the construction of ramps connecting mainlanes to elevated lanes and reconfiguration of mainlane ramps on I-410 from Sagebrush Ln. to FM 3009 along I-35, and along Loop 1604 from Nacogdoches Rd. to Biltmore Lakes.

1.1. Elevated Lanes

- I-35EL NB; the structure shall:
  - Include a two-lane stub-out at approx. Sta. 1448+35 to accommodate, in plan and profile, the future southern extension of the elevated lanes
  - Include an 80-foot wide crossover between the NB and SB elevated lanes, at approx. Sta. 1616+15
  - Include a one-lane stub-out at approx. Sta. 1728+30 to accommodate, in plan and profile, a future ELNB-1604EB direct connector as depicted on the Schematic Design
  - Include sufficient width to accommodate a 22-foot outside shoulder from tie in with 1604EB-ELNB at approx. Sta. 1774+00 to approx. Sta. 1785+00
  - Include an 80-foot wide crossover between the NB and SB elevated lanes, at approx. Sta. 1818+83
  - Include a two-lane stub-out at approx. Sta. 1838+75 to accommodate, in plan and profile, the future northern extension of the elevated lanes
  - DB Contractor shall place portable concrete traffic barrier across the stub-outs prior to opening the I-35EL NB to traffic.
- I-35EL SB; the structure shall:
  - Include a two-lane stub-out at approx. Sta. 2457+40 to accommodate, in plan and profile, the future southern extension of the elevated lanes
  - Include an 80-foot wide crossover between the NB and SB elevated lanes, at approx. Sta. 2615+32

- Include sufficient width to accommodate a 22-foot outside shoulder from approx. Sta. 2695+00 to tie in with one-lane stub-out at approx. Sta. 2710+00
- Include a one-lane stub-out at approx. Sta. 2714+50 to accommodate, in plan and profile, a future 1604WB-ELSB direct connector as depicted on the Schematic Design
- Include sufficient width to accommodate a 22-foot outside shoulder from tie in with 1604EB-ELSB direct connector at approx. Sta. 2742+00-to Sta. 2730+00
- Include an 80-foot wide crossover between the NB and SB elevated lanes, at approx. Sta. 2818+22.
- Include a two-lane stub-out at approx. Sta. 2871+75 to accommodate, in plan and profile, the future northern extension of the elevated lanes
- DB Contractor shall place portable concrete traffic barrier across the stub-outs prior to opening the I-35EL SB to traffic.

1.2. Mainlanes

1.2.1. New Pavement Areas

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

- Loop 1604: Approx. Sta. 4883+00 to approx. Sta. 4951+35. mainlane construction shall include:
  - A 26-foot EB inside shoulder from approx. Sta. 4887+50 to approx. Sta. 4949+50
  - A 26-foot WB inside shoulder from approx. Sta. 4887+50 to approx. Sta. 4938+50

Widening shall include removal of existing shoulders and widening/extension of the travel lane pavement section into the shoulder. Widening shall be constructed for the limits set forth below (Widening):

- I-35 northbound: Approx. Sta. 3813+35 to approx. Sta. 3970+00,
- I-35 southbound: Approx. Sta. 3811+50 to approx. Sta. 3825+45+00, Approx. Sta. 3866+25 to approx. Sta. 3887+36
- Loop 1604 eastbound: Approx. Sta. 4951+35 to approx. Sta. 4963+80
- Loop 1604 westbound: Approx. Sta. 4870+00 to approx. Sta. 4876+50+00, Approx. Sta. 4951+35 to approx. Sta. 4962+00

1.2.2. Resurfaced Pavement and Base Repair

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

1.3. Bridges

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

1.3.1. New Bridges (Mainlanes)

- I-410: Drainage ditch (elevated northbound); approx. Sta. 81020+00
- Loop 1604: Union Pacific Railroad (eastbound and westbound); approx. Sta. 4923+00
- Loop 1604: Lookout Rd. (eastbound and westbound); approx. Sta. 4935+00

1.3.2. New Bridges (Braided Ramps)

- Loop 1604: Exit ramp EXRPLBO over entrance ramp ENRPEBNA02 (eastbound between FM 2252/Nacogdoches Rd. and Union Pacific Railway turnaround)
- Loop 1604: Entrance ramp ENRPWBLO over exit ramp EXRPWBNA (westbound between FM 2252/Nacogdoches Rd. and Union Pacific Railway turnaround)

1.3.3. New Bridges (Direct Connectors)

- N410-ELNB: Eastbound I-410 mainlanes to northbound I-35 elevated lanes
- N410-ELSB: Eastbound I-410 mainlanes to southbound I-35 elevated lanes
  - Include a two-lane stub-out at approx. Sta. 103+49 to accommodate, in plan and profile, the future southern extension of the elevated lanes
  - DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the N410-ELNB to traffic
- ELSB-N410: Southbound I-35 elevated lanes to westbound I-410 mainlanes
- ELNB-N410: Northbound I-35 elevated lanes to westbound I-410 mainlanes
  - Include a two-lane stub-out at approx. Sta. 110+94 to accommodate, in plan and profile, the future southern extension of the elevated lanes
  - DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the ELSB-N410 to traffic
- ELNB-1604WB: Northbound I-35 elevated lanes to westbound Loop 1604 mainlanes
  - Structure shall be wide enough to accommodate two lanes, in accordance with shoulder width and stopping sight distance requirements in Design-Build Specifications Table 19-2
- ELSB-1604WB: Southbound I-35 elevated lanes to westbound Loop 1604 mainlanes
  - Include a one-lane stub-out at approx. Sta. 103+50 to accommodate, in plan and profile, a future ELSB-1604EB direct connector
  - DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the ELSB-1604WB to traffic
- 1604EB-ELNB: Eastbound Loop 1604 mainlanes to northbound I-35 elevated lanes
  - Include a one-lane stub-out at approx. Sta. 128+50 to accommodate, in plan and profile, a future 1604WB-ELNB direct connector
  - Include a 22-foot outside shoulder from stub-out at approx. Sta. 130+00 to tie in with I-35EL NB at approx. Sta. 141+00
  - DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the 1604EB-ELNB to traffic
- 1604EB-ELSB: Eastbound Loop 1604 mainlanes to southbound I-35 elevated lanes
  - Structure shall be wide enough to accommodate two lanes, in accordance with shoulder width and stopping sight distance requirements in Design-Build Specifications Table 19-2

1.3.4. New Bridges (Frontage Roads/Cross Streets)

- Loop 1604: Frontage roads over Union Pacific Railroad (eastbound and westbound bypasses)
- I-35: I-35 northbound to I-35 southbound frontage road turnaround over I-35 at Schertz Pkwy.; and I-35 southbound to I-35 northbound frontage road turnaround over I-35 at Schertz Pkwy.

1.3.5. Bridge Widenings

- I-410 frontage road: Salado Creek (eastbound)
- I-410 mainlanes: Perrin Beitel Rd./FM 2252 (westbound)
- I-35 frontage road: Retama Pkwy. drainage ditch (northbound)

- I-35 mainlanes: Evans Rd. and FM 1518 (northbound and southbound)

1.3.6. Bridge Removals

- Loop 1604 mainlanes and frontage roads: Union Pacific Railroad (eastbound and westbound)
- Loop 1604 mainlanes: Lookout Rd. (eastbound and westbound)

1.4. Ramps

1.4.1. Eastbound Ramps – I-410/Loop 1604

- I-410 mainlanes: Design and construction of entrance ramp 410N-ENNAC between Nacogdoches Rd. and Harry Wurzbach Hwy.
- I-410 mainlanes: Removal of existing entrance ramp between Nacogdoches Rd. and Harry Wurzbach Hwy.
- I-410 mainlanes: Removal of entrance and exit ramps between Harry Wurzbach Hwy. and Starcrest Dr. and design and construction of new exit ramp 410N-EXSC
- Loop 1604 mainlanes: Removal of existing exit and entrance ramps between FM 2252 and Union Pacific Railroad and design and construction of braided exit ramp ESRPEBLO and entrance ramp ENRPEBNA02
- Loop 1604 mainlanes: Design and construction of exit ramp EXRPEBRB between Lookout Rd. and Randolph Brooks Pkwy.

1.4.2. Westbound Ramps – I-410/Loop 1604

- Loop 1604 mainlanes: Removal of existing exit ramp between FM 2252 and Union Pacific Railroad and design and construction of new entrance ramp ENRPWBLO
- Loop 1604 mainlanes: Removal of existing entrance ramp between FM 2252 and Union Pacific Railroad and design and construction of new exit ramp EXRPWBNA
- Loop 1604 mainlanes: Removal of existing exit ramp between FM 2252 and Union Pacific Railroad
- Loop 1604 mainlanes: Design and reconstruction of exit ramp between Lookout Rd. and Randolph Brooks Pkwy.

1.4.3. Northbound Ramps – I-35/I-410

- I-35 mainlanes: Design and construction of exit ramp EXRPNBEVANS between Olympia Pkwy., and Pasatiempo Dr.
- I-35 elevated lanes: Design and construction of exit ramp to I-35 northbound mainlanes between Pasatiempo Dr and Evans Rd. (Ramp to Elevated Lanes)
- I-35 mainlanes: Removal of exit ramp and design and construction of new entrance ramp ENRPNBFORUM between Olympia Pkwy. and Pasatiempo Dr.
- I-35 mainlanes: Design and reconstruction of exit ramp EXRPNBSCPWY and entrance ramp ENRPNB1518 between FM1518 and Schertz Pkwy.
- I-35 mainlanes: Design and reconstruction of exit ramp EXRPNB3009 between Schertz Pkwy. and FM 3009
- I-35 mainlanes: Design and reconstruction of entrance ramp ENRPNBSCPWY between Schertz Pkwy. and FM 3009

1.4.4. Southbound Ramps – I-35/I-410

- I-35 mainlanes: Design and reconstruction of exit ramp EXRPSB35-TO between Thousand Oaks Dr. and N. Weidner Rd.
- I-35 mainlanes: Design and reconstruction of entrance ramp ENRPSBNW-35 between Thousand Oaks Dr. and N. Weidner Rd.
- I-35 mainlanes: Design and reconstruction of exit ramp EXRPSB35-RAN between Whirlwind Dr. and Thousand Oaks Dr.
- I-35 mainlanes: Design and reconstruction of exit ramp EXRPSB35-NW between Weidner Rd. and Tech Com Dr.
- I-35 mainlanes: Design and reconstruction of entrance ramp ENRPSBEVANS between Arcadia Dr. and Retama Pkwy.
- I-35 elevated lanes: Design and construction of entrance ramp from I-35 southbound mainlanes between FM 1518 and N. Evans Rd. (Ramp to Elevated Lanes)

1.5. Frontage Roads

1.5.1. New Pavement Areas

1.5.1.1 I-410/Loop 1604 Eastbound

- I-410: Widening from approx. Sta. 80976+00 to approx. Sta. 80997+00
- I-410: Design and construction of I-410FR EB BYPASS
- Loop 1604: Design and construction of 1604FR EB BYPASS
- Loop 1604: Design and reconstruction of eastbound to westbound turnaround at Union Pacific Railroad
- Loop 1604: Design and reconstruction of eastbound to westbound turnaround at Lookout Rd.

1.5.1.2 I-410/Loop 1604 Westbound

- Loop 1604: Design and reconstruction of frontage road from approx. Sta. 4884+40 to eastbound to westbound turnaround at Union Pacific Railroad
- Loop 1604: Design and construction of 1604FR WB BYPASS
- Loop 1604: Design and reconstruction of westbound to eastbound turnaround at Union Pacific Railroad
- Loop 1604: Design and reconstruction of westbound to eastbound turnaround at Lookout Rd.

1.5.1.3 I-35/I-410 Northbound

- I-35: Design and reconstruction from approx. Sta. 3760+00 to approx. Sta. 3774+80 (1604FR WB2: approx. Sta. 13+00 to 28+00)
- I-35: Widening from exit ramp at approx. Sta. 3819+50 to entrance ramp at approx. Sta. 3834+00 between Olympia Pkwy. and Pasatiempo Dr.
- I-35: Design and reconstruction from approx. Sta. 3834+00 to Sta. 3854+00
- I-35: Design and reconstruction from approx. Sta. 3877+00 to Sta. 3909+00
- I-35: Widening to accommodate storage lane for northbound to southbound turnaround bridge at Schertz Pkwy.
- I-35: Widening to accommodate merge lane from southbound to northbound turnaround bridge at Schertz Pkwy.
- I-35: Widening of existing frontage road from approx. Sta. 3937+00 to Sta. 3964+00

1.5.1.4 I-35/I-410 Southbound

- I-35: Widening between approx. Sta. 3492+50 and approx. Sta. 3497+00
- I-35: Design and reconstruction of existing frontage road from approx. Sta. 3858+00 to approx. Sta. 3864+50
- I-35: Widening to accommodate merge lane for northbound to southbound turnaround bridge at Schertz Pkwy.
- I-35: Widening to accommodate storage lane for southbound to northbound turnaround bridge at Schertz Pkwy.

1.5.2. Resurfaced Pavement and Base Repair Areas

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

1.6. Cross Streets

All existing cross street and intersection pavement within the Project limits shall be considered Resurfaced Pavement, for which DB Contractor shall design and construct pavement milling and overlay. Resurfaced Pavement approximate limits are depicted in the Reference Information Document entitled, "Resurfaced Pavement and Base Repair Areas".

1.7. Driveways

DB Contractor shall design and construct new driveways at all locations depicted in the Schematic Design. Any reduction in the locations depicted in the Schematic Design must be approved by TxDOT.

1.8. Sidewalks

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

1.9. Park and Rides

DB Contractor shall design and construct improvements to existing Park and Ride facilities within the Project Right-of-Way as depicted in the Reference Information Document entitled, "Park and Rides". Work will consist of surfacing/resurfacing, adding curb/raised island(s), adding/replacing lighting features and striping at each facility. Locations are as follows:

- I-35 southbound frontage road at approx. Sta. 3716+00
- I-35 southbound frontage road at approx. Sta. 3804+00
- I-35 mainlane and Evans Rd. at approx. Sta. 3862+00
- I-35 mainlane and FM 1518 at approx. Sta. 3872+00

1.10. Ultimate Project Configuration

The Work shall accommodate and be consistent with the improvements associated with the Ultimate Project Configuration. DB Contractor shall ensure that any Utilities that require relocation or adjustment to accommodate the Work shall also accommodate the Ultimate Project Configuration to the greatest extent possible within Schematic ROW. The design documents furnished by DB Contractor shall be consistent and compatible with the improvements associated with the Ultimate Project Configuration and provide for a smooth transition from the Work to the Ultimate Project Configuration. The Work shall minimize "throwaway" costs associated with the Project and shall provide for minimal disruption to traffic during the construction of the Ultimate Project Configuration. Additionally, the Project shall

be designed and constructed to minimize the cost associated with the Ultimate Project Configuration to the extent that DB Contractor costs to construct the Work are not unreasonably increased. DB Contractor shall design and construct the Project to allow for future construction of the cross street ultimate configurations as described in Item 19, Table 19-3.

APPENDIX 1 TO EXHIBIT 1

MILESTONE DESCRIPTIONS

1. Milestone 1

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

- I-35 southbound mainlane bridge widening between Sta. 3866+50 to 3874+60
- Entrance ramp from I-35 southbound mainlanes to I-35 elevated lanes between FM 1518 and N. Evans Rd
- I-35 southbound elevated lanes from entrance ramp from I-35 southbound mainlanes between FM 1518 and N. Evans Rd to Sta 2457+50
- ELSB-1064WB direct connector
- ELNB-1604WB from ELSB-1604WB to Lp 1604 mainlane
- Lp 1604 mainlane bridge over Lookout Rd
- Lp 1604 westbound mainlanes from bridge over Lookout Rd to westside project limit
- 1604 FR WB BYPASS
- Lp 1604 mainlane bridge over UPRR
- Braided entrance ramp bridge over Lp 1604 westbound exit ramp to FM 2252
- Lp 1604 westbound exit ramp to FM 2252
- Lp 1604 eastbound mainlanes from westside project limit to bridge over Lookout Rd
- 1604FR EB BYPASS
- 1604EB-ELSB direct connector
- ELSB-N410 direct connector
- N410-ELNB direct connector from I-410 mainlane to N410-ELSB direct connector
- N410-ELSB direct connector

2. Milestone 2

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

- I-35 northbound mainlane bridge widening between Sta. 3859+26 to Sta. 3874+21
- Exit ramp from I-35 northbound elevated lanes to I-35 northbound mainlanes between Pasatiempo Dr and Evans Rd
- I-35 northbound elevated lanes from exit ramp to I-35 northbound mainlanes between Pasatiempo Dr and Evans Rd to sta. 1448+40
- Crossover 3 at approx. sta. 3818+00
- 1604EB-ELNB direct connector
- ELENB-1604WB direct connector
- Crossover 2 at approx. sta. 3615+50
- N410-ELNB direct connector
- ELNB-N410 direct connector

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

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

ATC No.	ATC Description	Section(s) of the Contract Documents from which Deviations are Permitted	Date of Approval Letter
1.			
2.			
3.			
4.			

