# DESIGN-BUILD AGREEMENT

# OAK HILL PARKWAY PROJECT

**between**

**TEXAS DEPARTMENT OF TRANSPORTATION**

**and**

**[*DB CONTRACTOR*]**

**Dated as of: _____, 20__**

**TRAVIS COUNTY**

**DESIGN-BUILD AGREEMENT**
**Oak Hill Parkway Project**

**Table of Contents**

Page


SECTION 1. CONTRACT ..... 2
1.1 Abbreviations ..... 2
1.2 Definitions ..... 3
1.3 Contract Documents and Order of Precedence ..... 12
1.4 Reference Information Documents ..... 13

SECTION 2. SCOPE OF WORK ..... 14
2.1 Project Scope; Special Terms and Conditions ..... 14
2.2 DB Contractor's Proposal Commitments ..... 18
2.3 DB Contractor's ATCs ..... 18
2.4 Completion Deadlines ..... 18
2.5 Job Training Plan ..... 20
2.6 DBE Goals ..... 20
2.7 DBE Performance Plan ..... 20
2.8 Prevailing Wages ..... 20
2.9 Project-Specific NTPs ..... 21

SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS ..... 22
3.1 TxDOT-Provided Approvals ..... 22
3.2 Project Specific Third-Party Agreements ..... 22

SECTION 4. COMPENSATION ..... 22
4.1 Price ..... 22
4.2 Limitations on Payments ..... 23
4.3 Price Adjustment Due to Delay in NTPs ..... 23

SECTION 5. PERFORMANCE SECURITY ..... 25
5.1 Bonds ..... 25
5.2 Guaranty ..... 25
5.3 Insurance Special Provisions ..... 26

SECTION 6. CHANGE ORDERS ..... 26
6.1 Differing Site Conditions ..... 26
6.2 Relief Events ..... 26
6.3 Hazardous Materials ..... 28
6.4 Unidentified Utilities ..... 28
6.5 Access to Right of Way ..... 28
6.6 Necessary Basic Configuration Changes ..... 29
6.7 Form of Change Order ..... 29
6.8 DB Contractor Reimbursement for Eminent Domain Assistance ..... 29
6.9 Discovery of Karst Features ..... 30

SECTION 7. FEES; LIQUIDATED DAMAGES ..... 31
7.1 Fees for Early Issuance of NTP2 ..... 31
7.2 Liquidated Damages Respecting Delays ..... 32
7.3 Lane Rental Charges ..... 32
7.4 Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages ..... 33
7.5 Liquidated Damages and other Remedies Respecting Trees ..... 35
7.6 Additional Acknowledgements Regarding Liquidated Damages ..... 36
7.7 Noncompliance Points ..... 36

SECTION 8. KEY SUBCONTRACTORS AND KEY PERSONNEL ..... 36
8.1 Key Subcontractors ..... 36
8.2 Key Personnel ..... 37

SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES ..... 37
9.1 Notices and Communications ..... 37
9.2 Designation of Representatives ..... 38

SECTION 10. REPRESENTATIONS AND WARRANTIES ..... 38
10.1 Representations and Warranties ..... 38
10.2 Survival of Representations and Warranties ..... 40

SECTION 11. MISCELLANEOUS PROVISIONS ..... 40
11.1 Dispute Resolution Procedures ..... 40
11.2 Entire Agreement ..... 41
11.3 Severability ..... 41
11.4 Survival ..... 41
11.5 Counterparts ..... 41
11.6 Joint and Several Liability ..... 41

## LIST OF EXHIBITS


| | | |
|---|---|---|
| Exhibit 1 | Project Scope | |
| Exhibit 2 | Appendix 1 | DB Contractor's Proposal Commitments |
| | Appendix 2 | ATCs |
| Exhibit 3 | Appendix 1 | List of Reference Information Documents |
| | Appendix 2 | Portions of Reference Information Documents Incorporated in the Contract Documents for Purposes of DB Contractor Relief |
| Exhibit 4 | Performance Warranty Requirements | |
| | Appendix 1 | Form of Warranty Bond for Performance Warranty |
| Exhibit 5 | Job Training Plan | |
| Exhibit 6 | DBE Performance Plan | |
| Exhibit 7 | Prevailing Wage Rates | |
| Exhibit 8 | DB Contractor Obligations related to Project-Specific Third-Party Agreements | |
| Exhibit 9 | Allowances | |
| Exhibit 10 | Maximum Payment Schedule | |
| Exhibit 11 | Maximum Reimbursement Amounts for Eminent Domain Assistance | |
| Exhibit 12 | Forms of Bonds | |
| | Appendix 1 | Form of Performance Bond |
| | Appendix 2 | Form of Payment Bond |
| Exhibit 13 | Form of Guaranty | |
| Exhibit 14 | Change Order Forms | |
| | Appendix 1 | Form of Request for Change Order |
| | Appendix 2 | Form of Change Order |
| Exhibit 15 | Lane Rental Charges | |
| Exhibit 16 | Noncompliance Points Provisions | |
| Exhibit 17 | Key Subcontractors | |
| Exhibit 18 | Key Personnel | |
| Exhibit 19 | Initial Designation of Authorized Representatives | |
| Exhibit 20 | Disputes Resolution Requirements | |
| Exhibit 21 | Operating Procedures | |
| Exhibit 22 | Disputes Review Panel Agreement | |
| Exhibit 23 | Amendments to Utility Provisions | |
| Exhibit 24 | Amendments to Completion Deadline Provisions | |

# DESIGN-BUILD AGREEMENT

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

**B.** TxDOT wishes to enter into an agreement with DB Contractor to develop, design and construct the Oak Hill Parkway Project (the "**Project**") as described herein. In addition, TxDOT wishes to enter into a Performance Warranty with DB Contractor under which selected elements of the Work are warranted as to performance by DB Contractor for a period of five years following Final Acceptance.

**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 October 12, 2018.

**D.** TxDOT received four qualification statements on November 9, 2018 and subsequently shortlisted all four proposers.

**E.** On August 23, 2019 TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the "**RFP**") to develop, design and construct the Project.

**F.** On or before [●] (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.** 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.

**J.** 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 [●].

**K.** 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.

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

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

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

## SECTION 1. CONTRACT

### 1.1 Abbreviations

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

| | |
|---|---|
| **DBA** | Design-Build Agreement |
| **DBH** | diameter at breast height |
| **FPA** | floodplain administrator |
| **LCN** | Lane Closure Notice |
| **SGCN** | species of greatest conservation need |
| **T&E** | threatened and endangered |
| **WPAP** | water pollution abatement plan |

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. For purposes of Austin Water Utility Adjustment Work, the Adjustment Standards shall be the specifications, standards of practice and construction methods set forth in the "Project Manual" identified in the Austin Water Utility Agreement to the extent the standards and the requirements in the Project Manual do not conflict with the Austin Water Utility Agreement, including the "City Drawings" attached thereto. |
| **Aesthetics and Landscaping Plan** | means the Oak Hill Parkway Aesthetics Guidelines provided in the RIDs. |
| **Allowance** | means each allowance described in Exhibit 9 to this DBA. |
| **Allowable Lane Closure** | has the meaning set forth in Section A.1 of Exhibit 15 to this DBA. |
| **Assembly** | means the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement or the Austin Water Utility Agreement to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment or any amendment to the Austin Water Utility Agreement, as more particularly described in Section 14.3.4.5 of the Design-Build Specifications. |
| **Austin District Standards** | means the roadway, bridge and traffic related drawings and standards provided in the "Austin District Standards" folder in the RIDs. |
| **Austin Water** | means the department of the same name that is owned and operated by the City of Austin. |
| **Austin Water Betterments** | means any "Betterments" (as that term is defined in the Austin Water Utility Agreement) that are requested by Austin Water pursuant to Section 4.B.3 of the Austin Water Utility Agreement and not included in Attachment B thereto. |
| **Austin Water Critical Infrastructure** | means all Austin Water Utilities and related improvements identified as "Critical Infrastructure" under the Austin Water Utility Agreement, including any such Austin Water Utilities and related improvements that are not necessary to accommodate construction, operation, maintenance or use of the Project. |
| **Austin Water Delay** | has the meaning set forth in Section 4.5.5.4 of the General Conditions, as amended by Exhibit 23 to this DBA. |
| **Austin Water Utilities** | means all water and wastewater Utilities owned or operated by the City of Austin acting through Austin Water. |

**Austin Water Utility Adjustment Work** means all Utility Adjustment Work required to be performed by TxDOT or the DB Contractor pursuant to the Austin Water Utility Agreement.

**Austin Water Utility Agreement** means the Agreement for the Adjustment of Municipal Utilities in Connection with the Oak Hill Parkway Project between TxDOT and the City of Austin, acting through Austin Water, dated [_____], as such agreement may be amended by the parties thereto.

**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 (except for the Austin Water Utility Agreement); in all other cases (except with respect to Austin Water Utilities), "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 the Utility Owner's written "standards" meeting the requirements described in Section 14.1.2.2 of the Design-Build Specifications; or

(g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards. The term "Betterment" does not include Austin Water Betterments and Austin Water Critical Infrastructure.

**Certified Arborist** means the person assigned by Design-Build Contractor with responsibility for the identification, protection, inspection and evaluation of Trees, as more particularly described in Section 12.3.7 of the Design-Build Specifications.

**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.

**Committed Tree** has the meaning set forth in Section 10,001.1 of the Design-Build Specifications.

| | |
|---|---|
| **Completion Deadlines** | means Old Bee Cave Road Offsite Detention Area Completion Deadline, SH 71 Offsite Detention Area Completion Deadline, US 290 Westbound East Segment Completion Deadline, US 290 Eastbound East Segment Completion Deadline, US 290 Westbound West Segment Completion Deadline, US 290 Eastbound West Segment Completion Deadline, Substantial Completion Deadline and Final Acceptance Deadline. [*Upon execution, delete Completion Deadlines for which DB Contractor did not submit an Interim Milestone Commitment*] |
| **Contract Documents** | has the meaning set forth in Section 1.3 of this DBA. |
| **Critical Path** | means each critical path on the Project Schedule, which ends on a Completion Deadline (i.e., the term shall apply only following consumption of all available Float for the applicable Completion Deadline in the schedule). The lower case term "critical path" means the activities and durations associated with the longest chains of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack. |
| **DB Contractor** or **Design-Build Contractor** | means _____, a _____, together with its successors and assigns. |
| **Design-Build Agreement** | has the meaning set forth in the preamble hereof. |
| **Design-Build Specifications** | means the Design-Build Specifications Items 10-28, 32, 10,001 and 10,004 dated as of [_____]. |
| **Differing Site Conditions** | means (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents listed in Exhibit 3 to this DBA, which differ materially from those conditions indicated in the geotechnical reports for such boring holes or (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract Documents. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; (vi) any conditions which constitute or are caused by a Relief Event; and (vii) 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.

**Establishment Period** has the meaning set forth in Section 23.2.7 of the Design-Build Specifications.

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

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

**Full Roadway Closure** has the meaning set forth in Section A.3 of Exhibit 15 to this DBA.

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

**General Warranty** has the meaning set forth in Section 2 of Exhibit 4 to this DBA.

**Iconic Trees** means the following six trees: "Beckett Grove Oak" (29 inches DBH, latitude 30.234937, longitude -97.863206); "Grandmother Oak" (62 inches DBH, latitude 30.234051, longitude -97.865919); "Grandfather Oak" (52 inches DBH, latitude 30.234188, longitude -97.865371); and the three "Niece Oaks" (36 inches DBH, latitude 30.234258, longitude -97.864705), (35 inches DBH, latitude 30.234263, longitude -97.864727) and (44 inches DBH, latitude 30.234285, longitude -97.864760), as identified in the RID titled "Oak Hill Parkway Tree Preservation Areas."

**Ineligible Matters**

(i) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;

(ii) Any claim or dispute that does not arise under the Contract Documents;

(iii) Any claim that is not actionable against TxDOT by DB Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 4.9 of the General Conditions and Exhibit 20 hereof;

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

(v) Any claim for injunctive relief;

(vi) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;

(vii) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;

(viii) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in Section 4.9 of the General Conditions and Exhibit 20 hereof);

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

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

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

**Instructions to Proposers** means the Instructions to Proposers issued by TxDOT on August 23, 2019, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

**Karst Feature** means any subsurface cavity that: (a) is greater than six inches across in any direction; (b) is greater than one square foot along any plane; (c) blows air; (d) continually receives water during a rain event; or (e) has water flowing through or out of it.

**Karst Feature Mitigation Plan** means a karst feature mitigation plan contemplated in the RID titled "Karst Feature Discovery and Mitigation."

**Karst Feature Mitigation Plan Delay** has the meaning set forth in Section 6.9.3 of this DBA.

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

**Known Karst Features** means Karst Features at the sites identified in the Geologic Assessment Table of Re-Evaluation #1 of the Record of Decision for the Project (May 17, 2019) (included in the RIDs) as F-1 through F-12.

**Lane Closure** means closure of any traffic lane, or the reduction in width of any traffic lane to less than the width required in Item 26 of the Design-Build Specifications, in any portion of the Project or a connecting highway, as applicable, and for any duration, including mainlanes, ramps, direct connectors, frontage roads, access roads and cross roads.

**Lane Closure Notice** has the meaning set forth in Section B.1 of Exhibit 15 to this DBA.

**Liquidated Damages** means the liquidated damages specified in DBA Sections 7.2, 7.4 and 7.5, and General Conditions Sections 8.3.1 and 8.7.1.

**Mass Planting Areas** means the areas set forth Design-Build Specifications, Item 23.2.5.

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

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

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

| | |
|---|---|
| **Noncompliance Points** | means the points that may be assessed for certain breaches or failures to perform by DB Contractor, as set forth in Exhibit 16 to this DBA. |
| **NTP1 Maximum Payment Amount** | means the amount set forth in Section 4.2.2 of this DBA. |
| **NTP1 Payment Bond Amount** | means the amount set forth in Section 5.1.2 of this DBA. |
| **NTP1 Performance Bond Amount** | means the amount set forth in Section 5.1.1 of this DBA. |
| **NTP2 Payment Bond Amount** | means the amount set forth in Section 5.1.4 of this DBA. |
| **NTP2 Performance Bond Amount** | means the amount set forth in Section 5.1.3 of this DBA. |
| **Old Bee Cave Road Offsite Detention Area Completion** | means DB Contractor completed, as determined under Section 2.4.2.2, the Old Bee Cave Road Offsite Detention Area described on the Schematic Design. |
| **Old Bee Cave Road Offsite Detention Area Completion Deadline** | has the meaning set forth in Section 2.4.1 of this DBA. |
| **Performance and Measurement Table** | means Attachment 27-1 in the Design-Build Specifications. |
| **Performance Threshold** | means the threshold condition of a Performance Warranty Element, such that if the condition is worse than the specified threshold, a Warranty Defect is deemed to exist and Warranty Action is required. |
| **Performance Warranty(ies)** | has the meaning set forth in Section 2 of Exhibit 4 to this DBA. |
| **Performance Warranty Element** | means an Element subject to a Performance Warranty. |
| **Persistent DB Contractor Default** | has the meaning set forth in Section 4 of Exhibit 16 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 Design-Build Contract. |
| **Project** | has the meaning set forth in Recital B to this DBA. |
| **Proposal** | has the meaning set forth in Recital F to this DBA. |
| **Proposal Due Date** | has the meaning set forth in Recital F to this DBA. |
| **Reference Information Documents (RIDs)** | means those documents listed in Appendix 1 to Exhibit 3 to this DBA. |
| **Reimbursable Karst Features Costs** | has the meaning set forth in Section 6.9.2 of this DBA. |
| **Request for Proposals (RFP)** | has the meaning set forth in Recital E to this DBA. |
| **RFQ** | has the meaning set forth in Recital C to this DBA. |
| **ROW Project Manager** | means the Right of Way Administrator. |
| **Rules** | has the meaning set forth in Recital C to this DBA. |
| **Schematic Design** | has the meaning set forth in Recital M to this DBA. |

| | |
|---|---|
| **SH 71 Offsite Detention Area Completion** | means DB Contractor completed, as determined under Section 2.4.2.2, the SH 71 Offsite Detention Area described on the Schematic Design. |
| **SH 71 Offsite Detention Area Completion Deadline** | has the meaning set forth in Section 2.4.1 of this DBA. |
| **Substantial Completion Deadline** | has the meaning set forth in Section 2.4.1 of this DBA. |
| **Time Period A** | means the period shown as "A" on Table 15-6 in Exhibit 15 to this DBA. |
| **Time Period B** | means the period shown as "B" on Table 15-6 in Exhibit 15 to this DBA. |
| **Time Period C** | means the period shown as "C" on Table 15-6 in Exhibit 15 to this DBA. |
| **Tree** | means any of the following species with a DBH of 8 inches or greater: elm, oak, pecan, sycamore, hickory and cottonwood. |
| **Tree Preservation Amount** | has the meaning set forth in Section 2.1.2.1 of this DBA. |
| **Tree Preservation Areas** | means the areas identified in the RID titled "Oak Hill Parkway Tree Preservation Areas." |
| **Tree Preservation Plan** | has the meaning set forth in Design-Build Specification Item 10,001.1. |
| **TxDOT Acquisition Parcels** | means the Schematic ROW parcels identified in Table 15-1 in the Design-Build Specifications that TxDOT commits to make available by a specified "Availability Date" set forth in Table 15-1. |
| **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 Appendix 2 to Exhibit 3 of the DBA, unless such Error was known to DB Contractor prior to the Effective Date. Notwithstanding the foregoing, TxDOT shall not be liable for any changes in the scope of Work that result in less than $10,000 in increased costs and such changes shall not be considered TxDOT-Directed Changes. |
| **TxDOT-Provided Approvals** | means the approvals set forth in the table in Section 3.1 of this DBA. |
| **Uncured Noncompliance Points** | means Noncompliance Points assessed on account of breaches for failures that remain uncured. |
| **Unidentified Utilities Deductible** | has the meaning set forth in Section 6.4 of this DBA. |
| **Unidentified Utilities Deductible Cap** | has the meaning set forth in Section 6.4 of this DBA. |

| | |
|---|---|
| **Unknown Karst Features** | means all Karst Features not falling within the definition for Known Karst Features. |
| **US 290 Eastbound East Segment Completion** | means DB Contractor completed, as determined under Section 2.4.2.1, one eastbound lane for US 290 from east of Convict Hill (Station 340+00) to Loop 1 to provide safe, continuous free-flow movement of traffic (in addition to the minimum number of lanes required to be open during construction as set forth in Exhibit 15 to this DBA). |
| **US 290 Eastbound East Segment Completion Deadline** | has the meaning set forth in Section 2.4.1 of this DBA. |
| **US 290 Eastbound West Segment Completion** | means DB Contractor completed, as determined under Section 2.4.2.1, one eastbound lane for US 290 from west of South View Road (Station 225+00) to east of Convict Hill (Station 340+00) to provide safe, continuous free-flow movement of traffic (in addition to the minimum number of lanes required to be open during construction as set forth in Exhibit 15 to this DBA). |
| **US 290 Eastbound West Segment Completion Deadline** | has the meaning set forth in Section 2.4.1 of this DBA. |
| **US 290 Westbound East Segment Completion** | means DB Contractor completed, as determined under Section 2.4.2.1, one westbound lane for US 290 from Loop 1 to east of Convict Hill (Station 340+00) to provide safe, continuous free-flow movement of traffic (in addition to the minimum number of lanes required to be open during construction as set forth in Exhibit 15 to this DBA). |
| **US 290 Westbound East Segment Completion Deadline** | has the meaning set forth in Section 2.4.1 of this DBA. |
| **US 290 Westbound West Segment Completion** | means DB Contractor completed, as determined under Section 2.4.2.1, one westbound lane for US 290 from east of Convict Hill (Station 340+00) to west of South View Road (Station 225+00) to provide safe, continuous free-flow movement of traffic (in addition to the minimum number of lanes required to be open during construction as set forth in Exhibit 15 to this DBA). |
| **US 290 Westbound West Segment Completion Deadline** | has the meaning set forth in Section 2.4.1 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 or required under the Austin Water Utility Agreement (including work related to Austin Water Critical Infrastructure); provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

**Utility Adjustment Submittals** means Submittals, submitted in accordance herewith and with any Project Utility Adjustment Agreement, in each case arising out of or relating to the relevant Utility Adjustments. Submittals required in connection with the Austin Water Utility Adjustment Work are not considered Utility Adjustment Submittals.

**Utility Agreement** means a PUAA, UAAA, or the Austin Water Utility Agreement, as the context may require.

**Utility Assembly** means the collection of agreements, plans and other information and materials that DB Contractor is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Utility Agreement and any applicable amendments), as more particularly described in Section 14.3.4.5 of the Design-Build Specifications. Depending on the context, the term also refers to UAAAs, supplemental Utility Assemblies and Abbreviated Utility Assemblies.

**Utility Owner Project** means the design and construction by or at the direction of a Utility Owner, other than Austin Water, (or by DB Contractor pursuant to Section 4.5.2.3) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

**Warranty(ies)** shall have the meaning set forth in Section 2 of Exhibit 4 to this DBA, and shall include the Performance Warranty.

**Warranty Action** means an action required to be undertaken by DB Contractor in accordance with the Contract Documents to correct a failure of the Work to satisfy the Warranties, including an action to correct a Warranty Defect so that the condition of each Performance Warranty Element meets or exceeds the applicable Performance Threshold.

**Warranty Defect** means a failure of the Performance Warranty Element to meet the Performance Threshold as set forth in the Warranty Performance and Measurement Table.

**Warranty Inspection** means any of the inspections identified in Section 32.10 of Item 32 of the Design-Build Specifications including Warranty annual inspection, Warranty investigative inspection, Warranty verification inspection, specialist inspections and Warranty final inspection.

**Warranty Limits** means the physical limits for the Performance Warranty described in Section 32.6 of Item 32 of the Design-Build Specifications.

| | |
|---|---|
| **Warranty Performance Section** | means a defined section of the Project for the purpose of Warranty Inspections and the recording of measurements to determine the need for Warranty Action. A Warranty Performance Section includes all travel lanes including mainlanes, ramps and access roads of the roadway operating in one direction over a length of 0.1 miles, together with all Performance Warranty Elements associated with such 0.1-mile length. |
| **Warranty Performance and Measurement Table** | means the table included in Attachment 32-1 to Item 32 of the Design-Build Specifications defining the Performance Warranty Elements, the Performance Thresholds and specifying minimum requirements for Warranty Actions. |
| **Warranty Term** | means the term for the Warranties as set forth in Section 2 of Exhibit 4 to this DBA. |

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

### 1.3 Contract Documents and Order of Precedence

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

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

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

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

2. This DBA, including all exhibits hereto, except Exhibit 2 (DB Contractor's Proposal Commitments and ATCs) and Appendix 1 to Exhibit 3 (List of Reference Information Documents);

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

4. Change Orders to the Design-Build Specifications;

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

6. 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 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, Appendix 2.

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

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

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

## SECTION 2. SCOPE OF WORK

### 2.1 Project Scope; Special Terms and Conditions

**2.1.1** Project Scope

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

**2.1.2** Special Terms and Conditions

**2.1.2.1.** Trees

DB Contractor is responsible for protecting and preserving: (a) the Iconic Trees; (b) all Trees in the Tree Preservation Areas and; (c) at least 2,750 inches DBH of Trees (**"Tree Preservation Amount"**) that are (i) within the Project ROW outside of the Tree Preservation Areas; (ii) not Iconic Trees; and (iii) not in offsite detention areas.

**2.1.2.2.** Section 404 Permit

Notwithstanding General Conditions Section 4.2.4.2.2, the following shall apply. TxDOT will begin coordinating with USACE prior to the Effective Date regarding a Section 404 permit for the Project. Prior to the start of construction, DB Contractor shall be responsible for completing the requirements for the remaining waters of the U.S., including wetlands delineations, and completing the application for and obtaining the necessary Section 404 permit. DB Contractor shall develop a mitigation plan to compensate for impacts to waters of the U.S., including wetlands, and perform the necessary mitigation in accordance with the USACE approved mitigation plan. DB Contractor shall not perform any construction, staging, storage, or ground disturbing activities of any kind within unsurveyed parcels without the prior approval of TxDOT. TxDOT shall provide a list of parcels requiring DB Contractor mitigation of waters of the U.S., including wetlands delineations in the RIDs.

**2.1.2.3.** Software Compatibility

Section 5.2.7.1 of the General Conditions is amended as follows, provided (i) the underlined text below is hereby added to Section 5.2.7.1 of the General Conditions and (ii) stricken text is hereby deleted from Section 5.2.7.1 of the General Conditions:

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

**2.1.2.4.** Modifications to Project Management Plan

The first bullet of Section 4.2.3.6 of the General Conditions is amended as follows, provided the underlined text below is hereby added to the first bullet of Section 4.2.3.6 of the General Conditions:

- Maintenance of communication for the exchange of information between DB Contractor, TxDOT, and other involved agencies following a chain of command protocol;

A new subsection (g) is hereby added to Section 4.2.4.1.1 of the General Conditions as follows:

(g) Developing and managing a water pollution abatement plan.

An additional bullet is hereby added to Section 4.2.4.2.11 of the General Conditions:

- Controlling sediment from construction sites and preventing construction-related discharge from entering receiving waters.

An additional bullet is hereby added to Section 4.2.4.4 of the General Conditions:

- Procedures for inspecting on-site vehicles and storage tanks for Hazardous Materials leaks and procedures for mitigating such leaks.

**2.1.2.5.** Contents of EPDs

Section 5.13.1.4 of the General Conditions is amended as follows, provided the underlined text below is hereby added to Section 5.13.1.4 of the General Conditions:

The EPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been determined and shall show cost or price elements in sufficient detail as is adequate to enable TxDOT to understand how DB Contractor calculated the Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total cost or price and individual components of that cost or price were determined. The EPDs shall itemize the estimated costs or price of performing the required work separated into cost or price categories identified in the Price breakdown form included with the Proposal to present a detailed estimate of costs and price, including at a minimum, direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, indirect costs, contingencies, markup, overhead and profit. DB Contractor's estimate of costs and price for Utility Adjustments shall include a detailed estimate of the costs and price attributable to Work under the Austin Water Utility Agreement that includes

the information identified in the foregoing sentence. The EPDs shall itemize the estimated payment and performance bonds costs and the annual costs of insurance premiums for each coverage required to be provided by DB Contractor under Section 3.5. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by DB Contractor to arrive at the Price, and any adjustments to the Price under this 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 (other than Austin Water Utilities) in accordance with Transportation Code § 203.092 as determined by the project type. Since the Project is on the State Highway system, DB Contractor shall be responsible at its expense for Utility Adjustments where the Utility Owner has a compensable interest in the land occupied by the Utility to be Adjusted. The Utility Owners will be responsible for the costs of any other Utility Adjustments in accordance with Transportation Code § 203.092.

**2.1.3.2.** Amendments to the General Conditions Regarding Utility Provisions

Exhibit 23 sets forth certain amendments to the General Conditions regarding Utility Adjustments, including Utility Adjustments of the Austin Water Utilities.

**2.1.4** Obligations After Final Acceptance

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

DB Contractor shall be responsible for the General Warranty obligations set forth in Section 3.8 of the General Conditions (as amended by Section 2 of Exhibit 4).

DB Contractor shall provide to TxDOT an updated health assessment of the Iconic Trees prepared by its Certified Arborist immediately before and after performing any Warranty Action that occurs within 100 feet of any Iconic Tree.

In addition to the General Warranty obligations set forth in this Section 2.1.4, DB Contractor also shall provide a Performance Warranty in accordance with Exhibit 4. Except for the Warranties required pursuant to this Section 2.1.4, DB Contractor shall not be obligated to provide any additional maintenance of the Project after Final Acceptance, and the transfer of obligations for maintenance of the Project shall be in accordance with the Contract Documents.

**2.1.5** Special ROW Provisions

**2.1.5.1.** Section 4.4.1.1 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to the Section 4.4.1.1 of the General Conditions and (ii) stricken text is hereby deleted Section 4.4.1.1 of the General Conditions:

TxDOT will make available each TxDOT Acquisition Parcel by the applicable "Availability Date" set forth in Table 15-1 of the Design-Build Specifications. All other Project ROW, including Additional Properties but excluding temporary interests in property for Project Specific Locations, shall be acquired by DB Contractor in the name of the State. DB Contractor shall undertake and complete the acquisition of all Project ROW, including Additional Properties, but excluding TxDOT Acquisition Parcels, in accordance with Item 15 of the Design-Build Specifications, the approved Right of Way Acquisition Management Plan and all applicable Laws relating to such acquisition, including the Uniform

Act. For TxDOT Acquisition Parcels requiring acquisition by eminent domain, DB Contractor shall, upon TxDOT's request, perform support services for condemnation proceedings in accordance with Section 4.4.2.1. DB Contractor shall also be responsible for submitting the completed files in accordance with the closeout procedures as defined by TxDOT in Section 15.2.11 of the Design-Build Specifications.

**2.1.5.2.** Section 4.4.2.1 of the General Conditions is amended as follows, provided underlined text is hereby added to the Section 4.4.2.1 of the General Conditions:

For real property needed for ROW within the Schematic ROW, TxDOT shall be responsible for (a) the purchase price of such real property, (b) any market rental consideration paid in connection with PUAs in accordance with Section 15.4.1 of the Design-Build Specifications, (c) relocation assistance payments required in connection with such real property and (d) title insurance for such real property. Subject to the immediately preceding sentence and Section 4.4.2.6, DB Contractor shall be responsible for the performance and the costs of all right of way engineering, surveying, appraisals, administration, acquisition, relocation assistance, environmental permitting (other than certain mitigation requirements expressly excluded under Section 4.7.1) and related services for all such parcels (excluding TxDOT Acquisition Parcels), including all costs and expenses of negotiation. If TxDOT incurs and pays any such costs and expenses on DB Contractor's behalf, DB Contractor shall reimburse TxDOT within 10 days of TxDOT's submittal to DB Contractor of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. For any parcels within the Schematic ROW that require acquisition by eminent domain, except TxDOT Acquisition Parcels for which TxDOT does not request support services, DB Contractor shall be responsible for the performance of support services for the condemnation proceedings described in Item 15 of the Design-Build Specifications; provided, however, that DB Contractor shall be entitled to reimbursement for DB Contractor's reasonable out-of-pocket costs for providing such services to the extent allowed in accordance with DBA Exhibit 11. Such costs may be included in any Draw Request after the services are provided and incurred by DB Contractor. DB Contractor's responsibility for such support services shall terminate upon Final Acceptance of the Project, except that DB Contractor shall ensure that any expert witnesses employed by DB Contractor-Related Entities are available to assist TxDOT in connection with any condemnation proceedings, including discovery, depositions, pre-hearings and hearings after Final Acceptance. Notwithstanding the foregoing, TxDOT shall be responsible for the legal costs for the Office of the Attorney General or fees for private counsel retained as directed by the Office of the Attorney General in connection with any condemnation actions, except for such legal fees and costs that arise out of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of a DB Contractor-Related Entity in the performance of its obligations under the Contract Documents.

**2.1.5.3.** Section 4.4.5.2 of the General Conditions is amended as follows, provided underlined text is hereby added to Section 4.4.5.2 of the General Conditions:

Condemnation proceedings for any Project ROW for which a Condemnation Package is required will be brought by TxDOT within a reasonable time following approval by TxDOT of a complete Condemnation Package for the parcel as described in Section 15.4.4 of the Design-Build Specifications. TxDOT will deliver the petition for the parcel to DB Contractor within 105 days from the date of approval of the Condemnation Package. TxDOT will provide the payment for the parcel within 45 days from the date the Special Commissioners' award is filed with the court. Subject to the cost reimbursement provisions in Exhibit 11 to the DBA, DB Contractor shall cooperate in all respects with TxDOT and shall cause all expert witnesses, appraisers, surveyors, land planners and other consultants utilized by DB Contractor in connection with the acquisition of the Project ROW subject to condemnation to be available to and assist TxDOT in connection with the condemnation proceedings, including discovery, depositions, prehearing preparation, Special Commissioner's hearing, jury trial, or other proceedings. Counsel engaged for settlement and condemnation proceedings shall be from the Office of the Attorney General representing TxDOT.

**2.1.5.4.** Section 4.4.5.3 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 4.4.5.3 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.4.5.3 of the General Conditions:

Except as provided in Section 4.4.2.5, DB Contractor shall be entitled to a Change Order in accordance with Section 4.6.9.5 for delays to a Critical Path due to failure of TxDOT to make available the portion of the Schematic ROW or any Additional Properties that must be acquired due to a TxDOT-Directed Change, Relief Event, or a Necessary Basic Configuration Change, described in a condemnation packet within ~~365~~ 180 days after approval of the Condemnation Package, excluding any delay caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity in performing the services required under the Contract Documents; provided, however, that the risk of delay following the expiration of such ~~365~~ 180-day period, on an individual parcel basis, shall be borne equally by each Party for the first 100 days thereafter (i.e., for each parcel, DB Contractor shall be entitled to one day of time extension for every two days of delay). Following the expiration of the first 100 days after the initial ~~365~~ 180-day period, DB Contractor shall be entitled to one day of time extension for each day of eligible delay. DB Contractor shall also be entitled to a Change Order in accordance with Section 4.6.9.5 for delays to a Critical Path due to failure of TxDOT to make available any TxDOT Acquisition Parcel by the applicable "Availability Date" set forth in Table 15-1 of the Design-Build Specifications. In the event of such failure, DB Contractor shall be entitled to one day of time extension to applicable Completion Deadlines for each day of eligible delay to a Critical Path. The term "make available," as used herein, means to make available for (a) relocation of occupants and personal property, for occupied parcels, (b) demolition, for unoccupied, improved parcels, or (c) construction, for unoccupied, unimproved parcels. DB Contractor through due diligence shall initiate, cooperate and be responsible for all efforts necessary for the processing of the administrative portion of ~~the~~ condemnation actions, except for condemnation actions for TxDOT Acquisition Parcels for which TxDOT does not request such services, up to and including the deposit of the award of Special Commissioners.