EXHIBIT 3

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

- The Design-Build Contract references the following RIDs for purposes of granting a Price increase or extension of a Completion Deadline to DB Contractor:
  - The documents under the folder titled "Utility Strip Map" in the RIDs to the extent set forth in Section 4.5.1 of the General Conditions and Section 4.6.9.2 of the General Conditions;
  - The following level A SUE documents for the purpose of subsection (d) of the definition of TxDOT-Directed Changes: "I-35NEX_SUE-QL-A.dgn", "I-35NEX_SUE-QL-A_THs.pdf", "IH35 NEX - Test Hole Summary Sheet - 20.03.20.pdf"
  - The portions of the Schematic Design that define "Basic Configuration" for purposes of a Change Order for Necessary Basic Configuration Changes or for TxDOT's failure to make available a portion of the Schematic ROW, to the extent set forth in Section 4.6.9.6 of the General Conditions and Section 6.5 of this DBA, respectively.

- The following documents constitute the Signed and Sealed Engineering Data for the Project for purposes of a TxDOT-Directed Change:
  - I-35_NEX_Geotechnical_Data_Report_Boring_Logs_20.07.17.pdf
  - DE19-226 - IH-35 NEX - Final Bridge Boring Logs.20.08.12.pdf

- The Preliminary Exhibit As under the folder titled "Railroad Documents" in the RIDs to the extent set forth in Section 6.2.1.

EXHIBIT 4

CMC AMENDMENTS

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

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

   4.6.5.6 Change Order Affecting Capital Maintenance Agreement

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

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

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

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

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

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

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

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

9.4.3 Withholding for Maintenance Security

TxDOT shall retain from the Final Payment, and if it reasonably appears there will be insufficient funds at Final Payment, from progress payments, an amount equal to the initial penal sum of the Maintenance Performance Bond (regardless of whether DB Contractor intends to secure its maintenance obligations with letters of credit or bonds), calculated as of the date of Substantial Completion and in accordance with Section 3.2.3.2 of the CMA General Conditions (the "Retained Security Amount"), as security for the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions. DB Contractor shall have the option at any time to deliver an irrevocable letter of credit equal to the Retained Security Amount in lieu of the retained sums in a form and on terms acceptable to TxDOT in its sole discretion. TxDOT shall release the Retained Security Amount or letter of credit, as applicable, to DB Contractor upon the provision of the Maintenance Security required under Section 3.2 of the CMA General Conditions, which shall be no later than 120 days prior to the Initial Maintenance Term Commencement Date. In the event TxDOT does not receive the Maintenance Security required under Section 3.2 of the CMA General Conditions by the deadline set forth therein, DB Contractor shall forfeit as liquidated damages and not as a penalty such sums, or if a letter of credit is provided in lieu of retained amounts, TxDOT shall have the right to draw on the letter of credit.

EXHIBIT 5

JOB TRAINING PLAN

[***To be replaced by the TxDOT-approved DB Contractor 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: I-35 NEX Central Project

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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Appendix #	Description
1	Standard Professional Services Agreement
2	Standard Subcontract Document
3	Federally Required Provisions
4	DBE Compliance and Monitoring Process Workflow

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

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 goals as stated in Section 2.6 – DBE Goals of the DBA:

The DBE participation goals for the Project are established as 20% of the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners and 13% of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners. [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 goals. See Section 11 for details.

4. Anticipated Areas of Consulting & Contracting Opportunities

[DBE contracting opportunities are not limited to these examples and DB Contractor shall perform a thorough analysis of all contracting opportunities to be placed in this section]

[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 should occur throughout the term of the Design-Build Contract and will include:

- [Good faith efforts performed to date.
- During the Proposal phase, DBEs were interviewed and selected for professional services. *[DB Contractor shall provide a summary if applicable or remove statement if not applicable]*
- Holding DBE project informational meetings.
- Incorporation of opportunities in project website.
- Project and contracting advertisements in local and minority publications.
- Collaboration with other organizations to present/advertise project opportunities.
- Collaboration with TxDOT's Programs for 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.]
- *[DB Contractor shall include any other outreach or activities that DB Contractor has performed or plans to perform throughout the term of the Design-Build Contract.]*

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 goals (pending DBE commitment approval by TxDOT):

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

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

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

(a) Use our corporate vendor list;

(b) Contacts 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 goals for the Project.

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

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

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 option 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) DBE Special Provision;

(6) Compensation;

(7) Method of payment; and

(8) Federally required provisions.

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

(1) Parties to the contract;

(2) Contract start and end dates;

(3) Scope of Work, including deliverables;

(4) DBE Special Provision;

(5) Schedule of Values;

(6) Payment due dates;

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

(8) Terms and conditions relative to undue delays;

(9) Means to resolve claims and 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 49 CFR Part 26, Appendix A, Item F must be followed prior to rejecting a DBE proposal for failure to provide insurance as outlined in the Contract.

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

(4) The subcontractor will be required to submit any applicable reports, in the 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 the subcontract document paying particular attention to whether the DBE is using its own forces and equipment. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Report any activity of concern to 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 goals and the need for additional DBE credit; and

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

e. **DBE Truckers**

If truckers are to be used towards the Project goals, 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 a 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 1 TO EXHIBIT 6

STANDARD PROFESSIONAL SERVICES AGREEMENT

[***To be added by DB Contractor***]

APPENDIX 2 TO EXHIBIT 6

STANDARD SUBCONTRACT AGREEMENT

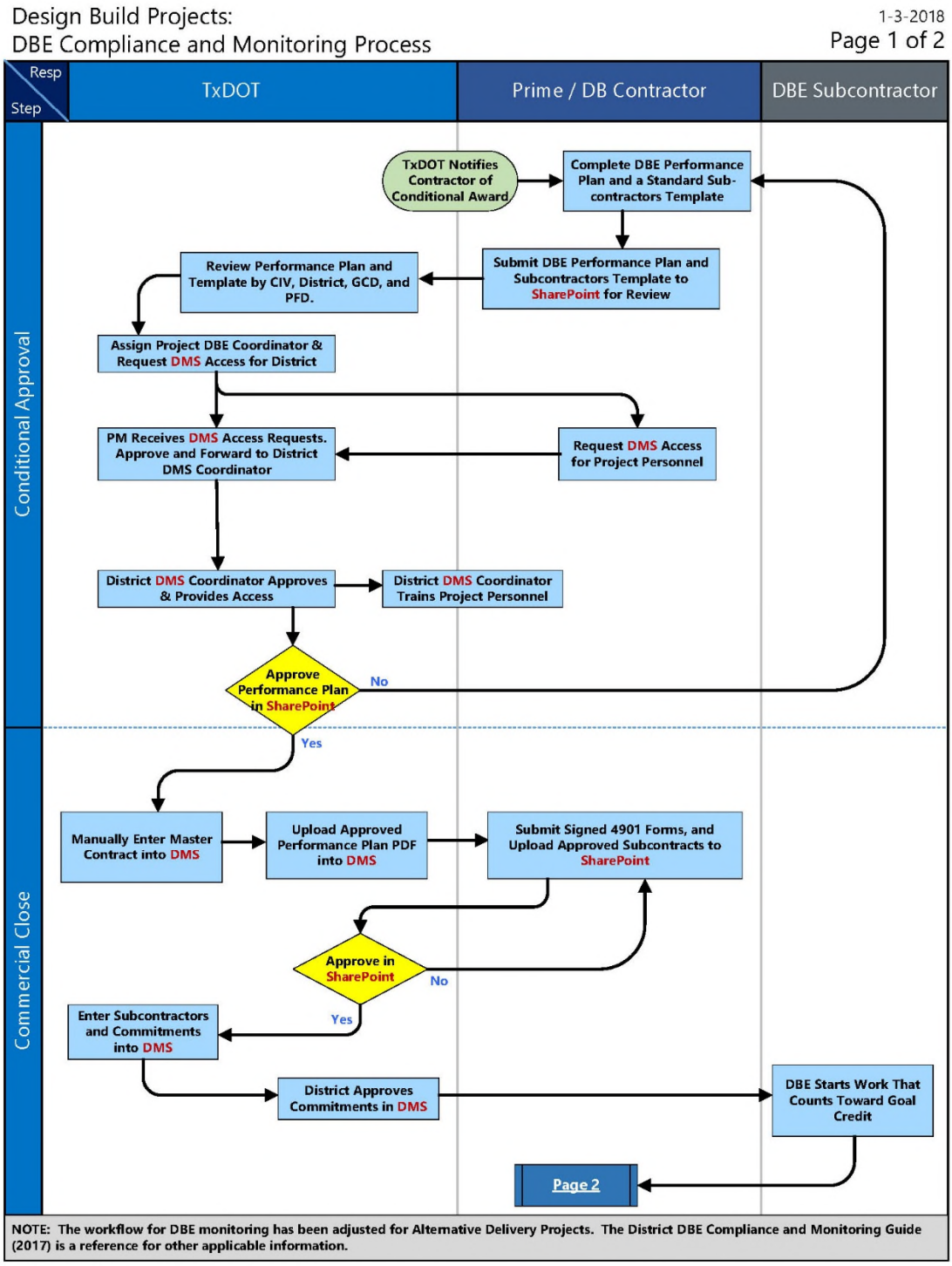
[***To be added by DB Contractor***]

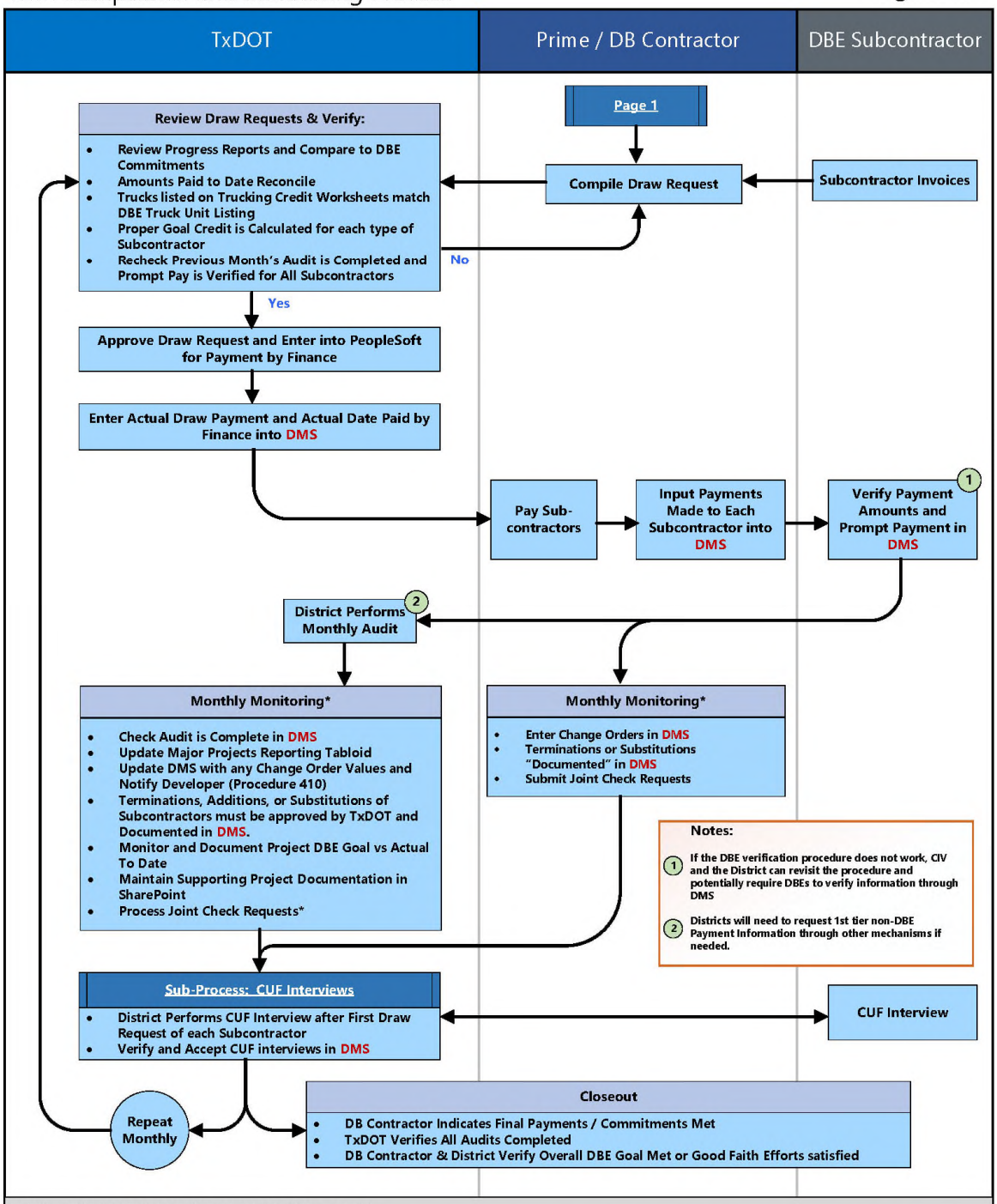
APPENDIX 3 TO EXHIBIT 6

FEDERALLY REQUIRED PROVISIONS

APPENDIX 4 TO EXHIBIT 6

DBE COMPLIANCE AND MONITORING PROCESS





* 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
[*To be provided from Request for Proposals*]

The wage rates listed are those predetermined by the Secretary of Labor and State Statue to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 01-03-2020.

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 1/3/2020	ZONE TX03 1/3/2020	ZONE TX04 1/3/2020	ZONE TX05 1/3/2020	ZONE TX06 1/3/2020	ZONE TX07 1/3/2020	ZONE TX08 1/3/2020	ZONE TX24 1/3/2020	ZONE TX25 1/3/2020	ZONE TX27 1/3/2020	ZONE TX28 1/3/2020	ZONE TX29 1/3/2020	ZONE TX30 1/3/2020	ZONE TX37 1/3/2020	ZONE TX38 1/3/2020	ZONE TX42 1/3/2020
1428	Agricultural Tractor Operator						$12.69					$12.35			$11.75		
1300	Asphalt Distributor Operator	$14.87	$13.48	$13.88	$15.72	$15.58	$15.55	$15.72	$13.28	$15.32	$15.62	$14.36	$14.25	$14.03	$13.75	$14.06	$14.40
1303	Asphalt Paving Machine Operator	$13.40	$12.25	$12.35	$13.87	$14.05	$14.36	$14.20	$13.26	$13.99	$14.68	$12.92	$13.44	$12.53	$14.00	$14.32	$12.99
1106	Asphalt Raker	$12.28	$10.61	$12.02	$14.21	$11.65	$12.12	$11.64	$11.44	$12.69	$12.05	$11.34	$11.67	$11.40	$12.59	$12.36	$11.78
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	$11.21	$10.33	$10.08	$11.99		$11.04	$11.62		$11.74	$11.41	$10.30		$10.23	$10.60	$12.68	$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	$13.55	$12.46	$13.16	$12.85	$12.64	$12.56	$12.77	$12.44	$14.12	$13.04	$13.38	$12.64	$12.80	$12.79	$12.98	$13.32
1318	Concrete Pavement Finishing Machine Operator				$16.05		$15.48			$16.05		$19.31				$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											$16.34				$11.71	
1333	Concrete Saw Operator				$14.67					$14.48	$17.33					$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less				$18.22		$18.36			$18.12	$18.04	$20.21			$18.63	$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	$16.82	$14.39	$13.85	$17.27		$15.87			$17.27		$14.67			$16.42	$14.97	$13.87
1343	Crane Operator, Lattice Boom Over 80 Tons				$20.52		$19.38			$20.52		$17.49			$25.13	$15.80	
1306	Crawler Tractor Operator	$13.96	$16.63	$13.62	$14.26		$15.67			$14.07	$13.15	$13.38			$14.60	$13.68	$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						$11.67										
1445	Directional Drilling Operator				$20.32		$17.24										
1139	Electrician	$20.96		$19.87	$19.80		$26.35		$20.27	$19.80		$20.92				$27.11	$19.87
1347	Excavator Operator, 50,000 pounds or less	$13.46	$12.56	$13.67	$17.19		$12.88	$14.38	$13.49	$17.19		$13.88			$14.09	$12.71	$14.42
1348	Excavator Operator, Over 50,000 pounds		$15.23	$13.52	$17.04		$17.71			$16.99	$18.80	$16.22				$14.53	$13.52
1150	Flagger	$9.30	$9.10	$8.50	$10.28	$8.81	$9.45	$8.70		$10.06	$9.71	$9.03	$8.81	$9.08	$9.90	$10.33	$8.10
1151	Form Builder/Setter, Structures	$13.52	$12.30	$13.38	$12.91	$12.71	$12.87	$12.38	$12.26	$13.84	$12.98	$13.07	$13.61	$12.82	$14.73	$12.23	$12.25
1160	Form Setter, Paving & Curb	$12.36	$12.16	$13.93	$11.83	$10.71	$12.94			$13.16	$12.54	$11.33	$10.69		$13.33	$12.34	$13.93
1360	Foundation Drill Operator, Crawler Mounted				$17.99					$17.99						$17.43	
1363	Foundation Drill Operator, Truck Mounted		$16.86	$22.05	$21.51		$16.93			$21.07	$20.20	$20.76		$17.54	$21.39	$15.89	$22.05
1369	Front End Loader Operator, 3 CY or Less	$12.28	$13.49	$13.40	$13.85		$13.04	$13.15	$13.29	$13.69	$12.64	$12.89			$13.51	$13.32	$12.17
1372	Front End Loader Operator, Over 3 CY	$12.77	$13.69	$12.33	$14.96		$13.21	$12.86	$13.57	$14.72	$13.75	$12.32			$13.19	$13.17	$13.02
1329	Joint Sealer																
1172	Laborer, Common	$10.30	$9.86	$10.08	$10.51	$10.71	$10.50	$10.24	$10.58	$10.72	$10.45	$10.30	$10.25	$10.03	$10.54	$11.02	$10.15
1175	Laborer, Utility	$11.80	$11.53	$12.70	$12.17	$11.81	$12.27	$12.11	$11.33	$12.32	$11.80	$11.53	$11.23	$11.50	$11.95	$11.73	$12.37
1346	Loader/Backhoe Operator	$14.18	$12.77	$12.97	$15.68		$14.12			$15.18	$13.58	$12.87		$13.21	$14.13	$14.29	$12.90
1187	Mechanic	$20.14	$15.47	$17.47	$17.74	$17.00	$17.10			$17.68	$18.94	$18.58	$17.00	$16.61	$18.46	$16.96	$17.47
1380	Milling Machine Operator	$15.54	$14.64	$12.22	$14.29		$14.18			$14.32	$14.35	$12.86			$14.75	$13.53	$12.80
1390	Motor Grader Operator, Fine Grade	$17.49	$16.52	$16.88	$17.12	$18.37	$18.51	$16.69	$16.13	$17.19	$18.35	$17.07	$17.74	$17.47	$17.08	$15.69	$20.01
1393	Motor Grader Operator, Rough	$16.15	$14.62	$15.83	$16.20	$17.07	$14.63	$18.50		$16.02	$16.44	$15.12	$16.85	$14.47	$17.39	$14.23	$15.53