### 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 Completion Deadlines may be adjusted by Change Order pursuant to the Design-Build Contract.

| **COMPLETION DEADLINES**<br>**[*Upon execution, delete Completion Deadlines for which DB Contractor did not submit an Interim Milestone Commitment*]** | |
|---|---|
| Old Bee Cave Road Offsite Detention Area Completion Deadline | The earlier of NTP2 plus [*Insert Interim Milestone Commitment for Old Bee Cave Road Offsite Detention Area Completion*] Days and the Substantial Completion Deadline |

| **COMPLETION DEADLINES**<br>**[*Upon execution, delete Completion Deadlines for which DB Contractor did not submit an Interim Milestone Commitment*]** | |
|---|---|
| SH 71 Offsite Detention Area Completion Deadline | The earlier of NTP2 plus [*Insert Interim Milestone Commitment for SH 71 Offsite Detention Area Completion*] Days and the Substantial Completion Deadline |
| US 290 Westbound East Segment Completion Deadline | The earlier of NTP2 plus [*Insert Interim Milestone Commitment for US 290 Westbound East Segment Completion*] Days and the Substantial Completion Deadline |
| US 290 Eastbound East Segment Completion Deadline | The earlier of NTP2 plus [*Insert Interim Milestone Commitment for US 290 Eastbound East Segment Completion Deadline*] Days and the Substantial Completion Deadline |
| US 290 Westbound West Segment Completion Deadline | The earlier of NTP2 plus [*Insert Interim Milestone Commitment for US 290 Westbound West Segment Completion*] Days and the Substantial Completion Deadline |
| US 290 Eastbound West Segment Completion Deadline | The earlier of NTP2 plus [*Insert Interim Milestone Commitment for US 290 Eastbound West Segment Completion*] Days and the Substantial Completion Deadline |
| Substantial Completion Deadline | NTP1 plus 1,460 Days |
| Final Acceptance Deadline | Date of Substantial Completion plus 120 Days |

**2.4.2** Completion of Milestones Prior to Substantial Completion and Final Acceptance

**2.4.2.1.** Completion of Segment Milestones

US 290 Westbound East Segment Completion, US 290 Eastbound East Segment Completion, US 290 Westbound West Segment Completion and US 290 Eastbound West Segment Completion will each occur when (a) TxDOT delivers a certificate to DB Contractor that indicates TxDOT has determined, in its discretion, that the work for the applicable segment is completed in accordance with the Contract Documents and the applicable segment provides safe and normal vehicular traffic, and (b) DB Contractor opens the applicable segment to the travelling public. Following completion of any segments under this Section 2.4.2.1, all closures of the applicable segments will be subject to the provisions of Exhibit 15 to this DBA. In the event TxDOT determines, in its discretion, that a segment deemed complete under this Section 2.4.2.1 does not provide safe and normal vehicular travel, then TxDOT may deliver written notice requiring DB Contractor to close such lanes until DB Contractor demonstrates that the applicable segment will provide safe and normal vehicular traffic. Upon delivery of such notice, DB Contractor shall close the applicable segment to traffic and such closure will be a Lane Closure and subject to the Lane Rental Charges set forth in Exhibit 15 to this DBA. DB Contractor may re-open any such closed segment upon written notice

from TxDOT that DB Contractor has demonstrated to TxDOT's satisfaction that the closed segment will provide safe and normal vehicular traffic.

**2.4.2.2.** Completion of Detention Area Milestones

Old Bee Cave Road Offsite Detention Area Completion and SH 71 Offsite Detention Area Completion will each occur when TxDOT delivers a certificate to DB Contractor that indicates TxDOT has determined, in its discretion, that the applicable detention area has been completed in accordance with the Contract Documents.

**2.4.3** Amendments to Completion Deadline Provisions

Exhibit 24 sets forth certain amendments to the General Conditions that address Completion Deadlines.

**2.4.4** 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.

**2.4.5** 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 the Project is [●] for trainees described in Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions.

### 2.6 DBE Goals

The Parties acknowledge that the Project is (or may be) funded with federal funds and the approved overall DBE participation goal for the Project is established as 7.0% of the Price for Construction Work and 12.6% of the Price for Professional Services.

### 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

Authorizing 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.

**2.9.1** In addition to the anticipated conditions for NTP2 set forth in General Conditions Section 8.1.1.4, TxDOT has approved, in its discretion, DB Contractor's Tree Preservation Plan prepared by DB Contractor's Certified Arborist, including a health assessment of all Trees to be preserved.

**2.9.2** Upon issuance of NTP1 DB Contractor shall be authorized to perform mitigation of Karst Features within the Project ROW prior to issuance of NTP 2, provided the following conditions have been met:

(a) DB Contractor has delivered to TxDOT and TxDOT has approved a list of Karst Features that DB Contractor proposes to mitigate;

(b) DB Contractor has delivered to TxDOT and TxDOT has approved the Karst Feature Mitigation Plan for each Karst Feature that DB Contractor proposes to mitigate;

(c) All Governmental Approvals necessary to begin mitigation of the applicable Karst Features have been obtained and DB Contractor has furnished to TxDOT fully executed copies of such Governmental Approvals;

(d) Property rights acceptable to TxDOT, in its discretion, for performing mitigation work for the applicable Karst Features have been acquired or obtained in favor of TxDOT;

(e) DB Contractor has satisfied all applicable requirements contained in the Environmental Approvals and other Governmental Approvals that are applicable, in TxDOT's discretion, to the proposed Karst Features mitigation work;

(f) The Performance Bond and Payment Bond (including dual oblige riders), in form and from a surety approved by TxDOT and in amounts equal to the NTP1 Performance Bond Amount and the NTP1 Payment Bond Amount, respectively, that are required under Section 3.4 of the General Conditions have been obtained and are in full force and effect, and DB Contractor has delivered to TxDOT certified and conformed copies of the originals of each such bond, with the original of each such bond delivered to DB Contractor;

(g) The Guarantees, if any, required under this DBA have been obtained and delivered to TxDOT;

(h) All insurance policies required under Section 3.5 of the General Conditions that are applicable to the proposed Karst Features mitigation work, as determined in TxDOT's discretion, have been obtained, are in full force and effect, and DB Contractor has delivered to TxDOT written binding verifications of coverage from the relevant issuers of such policies;

(i) DB Contractor has delivered to TxDOT all Submittals relevant to the proposed Karst Features mitigation work required by the Contract Documents;

(j) All representations and warranties of DB Contractor set forth in Section 10.1 shall be and remain true and correct in all material respects;

(k) DB Contractor has adopted written policies establishing ethical standards of conduct for all DB Contractor-Related Entities performing Karst Features mitigation work, including DB Contractor's

supervisory and management personnel, in dealing with (a) TxDOT and TxDOT's consultants and (b) employment relations, in accordance with Section 8.2.5 of the General Conditions;

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

(m) DB Contractor has provided to TxDOT copies of all executed Subcontracts with Key Subcontractors that are relevant to the proposed Karst Features mitigation work; and

(n) TxDOT has delivered notice acknowledging DB Contractor's satisfaction of the conditions above and authorizing DB Contractor to commence the proposed Karst Features mitigation work.

## 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 |
|---|---|
| Record of Decision for the Project | December 21, 2018 |
| Re-Evaluation #1 of the Record of Decision for the Project | May 17, 2019 |
| Re-Evaluation #2 of the Record of Decision for the Project | Anticipated October 2019 [*Date to be replaced upon completion of Re-Evaluation #2*] |

**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

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

## SECTION 4. COMPENSATION

### 4.1 Price

As full compensation for performance of the Work and all other obligations of DB Contractor under the Contract Documents, TxDOT shall pay DB Contractor the lump sum price of $[●], 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.

**4.1.2** Reserved

**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 $30,000,000.

**4.3 Price Adjustment Due to Delay in NTPs**

**4.3.1** Delay in NTP1

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

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

where:

"$\Delta$" 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:

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

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

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

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

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

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

## SECTION 5. PERFORMANCE SECURITY

### 5.1 Bonds

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

**5.1.1** The **"NTP1 Performance Bond Amount"** is $30 million.

**5.1.2** The **"NTP1 Payment Bond Amount"** is $30 million.

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

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

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

### 5.2 Guaranty

**5.2.1** As of the Effective Date, a Guaranty:

☐ 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 DBA 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 $150 million, 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 $150 million. 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

The "**Differing Site Conditions Deductible**" for the Project is the first $75,000 in additional Direct Costs.

The "**Differing Site Conditions Deductible Cap**" for the Project is an aggregate $750,000 for all Differing Site Conditions Deductibles borne by DB Contractor.

DB Contractor shall be entitled to an increase in the Price due to Differing Site Conditions only as provided in Section 4.6.9.1 of the General Conditions, unless otherwise specified in this Section 6.1.

### 6.2 Relief Events

The terms "Force Majeure Events" and "Other Relief Events" shall have the meanings set forth in the General Conditions; provided however, Section 4.6.9.3.2 of the General Conditions is amended as follows: (i) underlined text is hereby added to Section 4.6.9.3.2 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.6.9.3.2 of the General Conditions:

4.6.9.3.2 Other Relief Events

Other Relief Events means any of the events listed in clauses (a) through (h) below (and no other events, including those listed in clauses (i) through (vii) below) that materially and adversely affects DB Contractor's obligations, provided such events are beyond the control of the DB Contractor-Related Entities and are not due to (1) an act, omission, negligence, recklessness, intentional misconduct of or (2) breach of contract or Law or violation of any Governmental Approvals by any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB Contractor-Related Entity:

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

(b) The discovery at, near or on the Project ROW (excluding DB Contractor-Designated ROW) of any species listed as a Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to DB Contractor prior to the Proposal Due Date and would not have become known to DB Contractor by undertaking reasonable investigation prior to the Proposal Due Date;

(c) Any Change in Law, that (1) requires a material modification of the Project design, (2) requires DB Contractor to obtain a new major State or federal environmental approval not previously required for the

Project, (3) results in an increase in DB Contractor's costs directly attributable to the Change in Law of at least $500,000, or (4) specifically targets the Project or DB Contractor;

(d) Any Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials which: (1) occurs after the Proposal Due Date (and for Third Party Releases, also after the date TxDOT makes the parcel available to DB Contractor for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;

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

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

(g) Modifications to a Governmental Approval that is DB Contractor's responsibility to obtain made by a Governmental Entity after formal issuance of the Governmental Approval, provided that the required modification is not due to changes to the Project initiated by DB Contractor; ~~and~~

(h) Execution of new Third Party Agreements or modifications made after the Proposal Due Date to existing Third Party Agreements included in Section 3.2 of the DBA; and~~.~~

(i) Any Austin Water Betterments that are approved by TxDOT and performed by DB Contractor in accordance with the Austin Water Utility Agreement.

For the avoidance of doubt, Other Relief Events shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered relief events:

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

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

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

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

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

Subject to the limitations contained in, and upon DB Contractor's fulfillment of all applicable requirements of, this Section 4.6, TxDOT shall issue Change Orders: (a) to compensate DB Contractor for additional Direct Costs incurred as a result of the Other Relief Event under the terms, conditions and limitations set forth in this Section 4.6.9, and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by the Other Relief Event, to the extent that it is not possible to work around such event. DB Contractor's rights to recover additional Direct Costs incurred resulting from Other Relief Events shall not include compensation for delay and disruption damages. For the avoidance of doubt, the exclusions set forth above apply solely to Other Relief Events as defined in this Section 4.6.9.3.2, and do not limit DB Contractor's ability to seek a Change Order for eligible events that do not fall within the definition of Other Relief Event but are otherwise set forth in this Section 4.6.9.

### 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 $250,000 but do not exceed $750,000, (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed $750,000, 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 Unidentified Utilities

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

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

DB Contractor shall be entitled to a Change Order with respect to certain additional Direct Costs and delays relating to Utility Adjustments, as specified in Section 4.5 of the General Conditions and subject to the restrictions and limitations set forth in Section 4.5 of the General Conditions and in Section 4.6 of the General Conditions, each as amended by Exhibit 23.

### 6.5 Access to Right of Way

DB Contractor shall be entitled to a Change Order for delays to a 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, only as provided in

Section 4.6.9.5 of the General Conditions and subject to the requirements of Section 4.6 of the General Conditions, unless otherwise specified in this Section 6.5.

**6.5.1** Section 4.6.9.5 of the General Conditions is amended as follows: (i) underlined text is hereby added to Section 4.6.9.5 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.6.9.5 of the General Conditions:

4.6.9.5 Access to ROW

Subject to the restrictions and limitations set forth in this Section 4.6, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by failure or inability of TxDOT to (a) deliver the petition for the parcel to the DB Contractor within 105 days from the date of the approved Condemnation Package, or (b) provide the payment for the parcel within 45 days from the date that the Special Commissioners' award is filed with the Court, in either case in accordance with Section 4.4.5.2. In addition, subject to the limitations and risk sharing provisions in the Contract Documents, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as a result of any delay in a Critical Path directly caused by failure or inability of TxDOT to make available the portion of the Schematic ROW or any Additional Properties that must be acquired due to a TxDOT-Directed Change, Relief Event, or a Necessary Basic Configuration Change, described in a condemnation packet within 180 ~~365~~ days after approval of the Condemnation Package. DB Contractor shall also be entitled to a Change Order, subject to the limitations and risk sharing provisions in the Contract Documents, to extend the applicable Completion Deadlines as a result of any delay in a Critical Path directly caused by failure or inability of TxDOT to make available any TxDOT Acquisition Parcel by the applicable "Availability Date" set forth in Table 15-1 of the Design-Build Specifications. DB Contractor shall be entitled to a Change Order only to the extent the delay (i) materially adversely affects a Critical Path, (ii) is not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) is not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the DB Contractor-Related Entities. DB Contractor shall not be entitled to an increase in the Price or reimbursement of any costs incurred as a result of such delays, including any delay or disruption damages.

### 6.6 Necessary Basic Configuration Changes

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

In the event Karst Features are discovered within the Project ROW, DB Contractor shall comply with and shall cause all Persons performing Work or Utility Adjustment Work to comply with the RID titled "Karst Feature Discovery and Mitigation." DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Unknown Karst Features and any right to obtain an extension of a Completion Deadline in connection with any Unknown Karst Features if TxDOT is not provided written notice of the discovery of the Unknown Karst Feature and afforded the opportunity to inspect sites containing the Unknown Karst Feature before any action is taken that would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the mitigation work required for such Unknown Karst Feature.

#### **6.9.1** Price Increase

Subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as follows: (a) 50% of DB Contractor's Reimbursable Karst Features Costs for Unknown Karst Features encountered by DB Contractor that exceed $500,000 but do not exceed $1,250,000; (b) 100% of Reimbursable Karst Features Costs for Unknown Karst Features encountered by DB Contractor that exceed $1,250,000; and (c) 100% of Reimbursable Karst Features Costs for Unknown Karst Features encountered on Additional Properties acquired as a result of a TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to karsts.

#### **6.9.2** Determination of Reimbursable Amount

The term **"Reimbursable Karst Features Costs"** shall mean the incremental reasonable, out-of-pocket Direct Costs incurred for mitigating Unknown Karst Features, including any re-design and construction costs (deducting any avoided costs), and shall not include indirect costs, including overhead and barricades; provided, however, that "Reimbursable Karst Features Costs" shall only include such costs related to any individual Unknown Karst Feature if (a) such costs exceed $10,000 for such individual Unknown Karst Feature or (b) such costs do not exceed $10,000 for such individual Unknown Karst Feature and DB Contractor has mitigated more than 50 individual Unknown Karst Features that did not result in Reimbursable Karst Features Costs because such $10,000 threshold was not met. The costs of investigating and characterizing Unknown Karst Features and preparing of any Karst Feature Mitigation Plans are included in the Price, and DB Contractor shall not be entitled to additional compensation therefor. Any costs incurred by DB Contractor or a Utility Owner for mitigating Unknown Karst Features attributable to a non-reimbursable Utility Adjustment, excepting non-reimbursable Utility Adjustments performed under the Austin Water Utility Agreement, are not Reimbursable Karst Features Costs.

DB Contractor shall take all reasonable steps to minimize any Reimbursable Karst Features Costs.