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 1/3/2020	ZONE TX03 1/3/2020	ZONE TX04 1/3/2020	ZONE TX05 1/3/2020	ZONE TX06 1/3/2020	ZONE TX07 1/3/2020	ZONE TX08 1/3/2020	ZONE TX24 1/3/2020	ZONE TX25 1/3/2020	ZONE TX27 1/3/2020	ZONE TX28 1/3/2020	ZONE TX29 1/3/2020	ZONE TX30 1/3/2020	ZONE TX37 1/3/2020	ZONE TX38 1/3/2020	ZONE TX42 1/3/2020
1413	Off Road Hauler			$10.08	$12.26		$11.88			$12.25		$12.23			$13.00	$14.60	
1196	Painter, Structures					$21.29	$18.34						$21.29			$18.62	
1396	Pavement Marking Machine Operator	$16.42		$13.10	$13.55		$19.17	$12.01		$13.63	$14.60	$13.17		$16.65	$10.54	$11.18	$13.10
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															$14.95	
1205	Pipelayer		$11.87	$14.64	$13.17	$11.17	$12.79		$11.37	$13.24	$12.66	$13.24	$11.17	$11.67		$12.12	$14.64
1384	Reclaimer/Pulverizer Operator	$12.85			$11.90		$12.88			$11.01		$10.46					
1500	Reinforcing Steel Worker	$13.50	$14.07	$17.53	$16.17		$14.00			$16.18	$12.74	$15.83		$17.10		$15.15	$17.72
1402	Roller Operator, Asphalt	$10.95		$11.96	$13.29		$12.78	$11.61		$13.08	$12.36	$11.68			$11.71	$11.95	$11.50
1405	Roller Operator, Other	$10.36		$10.44	$11.82		$10.50	$11.64		$11.51	$10.59	$10.30		$12.04	$12.85	$11.57	$10.66
1411	Scraper Operator	$10.61	$11.07	$10.85	$12.88		$12.27		$11.12	$12.96	$11.88	$12.43		$11.22	$13.95	$13.47	$10.89
1417	Self-Propelled Hammer Operator																
1194	Servicer	$13.98	$12.34	$14.11	$14.74		$14.51	$15.56	$13.44	$14.58	$14.31	$13.83		$12.43	$13.72	$13.97	$14.11
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									$15.96							
1515	Spreader Box Operator	$12.60		$13.12	$14.71		$14.04			$14.73	$13.84	$13.68		$13.45	$11.83	$13.58	$14.05
1705	Structural Steel Welder															$12.85	
1509	Structural Steel Worker						$19.29									$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						$16.00										
1440	Trenching Machine Operator, Heavy						$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	$14.46	$13.63	$13.41	$15.00	$15.93	$15.66			$16.24	$16.39	$14.30	$16.62	$15.63	$14.28	$16.03	$13.41
1612	Truck Driver Transit-Mix				$14.14					$14.14							
1600	Truck Driver, Single Axle	$12.74	$10.82	$10.75	$13.04	$11.61	$11.79	$13.53	$13.16	$12.31	$13.40	$10.30	$11.61		$11.97	$11.46	$10.75
1606	Truck Driver, Single or Tandem Axle Dump Truck	$11.33	$14.53	$11.95	$12.95		$11.68		$14.06	$12.62	$11.45	$12.28		$13.08	$11.68	$11.48	$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	$12.49	$12.12	$12.50	$13.42		$12.81	$13.16		$12.86	$16.22	$12.50			$13.80	$12.27	$12.50
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		$14.02		$14.86		$15.97		$13.74	$14.84					$13.78		
1520	Work Zone Barricade Servicer	$10.30	$12.88	$11.46	$11.70	$11.57	$11.85	$10.77		$11.68	$12.20	$11.22	$11.51	$12.96	$10.54	$11.67	$11.76

Notes:

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

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

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

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

01-03-2020

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, payments and termination, as provided in the following Third Party Agreements:

- Lighting Agreement, by and between the State of Texas and the City of San Antonio, dated as of June 24, 2014;
- Lighting Agreement, by and between the State of Texas and the City of Selma, dated as of August 21, 1989;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of Cibolo, dated as of May 21, 1969;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of San Antonio, dated as of August 8, 1974;
- Municipal Maintenance Agreement Amendment No. 1, by and between the State of Texas and the City of San Antonio, dated as of August 26, 1996;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of Schertz, dated as of May 23, 1969;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of Selma, dated as of June 13, 2019;
- Municipal Maintenance Agreement, by and between the State of Texas and the City of Universal City, dated as of June 9, 1969; and
- Municipal Maintenance Agreement, by and between the State of Texas and the City of Live Oak, dated as of February 3, 2010.
- Multiple Use Agreement, by and between the State of Texas and the VIA Metropolitan Transit, dated as of August 15, 1980;
- Supplemental Agreement to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of August 15, 1980;
- Supplemental Agreement #8 to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of February 8, 2002;
- Supplemental Agreement #25 to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of February 17, 2004;
- Supplemental Agreement #68 to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of February 20, 2007;
- Supplemental Agreement #82 to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of August 24, 2007;
- Supplemental Agreement #112 to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of January 22, 2009; and
- Supplemental Agreement #243 to MUA, by and between the State of Texas and the VIA Metropolitan Transit, dated as of June 24, 2019.

EXHIBIT 9

ALLOWANCES

Allowance Name	Allowance Amount	Reference
Core Office Furniture Allowance	$15,000	Design-Build Specifications Section 10.1.1.5
Field Office Furniture Allowance	$15,000	Design-Build Specifications Section 10.1.2.5

EXHIBIT 10

MAXIMUM PAYMENT SCHEDULE

[*To be added prior to DBC execution*]

EXHIBIT 11

MAXIMUM REIMBURSEMENT AMOUNTS FOR EMINENT DOMAIN ASSISTANCE

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

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

EXHIBIT 12

FORMS OF BONDS

- □ Appendix 1: Form of Performance Bond
- □ Appendix 2: Form of Payment Bond
- □ Appendix 3: Form of Warranty Bond

APPENDIX 1 TO EXHIBIT 12

FORM OF PERFORMANCE BOND

[*To be replaced with actual Performance Bond*]

I-35 NEX Central Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for the I-35 NEX Central 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 $40,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 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, Qualifying Delay Late Fees, Noncompliance Charges, Key Personnel Change Fees and Lane Rental Charges, as specified in the Contract Documents, but not to exceed the Bonded Sum.

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

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, 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, Qualifying Delay Late Fees, Noncompliance Charges, Key Personnel Change Fees and Lane Rental Charges 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

_____ By:_____
or secretary attest
Name
Title:
Address:

NTP2 RIDER

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

Type of Bond: **Performance Bond**

dated effective [_____]
(MONTH-DAY-YEAR)

[DB Contractor], as Principal,
(PRINCIPAL)

and by [_____], as Surety,
(SURETY)
[*Add additional Surety lines as necessary*]

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 less the cost of Construction Work performed by Utility Owners] 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: [_____]
Its: [_____]
Seal:

[_____]
(SURETY)
[_____]
By: [_____]
Its: **Attorney in Fact**
Seal:
[*Add additional Surety lines as necessary*]

APPENDIX 2 TO EXHIBIT 12

FORM OF PAYMENT BOND

[*To be replaced by actual Payment Bond*]

I-35 NEX Central Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contract for the I-35 NEX Central 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 $40,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 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,
(SURETY)
[*Add additional Surety lines as necessary*]

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 less the cost of Construction Work performed by Utility Owners] 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: [_____]
Its: [_____]
Seal:

[_____]
(SURETY)
[_____]
By: [_____]
Its: **Attorney in fact**
Seal:
[*Add additional Surety lines as necessary*]

APPENDIX 3 TO EXHIBIT 12

FORM OF WARRANTY BOND

[To be replaced with actual Warranty Bond]

I-35 NEX Central Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build Contact for the I-35 NEX Central 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, Qualifying Delay Late Fees, Noncompliance Charges, Key Personnel Change Fees and Lane Rental Charges 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

_____
or secretary attest

By: _____
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").

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

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

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

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

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

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

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

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

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

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

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

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

4. Liability of Guarantor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to TxDOT:

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

With copies 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

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

If to Guarantor:

_____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

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

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

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

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

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

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

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

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

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

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

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

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

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

_____
a _____

By:_____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 14

CHANGE ORDER AND DELAY DEDUCTIBLE DETERMINATION FORMS

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

APPENDIX 1 TO EXHIBIT 14

FORM OF REQUEST FOR CHANGE ORDER

REQUEST FOR CHANGE ORDER NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator:_____ Date:_____

- **Title:_____**

Contract No:_____

- **DB Contractor Name:_____**

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] (45% 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.	Project Overhead (Qualifying Delay)	$ _____
I.	Grand Total	$ _____

SECTION III

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

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

SECTION IV[7]

The status of the Substantial Completion Deadline is as follows:

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

The status of the Final Acceptance Deadline is as follows:

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

---

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

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

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

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

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

_____
_____
_____

Change order required under CMC? Yes_____/No_____

If yes, state reason:

_____
_____
_____]

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

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

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

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

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

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

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

_____
DB Contractor Authorized Representative

Date: _____

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

_____
TxDOT District Engineer

Date: _____

Comments:

_____
_____
_____

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

_____
FHWA Project Representative

Date: _____

Comments:

_____
_____
_____

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

_____
TxDOT Chief Engineer

Date: _____

Comments:

[*Include if signature not required*] [Not Applicable - This Change Order is less than $10 million and does not exceed the $30 million cumulative threshold. Upon concurrence by the 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 VIII **(Reviewed by Chief Financial Officer, if applicable)**[9]

_____
TxDOT Chief Financial Officer

Date: _____

Comments:

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

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

_____

TxDOT Executive Director

Date: _____

Comments:

[*Include if signature not required*] [Not Applicable - This Change Order is less than $10 million and does not exceed the $30 million cumulative threshold. Upon concurrence by the 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. _____ CSJ 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)]

A. DB Contractor Labor (construction)
1. Wages (unburdened) $ _____
2. Insurance and taxes[4] (45% 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. Construction Labor[6] (25% of A.1)	$ _____
	2. Materials (15% of C)	$ _____
	3. Subcontracts (5% of E)	$ _____
	4. Utility Owner Direct Costs (5% of F)	$ _____
H.	Project Overhead (Qualifying Delay)	$ _____
I.	Not To Exceed Amount	$ _____

SECTION III

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

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

SECTION IV[7]

The status of Substantial Completion is as follows:

- θ Unaffected by this Change Order
- θ Affected by (increasing) (decreasing) the date of Substantial Completion by _____calendar days.
- θ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance is as follows:

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

- θ Unaffected by this Change Order
- θ Affected by (increasing) (decreasing) the date of Final Acceptance by _____calendar days.
- θ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

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

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

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

3. Number of days of Project Float _____

Justification for Change Order with reference to the Contract Documents:

_____

_____

_____

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

_____

_____

_____

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

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

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

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

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

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

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

_____

DB Contractor Authorized Representative

Date: _____

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

_____

TxDOT District Engineer

Date: _____

Comments:

_____

_____

_____

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

_____

FHWA Project Representative

Date: _____

Comments:

_____

_____

_____

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

_____

TxDOT Chief Engineer

Date: _____

Comments:

[*Include if signature not required*] [Not Applicable - This Change Order is less than $10 million and does not exceed the $30 million cumulative threshold. Upon concurrence by the 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 VIII **(Reviewed by Chief Financial Officer, if applicable)**[9]

_____

TxDOT Chief Financial Officer

Date: _____

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

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

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

_____

TxDOT Executive Director

Date_____

Comments:

[*Include if signature not required*] [Not Applicable - This Change Order is less than $10 million and does not exceed the $30 million cumulative threshold. Upon concurrence by the 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 3 TO EXHIBIT 14

FORM OF REQUEST FOR DELAY DEDUCTIBLE DETERMINATION

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator:_____ Date:_____

- **Title:_____**

Contract No:_____

- **DB Contractor Name:_____**

DESCRIPTION OF QUALIFYING DELAY:

_____
_____
_____
_____

IMPACT TO CRITICAL PATH:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:

_____
_____

_____
DB Contractor Authorized Representative

Date: _____

SECTION II

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

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

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

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

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

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

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

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

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

_____

DB Contractor Authorized Representative

Date: _____

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

_____

TxDOT District Engineer

Date: _____

Comments:

_____

_____

_____

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

_____

FHWA Project Representative

Date: _____

Comments:

_____

_____

_____

SECTION V **(Reviewed by TxDOT Chief Engineer, if applicable)**[1]

_____

TxDOT Chief Engineer

Date: _____

Comments:

_____

_____

_____

SECTION VI **(Reviewed by Chief Financial Officer, if applicable)**[2]

_____

TxDOT Chief Financial Officer

Date: _____

Comments:

_____

_____

_____

SECTION VII **(Reviewed by TxDOT Executive Director, if applicable)**[3]

_____

TxDOT Executive Director

Date: _____

Comments:

_____

_____

_____

[1] If not required, insert "NOT APPLICABLE" in signature line.
[2] If not required, insert "NOT APPLICABLE" in signature line.
[3] If not required, insert "NOT APPLICABLE" in signature line.

APPENDIX 4 TO EXHIBIT 14

FORM OF DELAY DEDUCTIBLE DETERMINATION

DELAY DEDUCTIBLE DETERMINATION NO. _____

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. _____

CSJ NO. _____

CONTRACT NO. _____

SECTION I

Originator:_____ Date:_____

- **Title:_____**

Contract No:_____

- **DB Contractor Name:_____**

DESCRIPTION OF QUALIFYING DELAY:

_____
_____
_____
_____

IMPACT TO CRITICAL PATH:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:

_____
_____

SECTION II

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

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

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

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

SECTION III (Approved by TxDOT District Engineer)

_____

TxDOT District Engineer

Date: _____

Comments:

_____

_____

_____

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

_____

FHWA Project Representative

Date: _____

Comments:

_____

_____

_____

SECTION V (Reviewed by TxDOT Chief Engineer, if applicable)[1]

_____

TxDOT Chief Engineer

Date: _____

Comments:

_____

_____

_____

SECTION VI (Reviewed by Chief Financial Officer, if applicable)[2]

_____

TxDOT Chief Financial Officer

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

Date: _____

Comments:

_____

_____

_____

SECTION VII **(Reviewed by TxDOT Executive Director, if applicable)**[3]

_____

TxDOT Executive Director

Date: _____

Comments:

_____

_____

_____

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

EXHIBIT 15

LANE RENTAL CHARGES AND LIQUIDATED DAMAGES FOR LANE CLOSURES

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

A. Non-Chargeable Lane Closures and Chargeable Lane Closures

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

2. A "Chargeable Lane Closure" is any Lane Closure that is not a Non-Chargeable Lane Closure, regardless of whether TxDOT has approved the Lane Closure as part of an approved TCP.