#### **6.9.3** Time Extensions

Subject to Section 4.6 of the General Conditions and this Section 6.9.3, DB Contractor shall be entitled to extend applicable Completion Deadlines for delays to a Critical Path attributable to the development, review and approval of a Karst Feature Mitigation Plan for an Unknown Karst Feature ("**Karst Feature Mitigation Plan Delay**"). A Karst Feature Mitigation Plan Delay begins on the date DB Contractor or another party working within the Project ROW notifies TCEQ and TxDOT of the discovery of an Unknown Karst Feature in accordance with the RID titled "Karst Feature Discovery and Mitigation" and ends when the applicable Karst Feature Mitigation Plan is approved by TxDOT and TCEQ. DB Contractor shall bear 100% of the risk of Karst Feature Mitigation Plan Delays up to 45 days per individual Unknown Karst Feature. After DB Contractor has borne the risk of a Karst Feature Mitigation Plan Delay for 45 days for an individual Unknown Karst Feature, the risk of a Karst Feature Mitigation Plan Delay for the individual Unknown Karst Feature shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Karst Feature Mitigation Plan Delay occurring after expiration of the initial 45-day period). Once the aggregate of all Karst Feature Mitigation Plan Delays on the Project that DB

Contractor bears the risk for, excluding Karst Feature Mitigation Plan Delays in excess of 45 days per individual Unknown Karst Feature, equals 180 days, then the risk of all further Karst Feature Mitigation Plan Delays shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Karst Feature Mitigation Plan Delay occurring after DB Contractor has borne an aggregate of 180 days of Karst Feature Mitigation Plan Delays, as determined under this section). If a Karst Feature Mitigation Plan Delay is concurrent with another delay that is DB Contractor's responsibility under the Design-Build Contract, then such Karst Feature Mitigation Plan Delay shall be borne 100% by DB Contractor. If a Karst Feature Mitigation Plan Delay at one location is concurrent with another Karst Feature Mitigation Plan Delay in another location, the 45-day period of DB Contractor's responsibility for the delays at the two locations shall run concurrently and only one of such concurrent delays shall apply to the 180 day cap. The foregoing shall not preclude DB Contractor from obtaining a time extension with respect to any Karst Feature 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.

**6.9.4** Limitations on Change Orders for Discovery of Karst Features

Entitlement to compensation or a time extension shall be limited to work performed pursuant to DB Contractor's Karst Feature Mitigation Plans for such Unknown Karst Features, as approved by TxDOT in writing. DB Contractor shall demonstrate to TxDOT's satisfaction that DB Contractor's Karst Feature Mitigation Plan represents the approach that is most beneficial to the Project and the public. DB Contractor shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for a Price increase or a time extension. Notwithstanding anything to the contrary in the Contract Documents, no compensation or time extension shall be allowed with respect to: (a) any Unknown Karst Features that could have been avoided by reasonable design modifications or construction techniques; (b) any costs that could have been avoided; (c) Unknown Karst Features on any DB Contractor-Designated ROW; or (d) any Known Karst Features. DB Contractor shall not be entitled to delay or disruption damages resulting from a Karst Feature Mitigation Plan Delay.

**6.9.5** Amendments to General Conditions Regarding Karst Features

**6.9.5.1.** A new subsection (h) is added to Section 4.6.3.1.1 of the General Conditions as follows:

(h) delays relating to Unknown Karst Features to the extent permitted in Section 6.9 of the DBA.

**6.9.5.2.** Section 4.6.3.1.2(b) of the General Conditions is deleted in its entirety and replaced with the following:

(b) certain additional costs relating to Differing Site Conditions, Hazardous Materials, and Relief Events, to the extent provided in Section 4.6.9 and certain additional costs relating to Unknown Karst Features to the extent provided in Section 6.9 of the DBA;

## 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 Respecting Delays

**7.2.1** The amounts of any liquidated damages for which DB Contractor may be liable pursuant to Section 8.7.1 of the General Conditions shall be as follows:

(a) $10,000 for each day after the Old Bee Cave Road Offsite Detention Area Completion Deadline and through the earlier of (a) the date of Old Bee Cave Road Offsite Detention Area Completion, and (b) the Substantial Completion Deadline;

(b) $10,000 for each day after the SH 71 Offsite Detention Area Completion Deadline and through the earlier of (a) the date of SH 71 Offsite Detention Area Completion, and (b) the Substantial Completion Deadline;

(c) $36,000 for each day after the US 290 Westbound East Segment Completion Deadline and through the earlier of (a) the date of US 290 Westbound East Segment Completion, and (b) the Substantial Completion Deadline;

(d) $33,500 for each day after the US 290 Eastbound East Segment Completion Deadline and through the earlier of (a) the date of US 290 Eastbound East Segment Completion, and (b) the Substantial Completion Deadline;

(e) $11,000 for each day after the US 290 Westbound West Segment Completion Deadline and through the earlier of (a) the date of US 290 Westbound West Segment Completion, and (b) the Substantial Completion Deadline;

(f) $13,500 for each day after the US 290 Eastbound West Segment Completion Deadline and through the earlier of (a) the date of US 290 Eastbound West Segment Completion, and (b) the Substantial Completion Deadline;

(g) $114,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days; and

(h) $7,600 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

### 7.3 Lane Rental Charges

The 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 Lane Rental Charges are reasonable in order to compensate TxDOT for damages it will incur as a result of Chargeable Lane Closures.

**7.3.1** Amendments to General Conditions Regarding Lane Closures and Lane Rental Charges

**7.3.1.1.** Section 1.2 of the General Conditions is amended by deleting the definition of "Liquidated Damages for Lane Closures" in its entirety.

**7.3.1.2.** Section 3.8.1.3 of the General Conditions is amended as set forth in Exhibit 4.

**7.3.1.3.** Section 8.7.2 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 8.7.2 of the General Conditions and (ii) stricken text is hereby deleted from Section 8.7.2 of the General Conditions:

8.7.2 **~~Liquidated Damages for Lane Closures and~~ Lane Rental Charges**

8.7.2.1 DB Contractor shall be liable for and pay to TxDOT ~~liquidated damages for Lane Closures ("Liquidated Damages for Lane Closures") and~~ Lane Rental Charges assessed against DB Contractor for implementing ~~failure to meet~~ certain Lane Closures ~~requirements~~ as described in Exhibit 15 to the Design-Build Agreement.

8.7.2.2 DB Contractor acknowledges and agrees that ~~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~~ Chargeable Lane Closures. Such damages include (a) loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, (b) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities, and (c) additional costs of administering this Design-Build Contract (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it and such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances as of the Effective Date.

**7.3.1.4.** Section 9.4.1(b) of the General Conditions is amended as follows, provided stricken text is hereby deleted from Section 9.4.1(b) of the General Conditions:

(b) Any (i) Liquidated Damages, including any Key Personnel Unavailability Liquidated Damages ~~and Liquidated Damages for Lane Closures~~, (ii) Key Personnel Change Fees, or (iii) Lane Rental Charges, that have accrued as of the date of the application for payment or that are anticipated to accrue based on the Substantial Completion and Final Acceptance dates shown in the current Project Schedule;

## 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 Fee amounts set forth in the table below in accordance with such section. For purposed of calculating the Key Personnel Change Fees, the "Progress Percentages" 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 | Fee During Period 1 (0% - 40% Progress Percentage) | Fee During Period 2 (>40% - 60% Progress Percentage) | Fee During Period 3 (>60% - 80% Progress Percentage) | Fee During Period 4 (>80% - 100% Progress Percentage) |
|---|---|---|---|---|
| Project Manager | $389,000 | $389,000 | $194,500 | $194,500 |

| Position | Fee During Period 1 (0% - 40% Progress Percentage) | Fee During Period 2 (>40% - 60% Progress Percentage) | Fee During Period 3 (>60% - 80% Progress Percentage) | Fee During Period 4 (>80% - 100% Progress Percentage) |
|---|---|---|---|---|
| Construction Manager | $410,000 | $410,000 | $205,000 | $205,000 |
| Design Manager | $182,000 | $91,000 | $91,000 | $45,500 |
| Lead Maintenance of Traffic (MOT) Design Engineer | $154,000 | $154,000 | $77,000 | $77,000 |
| Independent Quality Firm Manager | $342,000 | $342,000 | $171,000 | $171,000 |
| Professional Services Quality Assurance Manager | $273,000 | $136,500 | $136,500 | $68,250 |
| Environmental Compliance Manager | $214,000 | $214,000 | $214,000 | $214,000 |
| Safety Manager | $154,000 | $154,000 | $154,000 | $154,000 |
| Utility Manager | $278,000 | $278,000 | $278,000 | $278,000 |
| Certified Arborist | $154,000 | $154,000 | $115,500 | $77,000 |
| ROW Acquisition Manager | $206,000 | $154,500 | $103,000 | $51,500 |

**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 | $22,000 | $22,000 |
| Construction Manager | $11,000 | $24,000 |
| Design Manager | $16,000 | $10,000 |
| Lead Maintenance of Traffic (MOT) Design Engineer | $15,000 | $10,000 |
| Independent Quality Firm Manager | $10,000 | $29,000 |
| Professional Services Quality Assurance Manager | $24,000 | $10,000 |
| Environmental Compliance Manager | $10,000 | $20,000 |
| Safety Manager | $6,000 | $15,000 |
| Utility Manager | $12,000 | $27,000 |
| Certified Arborist | $6,000 | $15,000 |
| ROW Acquisition Manager | $20,000 | $10,000 |

### 7.5 Liquidated Damages and other Remedies Respecting Trees

**7.5.1** Subject to Section 7.5.4 of this DBA, for the period commencing on the Effective Date and continuing until one year following Final Acceptance and for the period of any Warranty Action, DB Contractor shall be liable for and pay to TxDOT liquidated damages of $60,000 per DBH inch for each Iconic Tree that dies.

**7.5.2** Subject to Section 7.5.4 of this DBA, for the period commencing on the Effective Date and continuing until one year following Final Acceptance and for the period of any Warranty Action, DB Contractor shall be liable for and pay to TxDOT liquidated damages of $20,000 per DBH inch for each Tree in the Tree Preservation Areas (excluding any Iconic Trees) that dies.

**7.5.3** Subject to Section 7.5.4 of this DBA, for the period commencing on the Effective Date and continuing until Final Acceptance, DB Contractor shall provide the following remedies with respect to Trees that are (i) within Project ROW outside of the Tree Preservation Areas; (ii) not Iconic Trees; and (iii) not in offsite detention areas:

(a) For the first 25% of the Tree Preservation Amount of such Trees that die, DB Contractor shall increase the Mass Planting Areas by 25 SF for each DBH inch of such Trees that die;

(b) For the next 25% of the Tree Preservation Amount of such Trees that die, DB Contractor shall (i) increase the Mass Planting Areas by 25 SF for each such DBH inch of such Trees that die and (ii) pay to TxDOT liquidated damages in the amount of $200 for each DBH inch of such Trees that die; and

(c) For the final 50% of the Tree Preservation Amount of such Trees that die, DB Contractor shall (i) increase the Mass Planting Areas by 35 SF for each DBH inch of such Trees that die and (ii) pay to TxDOT liquidated damages in the amount of $500 for each DBH inch of such Trees that die.

**7.5.4** No liquidated damages under Section 7.5.1, 7.5.2 or 7.5.3 of this DBA are owing and no increases to the Mass Planting Areas are required if DB Contractor demonstrates to TxDOT's satisfaction that a Tree died due to (i) the act of a Person that is not a DB Contractor-Related Entity or Utility Owner performing Utility Adjustment Work; (ii) an unexpected and unusually severe weather event or natural disaster such as a tornado, earthquake, flood, blizzard or direct lightning strike to a Tree; (iii) a fire; or (iv) a disease. The limitation on liquidated damages and increases to the Mass Planting Areas shall only apply if the Tree death resulting from the above events (1) is not due to the act, omission, negligence, recklessness, or intentional misconduct of any DB Contractor-Related Entity; (2) is not due to a breach of contract or Law or violation of any Governmental Approvals by any DB Contractor-Related Entity; and (3) could not have been avoided or mitigated by the exercise of caution, due diligence, or reasonable efforts by any DB Contractor-Related Entity.

### 7.6 Additional Acknowledgements Regarding Liquidated Damages

DB Contractor further agrees and acknowledges that:

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

**7.6.2** 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.

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

**7.6.4** 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.

### 7.7 Noncompliance Points

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

## SECTION 8. KEY SUBCONTRACTORS AND KEY PERSONNEL

### 8.1 Key Subcontractors

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

### 8.2 Key Personnel

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

## SECTION 9. NOTICE AND AUTHORIZED REPRESENTATIVES

### 9.1 Notices and Communications

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

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

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

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

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

**9.1.3** All notices, correspondence and other communications to TxDOT shall be marked as regarding the Oak Hill Parkway Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Austin District Office
7901 N Interstate Hwy 35
Austin, TX 78753
Attention: Tucker Ferguson, P.E.
Telephone: (512) 832-7000
E-mail: Tucker.Ferguson@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, including the Warranty Term, and for as long thereafter as any obligations remain outstanding under the Contract Documents.

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

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

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

**10.1.11** As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on DB Contractor that challenges DB Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents to which DB Contractor is a party, or that challenges the authority of 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

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

Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.

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

**DB CONTRACTOR:**
[*DB Contractor*]

By:_____
Name: [●]
Title: [●]

Date:_____

**TEXAS DEPARTMENT OF TRANSPORTATION**

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

Date:_____

# EXHIBIT 1

## PROJECT SCOPE

### 1. Project Description

The Project consists of the design and construction of approximately 6 miles of improvements along US 290 from just west of the east end of Circle Drive to Loop 1 (MoPac) and approximately 1.2 miles of improvements along SH 71 West from US 290 to Silvermine Drive in Travis County, including (i) the full reconstruction of the US 290/SH 71 interchange to include two direct connectors in the northeastern quadrant of the interchange, (ii) the reconstruction, widening and/or overlay of the US 290 main lanes from just west of the east end of Circle Drive to just west of Loop 1 (MoPac), (iii) the reconstruction, widening and/or overlay of frontage roads along US 290 from just west of the east end of Circle Drive to just west of Old Fredericksburg Road, (iv) the reconstruction and/or widening of the SH 71 main lanes from US 290 to Silvermine Drive, (v) bicycle and pedestrian facilities from just west of the east end of Circle Drive to Loop 1 (MoPac) additionally including a trailhead parking area along William Cannon Drive, (vi) water quality ponds and detention ponds including two upstream offsite detention ponds located near SH 71, (vii) construction of sound walls, (viii) reconstruction of cross streets, and (ix) operational improvements including the reconfiguration of US 290 at Convict Hill Road, RM 1826, Scenic Brook Drive, and Circle Drive (South View Road) to include grade separated interchanges.

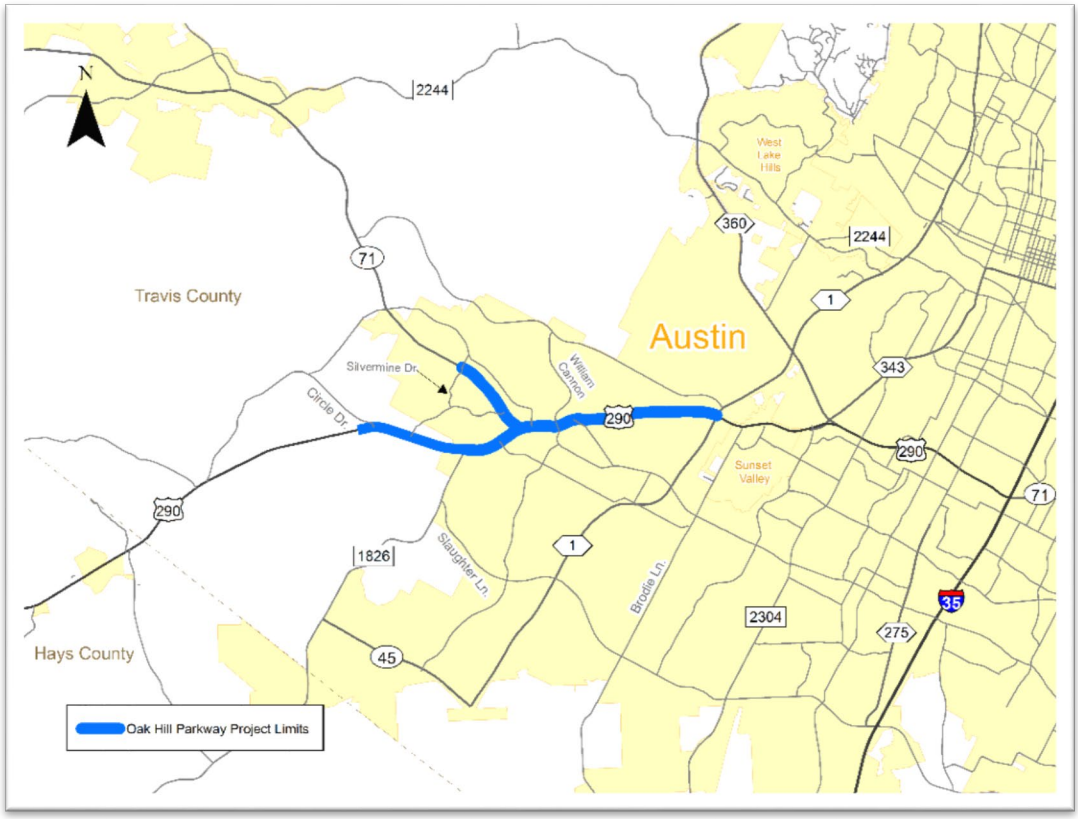



**Figure 1-1: Project Map**

## 2. Project Scope

### 2.1. Basic Configuration

The "Basic Configuration" shall mean the following elements defining the Project as reflected on the Schematic Design and in the document entitled "Oak Hill Parkway Cross Street Matrix" included in the RIDs:

a) the Schematic ROW;
b) the number and width of lanes;
c) the approximate location of ramps;
d) the approximate location of collector distributors;
e) the approximate location of direct connectors;
f) the approximate location of bus turnouts;
g) the approximate location of interchanges and the type of interchanges;
h) the approximate location of U-turns; and
i) the approximate location of the offsite detention ponds.

As further described in Section 4.1.2.3.1 of the General Conditions, any material change to the Basic Configuration must be approved by Change Order and authorized by a Change Order. Should there be a discrepancy in the requirements noted from the Schematic Design and the "Oak Hill Parkway Cross Street Matrix" shown in the RIDs, the most stringent requirements shall apply.

### 2.2. Pavement

#### 2.2.1. Main Lanes

DB Contractor shall design and construct the main lanes (a) as necessary to accommodate the Basic Configuration, and (b) consistent with the pavement types shown in the "Oak Hill Parkway Pavement Designations" document included in the RIDs.

#### 2.2.2. Frontage Roads

DB Contractor shall design and construct frontage roads (a) as necessary to accommodate the Basic Configuration, (b) consistent with the "Oak Hill Parkway Cross Street Matrix" document, and (c) consistent with the pavement types shown in the "Oak Hill Parkway Pavement Designations" document included in the RIDs.

#### 2.2.3. Cross Streets

DB Contractor shall design and construct cross streets (a) as necessary to accommodate the Basic Configuration, (b) consistent with the "Oak Hill Parkway Cross Street Matrix" document, and (c) consistent with the pavement types shown in the "Oak Hill Parkway Pavement Designations" document included in the RIDs.

#### 2.2.4. Ramps / Collector Distributors

DB Contractor shall design and construct ramps / collector distributors (a) at the approximate location and with the tie-ins or connections to facilities having the orientation shown on the Schematic Design, and (b) consistent with the pavement types shown in the "Oak Hill Parkway Pavement Designations" document included in the RIDs. For example, a ramp or collector distributor shown as a right lane exit or entrance on the Schematic Design may not be designed and constructed as a left lane exit or entrance, even if the ramp is at the approximate location shown on the Schematic Design.

## 2.3. Bridges

DB Contractor shall design and construct new bridge structures and widen existing bridge structures necessary to accommodate the Basic Configuration. All bridges west of Joe Tanner Lane shall be designed and constructed as new bridges.

The beginning and ending stations of bridges shown in the approved schematic are approximate. Final bridge limits will be determined by the DB Contractor's design in accordance with the requirements set forth in the Contract Documents.

## 2.4. Direct Connectors

DB Contractor shall design and construct direct connectors (a) at the approximate location and with the tie-ins or connections to facilities having the orientation shown on the Schematic Design, and (b) consistent with the pavement types shown in the "Oak Hill Parkway Pavement Designations" document included in the RIDs. For example, a direct connector shown on the Schematic Design as having a tie-in to/from the right lane(s) of a facility shall not be designed and constructed to have a tie-in to/from the left lane(s) of that facility, even if the direct connector is designed at the approximate location shown on the Schematic Design.

## 2.5 Bicycle and Pedestrian Facilities

DB Contractor shall design and construct sidewalks and shared use paths at the approximate location shown on the Schematic Design. DB Contractor shall design and construct sidewalks and shared use paths to accommodate all of the connections shown in the Schematic Design for sidewalks and shared use paths.

## 2.6 Sound Walls

DB Contractor shall design and construct sound walls consistent with the Schematic Design with locations and limits finalized through the completion of the NEPA documents and noise workshops.

## 2.7 Bus Turnouts

DB Contractor shall design and construct bus turnouts (a) at the approximate location shown in the Schematic Design, and (b) consistent with the "CapMetro Stops" document included in the RIDs.

## 2.8 Offsite Detention Ponds

DB Contractor shall design and construct the offsite detention ponds at the approximate location shown in the Schematic Design.

# EXHIBIT 2

- □ Appendix 1: DB Contractor's Proposal Commitments
- □ Appendix 2: ATCs

# APPENDIX 1 TO EXHIBIT 2

## DB CONTRACTOR'S PROPOSAL COMMITMENTS

**[*To be inserted from Proposal*]**

| No. | Proposal Location | Proposal Commitment |
|---|---|---|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

# APPENDIX 2 TO EXHIBIT 2

## ATCs

**[*To be inserted from Proposal*]**

# EXHIBIT 3

□ Appendix 1: List of Reference Information Documents

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

# APPENDIX 1 TO EXHIBIT 3

## LIST OF REFERENCE INFORMATION DOCUMENTS

[to be provided]

# APPENDIX 2 TO 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 sites identified in the Geologic Assessment Table of Re-Evaluation #1 of the Record of Decision for the Project labeled as F-1 through F-12 in the RIDs that identify the Known Karst Features to the extent set forth in Section 6.9 of this DBA;
    - the documents under the folder titled "Utility Strip Map" in the RIDs to the extent set forth in Sections 4.5.1 and 4.6.9.2 of the General Conditions;
    - the geotechnical reports in the RIDs to the extent such reports are necessary to classify a site condition as a Differing Site Condition under Section 4.6.9.1 of the General Conditions;
    - the documents in the RIDs that disclose the presence of archaeological, paleontological or cultural resources to the extent set forth in Section 4.6.9.3.2 of the General Conditions;
    - the documents in the RIDs that disclose the presence of Threatened or Endangered Species to the extent set forth in Section 4.6.9.3.2 of the General Conditions; and
    - the Schematic Design in the RIDs and the document titled "Oak Hill Parkway Cross Street Matrix" in the RIDs to the extent set forth in Section 4.6.9.6 of the General Conditions.

- The following documents constitute the Signed and Sealed Engineering Data for the Project for purposes of a TxDOT-Directed Change:
    - the documents under the folder titled "Legal Descriptions" in the RIDs.

- The following level A subsurface utility engineering (SUE) documents are included in the RIDs:
    - OHP_SUE_QLA_20190620.pdf

# EXHIBIT 4

## PERFORMANCE WARRANTY REQUIREMENTS

As set forth in Section 2.1.4 of the DBA, in addition to the General Warranty for all elements of the Work, DB Contractor shall be responsible for providing a Performance Warranty in accordance with all specified requirements set forth in this Exhibit 4 throughout the Warranty Term. Consequently, the General Conditions are amended as follows: except as otherwise provided, (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 3.4.7 of the General Conditions is hereby deleted in its entirety and replaced with the following:

   3.4.7 After Final Acceptance and subject to the requirements herein, including Section 3.4.3, DB Contractor may obtain a reduction of the Performance Bond by providing a warranty bond which shall guarantee performance of the Work required to be performed during the Warranty Term, as subject to extension under Section 3.8.2, and which shall also constitute a payment bond guaranteeing payment to Persons performing such Work (the "Warranty Bond"). The Warranty Bond shall be in an amount of the Bonded Sum equal to 20% of the Price and shall be in the form attached as Exhibit 4, Appendix 1 to the Design-Build Agreement. Upon Final Acceptance, DB Contractor may obtain a release of the Performance and Payment Bonds, subject to the requirements of Section 3.4.3 and provided that TxDOT has received the Warranty Bond in accordance with this Section 3.4.7. The Warranty Bond shall be released upon expiration of the Warranty Term, as subject to extension under Section 3.8.2, and (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Warranty Bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the Warranty Bond and (b) expiration of the statutory period for Subcontractors to file a claim against the Warranty Bond if no claims have been filed.

2. Section 3.8 of the General Conditions is hereby deleted in its entirety and replaced with the following:

   3.8 Warranties

   3.8.1 Warranty

   A General Warranty described in this Section 3.8 shall apply concurrent with the Performance Warranty and shall remain in effect as described in Section 3.8.1.1.1. Under the General 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 "General Warranty"). DB Contractor agrees that the General Warranty for the adjustment of Austin Water Utilities shall extend to both TxDOT and the City of Austin and DB Contractor agrees to take any further action required to evidence that the General Warranty for the adjustment of Austin Water Utilities extends to the City of Austin.

   In addition to the General Warranty, a Performance Warranty described in this Section 3.8 shall apply and shall remain in effect as described in Section 3.8.1.1.2. Under the Performance Warranty, DB Contractor warrants that: (y) the condition of the Performance Warranty Elements shall meet or exceed the Performance Thresholds set forth in the Warranty Performance and

Measurement Table provided in Item 32 of the Design-Build Specifications; and (z) any Warranty Action required to ensure the condition of the Performance Warranty Elements achieves or exceeds the Performance Thresholds shall be performed in accordance with Item 32 of the Design-Build Specifications (collectively, the "Performance Warranty").

The General Warranty and Performance Warranty are collectively the "Warranty" or "Warranties".

3.8.1.1 Warranty Term

3.8.1.1.1 Subject to extension under Section 3.8.2 for re-done Work, the Warranty Term for the General Warranty shall commence upon Substantial Completion and remain in effect until one year after Final Acceptance. The Warranty Term for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons and shall end one year thereafter. If TxDOT determines that any of the Work has not met the standards for the General Warranty 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.

3.8.1.1.2 Subject to extension under Section 3.8.2 for re-done Work, the Warranty Term for the Performance Warranty shall commence upon Substantial Completion and remain in effect until five years after Final Acceptance. If TxDOT determines that any of the Work has not met the standards for the Performance Warranty 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 warranty inspections and prepare a punch list as described in Design-Build Specifications Section 32.10.5.

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 requirements of the General Warranty described in Section 3.8.1, 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 of the General Conditions.

Where a failure of the Work to satisfy the requirements of the General Warranty is also classified as a Warranty Defect under the Performance Warranty, the failure shall be remedied in accordance with the requirements applicable to the General Warranty described in this Section 3.8.1.2, unless TxDOT instructs that the remedy shall be implemented under the terms of the Performance Warranty.

For all other instances of Warranty Defects under the Performance Warranty, DB Contractor shall implement Warranty Action in accordance with the requirements and within the time periods specified in Item 32 of the Design-Build Specifications.

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 or Warranty Action addressed under this Section 3.8.1. DB Contractor shall bear all costs of such Work or Warranty Action, 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 or Warranty Action within 10 days after DB Contractor's receipt of invoices therefor (including, subject to the limitations in Section 8.7.4, any Lane Rental Charges arising from or relating to such Work or Warranty Action). 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.

3.8.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Warranty Action, including Work re-done, repaired, corrected or replaced pursuant to the terms of this Design-Build Contract. Following acceptance by TxDOT of Warranty Action, including re-done, repaired, corrected or replaced Work, the Warranties as to each Warranty Action, including any 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 subject to the General Warranty shall have at least a one-year warranty period (but not to exceed two years from Final Acceptance) and each element of the Project subject to the Performance Warranty shall have at least a five-year warranty period (but not to exceed six years from Final Acceptance).

3. Section 5.12.1.2 of the General Conditions is hereby amended as follows:

5.12.1.2 TxDOT will issue a Certificate of Final Acceptance at such time as all of the following conditions have been satisfied:

(a) TxDOT has issued the Certificate of Substantial Completion;

(b) All Punch List items shall have been completed and delivered to the reasonable satisfaction of TxDOT;

(c) All aesthetic and landscaping features for the Project have been completed in accordance with Item 23 of the Design-Build Specifications and the plans and designs prepared in accordance therewith;

(d) TxDOT has received the as-built schedule as required by Section 8.5.1.5;

(e) TxDOT has received a complete set of the Record Documents in form and content required by in form and content required by Table 2 in Attachment 4-1 to the General Conditions;

(f) All Utility Adjustment Work and other work that DB Contractor is obligated to perform for or on behalf of third parties with respect to the Project has been accepted by such third parties, and DB Contractor has paid for all work by third parties that DB Contractor is obligated to pay for, other than disputed amounts;

(g) All component parts, plans and documentation of the Project Management Plan required to be prepared, submitted and approved prior to Final Acceptance have been so prepared, submitted and approved;

(h) All Submittals required by the Project Management Plan or Contract Documents to be submitted to and approved by TxDOT prior to Final Acceptance have been submitted to and approved by TxDOT, in the form and content required by the Project Management Plan or Contract Documents;

(i) All manufacturers' warranties, guarantees, instruction sheets, parts lists, and other product data have been submitted to TxDOT;

(j) All personnel, supplies, equipment, waste materials, rubbish and temporary facilities of each DB Contractor-Related Entity shall have been removed from the Project ROW, DB Contractor shall restore and repair all damage or injury arising from such removal to the satisfaction of TxDOT, and the Site shall be in good working order and condition;

(k) DB Contractor shall have delivered to TxDOT a certification representing that there are no outstanding claims of DB Contractor or claims, Liens or stop notices of any Subcontractor, Supplier, laborer, Utility Owner or other Persons with respect to the applicable Work, other than any previously submitted unresolved claims of DB Contractor and any claims, Liens or stop notices of a Subcontractor, Supplier, laborer, Utility Owner or other Persons being contested by DB Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by TxDOT and, with respect to all claims, Liens or stop notices of a Subcontractor, Supplier, laborer, Utility Owner and other Person, shall include a representation by DB Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings that shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts that may give rise to a claim;

(l) DB Contractor has paid in full all liquidated damages or other fees or charges, including Liquidated Damages and Lane Rental Charges that are owing to TxDOT pursuant to this Design-Build Contract and are not in Dispute, and has provided to TxDOT reasonable security for the full amount of all liquidated damages or other fees or charges, including Liquidated Damages, Key Personnel Change Fees and Lane Rental Charges that may then be the subject of an unresolved Dispute.

(m) DB Contractor shall have delivered to TxDOT a certification representing there exists no uncured DB Contractor Default and no uncured DB Contractor Defaults exist; ~~and~~

(n) TxDOT has received and approved an updated health assessment of all Trees to be preserved on DB Contractor's Tree Preservation Plan prepared by DB Contractor's Certified Arborist;

(o) DB Contractor has submitted the Warranty Limits for TxDOT's approval in accordance with Section 32.6 of Item 32 of the Design-Build Specifications; and

(p) All of DB Contractor's other obligations under the Contract Documents (other than obligations that by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived.

4. Section 9.1.2 of the General Conditions is hereby amended as follows:

9.1.2 Items Included in Price

DB Contractor acknowledges and agrees that, subject only to DB Contractor's rights under Section 4.6, the Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, job site and other overhead, profit and services relating to DB Contractor's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 4.7); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Laws, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of Utility Owners pursuant to Section 14 of the Design-Build Specifications; (e) payment of any taxes, duties, permit and other fees and royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; ~~and~~ (f) compensation for all risks and contingencies assigned to DB Contractor under the Contract Documents; and (g) all Warranty Actions.

**APPENDIX 1 TO EXHIBIT 4**

**FORM OF WARRANTY BOND FOR PERFORMANCE WARRANTY**

**[To be replaced with actual Warranty Bond]**

**OAK HILL PARKWAY PROJECT**

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to_____, a_____("Principal"), a Design-Build Contact for the Oak Hill Parkway 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 20% of the Price***] (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the 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 or Warranty Action, 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 and Warranty Action 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 or Warranty Action (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, Warranty Action 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 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

_____ By:_____
Or secretary attest Name Title Address:

# 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: [Insert Project Name Here]

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

Initial Draft: [Insert date here]

Revision 1: [Insert date here]

[Include additional revisions and dates, as applicable]

TABLE OF CONTENTS


Page

1. DEFINITIONS ..... 4
2. POLICY STATEMENT ..... 4
3. DISADVANTAGED BUSINESS ENTERPRISES (DBE) COMMITMENT ..... 4
4. ANTICIPATED AREAS OF CONSULTING & CONTRACTING OPPORTUNITIES ..... 5
5. OUTREACH ..... 5
6. PROFESSIONAL SERVICES PROCUREMENT ..... 6
   a. General ..... 6
   b. Proposal Phase Solicitations ..... 6
   c. Execution Phase Solicitations ..... 6
   d. Proposal Evaluation & Negotiation ..... 7
7. CONSTRUCTION SUBCONTRACTOR PROCUREMENT ..... 8
   a. General ..... 8
   b. Bid Package Development ..... 8
   c. DBE Identification & Solicitations ..... 8
   d. Proposal Evaluation ..... 9
8. SUBCONTRACT AGREEMENT ..... 9
9. EXECUTION OF THE WORK ..... 10
   a. DBE Responsibilities ..... 10
   b. Administration ..... 10
   c. Direction and Management ..... 10
   d. Quality ..... 11
   e. Environment ..... 11
   f. Safety ..... 11
   g. Commercially Useful Function (CUF) ..... 12
   h. Assistance to DBEs ..... 12
10. PAYMENT ..... 13
   a. Monthly Progress Payments ..... 13
   b. Withholding Progress Payments ..... 14
11. REPORTING ..... 14
   a. DBE Commitment Schedule ..... 14
   b. Monthly Reporting Schedule ..... 14
   c. Quarterly DBE Progress Tracking ..... 14
   d. Final DBE Report Schedule ..... 15
   e. DBE Truckers ..... 15
12. GOOD FAITH EFFORTS DOCUMENTATION ..... 15
13. TERMINATION ..... 15
14. REPLACEMENT ..... 16
15. DBE PROGRAM OVERSIGHT ..... 16

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

**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 49 CFR Part 26.

## 2. Policy Statement

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

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

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

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

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

## 3. Disadvantaged Business Enterprises (DBE) Commitment

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

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

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

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

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

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

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

## 4. Anticipated Areas of Consulting & Contracting Opportunities

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

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

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

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

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

## 5. Outreach

Our outreach programs in partnership with the Department will include:

- [Good faith efforts performed to date.
- During the Proposal phase, DBEs were interviewed and selected for professional services.
- A DBE project information meeting.
- Incorporation of opportunities in project website.
- Project and contracting advertisements in local and minority publications.