B. General Requirements for Lane Closures

1. Except for Lane Closures required due to Incidents or Emergencies, advance written notice of any Lane Closure (a "Lane Closure Notice" or "LCN") must be provided to TxDOT no fewer than fifteen days before the placement of any traffic control devices associated with the Lane Closure, if the Lane Closure is expected to exceed 24 hours in duration. If the Lane Closure is expected to be 24 hours or less, the LCN must be provided to TxDOT no later than seven days before the placement of any traffic control devices associated with the Lane Closure, or as otherwise approved by TxDOT. The LCN shall provide information as to the location and duration of the Lane Closure and shall contain such other information as requested by TxDOT.

2. Except for Lane Closures required due to Incidents or Emergencies, all Lane Closures shall be pursuant to a TCP submitted to TxDOT for approval fourteen days in advance of the Lane Closure. This requirement is increased to 21 days for Full Roadway Closures. Approval of the TCP shall be in TxDOT's good faith discretion. TxDOT and DB Contractor may agree on a standard TCP which can be used on a recurring basis for Lane Closures that come within the parameters of the TCP.

3. Lane Closures shall comply with the approved Traffic Management Plan and an approved TCP. No Lane Closure will be permitted unless DB Contractor can demonstrate that the Lane Closure will provide clear benefit to the progress of the Work. Lane Closures must be coordinated with adjacent projects. When simultaneous requests for traffic control are received from DB Contractor, adjacent projects, and/or Governmental Entities, TxDOT will give priority to the closure request submitted first. For Lane Closures on a non-TxDOT controlled facility, DB Contractor shall obtain approval from the applicable Governmental Entity in addition to approval from TxDOT. DB Contractor shall coordinate Lane Closures that may affect crossing TxDOT facilities with appropriate TxDOT Project staff, as needed, to ensure that no conflicts occur. In addition to obtaining applicable Governmental Entity and TxDOT advance approval, DB Contractor shall inform the PIO no less than ten days in advance of all Full Roadway Closures or Lane Closures exceeding 24 hours in duration, and five days in advance for all Lane Closures 24 hours or less so the PIO can inform the public, emergency services, schools, etc. as needed.

4. DB Contractor shall consider the safety of workers and the traveling public as the primary factor when determining the appropriate time to implement a Lane Closure.

5. The following TxDOT standards, specifications, procedure manuals, and references apply to all Lane Closures:

- Texas Manual of Uniform Traffic Control Devices (TMUTCD);
- TxDOT Traffic Control Plan (TCP) standards;
- TxDOT Barricade and Construction (BC) standards; and
- TxDOT Standard Specifications Item 502 (Barricades Signs and Traffic Handling).

C. Liquidated Damages for Lane Closures and Lane Rental Charges

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

If a Noncompliance Event referred to in items 33 and 34 in the Noncompliance Events Table set forth in Exhibit 16 occurs (i.e., a failure to properly identify and timely address the hazard mitigation for a Category 1 Defect), then notwithstanding that the affected travel lane(s) remain open to traffic, TxDOT shall have the right to assess a Lane Rental Charge for a Lane Closure for the relevant travel lane in addition to the applicable Noncompliance Points until the hazard to Users has been mitigated and the Noncompliance Event has been cured.

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

1. Liquidated Damages for Lane Closures. Liquidated Damages for Lane Closures shall be assessed for Lane Closures that result in less than the minimum number of lanes that must be maintained as described in Section E and that occur during a Holiday, a Special Event, or Time Period A. DB Contractor shall be liable for Liquidated Damages for Lane Closures for such Lane Closures pursuant to Section 8.7.2 of the General Conditions and Section 7.3 and Exhibit 15 of this DBA. For purposes of this Exhibit 15, a "Full Roadway Closure" means a Lane Closure of the elevated lanes, mainlanes, frontage roads, mainlane ramps, connector ramps or cross streets such that the applicable facility has no lanes or shoulders available to traffic in one direction of travel. Lane Closures that result in no lanes being available to traffic in both directions shall be considered two separate Full Roadway Closures. The Liquidated Damages for Lane Closures are set forth below in Tables 15-1 for the applicable number of lanes that are closed below the minimum number of lanes set forth in Section E.

2. Lane Rental Charges. Lane Rental Charges shall be assessed for any Chargeable Lane Closure, other than (i) a Lane Closure that occurs during a Holiday or a Special Event, or (ii) a Lane Closure during Time Period A. DB Contractor shall be liable for Lane Rental Charges for such Lane Closures pursuant to Section 8.7.2 of the General Conditions and Section 7.3 and Exhibit 15 of this DBA. The Lane Rental Charges are set forth below in Tables 15-1 for the applicable number of lanes that are closed below the minimum number of lanes set forth in Section E.

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

I-35 NEX CENTRAL PROJECT	Time Period A / Holidays / Special Events Liquidated Damages Per Hour	Time Period B Lane Rental Charges Per Hour	Time Period C Lane Rental Charges Per Hour
ELEVATED LANES (See Note 1)			
I-35 (2 LANES)			
One Lane Closed	$39,000	$9,000	$2,000
Two Lanes Closed (Full Roadway Closure)	$52,000	$13,000	$3,000
I-35 (3 LANES)			
One Lane Closed	$13,000	$4,000	$1,000
Two Lanes Closed	$43,000	$11,000	$3,000
Three Lanes Closed (Full Roadway Closure)	$52,000	$13,000	$3,000
MAINLANES			
I-35 (3 LANES)			
One Lane Closed	$20,000	$6,000	$0
Two Lanes Closed	$65,000	$15,000	$500
Three Lanes Closed (Full Roadway Closure)	$85,000	$40,000	$15,000
I-35 (4 LANES)			
One Lane Closed	$15,000	$4,000	$0
Two Lanes Closed	$25,000	$8,000	$200
Three Lanes Closed	$70,000	$17,000	$2,500
Four Lanes Closed (Full Roadway Closure)	$85,000	$40,000	$15,000
I-410 (3 LANES)			
One Lane Closed	$25,000	$7,500	$0
Two Lanes Closed	$70,000	$20,000	$500
Three Lanes Closed (Full Roadway Closure)	$90,000	$45,000	$15,000
I-410 (4 LANES)			
One Lane Closed	$15,000	$5,000	$0
Two Lanes Closed	$30,000	$10,000	$300
Three Lanes Closed	$75,000	$22,000	$2,800

Four Lanes Closed (Full Roadway Closure)	$90,000	$45,000	$15,000
I-410 (5 LANES)			
One Lane Closed	$10,000	$4,000	$0
Two Lanes Closed	$20,000	$6,000	$200
Three Lanes Closed	$50,000	$15,000	$2,000
Four Lanes Closed	$75,000	$22,000	$2,800
Five Lanes (Full Roadway Closure)	$90,000	$45,000	$18,800
LP 1604 (2 LANES)			
One Lane Closed	$50,000	$15,000	$300
Two Lanes Closed (Full Roadway Closure)	$70,000	$35,000	$20,000
AUXILIARY LANES			
Auxiliary Lane Closure (See Note 6)	$15,000	$5,000	$2,000
MAINLANE RAMPS			
I-35, I-410 AND LP 1604 (Full Roadway Closures)	$25,000	$10,000	$500
CONNECTOR RAMPS			
I-410 (2 LANES)			
One Lane Closed	$35,000	$10,000	$200
Two Lanes Closed (Full Roadway Closure)	$45,000	$20,000	$5,000
LP 1604 (2 LANES)			
One Lane Closed	$15,000	$3,000	$100
Two Lanes Closed (Full Roadway Closure)	$20,000	$10,000	$2,500
FRONTAGE ROADS			
I-35, I-410 and LP 1604 (2 LANES)			
One Lane Closed	$20,000	$5,000	$100
Two Lanes Closed (Full Roadway Closure)	$30,000	$15,000	$5,000
I-35, I-410 and LP 1604 (3 LANES)			
One Lane Closed	$7,500	$2,500	$0
Two Lanes Closed	$25,000	$6,000	$200
Three Lanes Closed (Full Roadway Closure)	$30,000	$15,000	$5,000
TURNAROUNDS			
Turnaround Closed	$7,500	$2,500	$500

CROSS STREETS				
Single Lane Closure	I-35 Thousand Oaks Dr. (See Note 2) N. Weidner Rd. O'Connor Judson Rd. Toepperwein Rd. Pat Booker Road (See Note 3) Forum Parkway (See Note 3) N. Evans Dr. FM 1518 / Corporate Dr. Schertz Parkway FM 3009 I-410 Harry Wurzbach Rd. Starcrest Dr. Perrin Beitel Rd. / FM 2252 LP 1604 Lookout Rd.	$12,000	$3,000	$0 (See Note 4)

Full Roadway Closure	I-35 Thousand Oaks Dr. (See Note 2) Starlight Terrace N. Weidner Rd. O'Connor Judson Rd. Toepperwein Rd. I-35 Access Road bridge Pat Booker Road (See Note 3) Forum Parkway (See Note 3) Olympia Parkway N. Evans Dr. FM 1518 / Corporate Dr. Schertz Parkway FM 3009 I-410 Harry Wurzbach Rd. Starcrest Dr. Perrin Beitel Rd. / FM 2252 LP 1604 Lookout Rd.	$24,000	$6,000	$1,500

Notes:

1. DB Contractor shall be subject to Liquidated Damages and Lane Rental Charges for Lane Closures of the elevated lanes after the date DB Contractor achieves "Milestone Completion" for the applicable lanes.

2. Liquidated Damages shall be assessed for Lane Closures of Thousand Oaks Drive during Friday Night home football game days at Heroes Stadium from 4:00 pm to 11:00 pm. Such Liquidated Damages shall be $45,000 per hour for a single Lane Closure and $60,000 per hour for a Full Roadway Closure.

3. Liquidated Damages for the closure of Pat Booker Road and Forum Pkwy on Special Event days shall be $30,000 per hour for a single Lane Closure and $40,000 per hour for a Full Roadway Closure. Lane Rental Charges for Lane Closures of Pat Booker Road or Forum Pkwy on weekends during Time Period B shall be $20,000 per hour for a single Lane Closure and $30,000 per hour for a Full Roadway Closure. Lane Rental Charges for Lane Closures of Pat Booker Road or Forum Pkwy on weekends during Time Period C shall be $500 per hour for a single Lane Closure and $7,500 per hour for a Full Roadway Closure.

4. During Time Period C, single Lane Closures are not subject to Lane Rental Charges provided DB Contractor maintains one lane of traffic in each direction.

5. Lane Closures of acceleration lanes on frontage roads from cross streets shall be subject to Liquidated Damages or Lane Rental Charges, as applicable, in an amount equal to the amount charged for a single Lane Closure on 3-lane frontage roads, unless DB Contractor identifies the applicable Lane Closure in a TCP and the Lane Closure is allowed with TxDOT approval of the TCP.

6. An auxiliary lane for the purposes of this Exhibit 15 is defined as an additional mainlane or frontage road lane adjoining the through-traffic lanes for the purpose of speed change, turning, weaving, truck climbing, maneuvering of entering and leaving traffic, and other purposes supplementary to through-traffic movement.

The above amounts will be prorated and assessed for each quarter hour, or any part thereof, that a Lane Closure occurs. A Lane Closure of 30 minutes or shorter spanning two clock hours shall be measured as occupying only one clock hour.

D. Lane Rental Bank

The Lane Rental Bank amount for the Project shall be [$___] [*insert $120,000,000 plus the Lane Rental Value amount included in the Proposal*]. DB Contractor shall use the Lane Rental Bank amount during the term of the DBC to pay for Lane Rental Charges assessed for Lane Closures during Time Periods B and C in accordance with Table 15-1. Time Period A and Holidays / Special Events Lane Closures are not eligible for the Lane Rental Bank provisions. Any Lane Rental Charges in excess of the Lane Rental Bank amount will be deducted from DB Contractor's monthly Draw Request or Final Payment.

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

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

All Lane Closures that do not meet the minimum number of lanes requirements or allowable Lane Closure requirements specified in this Section E are subject to Liquidated Damages during Time Period A and Lane Rental Charges during Time Periods B and C.

The allowable Lane Closures defined in Sections E.1 - E.7 are allowable for specific durations at specific locations and are not subject to Liquidated Damages or Lane Rental Charges, as applicable, pursuant to an approved TCP. The

allowable Lane Closures shall have the maximum allowable durations shown in Tables 15-2.1 to 15-2.5. Such durations shall exclude the time periods for Holidays and Special Events listed in Sections G and H, respectively. If Work extends beyond the allowable durations for such operations, then Liquidated Damages and/or Lane Rental Charges will be assessed, as applicable.

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

E.1 Mainlanes

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

- During Time Period C, excluding auxiliary lanes, a single mainlane Lane Closure is allowed for mainlanes with 3 lanes or more in one direction.
- During Time Period C, and only after opening of the elevated lanes, the closure of two mainlanes is allowed adjacent to the segment of elevated lanes open to traffic.
- During Time Period C, and only for the purpose of performing base repairs, DB Contractor is allowed to close two adjacent mainlanes. The allowable duration for the mainlane Lane Closures during Time Period C to perform the base repairs is 225 days.
- Auxiliary Lane Closures are allowed during the periods when the entrance ramp to the applicable auxiliary lane is closed.

Table 15-2.1 – Allowable Mainlane Closures

No.	Centerline Station	Closure Type	Closure Description	Allowable Duration (Days)
1	3772+00 to 3791+00 (I35 CL)	Mainlane Aux Lane	NB AUX Lane Under Forum Drive	120
2	3772+00 to 3791+00 (I35 CL)	Mainlane Aux Lane	SB AUX Lane Under Forum Drive	120

E.2 Ramps

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

The approved TCP for the allowable ramp closures in Table 15-2.2 must provide alternate access for the duration of the allowable ramp closure either by means of an adjacent existing ramp or temporary ramp that maintains access to/from the cross street served by the closed ramp, otherwise the closure shall be subject to Liquidated Damages or Lane Rental Charges, as applicable. If an existing ramp is closed and is replaced

with either an adjacent existing ramp or temporary ramp, then the Lane Closure resulting from the relocation of the existing ramp shall not be subject to Liquidated Damages or Lane Rental Charges.

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

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

Table 15-2.2 – Allowable Ramp Lane Closures

No.	Centerline Station	Closure Type	Closure Description	Allowable Duration (Days)
1	3457+50 (I-35 CL)	Ramp	I410 EB/Thousand Oaks to I35 SB Entrance Ramp	5
2	3525+00 (I35 CL)	Ramp	I35 SB to Randolph Exit Ramp	60
3	3548+50 (I35 CL)	Ramp	I35 SB to Thousand Oaks Exit Ramp	60
4	3560+00 (I35 CL)	Ramp	Weidner to I35 SB Entrance Ramp	60
5	3585+00 (I35 CL)	Ramp	I35 SB to Weidner Exit Ramp	60
6	3587+00 (I35 CL)	Ramp	Weidner to I35 NB Entrance Ramp	60
7	3600+00 (I35 CL)	Ramp	O'Conner to I35SB Entrance Ramp	30
8	3605+00 (I35 CL)	Ramp	I35 NB to O'Conner Exit Ramp	30

E.3 Direct Connectors

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

E.4 Frontage Roads

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

Lane Closures that comply with the minimum number of lanes requirements and the allowable Lane Closure requirements specified in this Section E.4 are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP. No ramp closures are permitted adjacent to, and in the same direction as, the allowable frontage road Lane Closures specified in Table 15-2.3 during Time Period A for the duration

of such frontage road closures, unless the temporary or adjacent ramp access provided for the ramp closure under Section E.2 allows frontage road traffic to enter or exit the highway without passing through an intersection that traffic would not pass through if there was no ramp closure. In addition, if a mainlane exit ramp is closed, DB Contractor may close the frontage road lane serviced by the ramp provided that at least two adjacent frontage road lanes are open to traffic in the same direction.

- During Time Period C and on Sundays, and only in locations where there are three frontage road lanes, excluding auxiliary lanes, single lane frontage road closures are allowed.

- Auxiliary Lane Closures are allowed during the periods when the exit ramp to the applicable frontage road auxiliary lane is closed.