- Collaboration with other organizations to present/advertise project opportunities.
- Collaboration with TxDOT's Programs for DBE's such as PAVED, TBOD and the local TUCP.
- Participation at DBE-related events and conferences.
- Provision of project plans at plan rooms maintained by minority and women business organizations.
- Project Marketing Collateral.
- One-on-one Meeting with interested firms.
- Project Presentations.]

## 6. Professional Services Procurement

### a. General

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

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

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

### b. Proposal Phase Solicitations

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

- [List DBE firms here]

### c. Execution Phase Solicitations

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

(a) Added scope to the Project;

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

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

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

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

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

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

(a) Use our corporate vendor list;

(b) Contacts develop from outreach events;

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

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

(e) Coordination with other subcontractor advocacy groups; and

(f) Local DBE organizations.

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

d. **Proposal Evaluation & Negotiation**

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

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

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

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

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

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

(e) Ability to start when required; and

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

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

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

## 7. Construction Subcontractor Procurement

### a. General

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

### b. Bid Package Development

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

### c. DBE Identification & Solicitations

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

- *Project information*
- *Scope or items of work*
- *Date proposal is due*
- *Where to view plans and specs*
- *Where and how to submit price proposal*
- *To whom the proposal should be directed*
- *To whom all questions should be directed*
- *A CPM schedule illustrating when the work is to be performed*
- *Environmental, Permits, Issues, & Commitment (EPIC) Sheets associated with the work to be performed*

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

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

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

d. **Proposal Evaluation**

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

**8. Subcontract Agreement**

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

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

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

(1) Identification of parties;

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

(3) Definition of Client's responsibility;

(4) Provisions for contract changes;

(5) Compensation;

(6) Method of payment; and

(7) Federally required provisions.

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

(1) Parties to the contract;

(2) Contract start and end dates;

(3) Scope of Work, including deliverables;

(4) DBE Special Provision;

(5) Schedule of Values;

(6) Payment due dates;

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

(8) Terms and conditions relative to undue delays;

(9) Means to resolve claims and deputes;

(10) Indemnification terms and conditions; and

(11) Federally required provisions.

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

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

**9. Execution of the Work**

a. **DBE Responsibilities**

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

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

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

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

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

b. **Administration**

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

(2) The subcontractor will be required to carry the requisite insurance outlined in the Contract. Good Faith Efforts (GFE) in accordance with 49 CFR 25, 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 goal 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 2.3.5 of Attachment 3-2, via the Department's tracking system upon selection of DBE subcontractor. Progress of commitments towards goal attainment will be monitored as required in Attachment 3-2.

b. **Monthly Reporting Schedule**

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

c. **Quarterly DBE Progress Tracking**

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

d. **Final DBE Report Schedule**

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

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

## 12. Good Faith Efforts Documentation

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

## 13. Termination

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

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

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

(1) Safety/OSHA violations;

(2) Environmental violations;

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

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

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

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

(7) Non-responsive to the project schedule;

(8) Failure to provide adequate resources;

(9) Unprofessional conduct; and

(10) A subcontractor removal request by the Department.

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

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

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

**14. Replacement**

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

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

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

**15. DBE Program Oversight**

a. DB Contractor:

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

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

(3) Project Manager – [Insert name here]

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

(5) Construction Manager – [Insert name here]

(6) Document Manager – [Insert name here]

b. The Department:

(7) District DBE Coordinator

(8) District Project Manager

# APPENDIX 1 TO EXHIBIT 6

## STANDARD PROFESSIONAL SERVICES AGREEMENT

**[to be added by DB Contractor prior to DBC execution]**

# APPENDIX 2 TO EXHIBIT 6

## STANDARD SUBCONTRACT AGREEMENT

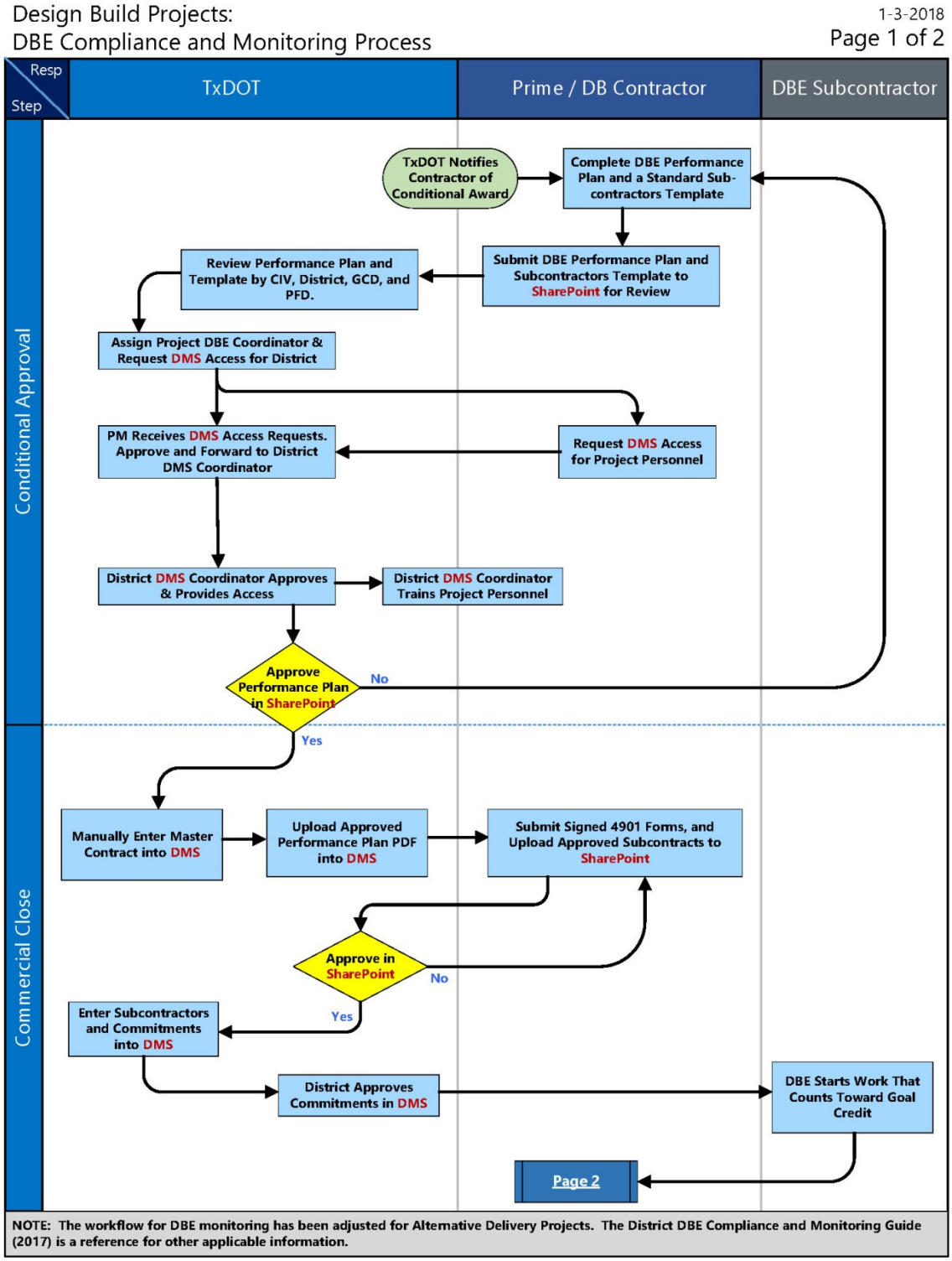
**[to be added by DB Contractor prior to DBC execution]**

# APPENDIX 3 TO EXHIBIT 6

## FEDERALLY REQUIRED PROVISIONS

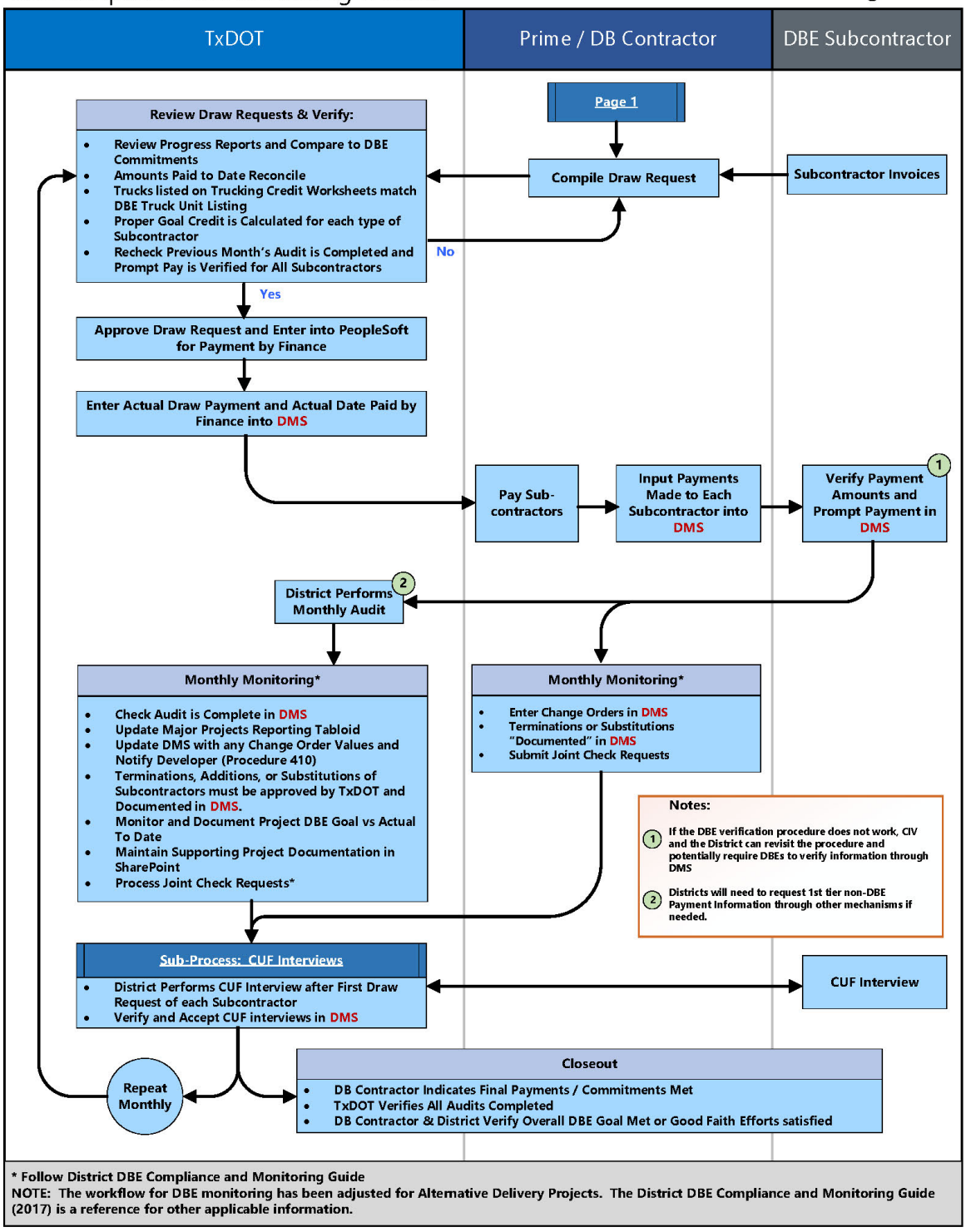
# APPENDIX 4 TO EXHIBIT 6

## DBE COMPLIANCE AND MONITORING PROCESS



Design Build Projects:
DBE Compliance and Monitoring Process

1-3-2018
Page 2 of 2




* 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 updated prior to execution of the DBC)

Texas Department of Transportation

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 01-04-2019.

| CLASS. # | CLASSIFICATION DESCRIPTION | ZONE TX02 1/4/19 | ZONE TX03 1/4/19 | ZONE TX04 1/4/19 | ZONE TX05 1/4/19 | ZONE TX06 1/4/19 | ZONE TX07 1/4/19 | ZONE TX08 1/4/19 | ZONE TX24 1/4/19 | ZONE TX25 1/4/19 | ZONE TX27 1/4/19 | ZONE TX28 1/4/19 | ZONE TX29 1/4/19 | ZONE TX30 1/4/19 | ZONE TX37 1/4/19 | ZONE TX38 1/4/19 | ZONE TX42 1/4/19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 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 | $14.38 | $14.25 | $14.03 | $13.75 | $14.08 | $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 | $9.70 | | $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 | $20.78 | | $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 |

| CLASS. # | CLASSIFICATION DESCRIPTION | ZONE TX02 1/4/19 | ZONE TX03 1/4/19 | ZONE TX04 1/4/19 | ZONE TX05 1/4/19 | ZONE TX06 1/4/19 | ZONE TX07 1/4/19 | ZONE TX08 1/4/19 | ZONE TX24 1/4/19 | ZONE TX25 1/4/19 | ZONE TX27 1/4/19 | ZONE TX28 1/4/19 | ZONE TX29 1/4/19 | ZONE TX30 1/4/19 | ZONE TX37 1/4/19 | ZONE TX38 1/4/19 | ZONE TX42 1/4/19 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1187 | Mechanic | $20.14 | $15.47 | $17.47 | $17.74 | $17.00 | $17.10 | | | $17.68 | $18.94 | $18.58 | $17.00 | $16.61 | $18.46 | $16.96 | $17.47 |
| 1380 | Milling Machine Operator | $15.54 | $14.64 | $12.22 | $14.29 | | $14.18 | | | $14.32 | $14.35 | $12.86 | | | $14.75 | $13.53 | $12.80 |
| 1390 | Motor Grader Operator, Fine Grade | $17.49 | $16.52 | $16.88 | $17.12 | $18.37 | $18.51 | $16.69 | $16.13 | $17.19 | $18.35 | $17.07 | $17.74 | $17.47 | $17.08 | $15.69 | $20.01 |
| 1393 | Motor Grader Operator, Rough | $16.15 | $14.62 | $15.83 | $16.20 | $17.07 | $14.63 | $18.50 | | $16.02 | $16.44 | $15.12 | $16.85 | $14.47 | $17.39 | $14.23 | $15.53 |
| 1413 | Off Road Hauler | | | $10.08 | $12.26 | | $11.88 | | | $12.25 | | $12.23 | | | $13.00 | $14.60 | |
| 1196 | Painter, Structures | | | | | $21.29 | $18.34 | | | | | | $21.29 | | | $18.62 | |
| 1396 | Pavement Marking Machine Operator | $16.42 | | $13.10 | $13.55 | | $19.17 | $12.01 | | $13.63 | $14.60 | $13.17 | | $16.65 | $10.54 | $11.18 | $13.10 |
| 1443 | Percussion or Rotary Drill Operator | | | | | | | | | | | | | | | | |
| 1202 | Piledriver | | | | | | | | | | | | | | | $14.95 | |
| 1205 | Pipelayer | | $11.87 | $14.64 | $13.17 | $11.17 | $12.79 | | $11.37 | $13.24 | $12.66 | $13.24 | $11.17 | $11.67 | | $12.12 | $14.64 |
| 1384 | Reclaimer/Pulverizer Operator | $12.85 | | | $11.90 | | $12.88 | | | $11.01 | | $10.46 | | | | | |
| 1500 | Reinforcing Steel Worker | $13.50 | $14.07 | $17.53 | $16.17 | | $14.00 | | | $16.18 | $12.74 | $15.83 | | $17.10 | | $15.15 | $17.72 |
| 1402 | Roller Operator, Asphalt | $10.95 | | $11.96 | $13.29 | | $12.78 | $11.61 | | $13.08 | $12.36 | $11.68 | | | $11.71 | $11.95 | $11.50 |
| 1405 | Roller Operator, Other | $10.36 | | $10.44 | $11.82 | | $10.50 | $11.64 | | $11.51 | $10.59 | $10.30 | | $12.04 | $12.85 | $11.57 | $10.66 |
| 1411 | Scraper Operator | $10.61 | $11.07 | $10.85 | $12.88 | | $12.27 | | $11.12 | $12.96 | $11.88 | $12.43 | | $11.22 | $13.95 | $13.47 | $10.89 |
| 1417 | Self-Propelled Hammer Operator | | | | | | | | | | | | | | | | |
| 1194 | Servicer | $13.98 | $12.34 | $14.11 | $14.74 | | $14.51 | $15.56 | $13.44 | $14.58 | $14.31 | $13.83 | | $12.43 | $13.72 | $13.97 | $14.11 |
| 1513 | Sign Erector | | | | | | | | | | | | | | | | |
| 1708 | Slurry Seal or Micro-Surfacing Machine Operator | | | | | | | | | | | | | | | | |
| 1341 | Small Slipform Machine Operator | | | | | | | | | $15.96 | | | | | | | |
| 1515 | Spreader Box Operator | $12.60 | | $13.12 | $14.71 | | $14.04 | | | $14.73 | $13.84 | $13.68 | | $13.45 | $11.83 | $13.58 | $14.05 |
| 1705 | Structural Steel Welder | | | | | | | | | | | | | | | $12.85 | |
| 1509 | Structural Steel Worker | | | | | | $19.29 | | | | | | | | | $14.39 | |
| 1339 | Subgrade Trimmer | | | | | | | | | | | | | | | | |
| 1143 | Telecommunication Technician | | | | | | | | | | | | | | | | |
| 1145 | Traffic Signal/Light Pole Worker | | | | | | $16.00 | | | | | | | | | | |
| 1440 | Trenching Machine Operator, Heavy | | | | | | $18.48 | | | | | | | | | | |
| 1437 | Trenching Machine Operator, Light | | | | | | | | | | | | | | | | |
| 1609 | Truck Driver Lowboy-Float | $14.46 | $13.63 | $13.41 | $15.00 | $15.93 | $15.66 | | | $16.24 | $16.39 | $14.30 | $16.62 | $15.63 | $14.28 | $16.03 | $13.41 |
| 1612 | Truck Driver Transit-Mix | | | | $14.14 | | | | | $14.14 | | | | | | | |
| 1600 | Truck Driver, Single Axle | $12.74 | $10.82 | $10.75 | $13.04 | $11.61 | $11.79 | $13.53 | $13.16 | $12.31 | $13.40 | $10.30 | $11.61 | | $11.97 | $11.46 | $10.75 |
| 1606 | Truck Driver, Single or Tandem Axle Dump Truck | $11.33 | $14.53 | $11.95 | $12.95 | | $11.68 | | $14.06 | $12.62 | $11.45 | $12.28 | | $13.08 | $11.68 | $11.48 | $11.10 |
| 1607 | Truck Driver, Tandem Axle Tractor with Semi Trailer | $12.49 | $12.12 | $12.50 | $13.42 | | $12.81 | $13.16 | | $12.86 | $16.22 | $12.50 | | | $13.80 | $12.27 | $12.50 |
| 1441 | Tunneling Machine Operator, Heavy | | | | | | | | | | | | | | | | |
| 1442 | Tunneling Machine Operator, Light | | | | | | | | | | | | | | | | |
| 1706 | Welder | | $14.02 | | $14.86 | | $15.97 | | $13.74 | $14.84 | | | | | $13.78 | | |
| 1520 | Work Zone Barricade Servicer | $10.30 | $12.88 | $11.46 | $11.70 | $11.57 | $11.85 | $10.77 | | $11.68 | $12.20 | $11.22 | $11.51 | $12.96 | $10.54 | $11.67 | $11.76 |

Notes:

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

The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *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 | Karnes | 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 | | |

01-04-2019

# 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:

- Municipal Maintenance Agreement (Illumination), by and between the State of Texas and the City of Austin, dated 12-02-1983 [as revised to include the Project limits]; and

- Municipal Maintenance Agreement (Traffic Signal), by and between the State of Texas and the City of Austin, dated 09-25-1996, amended 2013 [as revised to include the Project limits].

# 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 |
| Groundbreaking Ceremony Allowance | $20,000 | Design-Build Specifications Section 11.6.1 |
| Grand Opening Ceremony Allowance | $20,000 | Design-Build Specifications Section 11.6.2 |
| Additional Ceremonies Allowance | $20,000 | Design-Build Specifications Section 11.6.3 |

# 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

## FORM OF BONDS

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

**APPENDIX 1 TO EXHIBIT 12**

**FORM OF PERFORMANCE BOND**

**[To be replaced with actual Performance Bond]**

**OAK HILL PARKWAY PROJECT**

Bond No. _____

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

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

NOW, THEREFORE, Principal and _____, a _____ ("Surety") *[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]*, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $_____, subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 3.4.3 of the General Conditions.

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

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

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

Bond No. [_____]

Type of Bond: **Performance Bond**

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

**[DB Contractor]**, as Principal
(PRINCIPAL)

and by [_____], as Surety
(SURETY)

in favor of **Texas Department of Transportation**
(OBLIGEE)

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

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

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

This rider is effective

[_____]
(MONTH-DAY-YEAR)

Signed and Sealed

[_____]
(MONTH-DAY-YEAR)

[_____]
(PRINCIPAL)

By: _____
(PRINCIPAL)

_____
(SURETY)

By: _____
Attorney in fact

**APPENDIX 2 TO EXHIBIT 12**

**FORM OF PAYMENT BOND**

**[To be replaced by actual Payment Bond]**

**OAK HILL PARKWAY PROJECT**

Bond No. _____

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

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

NOW, THEREFORE, Principal and _____, a _____ ("Surety") *[If multiple co-sureties will be used, TxDOT will revise this form of Bond to identify and refer to the Co-Sureties throughout and note that all such Co-Sureties are jointly and severally liable for all obligations under this Bond.]*, an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $[●], subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 3.4.4 of the General Conditions.

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

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

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $_____ *[Insert amount that is 10% of the Price]*. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

   _____
   _____
   _____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

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

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

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

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

## NTP2 RIDER

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

Bond No. [_____]

Type of Bond: **Payment Bond**

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

_____**[DB Contractor]**_____, as Principal
(PRINCIPAL)

and by [_____], as Surety
(SURETY)

in favor of **Texas Department of Transportation**
(OBLIGEE)

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

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

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

This rider is effective

[_____]
(MONTH-DAY-YEAR)

Signed and Sealed

[_____]
(MONTH-DAY-YEAR)

[_____]
(PRINCIPAL)

By: _____
(PRINCIPAL)

_____
(SURETY)

By: _____
Attorney in fact

**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 develop, design, and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce TxDOT to (i) enter into the 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 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

_____

_____

Attention:_____
Telephone:_____
Facsimile:_____

With copies to: Texas Department of Transportation
Office of General Counsel

_____

Attention:_____
Telephone:_____
Facsimile:_____

If to Guarantor: _____

_____

_____

Attention:_____
Telephone:_____
Facsimile:_____

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

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

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

**15. Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's 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, 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 FORMS

- □ Appendix 1: Form of Request for Change Order
- □ Appendix 2: Form of Change Order

# APPENDIX 1 TO EXHIBIT 14

## FORM OF REQUEST FOR CHANGE ORDER

**REQUEST FOR CHANGE ORDER NO. _____**

**CONTRACT NO. _____**

**SECTION I**

**Originator:_____ Date:_____**

- **Title:_____**

**Contract No:_____**

- **DB Contractor Name:_____**

**DESCRIPTION:**

_____
_____
_____
_____

**SCOPE:**

_____
_____
_____
_____
_____

**REASON FOR REQUEST FOR CHANGE ORDER:**

_____
_____

_____
**DB Contractor Authorized Representative**

**Date: _____**

**SECTION II**

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

Payment Activity/Project Schedule Items Added/Deducted:

| Activity No. | Description | Amount |
|---|---|---|
| _____ | _____ | _____ |

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

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

**Section IIA**[1]

Lump sum price is $_____

**Section IIB**[2]

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

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

**Section IIC**[3]

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

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

**SECTION III**[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.

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:

_____

_____

_____

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;

[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

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

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

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

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

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

_____

**DB Contractor Authorized Representative**

**Date:** _____

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

_____

**TxDOT District Engineer**

**Date:** _____

**Comments:**

_____

_____

_____

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

_____

**FHWA Project Representative**

**Date:** _____

**Comments:**

_____

_____

_____

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

_____
**TxDOT Chief Engineer**

**Date:** _____

**Comments:**

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

_____
_____
_____

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

_____
**TxDOT Chief Financial Officer**

**Date:** _____

**Comments:**

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

_____
_____
_____

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

_____
**TxDOT Executive Director**

**Date:** _____

**Comments:**

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

_____

_____

_____

## APPENDIX 2 TO EXHIBIT 14

## FORM OF CHANGE ORDER

**CHANGE ORDER NO. _____ CONTRACT NO. _____**

**SECTION I**

**Originator:_____ Date:_____**

- **Title:_____**

**Contract No:_____**

- **DB Contractor Name:_____**

**DESCRIPTION:**

_____
_____
_____
_____

**SCOPE:**

_____
_____
_____
_____
_____

**REASON FOR CHANGE ORDER:**

_____
_____

_____
**DB Contractor Authorized Representative**

**Date: _____**

**SECTION II**

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

Payment Schedule Items Added/Deducted:

| Activity No. | Description | Amount |
|---|---|---|
| _____ | _____ | _____ |

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

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

**Section IIA**[1]

Lump sum price is $_____

**Section IIB**[2]

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

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

**Section IIC**[3]

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

A. DB Contractor Labor (construction)
   1. Wages (unburdened) $ _____
   2. Insurance and taxes[4] (45% of A.1) $ _____

[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)

B. DB Contractor and Subcontractor Labor (professional services)
   1. Wages (unburdened) $ _____
   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. Not To Exceed Amount $ _____

**SECTION III**[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:

- 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 NTP1)

3. Number of days of Project Float _____

[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

Justification for Change Order with reference to the Contract Documents:

_____

_____

_____

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

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

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

(c) this 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 IV** **(Reviewed by TxDOT District Engineer)**

_____

**TxDOT District Engineer**

**Date:** _____

**Comments:**

_____

_____

_____

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

_____
**FHWA Project Representative**

**Date:** _____

**Comments:**

_____
_____
_____

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

_____
**TxDOT Chief Engineer**

**Date:** _____

**Comments:**

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

_____
_____
_____

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

_____
**TxDOT Chief Financial Officer**

**Date:** _____

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

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

_____

**TxDOT Executive Director**

**Date**_____

**Comments:**

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

_____

_____

_____

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

# EXHIBIT 15

## LANE RENTAL CHARGES

Lane Rental Charges shall be assessed for certain Lane Closures during the Term and Warranty Term in accordance with this Exhibit 15.

### A. Non-Chargeable Lane Closures, Chargeable Lane Closures and Full Roadway Closures

1. A "Non-Chargeable Lane Closure" is (a) a Lane Closure during which the minimum number of lanes and movements to be maintained during construction are observed, as described in Section C; (b) a Lane Closure that is expressly identified as Non-Chargeable under Section C.5; (c) a Lane Closure during Time Period C that does not result in a Full Roadway Closure or occur during a Holiday or Special Event, as defined in Section E and Section F, respectively; (d) a Lane Closure of a turn lane, except for a Lane Closure that results in less than the minimum number of turn lanes identified in Tables 15-2, 15-3 and 15-4 (a, b, c and d together, "Allowable Lane Closures") or (e) a Lane Closure required due to an Incident or Emergency that is not attributable to, could not have been avoided by and is not exacerbated by the actions of a DB Contractor-Related Entity, and only to the extent the Lane Closure is 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 or LCN.

3. A "Full Roadway Closure" is any Lane Closure that results in no lanes being available to traffic in one direction of travel on a roadway. Lane Closures that result in no lanes being available to traffic in both directions shall be considered two separate Full Roadway Closures.

### B. General Requirements for Lane Closures

1. DB Contractor will submit a Traffic Control Plan ("TCP") for every phase of Work that impacts traffic and involves traffic control in accordance with Item 26 of the Design-Build Specifications. Approval of a TCP shall be in TxDOT's discretion. Each TCP must identify the estimated location and estimated timing of all Allowable Lane Closures that DB Contractor proposes to implement during the time the TCP remains in effect, in addition to all other requirements of Item 26 of the Design-Build Specifications. All requests for Lane Closures must be submitted for TxDOT's review and approval through advance written notice (a "Lane Closure Notice" or "LCN") in accordance with this Section B.

2. Except for Lane Closures required due to Incidents or Emergencies, an LCN must be provided to TxDOT for TxDOT's review and approval prior to any Lane Closure. DB Contractor shall not implement a Lane Closure unless such Lane Closure is approved by TxDOT pursuant to this Section B. If a Lane Closure is expected to exceed 24 hours in duration, the LCN for such Lane Closure must be provided to TxDOT no fewer than 14 days before the placement of any traffic control devices associated with the Lane Closure is scheduled. If the Lane Closure is expected to be 24 hours or less, the LCN for such Lane Closure must be provided to TxDOT no later than 72 hours before the placement of any traffic control devices associated with the Lane Closure is scheduled. TxDOT will provide notice of approval or disapproval of Lane Closures identified in an LCN within 7 days of receipt of an LCN for Lane Closures scheduled to exceed more than 24 hours in duration and within 24 hours of receipt of an LCN for Lane Closures scheduled to be 24 hours or less in duration. No Lane Closure will be approved unless DB Contractor can demonstrate that the Lane Closure will provide a clear benefit to the progress of the Work. Each LCN must identify the projected beginning and end times of each Lane Closure.

3. LCNs for Allowable Lane Closures identified in an approved TCP must provide information as to the location and duration of the Lane Closures, demonstrate compliance with the applicable TCP and must contain any other

information requested by TxDOT. LCNs for Allowable Lane Closures identified in an approved TCP will be subject to TxDOT approval, which will generally be provided except under unusual circumstances or where the Lane Closure does not comply with the applicable TCP, the benefit to the progress of the Work does not outweigh the inconvenience to the public, or the Lane Closure is incompatible with traffic control measures implemented for adjacent projects.

4. LCNs for Allowable Lane Closures not identified in an approved TCP must provide information on the location and duration of such Lane Closures, all detours, placement of traffic control devices, signage, compliance with design criteria and safety requirements and any other information requested by TxDOT related to such Lane Closures. In determining whether to approve the LCN, TxDOT may consider the benefit to the progress of the Work against the inconvenience to the public, the Lane Closure's compatibility with traffic control measures implemented for adjacent projects, the Lane Closure's compatibility with approved TCPs, whether the LCN is complete, and if the Lane Closure, as described in the LCN, complies with the requirements of Item 26 of the Design-Build Specifications for Lane Closures.

5. TxDOT will not approve any Chargeable Lane Closure except in extraordinary circumstances where such Lane Closure is essential for progress of the Work. The DB Contractor's schedule and delays to the Project schedule shall not be considered "extraordinary circumstances." LCNs for Chargeable Lane Closures must provide information on the location and duration of the Lane Closures, all detours, placement of traffic control devices, signage, compliance with design criteria and safety requirements and any other information requested by TxDOT related to such Lane Closures. Approval of Chargeable Lane Closures is in TxDOT's discretion. TxDOT may impose any restrictions or conditions on an approved Chargeable Lane Closure that TxDOT, in its discretion, deems appropriate.

6. 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 first received. 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 TxDOT facilities that cross the Project roadways 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 TxDOT's public information officer no less than 48 hours in advance of all Lane Closures so TxDOT's public information officer can inform the public, emergency services, schools, etc. as needed. 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.

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

This Section C identifies the minimum number of through lanes and turn lanes DB Contractor must maintain during Time Periods A and B and at all times during Holidays and Special Events for the duration of the Term and Warranty Term. Lane Closures that cause the number of lanes open to traffic to be reduced below the number of lanes required by this Section C during Time Periods A and B and during Holidays and Special Events and Lane Closures that result in Full Roadway Closures during Time Period C may result in the assessment of Lane Rental Charges as more fully described in Section D. Lanes with both turning and through movements shall be counted as both a turn lane and a through lane for purposes of determining whether the minimum number of through lanes and turn lanes are maintained.

1. For the existing US 290 mainlanes east of Old Fredericksburg Road and US 290 frontage roads east of Old Fredericksburg Road, DB Contractor is required to maintain the same number of lanes on the existing Project facilities as of the Effective Date during Time Periods A and B and at all times during Holidays and Special Events for the duration of the Term and the Warranty Term, subject to the exceptions set forth in Section C.5.

2. DB Contractor shall maintain the minimum number of lanes specified in Tables 15-1, 15-2, 15-3 and 15-4 during Time Periods A and B and at all times during Holidays and Special Events for the duration of the Term and the Warranty Term, subject to the exceptions in Section C.5. Tables 15-2, 15-3 and 15-4 also set forth the minimum storage length required for each of the turn lanes required to be maintained. In the event the minimum storage length for the turn lanes is not maintained, such turn lane shall be deemed "closed."