- During Time Period C, and only for the purpose of performing base repairs and pavement resurfacing operations, DB Contractor is allowed to reduce frontage roads to a single lane, excluding auxiliary lanes. The allowable duration for reducing the frontage road to a single lane during Time Period C to perform the base repairs is 415 days.

Table 15-2.3 – Allowable Frontage Road Lane Closures

No.	Station	Closure Type	Closure Description	Allowable Duration (Days)
1	1499+00 to 1507+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	80
2	1529+00 to 1530+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure (See Note 1)	20
3	1537+00 to 1555+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	160
4	1562+00 to 1573+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	90
5	1574+00 to 1585+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	80
6	1586+00 to 1610+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	190
7	1623+00 to 1635+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	100
8	1646+00 to 1658+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	100
9	1667+00 to 1681+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	110
10	1707+00 to 1720+00 (I-35EL NB)	NB Frontage Road	1 Lane Frontage Road Closure	110
11	1720+00 to 1729+50 (I-35 EL NB)	NB Frontage Road	1 Lane Frontage Road Closure	40
12	102+50 to 109+00 (ELNB-1604EB)	Two-Way Frontage Road	1 Lane Frontage Road Closure (See Note 2)	30
13	1724+00 to 1729+00 (I-35 EL NB)	NB Frontage Road	1 Lane Frontage Road Closure (See Note 3)	15
14	1786+00 to 1810+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	170

15	2490+00 to 2496+00 (I35 SBEL)	SB Frontage Road	1 Lane Closure (See Note 4)	40
16	2514+00 to 2532+50 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	260
17	2532+50 to 2547+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	150
18	2558+00 to 2588+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	110
19	2600+00 to 2612+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	90
20	2612+00 to 2638+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	200
21	2638+00 to 2664+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	190
22	2669+00 to 2671+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	20
23	2696+00 to 2704+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	60
24	109+00 to 116+00 (ELSB-1604WB)	SB-WB Direct Connector	1 Lane I35SB-1604WB DC Closure	30
25	109+00 to 128+00 (ELSB-1604WB)	SB Frontage Road	1 Lane Frontage Road Closure	100
26	2457+00 to 2461+00 (I-35EL SB)	SB Frontage Road	1 Lane Frontage Road Closure	30
27	2665+00 to 2669+00 (I-35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	30
28	2735+00 to 2746+00 (I-35SBEL)	SB Collector Distributor	1 Lane Collector Distributor Closure	70
29	2761+00 to 2771+00 (I-35SBEL)	SB Collector Distributor	1 Lane Collector Distributor Closure	40
30	2733+00 to 2748+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	90
31	2758+00 to2775+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	130
32	2792+00 to 2811+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	140
33	2815+00 to 2830+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	60
34	2830+00 to 2864+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	270

Notes:

1. The Lane Closure does not extend to the Thousand Oaks intersection. All lanes must be open immediately after this location.
2. Single Lane Closure of the two-way frontage road.
3. The allowable single Lane Closure at this location is in addition to the allowable Lane Closure specified in Item 11.
4. DB Contractor shall maintain two lanes for the duration of the allowable Lane Closure.

E.5 Cross Streets

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

- During Time Period C, single Lane Closures are allowed on cross streets provided DB Contractor maintains one lane of traffic in each direction.

- Right-turn lane closures from the frontage roads to cross streets are allowed subject to an approved TCP. The right-turn lane to Forum Pkwy shall remain open to traffic during Time Periods A and B on Friday and during Time Period B on Saturday and Sunday. A closure of the right-turn lane to Forum Pkwy during these time periods shall be subject to Liquidated Damages or Lane Rental Charges, as applicable. The amount assessed shall be for a single Lane Closure of Forum Pkwy as provided in Table 15-1.

E.6 Turnarounds

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

- During Time Period C, turnaround Lane Closures are allowed.

Table 15-2.4 – Allowable Turnaround Lane Closures

No.	Centerline Station	Closure Type	Closure Description	Allowable Duration (Days)
1	3532+30 (I35 CL)	Turn-Arounds	NB-SB T/A @ Thousand Oaks	25
2	3532+30 (I35 CL)	Turn-Arounds	NB-SB T/A @ Thousand Oaks	25
3	3533+70 (I35 CL)	Turn-Arounds	SB-NB T/A @ Thousand Oaks	25
4	3573+00 (I35 CL)	Turn-Arounds	NB-SB T/A @ N Weidner Rd	25
5	3573+00 (I35 CL)	Turn-Arounds	NB-SB T/A @ N Weidner Rd	25
6	3574+62 (I35 CL)	Turn-Arounds	SB-NB T/A @ N Weidner Rd	25
7	3574+62 (I35 CL)	Turn-Arounds	SB-NB T/A @ N Weidner Rd	25
8	81040+50 (I410 CL)	Turn-Arounds	EB-WB T/A @ N Perrin Beitel Rd	25
9	81042+25 (I410 CL)	Turn-Arounds	WB-EB T/A @ Perrin Beitel Rd	25
10	4921+25 (LP1604 CL)	Turn-Arounds	EB-WB T/A @ UPRR	80
11	4924+25 (LP1604 CL)	Turn-Arounds	WB-EB T/A @ UPRR	80

E.7 Existing Retaining Wall Reconstruction

DB Contractor is provided the following allowable Lane Closures, identified in Table 15-2.5 for the sole purpose of reconstructing existing retaining walls impacted by DB Contractor's Work, in accordance with the requirements defined in the Design-Build Specifications, Item 21.2.7 and this Section E.7.

If DB Contractor is not required to reconstruct an existing retaining wall identified in Table 15-2.5, pursuant to the reconstruction requirements defined in Design-Build Specifications, Item 21.2.7, then DB Contractor shall not be entitled to the applicable allowable Lane Closure.

In locations where the limits of the allowable Lane Closures provided in Table 15-2.5 overlap with the limits of other allowable Lane Closures provided in this Exhibit 15, the duration of the allowable Lane Closure for a particular closure type within the overlap limits may be the sum of the durations of the allowable Lane Closures in the areas of overlap only.

Table 15-2.5 – Allowable Lane Closures for Existing Retaining Wall Reconstruction

No.	Retaining Wall No.	Station (I-35 CL)	Closure Type	Closure Description	Allowable Duration (Days)
1	1	3456+69 to 3458+59	Ramp	I410 EB/Thousand Oaks to I35 SB Entrance Ramp	30
2	2	3456+68 to 3458+79	Ramp	I410 EB/Thousand Oaks to I35 SB Entrance Ramp	30
3	4	3506+66 to 3523+51	NB Frontage Road	1 Lane Frontage Road Closure	90
4	5	3516+25 to 3523+25	Ramp	I35 SB to Randolph Exit Ramp	60
5	6	3520+15 to 3531+96	SB Frontage Road	Must maintain two Lanes	240
6	7	3534+12 to 3545+80 (See Note 1)	Ramp	I35 SB to Thousand Oaks/Starlight Rd. Exit Ramp	30
7	8	3534+12 to 3545+80 (See Note 1)	SB Frontage Road	1 Lane Frontage Road Closure	200
8	9	3543+30 to 3551+25	Ramp	I35 SB to Thousand Oaks/Starlight Rd. Exit Ramp	60
9	10	3558+25 to 3562+75	Ramp	Weidner Rd to I35 SB Entrance Ramp	30
10	11	3560+10 to 3563+00	Ramp	Weidner Rd to I35 SB Entrance Ramp	30
11	12	3582+00 to 3585+50	Ramp	I35 SB to Weidner Rd Exit Ramp	30
12	13	3583+20 to 3593+16	Ramp	I35 SB to Weidner Rd Exit Ramp	60
13	14	3593+67 to 3606+65	Ramp	I35 NB to O'Connor Rd Exit Ramp	140
14	15	3597+05 to 3602+41	Ramp	O'Connor Rd to I35 SB Entrance Ramp	30
15	16	3603+23 to 3610+00	Ramp	I35 NB to O'Connor Exit Ramp	120
16	17	3610+00 to 3623+11	NB Frontage Road	1 Lane Frontage Road Closure	120

No.	Retaining Wall No.	Station (I-35 CL)	Closure Type	Closure Description	Allowable Duration (Days)
17	18	3601+22to 3617+84	SB Frontage Road	1 Lane Frontage Road Closure	120
18	19	3633+13 to 3640+08	NB Frontage Road	1 Lane Frontage Road Closure	60
19	20	3654+00 to 3655+81	Ramp	Judson Rd to I35 SB Entrance Ramp	30
20	21	3648+40 to 3653+22	NB Frontage Road	1 Lane Frontage Road Closure	60
21	22	3656+48 to 3661+25	NB Frontage Road	1 Lane Frontage Road Closure	60
22	23	3655+10 to 3658+00	Ramp	Judson Rd to I35 SB Entrance Ramp	30
23	24	3658+00 to 3672+67	SB Frontage Road	Must maintain two Lanes	110
24	26	3689+82 to 3697+06	Ramp	I-35 NB to Pat Booker Exit Ramp	120
25	32	3772+88 to 3781+80	NB Frontage Road	1 Lane Frontage Road Closure	120
26	33	3774+22 to 3783+70	SB Frontage Road	1 Lane Frontage Road Closure	120
27	34	3910+20 to 3935+04	NB Frontage Road	Maintain 2 Frontage Road Lanes (See Note 2)	450
28	35	3910+97 to 3930+19	SB Frontage Road	Maintain 2 Frontage Road Lanes (See Note 2)	250

Notes:

1. Location Nos. 6 and 7 (Retaining Wall Nos. 7 and 8) are the same wall. DB Contractor may implement an allowable ramp closure of 30 days for reconstruction of the existing wall adjacent to the I-35 SB exit ramp to Thousand Oaks and an allowable frontage road Lane Closure of 200 days for reconstruction of the remainder of the existing wall.
2. For Location Nos. 27 and 28 (Retaining Wall Nos. 34 and 35), the allowable Lane Closures are the left-turn, turnaround and acceleration lanes only. DB Contractor must maintain 2 frontage road lanes at all times at these retaining wall locations.

F. Other Lane Closure Restrictions

- Any Lane Closure of the same facility in the same direction, with the beginning of one Lane Closure separated from the end of another adjacent Lane Closure by more than 1 mile, shall be considered two separate Lane Closures.

- DB Contractor shall not close two consecutive entrance or two consecutive exit ramps at the same time.

- DB Contractor shall not close two consecutive signalized frontage road intersections at the same time during construction.

- DB Contractor shall maintain a minimum of one driveway per business and residence at all times. For businesses with multiple driveways, when driveway closure is necessary to progress Work, no driveway may be closed for more than 30 consecutive days or more than 45 days in a 90-day period.

- DB Contractor is not permitted to schedule a Full Roadway Closure of the mainlanes simultaneous with a frontage road Lane Closure within the same proximity that might further impact traffic operations.

- Liquidated Damages shall be assessed as a Full Roadway Closure in accordance with Table 15-1 for rolling lane closures that occur during a Holiday, a Special Event, or Time Period A. DB Contractor shall not be assessed Lane Rental Charges where rolling lane closures are implemented if the rolling lane closure is less than 15 minutes in duration during Time Periods B and C and provided that the queued traffic can be dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the rolling lane closure. The determination of whether the queued traffic can be dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the rolling lane closure shall be based on an assessment and joint decision by the IQF and TxDOT. If the traffic queue resulting from rolling lane closure cannot be dispersed within 10 minutes, then Lane Rental Charges shall be assessed. Lane Rental Charges shall also be assessed if any rolling lane closure is greater than 15 minutes in duration.

G. Holidays

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

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

H. Special Events

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

- Tax-free shopping weekend (Saturday and Sunday during Time Period B)
- Friday Night Home Football Games at Heroes Stadium from 4:00 pm to 11:00 pm (Thousand Oaks Drive only)

TxDOT has the right to modify the list of Special Events as they are renamed or replaced. Subject to DB Contractor's right to a Change Order in accordance with Section 4.6.9.8 of the General Conditions. TxDOT also has the right to (a) reschedule a Special Event, (b) lengthen, shorten, or otherwise modify these restrictions as actual traffic conditions may warrant, or (c) add a "Special Event" for certain major events that are currently unknown to TxDOT, which will be handled on an individual basis as they arise. TxDOT shall provide written notice to DB Contractor of any changes to

the Special Events. These events could include, but are not limited to, parades for sports championships, major political events, major Arts District events, and large athletic events (such as marathons).

I. Incidents and Emergencies

DB Contractor shall not be liable for Liquidated Damages for Lane Closures and Lane Rental Charges for Lane Closures required due to Incidents or Emergencies that are not attributable to, could not have been avoided by or are not exacerbated by the actions of a DB Contractor-Related Entity, but only to the extent necessary to remediate the Incident or Emergency.

J. Time Periods

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

Table 15-3 Period Per Hour of the Day

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

15:00	B	A	A	B
16:00	B	A	A	B
17:00	B	A	A	B
18:00	B	A	A	B
19:00	B	A	A	B
20:00	B	A	A	B
21:00	C	C	C	C
22:00	C	C	C	C
23:00	C	C	C	C

Liquidated Damages for Lane Closures and Lane Rental Charges will be assessed for all Lane Closures based upon the time periods shown in the above table and corresponding amounts listed in Table 15-1 of this Exhibit 15.

EXHIBIT 16

NONCOMPLIANCE POINTS PROVISIONS

1. Noncompliance Points System

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

1.2 The persistent accumulation of Noncompliance Points may also result in a Persistent DB Contractor 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 Design-Build Agreement.

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

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

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

2.2 Notification Initiated by TxDOT

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

2.3 NCE Cure Periods

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

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

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

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

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

2.4 Notification of Cure

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

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

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

2.4.4 Subject to the time restrictions in this Section 2, TxDOT may reject DB Contractor's notice of cure if TxDOT determines that DB Contractor has not fully cured the Noncompliance Event or if TxDOT cannot determine if DB Contractor has fully cured the Noncompliance Event. Upon making this determination, TxDOT shall deliver a Notice of Determination to DB Contractor rejecting the cure either by entry into the electronic database or in

a separate writing. Any Dispute regarding rejection of cure shall be resolved according to the dispute resolution procedures set forth in this Design-Build Contract.

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

3. Assessment of Noncompliance Points

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

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

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

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

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

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

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

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

for the purpose of assessing Noncompliance Points, and the highest amount of Noncompliance Points under the relevant breaches or failures shall apply.

4. Trigger Points for Persistent DB Contractor 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 50 or more Noncompliance Points have been assessed in any consecutive six month period. For the purpose of this determination all assessed Noncompliance Points shall be included, regardless of whether the breaches or failures giving rise to the Noncompliance Event were cured.

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

5. Special Provisions for Certain Noncompliance Events

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

5.2 If any such Noncompliance Event occurs, then:

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

(b) Regardless of which Party initiates notice of such Noncompliance Event, no Noncompliance Points shall be assessed, counted toward a Persistent DB Contractor 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 2.4.4 by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its notice of rejection.

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

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

6.5 For the purpose of determining whether TxDOT may declare an "Event of Default" upon the occurrence of a Persistent DB Contractor 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; or

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

7. Noncompliance Charges

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

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

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

7.4 DB Contractor further acknowledges that these damages would be difficult and impracticable to measure and prove, because, among other things: (a) the Project is of a unique nature and no substitute for it is available; (b) the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely

difficult to quantify; (c) the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and (d) the variety of factors that influence use of and demand for the Project make it difficult to sort out causation of the matters that will trigger these liquidated damages and to quantify actual damages.

8. Remedial Plan Delivery and Implementation upon Persistent DB Contractor 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 (refer to the trigger points in Section 4.1), 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 (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 8.8.1 of the General Conditions.

9. General Conditions Amendments

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

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

> (s) 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 8.8.1.2 of the General Conditions:

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

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

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

8.8.1.3 If any event or condition described in Section 8.8.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 8.8.1.2, or if the circumstances described in Section 8.4 of Exhibit 16 to the DBA exist, TxDOT may declare that an **"Event of Default"** has occurred. The declaration of an Event of Default shall be in writing and given to DB Contractor and the Surety.

ATTACHMENT 1 TO EXHIBIT 16

Noncompliance Events Table

Ref No.	Main Heading	Sub-heading	Failure to:	Number of Points	Assessment Category	NCE Cure Period
1	General	Records and Documents	Make all books, records and documents available for inspection and audit by TxDOT or its Authorized Representatives as required by the Contract Documents, including Section 5.13 of the General Conditions.	1	A	1 Day
2	General	Insurance Coverage	Provide TxDOT with a copy of any insurance certificate or evidence of payment of any premium all in accordance with Section 3.5.1.4 of the General Conditions and Section 5.3 of the DBA.	2	B	7 Days
3	General	Implement Directive Letter	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, including Section 8.2 of the DBA, except to the extent such failure results in Key Personnel Change Fees or Key Personnel Unavailability Liquidated Damages under 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 the Noncompliance Events Table and as required by the Contract Documents, including this Exhibit 16 to the DBA.	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 to the DBA.	2	A	7 Days
7	General	TxDOT Review of Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity, as required by the Contract Documents, including Section 5.2.6 of the General Conditions and Section 3 of the DBA.	1	A	7 Days
8	General	Provide Safe and Unrestricted Access to the Project	Provide TxDOT or its Authorized Representatives with safe and unrestricted access to the Project in accordance with Section 5.10.1.2.5 of the General Conditions.	1	B	1 Day

Noncompliance Events Table

Ref No.	Main Heading	Sub-heading	Failure to:	Number of Points	Assessment Category	NCE Cure Period
9	General	Inspections	Provide proper notice to TxDOT before proceeding with the Work, or failure to follow a requirement relating to a DB Contractor hold point as required by the Contract Documents, including Attachment 4-2 of the General Conditions and in accordance with the QMP.	1	C	None
10	General	Inspections	Comply with the requirements of the Quality Management Plan as regards the timing, quantities represented or frequency of testing as required by the Contract Documents, including Section 4.3 of the General Conditions.	2	B	2 Days
11	General	Submittals	Prepare, implement, maintain, update or timely deliver, or otherwise be compliant with any Submittal requirement within the Contract Documents. This Noncompliance Event shall not apply to failure to timely deliver a Submittal described more specifically in another line item in this Exhibit 16 (for which Noncompliance Points shall be assessed in accordance with the particular line item).	1	B	7 Days
12	General	Submittals	Resolve TxDOT Submittal comments or objections by modifying a Submittal, or failure to provide a written justification as to why modifications to a Submittal based on a comment or objection by TxDOT are not required, as required by the Contract Documents including Section 5.2 of the General Conditions.	4	C	None
13	General	Submittals	Maintain an accurate and complete daily log of all inspections performed, or failure to submit a daily IQ inspection, test results, QC inspection report, process control material sampling/test results, or control chart, as required by the Contract Documents, including Section 4.3.1 of the General Conditions and Attachment 4-2 to the General Conditions.	1	A	1 Day
14	General	Submittals – Project Schedule	Timely submit any Project Schedule Revisions, Recovery Schedules, Change Order Revisions, or Time Impact Analyses, with all required information as required by the Contract Documents, including Section 8.5.5 through 8.5.7 of the General Conditions	2	A	7 Days

Noncompliance Events Table

Ref No.	Main Heading	Sub-heading	Failure to:	Number of Points	Assessment Category	NCE Cure Period
15	Project Management	Project Management Plan	Have the relevant part of the Project Management Plan approved by TxDOT prior to commencement of any Work governed by that portion of the Project Management Plan, or failure to comply, or cause a Subcontractor to comply, with a requirement, process, or procedure in the Project Management Plan, as required by the Contract Documents including Section 4.2 of the General Conditions.	2	B	7 Days
16	Project Management	Document Management System	Establish and maintain a document management system as required by and in accordance with the Contract Documents, including Section 4.2.1.2 of the General Conditions.	2	A	7 Days
17	Project Management	Submit or Revise PMP when Required	Develop and submit a part of, or change or addition or revision to, the PMP at the time required all in accordance to Section 4.2 of the General Conditions.	1	B	7 Days
18	Project Management	Audit PMP when Required	Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Attachments 4-1 and 4-2 to the General Conditions.	1	B	7 Days
19	Project Management	Safety and Health Plan	Observe a requirement of the Safety and Health Plan, or to carry out any Work in contravention of (or in absence of) the Safety and Health Plan or in a manner that represents a hazard to Project workers or the general public, as required by the Contract Documents, including Section 4.2.3 of the General Conditions.	3	C	None
20	Project Management	Comply with Progress Meetings	Comply with the requirements for any Project meeting, including for meeting attendance, proper issuance of an agenda, draft or final meeting minutes, or to accurately integrate TxDOT comments with the meeting minutes as required and in accordance with the Contract Documents, including Section 11.2 of the Design-Build Specifications.	1	A	2 Days
21	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
22	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

Noncompliance Events Table

Ref No.	Main Heading	Sub-heading	Failure to:	Number of Points	Assessment Category	NCE Cure Period
23	Reporting	Federal Reporting Requirements	Report compliance with, or to comply with the reporting requirements of, any of the Federal Requirements, as required by the Contract Documents including Sections 3.1 through 3.3 of the General Conditions.	2	B	30 Days
24	Reporting	DB Contractor Reporting Requirements	Comply with any of the reporting, recording keeping, or documentation requirements, including quality reporting requirements, monthly and annual reporting, or any Subcontractor reporting requirements, as required by and in accordance with the Contract Documents, including Section 9.3 of the General Conditions.	1	B	14 Days
25	Invoicing	Invoicing and Draw Request	Submit a Draw Request, with all required information as required by the Contract Documents, including Section 9.3 of the General Conditions.	2	A	7 Days
26	Change Orders	Cost and Schedule Proposal	Submit a timely and sufficient cost and schedule proposal in response to a Request for Change Proposal, as required by the Contract Documents including Section 4.6.2.1.2 of the General Conditions, or as otherwise agreed to by TxDOT in writing.	2	A	7 Days
27	Environmental Compliance	Comply with Dust Control Requirements	Take measures to minimize or mitigate the effects of dust in accordance with Section 12.2.5.3 of the Design-Build Specifications.	1	B	4 Hours
28	Environmental Compliance	Maintain and Update CEPP	Maintain and update the complete Comprehensive Environmental Protection Plan (CEPP) as required by Item 12 of the Design-Build Specifications and Section 4.2.4 of the General Conditions.	2	A	7 Days
29	Environmental Compliance	Notify TxDOT of Hazardous Materials	Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 4.8.1.1 of the General Conditions.	2	B	1 Day
30	Utility Adjustments	Maintain Utility Service	Maintain fully operational utility service in accordance with Section 14.4.10 of the Design-Build Specifications.	3	A	14 Days
31	Utility Adjustments	Maintain Records for Utility Adjustments	Maintain a complete set of records for each Utility Adjustment in accordance with Section 14.1.4 of the Design-Build Specifications.	1	B	14 Days
32	Maintenance Management System	Maintenance Management System	Establish, use and maintain or provide information updates to the Maintenance Management System in accordance with the Contract Documents, including Section 27.5 of the Design-Build Specifications.	1	A	2 Days

Noncompliance Events Table

Ref No.	Main Heading	Sub-heading	Failure to:	Number of Points	Assessment Category	NCE Cure Period
33	Maintenance Services	Ensure Timely Hazard Mitigation of Category 1 Defect	Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications.	3	B	Defect Repair Period
34	Maintenance Services	Ensure Timely Hazard Repair of Category 1 Defect	Perform a permanent repair to a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications.	3	B	Defect Repair Period
35	Maintenance Services	Ensure Timely Permanent Repair of non-Category 1 Defect	Address a Defect other than a Defect classified as Category 1 such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications.	1	B	Defect Repair Period
36	Maintenance Services	Prevent a Defect from Deteriorating	Prevent a Defect other than a Defect classified as Category 1 from deteriorating to become a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications.	4	C	None
37	Maintenance Services	Comply with Incident Management Plan	Comply with a requirement in respect of the Incident and Emergency Management Plan (IEMP) as required by and in accordance with the Contract Documents, including Section 27.6.1 of the Design-Build Specifications.	4	B	7 Days
38	Maintenance Services	Inspections	Conduct any scheduled inspections, or failure to perform general inspections at the required frequency, as required by and in accordance with the Contract Documents, including Section 27.4 of the Design-Build Specifications.	2	B	3 Days
39	Maintenance Services	Maintenance Records	Create a Maintenance Record as required by and in accordance with the Contract Documents, including Section 27 of the Design-Build Specifications.	1	A	2 Days
40	Traffic Management	Submit and Update a Traffic Management Plan	Prepare and submit to TxDOT for its approval or keep updated a Traffic Management Plan in accordance to Section 4.2.10 of the General Conditions.	4	B	7 Days
41	Traffic Management	Lane Closure	Provide a Lane Closure Notice to TxDOT, no later than the specified period prior to implementation, as required by and in accordance with the Contract Documents, including Section B to Exhibit 15 to the DBA.	2	B	1 Day

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

EXHIBIT 17

IDENTIFIED SUBCONTRACTORS

[*To Be Inserted From Proposal*]

EXHIBIT 18

KEY PERSONNEL

[***To be updated prior to DBC execution***]

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

EXHIBIT 19

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

[***To be updated prior to DBC execution***]

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 sole 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 Agreements unless mutually agreed by the Parties.

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

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

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

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

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

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

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

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

2. FREQUENCY OF MEETINGS

The Panel will meet initially at 3-month intervals and at such other times as requested by the Parties. If conditions warrant, the Panel Chairperson, in consultation with the Parties, may reduce or increase the time between meetings to better serve the Parties. Factors to be considered include work progress, occurrence of unusual events and the number and complexity of potential Disputes. The ensuing Panel meeting will be scheduled at each Panel regular meeting.

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

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

3. AGENDA FOR MEETINGS

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

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

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

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

4. MINUTES OF MEETINGS

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

5. PROCEDURES FOR DISPUTE HEARINGS

5.1 Procedure to Take a Dispute to the Panel

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

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. Dispute resolution panels usually hear entitlement and, if appropriate, give guidelines for quantum. If the Parties cannot then negotiate quantum, the Panel 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 sole discretion of the Panel.

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

1. Statement of Dispute and Stipulated Facts

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

2. Common Reference Document (CRD)

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

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

A. Correspondence, in chronological order.

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

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

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

E. Other

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

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

5.2 List of Representatives

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

5.3 Presentation of Dispute

The hearing will be informal. The Panel will conduct the proceedings. The referring Party will make an initial presentation of its case, followed by the respondent. Then, one or more rebuttals to any assertion by the other Party may be presented until the Panel determines that all aspects of the Dispute have been adequately covered. The Panel

members may ask questions, request clarification, or ask for additional data. In large or complex cases, the hearing may be continued as necessary in order to consider and fully understand all the evidence presented by both Parties.

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

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

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

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

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

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

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

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

5.4 Redundant Evidence and Oral Statements

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

5.5 Disputes Involving Subcontractors

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

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

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

5.6 Panel Deliberations

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

5.7 Recommendation

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

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

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

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

6. OTHER

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

EXHIBIT 22

DISPUTES REVIEW PANEL AGREEMENT

THIS DISPUTES REVIEW PANEL AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, among: the Texas Department of Transportation, hereinafter referred to as "TxDOT", _____, hereinafter referred to as "DB Contractor", and _____, hereinafter referred to as "Panel Member". Panel Member is a member of the Disputes Review Panel, hereinafter referred to as the "Panel" for the I-35 NEX Central Project ("Project"). TxDOT, DB Contractor, and Panel Member may be referred to individually herein as a "Party" or collectively as the "Parties". All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated _____ between TxDOT and DB Contractor (the "DBC").

WHEREAS, TxDOT is now engaged in the development of the Project; and

WHEREAS, the DBC provides for DB Contractor to 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. Panel Member shall perform the services necessary to participate on the Panel in accordance with the scope of work set forth herein.

II.
SCOPE OF SERVICES

The scope of services of the Panel includes the following.

A. Adopting Operating Procedures:

At the first regular meeting after the effective date of this Agreement, the Panel will meet with DB Contractor and TxDOT to establish the rules and procedures ("Operating Procedures") which will govern the Panel's participation in the Project as set forth in the Section 4.9 of the General Conditions. In establishing the Operating Procedures, the Parties shall first consider the form of Operating Procedures included in Exhibit 21 to the Design-Build Agreement, along with the other members of the Panel, and make any revisions necessary to the effective operation of the Panel and efficient resolution of Disputes. The agreed upon Operating Procedures shall not conflict with any provisions of the DBC. The Panel may establish any internal rules and procedures not covered in the DBC.

B. Conducting Regular Progress Meetings:

All regular meetings are expected to be held at or near the Project site. 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, including Panel Member are to act impartially and independently in the consideration of facts and conditions surrounding any dispute. Ex parte contact with representatives of TxDOT or DB Contractor is prohibited and is grounds for removal of Panel Member from the Panel.

III.
PANEL RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Shall disclose during the term of this Agreement any potential conflicts of interest as described in Section 4.9.2.5 of the General Conditions.

IV.
DB CONTRACTOR RESPONSIBILITIES

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, DB Contractor shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or the resolution of problems.

The DB Contractor shall furnish to Panel Member one copy of all documents it has, other than those furnished by TxDOT, which are pertinent to the performance of the Panel.

V.
TxDOT'S RESPONSIBILITIES

Except for its participation in the Panel's activities as provided in the DBC and in this Agreement, TxDOT shall not solicit advice or consultation from the Panel or its members on matters dealing with the conduct of the work or resolution of problems.

TxDOT shall furnish the following:

A. Contract Documents and Other Documents

TxDOT shall furnish Panel Member one copy of (a) the DBC and all related Contract Documents, including, but not limited to, the Design-Build Specifications, any modifications or amendments to the Contract Documents, (b) Project Schedule Updates, and (c) other documents, as agreed by TxDOT and DB Contractor that are pertinent to the performance of the DBC, and necessary to the Panel's work.

B. Coordination

TxDOT will, in cooperation with DB Contractor, coordinate the operations of the Panel.

C. Services

TxDOT and DB Contractor will arrange for or provide conference facilities at the Project Office or TxDOT's facilities, and will provide secretarial and copying services.

VI.
TIME FOR BEGINNING AND COMPLETION

The Panel shall begin operation upon execution of Disputes Review Panel Agreements between TxDOT, DB Contractor and each of the members of the Panel, and written authorization by TxDOT, and shall terminate its activities upon later of (a) completion of all work required to be performed by DB Contractor under the DBC (including, unless the DBC is terminated earlier, work required pursuant to the Warranties) or (b) conclusion of any proceedings before the Panel.

Except for choosing a Panel Chairperson, if Panel Member is a Party-appointed member, Panel Member shall not begin any work under the terms of this Agreement until authorized in writing by TxDOT.

VII.
PAYMENT

Invoices of the Panel members for services performed as described in this Article VII shall be paid by DB Contractor subject to approval by TxDOT and DB Contractor. Payments shall constitute full compensation for work performed and services rendered, and for all materials, supplies and incidentals necessary to serve on the Panel. TxDOT shall reimburse the DB Contractor for one half of these fees and expenses in accordance with the DBC.

A. Payment for Services and Expenses

Panel Member shall be entitled to be paid at the hourly rate of $_____ [$200 – 450 depending on qualifications] prorated for each quarter-hour for actual time spent (a) at regular Panel meetings at the Project site, including site visits; (b) at hearings conducted by the Parties; (c) choosing the Panel Chairperson, if applicable; and (d) if approved in advance by TxDOT, actual time spent on pre-meeting and pre-hearing review of information and documents provided to the Panel, consultation and discussion with other members of the Panel, telephonic meetings and discussions with the Panel and parties to a Dispute, post-hearing deliberations with the other members of the Panel, drafting Panel

Recommendations, and reconsideration and modifications of Panel Recommendations when appropriate. Panel Member shall not be entitled to compensation for travel time.

Reasonable and necessary direct expenses will be reimbursed without markup to Panel Member. These expenses may include, but are not limited to, travel expenses from the Panel Member's point-of-departure to the initial point-of-arrival in accordance with the State travel expenditure guidelines, printing, long distance telephone, postage and courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting date. All expenses shall be subject to TxDOT standard requirements.

B. Payments

Panel Member may submit invoices for payment for work completed not more often than once per month during the progress of work. Such invoices shall be in a format approved by TxDOT and DB Contractor, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours, or portions thereof, expended by Panel Member together with direct expenses. Satisfactorily submitted invoices shall be paid within 30 days of approval by TxDOT and DB Contractor.

C. Inspection of Cost Records

Panel Member shall keep, available for inspection by representatives of TxDOT or DB Contractor for a period of four years after final payment, the cost records and accounts pertaining to this Agreement.

VIII.
ASSIGNMENT

Panel Member shall not assign any of the work of this Agreement.

IX.
TERMINATION OF AGREEMENT

This Agreement may be terminated by mutual agreement of TxDOT and DB Contractor at any time upon not less than four weeks' prior written notice to the Panel members.

Panel Member may withdraw from the Panel by providing four weeks' prior written notice to the other Parties. Panel Member may be terminated for or without cause as specified in the DBC.

Each of TxDOT and DB Contractor shall be entitled to replace the Panel member selected by such Party without cause and without agreement of the other Parties (other than approval of the replacement). The Panel Chairperson may be replaced without cause only with the agreement of TxDOT and DB Contractor.

Should the need arise to appoint a replacement Panel member, the replacement member shall be appointed in the same manner as the original member was appointed. The selection of a replacement Panel member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 20 days.

X.
LEGAL RELATIONS

The Parties hereto mutually understand and agree that Panel Member, in the performance of his/her duties on the Panel, is acting in the capacity of an independent agent and not as an employee of either TxDOT or DB Contractor.

Panel Member is absolved of any personal or professional liability arising from the activities and recommendations of the Panel. TxDOT and DB Contractor each agree to hold harmless Panel Member from such liability to the extent permitted by law.

XI.
MISCELLANEOUS

This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

PANEL MEMBER

By:_____

DB CONTRACTOR:

_____

By:_____

Title:_____

TEXAS DEPARTMENT OF TRANSPORTATION

By:_____

Title:_____

EXHIBIT 23

[PRE-PROPOSAL UTILITY COMMITMENTS]

(To be provided)

[*Include any Utility Owner commitments (a) regarding Utility Adjustments that are necessary for the accommodation of the Project, (b) that were approved by TxDOT prior to the Proposal Due Date in accordance with Section 2.13 of the ITP, and (c) that were included in the Proposal in accordance with Section 4.5 of Exhibit B to the ITP.*]

EXHIBIT 24

AMENDMENTS TO UTILITY PROVISIONS

As contemplated in Section 2.1.3.2 of the DBA, the General Conditions are amended as shown below.

1. Section 4.5 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 4.5 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.5 of the General Conditions:

4.5 Utilities

DB Contractor is responsible for causing, in accordance with the Project Schedule, all Utility Adjustment Work necessary to accommodate the design and construction of the Project. All Utility Adjustment Work performed by DB Contractor shall comply with the Contract Documents. DB Contractor shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards applicable to the Professional Services and Construction Work and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Section 4.6, DB Contractor shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact or be impacted by the Project (whether located within or outside the Project ROW) are compatible with the Project. DB Contractor agrees that (a) the Price (as it may be modified hereunder) covers all of the Utility Adjustment Work to be furnished, performed or paid for by DB Contractor, (b) it is feasible to obtain and perform all necessary Utility Adjustments within the time deadlines of the Contract Documents (as they may be modified pursuant to Section 4.6), and (c) the Price includes contingencies deemed adequate by DB Contractor to account for the potential risks of additional costs and delays relating to Utility Adjustments, except to the extent that an adjustment to the Price is permitted under this Section 4.5 and in accordance with Section 4.6.

The SAWS Utility Adjustment Work to be performed by DB Contractor is included in the Work. Subject to DB Contractor's rights with respect to Change Orders in accordance with this Design-Build Contract, the Price includes all costs associated with the performance of the SAWS Utility Adjustment Work to be performed by DB Contractor, including DB Contractor's coordination and permitting costs associated with such Work.

DB Contractor shall not be required to enter into a PUAA with SAWS. DB Contractor shall comply with the requirements set forth in the SAWS ILA with respect to the SAWS Utility Adjustment Work without any right to any additional increase in Price or extension of any Completion Deadline, except as explicitly provided for in the Design-Build Contract. If SAWS elects not to use DB Contractor to perform the SAWS Utility Adjustments, TxDOT and DB Contractor will enter into a reductive Change Order, removing such SAWS Utility Adjustments from the Work and decreasing the Price.

4.5.1 New Utilities and Unidentified Utilities

DB Contractor's entitlement to Change Orders for additional compensation or extension of time on account of New Utilities and omissions or inaccuracies in the Utility Strip Map shall be limited as set forth in this Section 4.5.1 and Section 4.6.9.2. DB Contractor shall use its best efforts to minimize costs for which DB Contractor is entitled to compensation pursuant to Section 4.6.9.2, and to minimize any delay for which DB Contractor is entitled to an extension of ~~the~~ a Completion Deadline pursuant to Section 4.6.9.2, subject to DB Contractor's obligation to comply with all applicable requirements of the Contract Documents, including the Utility Accommodation Rules (UAR).

4.5.2 Utility Enhancements

DB Contractor shall be responsible for addressing any requests by Utility Owners that DB Contractor design or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancements"), except as otherwise set forth in this Section 4.5.2.

4.5.2.1 If a Utility Owner (other than SAWS) requests that DB Contractor design or construct a Betterment, then subject to Section 4.5.3.4, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to DB Contractor. Any such agreement shall be set forth in the applicable Utility Agreement. Any such Betterment shall be deemed added to the scope of the Work only upon execution by the Utility Owner and DB Contractor and approval by TxDOT of a Utility Agreement identifying and providing for performance of such Betterment. Any change in the scope of the Work pursuant to this Section 4.5.2.1 shall not be treated as a TxDOT-Directed Change or extend the Completion Deadlines. If SAWS requests that DB Contractor design or construct any Betterments under the SAWS ILA, SAWS, TxDOT and, if requested by TxDOT, DB Contractor, will negotiate the terms for incorporation of such Betterments into the scope of work under the SAWS ILA. In the event such Betterments are incorporated into the scope of work under the SAWS ILA, DB Contractor shall be entitled to a Change Order to increase the Price by the amount SAWS pays TxDOT for performance of such Betterments under Section 3.A.3 of the SAWS ILA. Notwithstanding any other provisions of this Design-Build Contract, DB Contractor shall not be entitled to any increase in the Price for performing additional Betterments pursuant to the SAWS ILA that exceeds the amount paid by SAWS to TxDOT for the performance of such Betterments. Any change in the scope of the Work pursuant to this Section 4.5.2.1 shall not be treated as a TxDOT-Directed Change or extend the Completion Deadlines.

4.5.2.2 Except for Betterments incorporated into the scope of work under the SAWS ILA, ~~The~~ the Price shall not be increased on account of any Betterment added to the Work. Instead, DB Contractor shall have the right to collect payment for such work directly from the Utility Owner, subject to the provisions of the applicable Utility Agreement. ~~The~~ Except for Betterments incorporated into the scope of work under the SAWS ILA, the amount of compensation payable by the Utility Owner to DB Contractor for a Betterment shall be determined pursuant to the process set forth in the applicable Utility Agreement. DB Contractor shall submit to TxDOT a copy of each invoice delivered to a Utility Owner pursuant to this Section 4.5.2.2, concurrently with its delivery to the Utility Owner.

4.5.2.3 If a Utility Owner (other than SAWS) requests that DB Contractor design or construct a Utility Owner Project, then subject to Section 4.5.3.4, DB Contractor shall use its best efforts to negotiate in good faith an agreement with the Utility Owner providing for DB Contractor to perform such work at the Utility Owner's expense, with payments to be made directly by the Utility Owner to DB Contractor. Any such agreement shall be a separate contract between DB Contractor and the Utility Owner; and any such Utility Owner Project shall be performed outside of this Design-Build Contract and the Work, without any impact on the Price and the Completion Deadlines and shall be subject to Section 4.5.8. The compensation payable by the Utility Owner to DB Contractor for a Utility Owner Project shall be determined in a manner acceptable to both DB Contractor and the Utility Owner. Any Utility Owner Projects for SAWS Utilities shall be incorporated into the SAWS ILA or another interlocal agreement between TxDOT and SAWS and such SAWS Utility Owner Projects shall be incorporated into the Work as a TxDOT-Directed Change.

4.5.2.4 DB Contractor is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that DB Contractor design or construct Utility Enhancements, except as otherwise provided in this Section 4.5.2. Any Betterment performed as part of a Utility Adjustment, whether by DB Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement or the SAWS

ILA. Under no circumstances shall DB Contractor proceed with any Utility Enhancement that is incompatible with the Project or that cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the Completion Deadlines. ~~Under no circumstances~~ Except as otherwise provided for SAWS Utility Enhancements, ~~will~~ DB Contractor will not be entitled to any Price increase or time extension hereunder as the result of any Utility Enhancement, whether performed by DB Contractor or by the Utility Owner. DB Contractor may, but is not obligated to, design and construct Utility Enhancements, except that DB Contractor is obligated to perform SAWS Utility Enhancements that are incorporated into the Work. DB Contractor shall promptly notify TxDOT of any requests by Utility Owners that DB Contractor considers to be Betterments, and shall keep TxDOT informed as to the status of negotiations with Utility Owners concerning such requests. DB Contractor shall provide TxDOT with such information, analyses, and certificates as may be requested by TxDOT in order to determine compliance with this Section 4.5.2.

4.5.3 Utility Agreements

4.5.3.1 ~~As described in the Design-Build Specifications,~~ DB Contractor is responsible for preparing and entering into Utility Agreements with ~~the~~ Utility Owners in accordance with Section 14.1.3 of the Design-Build Specifications, and TxDOT agrees to cooperate as reasonably requested by DB Contractor in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. TxDOT is not providing any assurances to DB Contractor that the Utility Owners will accept, without modification, the standard Utility Agreement forms specified in the Design-Build Specifications. DB Contractor is solely responsible for the terms and conditions of all PUAAs and UAAAs into which it enters (subject to the requirements of the Contract Documents, including Section 14.1.3 of the Design-Build Specifications). Utility Agreements entered into by DB Contractor shall not be considered Contract Documents. Except for extensions of Completion Deadlines to the extent permitted by Section 4.5.5.2, DB Contractor shall not be entitled to any increase in the Price or to any time extension on account of the terms of any Utility Agreement (including those related to any Betterment).

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

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

4.5.3.4 DB Contractor shall comply with and timely perform all obligations imposed on DB Contractor by any Utility Agreement. DB Contractor shall also comply with all obligations that are either assigned to DB Contractor under the SAWS ILA or that TxDOT is required to impose on DB Contractor pursuant to the terms of the SAWS ILA.

4.5.3.5 Each Utility Adjustment (whether performed by DB Contractor or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreements. DB Contractor is solely responsible for negotiating any terms and conditions of its Utility Agreements that

might limit a Utility Owner's amendments and additions to its Adjustment Standards after the Proposal Due Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreements or SAWS ILA, and all other requirements specified in the Contract Documents.

4.5.4 Failure of Utility Owners to Cooperate

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

4.5.4.2 If DB Contractor requests TxDOT's assistance pursuant to Section 4.5.4.1, DB Contractor shall provide evidence reasonably satisfactory to TxDOT that (a) the Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (d) the Utility Owner is not cooperating (the foregoing items (a) through (d) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by DB Contractor to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, that TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its sole discretion. If TxDOT holds contractual rights, excluding its rights under the SAWS ILA, that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its sole discretion not to exercise those rights, then TxDOT shall assign those rights to DB Contractor upon DB Contractor's request; provided, however, that such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. DB Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to DB Contractor. Any assistance provided by TxDOT shall not relieve DB Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 4.5.4.

4.5.4.3 If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1, based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(a) and (b), then DB Contractor shall take such action as is appropriate to satisfy the conditions and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1 based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(c) and (d), then DB Contractor shall take such action as DB Contractor deems advisable during the next 30 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until DB Contractor

succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence DB Contractor presents, that the conditions to assistance have been satisfied. DB Contractor shall have the right to submit the question of the reasonableness of TxDOT's determination through the dispute resolution process described in Section 4.9, Section 4.10 and DBA Exhibit 20.

4.5.5 Delays by Utility Owners

4.5.5.1 The term "Uncooperative Utility Delay" means a delay to a Critical Path that is directly attributable to a failure by a Utility Owner~~'s~~ (other than SAWS) ~~failure~~ to cooperate with DB Contractor in performing Utility Adjustment Work within the time period reasonably scheduled by DB Contractor for performance of such work, where DB Contractor and the Utility Owner have not yet executed a Utility Agreement addressing such Utility Adjustment Work. If an Uncooperative Utility Delay occurs, then, subject to Section 4.6.9.11, DB Contractor shall be entitled to a Change Order to extend affected Completion Deadlines and for Project Overhead subject to the following risk sharing thresholds:

(a) DB Contractor shall bear 100% of the risk of Uncooperative Utility Delays for the first 60 cumulative days and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;

(b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Uncooperative Utility Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;

(c) DB Contractor and TxDOT shall share equally in the risk of Uncooperative Utility Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Uncooperative Utility Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and

(d) TxDOT shall bear 100% of the risk of Uncooperative Utility Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2 for Uncooperative Utility Delays that exceed 180 cumulative days.

If an Uncooperative Utility Delay is concurrent with another Uncooperative Utility Delay by the same Utility Owner or by another Utility Owner, only one of the delays shall be counted.

4.5.5.2 Subject to the requirements and limitations in this Section 4.5 and Section 4.6, DB Contractor shall be entitled to a Change Order for delays to the Critical Path caused directly by a Utility Owner's failure to perform Utility Adjustment Work within the time period required in the executed Utility Agreement, as it may be extended in accordance with Section 4.5.5.2.1 ("Utility Owner Delay"), provided that (a) the time period established in the executed Utility Agreement for the Utility Owner's performance of the Utility Adjustment Work is reasonable and agreed upon by DB Contractor, Utility Owner, and TxDOT, (b) DB Contractor has taken all reasonable and appropriate steps to secure the Utility Owner's timely performance of the Utility Adjustment Work and (c) DB Contractor has notified TxDOT of the potential delay sufficiently in advance of any delay to the Critical Path to provide TxDOT with an opportunity to take steps to ensure the timely performance of the Utility Adjustment Work by the Utility Owner.

4.5.5.2.1 The Utility Agreement shall include an anticipated start date for the Utility Adjustment Work to be performed by the Utility Owner to begin. If the Utility Owner is not provided with sufficient access to the work area on the anticipated start date set forth in the executed Utility Agreement, the time period for the

Utility Owner's performance established in the Utility Agreement shall be extended with a new time period to be agreed upon by DB Contractor, Utility Owner, and TxDOT.

4.5.5.2.2 The following risk sharing thresholds apply to Utility Owner Delays:

(a) DB Contractor shall bear 100% of the risk of the first 60 cumulative days of Utility Owner Delays and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;

(b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Utility Owner Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;

(c) DB Contractor and TxDOT shall share equally the risk of Utility Owner Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and

(d) TxDOT shall bear 100% of the risk of Utility Owner Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to an extension of affected Completion Deadlines and Project Overhead to the extent permitted by Section 4.6.6.2.2 for Utility Owner Delays that exceed 180 cumulative days.

4.5.5.3 No Change Order for delay to a Critical Path shall be allowable pursuant to Section 4.5.5.1 or Section 4.5.5.2 unless all of the following criteria are met:

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

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

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

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

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

(f) the delay is allowable under Section 4.6.6.3.

4.5.5.4 Except as set forth in Section 4.5.5.1 and Section 4.5.5.2 <u>and Sections 6.4.2 and 6.4.4 of the Design-Build Agreement</u>, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs (other than for Project Overhead) which it may incur as a result of any delays caused by a Utility Owner<u>, except as provided in Sections 6.4.2 and 6.4.4 of the Design-Build Agreement</u>, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 4.5.5.1 or Section 4.5.5.2. Any action or inaction by TxDOT as

described in Section 4.5.4.2 or Section 4.5.5.2 shall have no bearing on the restriction set forth in this Section 4.5.5.4.

4.5.6 Utility Adjustment Costs

4.5.6.1 Subject to Section 4.5.1, DB Contractor is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding costs attributable to Betterments and any other costs for which the Utility Owner is responsible under applicable Law. DB Contractor shall fulfill this responsibility either by performing the Utility Adjustment Work itself at its own cost (except that any assistance provided by any DB Contractor-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work, in compliance with Section 14.2.4 of the Design-Build Specifications), or by reimbursing the Utility Owner for its Utility Adjustment Work or SAWS Utility Adjustment Work, as applicable (however, DB Contractor has no obligation to reimburse Utility Adjustment costs for any Service Line Utility Adjustment for which the affected property owner has been compensated pursuant to Section 4.4.2). DB Contractor shall timely reimburse SAWS for its costs of performing reimbursable SAWS Utility Adjustment Work under the SAWS ILA when SAWS requests such reimbursement pursuant to an invoice submitted in accordance with the SAWS ILA. Except with respect to any Betterments and SAWS Cost Work performed under the SAWS ILA, DB Contractor is solely responsible for collecting directly from the Utility Owner any reimbursement due to DB Contractor for Betterment costs or other costs incurred by DB Contractor for which the Utility Owner is responsible under applicable Law.

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

4.5.6.3 Except as provided for under the SAWS ILA, ~~For~~ for each Utility Adjustment involving the Adjustment of a Utility that is within an Existing Utility Property Interest, DB Contractor shall (a) compensate the Utility Owner for the market value of each Existing Utility Property Interest relinquished pursuant to Section 14.2.4 of the Design-Build Specifications, to the extent TxDOT would be required to do so by applicable Law and provided that TxDOT has approved the Utility Owner's claim or (b) reimburse the Utility Owner's reasonable acquisition costs for a Replacement Utility Property Interest. Except as otherwise provided under the SAWS ILA, ~~The~~ the applicable Utility Owner will determine which method of compensation is satisfactory. As provided for under Section 5 of the SAWS ILA, certain SAWS Existing Utility Property Interests may remain within the Project ROW, provided SAWS executes a UJUA. DB Contractor shall pay any compensation due to the Utility Owner pursuant to this Section 4.5.6.3 and all costs and expenses associated therewith (including any incurred by TxDOT on DB Contractor's behalf for eminent domain proceedings or otherwise) in accordance with Section 4.4.2, except that reimbursement of SAWS's reimbursable costs of property interest acquisition under the SAWS ILA shall be paid in accordance with Section 4.5.6.1. DB Contractor shall be responsible for all eligible costs of right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting and related services for either compensating the Utility Owner for or replacing each Existing Utility Property Interest (except those Existing Utility Property Interests for which a UJUA is executed pursuant to the SAWS ILA), including all costs and expenses associated with negotiation and condemnation action. DB Contractor shall also carry out the duties in Section 14.2.4.2 of the Design-Build Specifications.

4.5.6.4 If for any reason DB Contractor is unable to collect any amounts owed to DB Contractor by any Utility Owner, then (a) TxDOT shall have no liability for such amounts; (b) DB Contractor shall have no right to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owing to DB

Contractor from TxDOT; and (c) DB Contractor shall have no right to stop work or to exercise any other remedies against TxDOT on account of such Utility Owner's failure to pay DB Contractor.

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

4.5.6.6 DB Contractor shall maintain a complete set of records for the costs of each Utility Adjustment (whether incurred by DB Contractor or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and DB Contractor costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate or, in the case of the SAWS Utility Adjustment Work, the total cost categories should be shown in a manner that is similar to other records kept by DB Contractor for comparable Utility Adjustments. DB Contractor also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the Contract Documents. This Work includes the deliverables identified in the final closeout procedures of Section 14.5.3 of the Design-Build Specifications.

4.5.7 FHWA Utility Requirements

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

4.5.7.2 The Project will be subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and 23 CFR Section 635.410 (Buy America) and FHWA associated policies. DB Contractor shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A and 23 CFR Section 635.410.

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

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

4.5.7.5 TxDOT will forward the approved list to DB Contractor.

4.5.8 Applications for Utility Permits

4.5.8.1 It is anticipated that during the Work, Utility Owners will apply for utility permits to install Utilities that would cross or longitudinally occupy the Project ROW, or to modify, upgrade, relocate or expand existing Utilities within the Project ROW for reasons other than accommodation of the Project. The provisions of this Section 4.5.8 shall apply to all such permit applications. TxDOT shall provide DB Contractor with a copy of each such permit application received after the Effective Date, within 30 days after TxDOT's receipt of such application.

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

4.5.8.3 DB Contractor shall assist TxDOT in deciding whether to approve a permit described in Section 4.5.8.1. Within a time period that will enable TxDOT to timely respond to the application, DB Contractor shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, DB Contractor shall furnish to TxDOT Utility No Conflict Sign-Off Forms, signed by both DB Contractor's Utility Design Coordinator (UDC) and DB Contractor's Utility Manager (UM), using the standard forms included in the Contract Documents. DB Contractor shall limit the grounds for its recommendation to the grounds on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval. However, TxDOT shall have the right to issue Utility permits in its sole discretion. Applications for Utility permits and associated coordination described in this Section 4.5.8 shall not be subject to a Change Order and are not considered a New Utility or Unidentified Utility as described in Section 4.5.1.

4.5.9 Security for Utility Adjustment Costs; Insurance

4.5.9.1 Upon request from a Utility Owner, other than SAWS, that is entitled to reimbursement of Utility Adjustment costs, DB Contractor shall, at its sole cost, provide security for such reimbursement by way of a payment bond, letter of credit or retention account, in such amount and on such terms as are negotiated in good faith between DB Contractor and the Utility Owner.

4.5.9.2 DB Contractor may satisfy a Utility Owner's requirement that DB Contractor provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by DB Contractor or any Subcontractor pursuant to Section 3.5. DB Contractor shall fulfill the insurance obligations set forth in the SAWS ILA, including the obligation to add SAWS as an additional insured for certain policies.

4.5.10 Additional Restrictions on Change Orders for Utility Adjustments

4.5.10.1 In addition to all of the other requirements and limitations contained in this Section 4.5 and in Section 4.6 the entitlement of DB Contractor to any Change Order under this Section 4.5 or Section 4.6.9.2 or Sections 6.4.2, 6.4.3 or 6.4.4 of the Design-Build Agreement shall be subject to the restrictions and limitations set forth in this Section 4.5.10.

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

4.5.10.3 As part of the Work, DB Contractor is responsible for causing all Utility Adjustment Work and Incidental Utility Adjustment Work to occur, for reimbursing the Utility Owners for their reimbursable costs of performing or furnishing Utility Adjustment Work and Incidental Utility Adjustment Work or SAWS Utility Adjustment Work, if applicable, and, subject to Sections 4.5.5.1 and 4.5.5.2 and Sections 6.4.2 and 6.4.3 of the Design-Build Agreement, for scheduling all Utility Adjustment Work, ~~and~~ Incidental Utility Adjustment Work and SAWS Utility Adjustment Work (whether performed by DB Contractor or the affected Utility Owner) so as to meet the Completion Deadlines herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by DB Contractor, or if DB Contractor performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting time extension and no resulting change in the Price, except as otherwise provided under Section 4.5 and Section 6.4.3 of the Design-Build Agreement. The foregoing shall not affect TxDOT's right to any credit that may be owing under Section 4.6.

4.5.10.4 DB Contractor shall not be entitled to a Change Order for any costs or delays that are attributable to (a) any failure of a design furnished by any Utility Owner to comply with the requirements of Section 14.3 of the Design-Build Specifications or (b) any failure of construction performed by a Utility Owner to comply with the requirements of Section 14.4 of the Design-Build Specifications.

4.5.10.5 DB Contractor shall not be entitled to a Change Order for any costs or delays resulting from the performance of Incidental Utility Adjustment Work by DB Contractor.

4.5.10.6 Any Change Order increasing the Price pursuant to this Section 4.5 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.

4.5.10.7 DB Contractor shall not be entitled to any increase in the Price for any costs of coordinating with Utility Owners (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 4.6.9.2).

4.5.10.8 Except to the extent set forth in Section 4.6.9.2.3 with respect to Level A SUE, any information with respect to Utilities provided in the Reference Information Documents is for DB Contractor's reference only, has not been verified, and shall not be relied upon by DB Contractor. Without limiting the generality of the foregoing, DB Contractor acknowledges that such information does not identify most of the Service Lines that may be impacted by the Project and that there may be other facilities impacted by the Project that are not identified in such information. DB Contractor shall verify all information with respect to Utilities included in the Reference Information Documents and shall perform its own investigations as provided in Sections 14.3.1 and 14.4.2 of the Design-Build Specifications. Accordingly, there shall be no changes in the Price and no time extensions on account of any inaccuracies in the Reference Information Documents with respect to any Utilities. Except as provided in Section 4.6.9.2 ~~4.9.6.2~~ and Sections 6.4.3 and 6.4.4 of the Design-Build Agreement, DB Contractor shall not be entitled to any increase in the Price or time extension as a result of any of the following:

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

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

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

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

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

4.5.10.9 Inasmuch as DB Contractor is both furnishing the design of and constructing the Project, DB Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering each such opportunity, DB Contractor shall consider the impact of design changes on Utility Adjustments to the extent practical. Accordingly, except as otherwise provided in Section 4.6 with respect to TxDOT-Directed Changes and Section 4.5.2.1 with respect to SAWS Betterments, the following provisions shall apply with respect to any increase or decrease in the cost of the Work and any delay associated with design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature or extent of anticipated Utility Adjustments:

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

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

(c) If TxDOT incurs any such additional costs, then DB Contractor shall reimburse TxDOT for such costs within 10 days after receipt of TxDOT's invoice therefor, or in TxDOT's sole discretion, TxDOT may deduct the amount of reimbursement due from any payment due to DB Contractor under this Design-Build Contract.

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

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

4.5.10.11 Except as specified in this Section 4.5 or ~~in~~ Section 4.6 <u>or Section 6.4 of the Design-Build Agreement</u>, DB Contractor shall not be entitled to any Change Order with respect to any Utility Adjustments, including any act or omission of any Utility Owner that may result in a delay to the Project Schedule or in DB Contractor's incurring costs not included in the Price.

2. Section 3.8.1 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 3.8.1 of the General Conditions:

3.8.1 Warranty

DB Contractor warrants that (a) all Work furnished pursuant to the Contract Documents shall conform to Good Industry Practice, (b) all Construction Work shall be free of defects, (c) all Design Work shall meet the standard of care for engineering and architectural services set forth in Section 4.1.2.2.1, (d) the Project shall be fit for use for the intended function, (e) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (f) the Work shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties"). <u>DB Contractor agrees that the Warranty for the adjustment of SAWS Utilities shall extend to both TxDOT and SAWS and that SAWS shall be a third-party beneficiary under this Design-Build Contract for purposes of enforcing such Warranty, subject to Section 3.8.1.2. DB Contractor agrees to take any further action required to evidence that the Warranty for the adjustment of SAWS Utilities extends to SAWS, including the execution of the DB Contractor Warranty Acknowledgment included in the SAWS ILA.</u>

3.8.1.1 Warranty Term

Subject to extension under Section 3.8.2, the Warranty Term shall commence upon Substantial Completion and remain in effect until one year after Final Acceptance of the Project. The Warranty Term for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons <u>(which, for SAWS Utilities, shall be the date that SAWS delivers a "Certificate of Final Acceptance" for the applicable Utilities pursuant to the SAWS ILA)</u> and shall end one year thereafter. If TxDOT <u>(or SAWS with respect to the SAWS Utility Adjustment Work)</u> determines that any of the Work has not met the standards set forth in this Section 3.8.1 at any time within the applicable Warranty Term, then DB Contractor shall correct such Work as specified in this Section 3.8, even if the

performance of such corrective Work extends beyond the applicable Warranty Term. TxDOT and DB Contractor shall conduct a walk-through of the Site prior to expiration of the applicable Warranty Term and shall produce a punch list of those items requiring corrective Work.

3.8.1.2 Remedy

Within seven days of receipt by DB Contractor of notice from TxDOT specifying a failure of any of the Work to satisfy the Warranties, or of the failure of any Subcontractor representation, warranty, guarantee or obligation that DB Contractor is responsible for enforcing, DB Contractor and TxDOT shall mutually agree when and how DB Contractor shall remedy such failure, except that in case of an Emergency requiring immediate curative action or a situation that poses a significant safety risk, DB Contractor shall implement such action as it deems necessary and shall notify TxDOT in writing of the urgency of a decision. DB Contractor and TxDOT shall promptly meet in order to agree on a remedy. If DB Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should DB Contractor and TxDOT fail to reach such an agreement within such seven-day period (or immediately in the case of Emergency conditions), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by DB Contractor. Reimbursement therefor must be paid to TxDOT by DB Contractor within 10 days after DB Contractor's receipt of an invoice therefor. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.3.2.

<u>With respect to the Warranty for the adjustment of SAWS Utilities, SAWS shall be entitled to exercise the rights granted to TxDOT under this Section 3.8.1.2 in the same manner as such rights may be exercised by TxDOT, except that SAWS shall not have the right to deduct costs and expenses from sums owed by TxDOT to DB Contractor nor any rights under Section 5.3.2 with respect to Nonconforming Work.</u>

3.8.1.3 Permits and Costs

DB Contractor shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with the performance of Work addressed under this Section 3.8.1. DB Contractor shall bear all costs of such Work, including additional testing and inspections, and DB Contractor shall reimburse TxDOT or pay TxDOT's expenses made necessary thereby including any costs incurred by TxDOT for independent quality assurance or quality control with respect to such Work within 10 days after DB Contractor's receipt of invoices therefor (including, subject to the limitations in Section 8.7.4, any Liquidated Damages for Lane Closures or Lane Rental Charges arising from or relating to such Work). Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract.

<u>With respect to the Warranty for the adjustment of SAWS Utilities under the SAWS ILA, DB Contractor's obligation to bear all costs for Warranty Work shall include the obligation to reimburse SAWS for its costs made necessary by such Warranty Work. DB Contractor shall pay any such costs within 10 days of DB Contractor's receipt of any invoice therefor.</u>

3. Section 3.8.2 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 3.8.2 of the General Conditions:

3.8.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of this Design-Build Contract. Following acceptance by TxDOT <u>or SAWS, if applicable,</u> of re-done, repaired,

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

4. Section 3.8.4 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 3.8.4 of the General Conditions and (ii) stricken text is hereby deleted from Section 3.8.4 of the General Conditions:

3.8.4 Effect of TxDOT or DB Contractor Activities on Warranties

DB Contractor acknowledges and agrees that TxDOT, ~~and~~ DB Contractor and SAWS, if applicable, and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and agrees that the Warranties shall apply notwithstanding such activities; provided, however, that DB Contractor does not hereby waive any rights, claims or remedies to which it may be entitled as a result of such activities.

5. Section 4.2.8 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.2.8 of the General Conditions:

4.2.8 Utility Management Plan

DB Contractor shall prepare and submit to TxDOT no later than 30 days after NTP1, a Utility Management Plan in accordance with the requirements of this Section 4.2.8. TxDOT approval of the Utility Management Plan shall be a condition to the commencement of Design Work. The Utility Management Plan shall include the following:

- DB Contractor's organization structure including names, contact details, titles, job roles and qualifications of Utility Key Personnel and other Utility personnel;
- Procedures for coordination with Utility Owners to obtain Utility Assemblies and establishing procedures for Utility Adjustment Concept Plans, Utility Adjustment Field Modifications, Utility strip map, inspection of Utility Owner construction, quality control/quality assurance, emergency procedures with respect to Utility Adjustment Work and close out procedures;
- Integration of the Utility Adjustment Work and SAW Utility Adjustment Work in the Project Baseline Schedule; and
- Procedures to address a Utility Adjustment Field Modification (UAFM) as described in Section 14.4.7 of the Design-Build Specifications.

6. Section 4.6.8.5 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 4.6.8.5 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.6.8.5 of the General Conditions:

4.6.8.5 Work Performed by Utility Owners

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Utility Owners entitled to receive reimbursement for their costs from DB Contractor, the Change Order shall provide for compensation to DB Contractor equal to: (a) the actual and reasonable amount paid by DB Contractor to the Utility Owner for such work (but not greater than the amount allowed pursuant to the SAWS

ILA or ~~applicable~~ Utility Agreement~~s~~, as applicable), plus (b) 5% of such allowed actual amount, less any amounts that may be deducted pursuant to Section 4.5. Back-up documentation supporting each cost item for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

7. Section 4.6.9.2 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.6.9.2 of the General Conditions:

4.6.9.2 Utilities

DB Contractor shall be entitled to a Change Order with respect to certain additional costs and delays relating to Utility Adjustments, as specified in this Section 4.6.9.2 and Section 4.5.2.1 and Section 6.4. of the Design-Build Agreement and subject to the restrictions and limitations set forth in Sections 4.5.1, 4.5.10 and 4.6, including this Section 4.6.9.2 and Section 6.4 of the Design-Build Agreement. DB Contractor shall be entitled to certain additional costs and delays relating to delays by Utility Owners to the extent permitted by Sections 4.5.5.1 and 4.5.5.2 and Sections 6.4.2 and 6.4.4 of the Design-Build Agreement. In all other respects, DB Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in DB Contractor's obligations relating to the Work resulting from the existence of any Utilities on the Site.

8. A new Section 4.6.9.2.5 is hereby added to Section 4.6.9.2 of the General Conditions as follows:

4.6.9.2.5 In the event that SAWS Cost Work described in Section 3.B.2 or Section 3.B.5 of the SAWS ILA is incorporated into the scope of work under the SAWS ILA, DB Contractor shall be entitled to a Change Order to increase the Price by the amount SAWS pays TxDOT for the performance of such work under Section 3.A.3 of the SAWS ILA. Notwithstanding any other provisions of this Design-Build Contract, DB Contractor shall not be entitled to any increase in the Price for performing SAWS Cost Work that exceeds the amount paid by SAWS to TxDOT for the performance of such Work.

9. Section 4.6.9.4 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.6.9.4 of the General Conditions:

4.6.9.4 Hazardous Materials Management

If compensation is payable to DB Contractor pursuant to this Section 4.6.9 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or the Reimbursable Hazardous Materials Management Costs for the work in question, subject to the limitations set forth in this Section 4.6.9.4, including the cost sharing provisions set forth in Section 4.6.9.4.1. DB Contractor shall not be entitled to any Change Order under this Section 4.6.9.4 for Hazardous Materials Management performed by DB Contractor that constitutes SAWS Cost Work under the SAWS ILA.

10. Section 7.12.1.1(i) of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 7.12.1.1(i) of the General Conditions:

(i) DB CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT OR THE SAWS ILA, OR ANY DISPUTE BETWEEN DB CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;