Table 15-1: Minimum Through Lanes for Roadways West of Old Fredericksburg Road

| **Facility Name** | **Minimum No. of Through Lanes** |
|---|---|
| US 290 west of Old Fredericksburg Road<br>SH 71 | 2 (in each direction) |
| US 290 frontage roads west of Old Fredericksburg Road | 1 (in each direction) |
| William Cannon Drive | 2 (in each direction) |
| RM 1826<br>Scenic Brook Drive<br>Oak Meadow Drive<br>Hill Meadow Drive<br>Convict Hill<br>El Rey Blvd<br>S. View Road/Circle Road<br>Silvermine Drive<br>Mowinkle Drive<br>Thunderbird Road<br>Boling Drive<br>Rosson Road<br>Hudson Loop<br>Wolfcreek Pass<br>Hill Oaks Drive<br>Old Bee Cave Road<br>Patton Ranch Road<br>McCarty Lane<br>Joe Tanner Lane<br>Fletcher Lane | 1 (in each direction) |

Table 15-2: Minimum Turn Lanes at US 290 and SH 71

| US 290 at SH 71 | Left Turn Lanes | | | | Right Turn Lanes | | | |
|---|---|---|---|---|---|---|---|---|
| | Along SH 71 | | Along US 290 | | Along SH 71 | | Along US 290 | |
| | NB to WB | SB to EB | EB to NB | WB to SB | NB to EB | SB to WB | EB to SB | WB to NB |
| **Required Storage Length (ft)** | N/A | 2 lanes via the Minimum Number of Through Lanes for SH 71 | 1 lane - 1,000 | N/A | N/A | 1 lane - 100 | N/A | 1 lane - immediately after Old Bee Caves Road intersection |

Table 15-3: Minimum Turn Lanes at US 290 and William Cannon

| US 290 at William Cannon Drive | Left Turn Lanes | | | | Right Turn Lanes | | | |
|---|---|---|---|---|---|---|---|---|
| | Along William Cannon Dr. | | Along US 290 | | Along William Cannon Dr. | | Along US 290 | |
| | NB to WB | SB to EB | EB to NB | WB to SB | NB to EB | SB to WB | EB to SB | WB to NB |
| **Required Storage Length (ft)** | 2 lanes – one dedicated left lane with 400' storage length and one additional shared left and through lane | 2 lanes – one dedicated left lane with 400' storage length and one additional shared left and through lane | 1 lane - 475 | 1 lane - 475 | 1 lane – 330' from funeral home driveway to US 290 | 1 lane - 200 | 1 lane - 350 | 1 lane - 260 |

Table 15-4: Minimum Turn Lanes at US 290 and RM 1826

| US 290 at RM 1826 | Left Turn Lanes | | | | Right Turn Lanes | | | |
|---|---|---|---|---|---|---|---|---|
| | Along RM 1826 | | Along US 290 | | Along RM 1826 | | Along US 290 | |
| | NB to WB | SB to EB | EB to NB | WB to SB | NB to EB | SB to WB | EB to SB | WB to NB |
| **Required Storage Length (ft)** | 2 lanes – one dedicated left lane with 100' storage length and one additional shared left and through lane | N/A | 1 lane - 250 | 2 lanes – 400 | 1 lane - 1,000 | N/A | 1 lane - 500 | 1 lane - 250 |

4. From the occurrence of each of US 290 Westbound East Segment Completion, US 290 Eastbound East Segment Completion, US 290 Westbound West Segment Completion and US 290 Eastbound West Segment Completion and through the remainder of the Term and Warranty Term, DB Contractor is required to maintain at

least one lane on the applicable segment open to traffic during Time Periods A and B and during Holidays and Special Events. A Lane Closure of such segment that results in no lanes being open to traffic during Time Period A or B or during a Holiday or Special Event may result in the assessment of Lane Rental Charges as more fully described in Section D.

5. The Lane Closures listed below shall be Non-Chargeable Lane Closures. In the event any of the conditions for such Lane Closures are not met, the applicable Lane Closure shall be subject to the Lane Rental Charges set forth in Section D.

    a. Lane Closures during Time Period B for purposes of major TCP shift implementation, bridge beam installation, and overhead sign bridge removal/installation, provided TxDOT has approved the Lane Closure pursuant to Section B.

    b. Full Roadway Closures during Time Period C on Friday night, Saturday, Sunday or Monday morning for purposes of bridge beam installation, bridge demolition and overhead sign bridge removal/installation, provided TxDOT has approved the Lane Closure pursuant to Section B.

    c. Lane Closures of the through lanes for signalized intersections at US 290 and El Rey, Hudson Loop, Old Bee Cave Road, and Joe Tanner, provided the following conditions are met:
        1) Such Lane Closure is accompanied by a signalized u-turn or u-turn with an acceleration lane that is (i) a minimum of 500' from the Lane Closure termination point and (ii) either within 4,500' of the Lane Closure termination point or before the next signalized intersection, whichever is a shorter distance. This u-turn shall serve the traffic impacted by the restriction of the through lanes or left hand turn lanes at the cross street. This u-turn may only be closed during Time Period C and only if detour routes are provided during the closure of the u-turn;
        2) TxDOT has approved the Lane Closure pursuant to Section B; and
        3) Such Lane Closure is accompanied by dedicated lanes for free right turns or signalized right turn lanes that will remain open to traffic.

    d. Lane Closures of the through lanes for proposed US 290 signalized cross streets from Convict Hill to Circle Drive, provided the following conditions are met:
        1) Such Lane Closure is accompanied by a signalized u-turn or u-turn with an acceleration lane that is (i) a minimum of 500' from the Lane Closure termination point and (ii) either within 4,500' of the Lane Closure termination point or before the next signalized intersection, whichever is a shorter distance. This u-turn shall serve the traffic impacted by the restriction of the through lanes or left hand turn lanes at the cross street. This u-turn may only be closed during Time Period C and only if detour routes are provided during the closure of the u-turn;
        2) Such Lane Closure is accompanied by dedicated lanes for free right turns or signalized right turn lanes that will remain open to traffic;
        3) TxDOT has approved the Lane Closure pursuant to Section B; and
        4) Such Lane Closure shall only be permitted for one continuous six-month period. Following the expiration of such six-month period, the Lane Rental Charges set forth in Section D will apply.

    e. Lane Closures of the through lanes for proposed SH 71 signalized cross streets at Scenic Brook Drive and the HEB crossover, provided the following conditions are met:
        1) Such Lane Closure is accompanied by a signalized u-turn or u-turn with an acceleration lane that is (i) a minimum of 500' from the Lane Closure termination point and (ii) either within 1,000' of the Lane Closure termination point or before the next signalized intersection, whichever is a shorter distance. This u-turn shall serve the traffic impacted by the restriction of the through lanes or left hand turn lanes at the cross street. This u-turn may only be closed during Time Period C and only if detour routes are provided during the closure of the u-turn;

2) Such Lane Closure is accompanied by dedicated lanes for free right turns or signalized right turn lanes that will remain open to traffic;
3) TxDOT has approved the Lane Closure pursuant to Section B; and
4) Such Lane Closure shall only be permitted for one continuous six-month period. Following the expiration of such six-month period, the Lane Rental Charges set forth in Section D will apply.

f. A Lane Closure of one lane on the US 290 Eastbound Frontage Road east of Old Fredericksburg Road, provided the following conditions are met:
1) Such Lane Closure is directly related to construction of the shared use path along the US 290 Eastbound Frontage Road east of Old Fredericksburg Road;
2) The Lane Closure is not within 300 feet of any intersection;
3) TxDOT has approved the Lane Closure pursuant to Section B; and
4) Such Lane Closure shall only be permitted for one continuous six-month period that begins on the first day that DB Contractor closes a lane on US 290 Eastbound Frontage Road for purposes of constructing the applicable shared use path. Following the expiration of such six-month period, the Lane Rental Charges set forth in Section D will apply.

g. A Lane Closure of one lane on the US 290 Westbound Frontage Road east of Old Fredericksburg Road, provided the following conditions are met:
1) Such Lane Closure is directly related to construction of the sidewalk or shared use path along the US 290 Westbound Frontage Road east of Old Fredericksburg Road;
2) The Lane Closure is not within 300 feet of any intersection;
3) TxDOT has approved the Lane Closure pursuant to Section B; and
4) Such Lane Closure shall only be permitted for one continuous six-month period that begins on the first day that DB Contractor closes a lane on US 290 Westbound Frontage Road for purposes of constructing the applicable sidewalk or shared use path. Following the expiration of such six-month period, the Lane Rental Charges set forth in Section D will apply.

h. A Lane Closure of one mainlane on each of US 290 Eastbound east of Joe Tanner Road and US 290 Westbound east of Joe Tanner Road, provided the following conditions have been met:
1) Such Lane Closure is directly related to either the widening of a bridge or widening of lanes along US 290 east of Joe Tanner Road;
2) TxDOT has approved the Lane Closure pursuant to Section B;
3) Two mainlanes in each direction remain open to traffic; and
4) On each of the US 290 Eastbound and Westbound mainlanes, the permitted Lane Closures shall only be permitted for one continuous twelve-month period that begins on the first day that DB Contractor closes a lane on the applicable roadway for purposes of bridge or lane widening. Following the expiration of such twelve-month period, the Lane Rental Charges set forth in Section D will apply.

## D. Lane Rental Charges

No Lane Rental Charges shall be assessed for a Non-Chargeable Lane Closure. Notwithstanding the foregoing, TxDOT may assess Noncompliance Points for DB Contractor's failure to follow the requirements of the DBC for Lane Closures, including but not limited to, those set forth in this Exhibit 15.

If a Noncompliance Event referred to in items 36 and 37 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 Lane Rental Charges for a Lane Closure for the relevant travel lane in addition to the Noncompliance Points attributable to

items 36 and 37 in the Noncompliance Events Table until the hazard to Users has been mitigated and the Noncompliance Event has been cured.

Lane Rental Charges shall be assessed for Chargeable Lane Closures, as described in Table 15-5. DB Contractor shall be liable for Lane Rental Charges for such Lane Closures pursuant to Section 8.7.2 of the General Conditions, Section 7.3 of the DBA and this Exhibit 15 to the DBA. The Lane Rental Charges for Full Roadway Closures and single Lane Closures that result in less than the minimum number of lanes required in Section C to be open to traffic are set forth below in Table 15-5.

Table 15-5: Lane Rental Charges

| Closure Type | Facility Type | Time Period A and Holidays / Special Events Lane Rental Charges Per Hour | Time Period B Lane Rental Charges Per Hour | Time Period C Lane Rental Charges Per Hour (Only for Full Roadway Closures) |
|---|---|---|---|---|
| **Full Roadway Closure** | US 290 mainlanes | $31,000 | $8,200 | $2,400 |
| | US 290 frontage roads | $21,000 | $5,500 | $2,400 |
| | SH 71 mainlanes | $16,000 | $4,200 | $2,400 |
| | William Cannon | $13,000 | $3,500 | $2,400 |
| | RM 1826 | $12,000 | $3,300 | $2,400 |
| | Scenic Brook Drive | $4,000 | $2,400 | $2,400 |
| | Oak Meadow Drive<br>Hill Meadow Drive<br>Convict Hill<br>El Rey Blvd<br>S. View Road/Circle Road<br>Silvermine Drive<br>Mowinkle Drive<br>Thunderbird Road<br>Boling Drive<br>Rosson Road<br>Hudson Loop<br>Wolfcreek Pass<br>Hill Oaks Drive | $2,400 | $2,400 | $2,400 |

| Closure Type | Facility Type | Time Period A and Holidays / Special Events Lane Rental Charges Per Hour | Time Period B Lane Rental Charges Per Hour | Time Period C Lane Rental Charges Per Hour (Only for Full Roadway Closures) |
|---|---|---|---|---|
| | Old Bee Cave Road<br>Patton Ranch Road<br>McCarty Lane<br>Joe Tanner Lane<br>Fletcher Lane | | | |
| | US 290 Westbound East Segment<br>US 290 Eastbound East Segment | $7,000 | $2,400 | N/A |
| | US 290 Westbound West Segment<br>US 290 Eastbound West Segment | $2,400 | $2,400 | N/A |
| **Single Lane Closure** | US 290 mainlanes | $15,500 | $4,800 | N/A |
| | US 290 frontage roads | $10,500 | $4,800 | N/A |
| | SH 71 mainlanes | $8,000 | $4,800 | N/A |
| | William Cannon | $6,500 | $2,400 | N/A |
| | RM 1826 | $6,000 | $2,400 | N/A |
| | Scenic Brook Drive | $2,400 | $2,400 | N/A |
| | Oak Meadow Drive<br>Hill Meadow Drive<br>Convict Hill<br>El Rey Blvd<br>S. View Road/Circle Road | $2,400 | $2,400 | N/A |

| Closure Type | Facility Type | Time Period A and Holidays / Special Events Lane Rental Charges Per Hour | Time Period B Lane Rental Charges Per Hour | Time Period C Lane Rental Charges Per Hour (Only for Full Roadway Closures) |
|---|---|---|---|---|
| | Silvermine Drive<br>Mowinkle Drive<br>Thunderbird Road<br>Boling Drive<br>Rosson Road<br>Hudson Loop<br>Wolfcreek Pass<br>Hill Oaks Drive<br>Old Bee Cave Road<br>Patton Ranch Road<br>McCarty Lane<br>Joe Tanner Lane<br>Fletcher Lane | | | |

The above amounts will be assessed for each hour, or prorated for each 15 minute period thereof, that a Chargeable Lane Closure that is subject to Lane Rental Charges occurs. A Lane Closure of less than 15 minutes that is subject to Lane Rental Charges shall be assessed one quarter of the hourly Lane Rental Charges amount for such Lane Closure.

Assessment of Lane Rental Charges for Chargeable Lane Closures does not imply TxDOT's consent to such Lane Closures, and DB Contractor is not permitted to implement Chargeable Lane Closures unless such Lane Closure is approved pursuant to Section B.

## E. 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 (5:00 am on December 30 through 10:00 pm on January 2)
- Easter Holiday Weekend (5:00 am on Thursday through 10:00 pm on Monday)
- Memorial Day Weekend (5:00 am on Friday through 10:00 pm on Tuesday)
- Independence Day (5:00 am on July 2 through 10:00 pm on July 5)
- Labor Day Weekend (5:00 am on Friday through 10:00 pm on Tuesday)
- Thanksgiving Holiday (5:00 am on Wednesday through 10:00 pm on Monday)
- Christmas Holiday (5:00 am on December 23 through 10:00 pm on December 26)

## F. Special Events

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

- Super Bowl Sunday (9:00 am through 11:00 pm)
- Formula 1 at COTA (5:00 am on Friday through 10:00 pm on Sunday)
- ACL Fest (5:00 am on Friday through 10:00 pm on Sunday)
- SXSW (5:00 am on Friday through 10:00 pm on Sunday)
- ROT Rally (5:00 am on Friday through 10:00 pm on Sunday)
- UT Home Football Games (5:00 am on the day prior to the home football game through 10:00 pm on the day following the home football game)
- Dell Match Play Golf Tournament (5:00 am on Wednesday through 10:00 pm on Sunday)
- Sales Tax Holiday Weekend (5:00 am on Friday through 10:00 pm on Sunday)
- Dripping Springs Founders Day Festival (5:00 am Friday through 10:00 pm on Sunday)

TxDOT has the right, without liability, to lengthen, shorten, or otherwise modify these restrictions as actual traffic conditions may warrant. TxDOT also has the right to modify the list of "Special Events" as they are renamed, rescheduled, or as warranted.

TxDOT, at its discretion, may 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, provided that TxDOT may not add more than 240 additional hours of Special Events in a calendar year. These events could include, but are not limited to, parades for sports championships, major political events, and large athletic events (such as marathons).

### G. Incidents and Emergencies

DB Contractor shall not be liable for 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 the Lane Closures are necessary to remediate the Incident or Emergency.

### H. Time Periods

Table 15-6 shows the time period designation for each of the hours of the day. These periods are used to determine Lane Rental Charges.

Table 15-6: Period Per Hour of the Day

| Hour/Day | Sunday | Monday-Thursday | Friday | Saturday |
|---|---|---|---|---|
| 0:00 | B | C | C | B |
| 1:00 | B | C | C | B |
| 2:00 | B | C | C | B |
| 3:00 | B | C | C | B |
| 4:00 | B | C | C | B |
| 5:00 | B | A | A | B |

| Hour/Day | Sunday | Monday-Thursday | Friday | Saturday |
|---|---|---|---|---|
| 6:00 | B | A | A | B |
| 7:00 | B | A | A | B |
| 8:00 | B | A | A | B |
| 9:00 | B | A | A | A |
| 10:00 | A | A | A | A |
| 11:00 | A | A | A | A |
| 12:00 | A | A | A | A |
| 13:00 | A | A | A | A |
| 14:00 | A | A | A | A |
| 15:00 | A | A | A | A |
| 16:00 | A | A | A | A |
| 17:00 | A | A | A | A |
| 18:00 | A | A | A | A |
| 19:00 | A | A | A | A |
| 20:00 | A | A | A | A |
| 21:00 | A | A | A | A |
| 22:00 | C | C | B | B |
| 23:00 | C | C | B | B |

Lane Rental Charges will be assessed for all Chargeable Lane Closures based upon the time periods shown in the above table and the corresponding amounts listed in Sections D 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. Noncompliance Points are a system to measure DB Contractor performance and trigger the remedies set forth or referenced in this Exhibit 16.

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

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

### 2. Assessment Notification and Cure Process

#### 2.1 Electronic Database and Notification Initiated by DB Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.1.5** Each Project Schedule Update required to be submitted to TxDOT pursuant to Section 8.5.4 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, and whether the PSQAF or IQF has certified acceptance of the cure, and (d) if any Noncompliance Event is in dispute, identify the anticipated date of its resolution.

### 2.2 Notification Initiated by TxDOT

If TxDOT believes there has occurred any Noncompliance Event specified in the Noncompliance Events Table, TxDOT may deliver to DB Contractor a Notice of Determination setting forth one or more of the following: the Noncompliance Event, the applicable NCE Cure Period (if any), TxDOT's determination whether the Noncompliance Event was cured during the applicable NCE Cure Period (if any), and the Noncompliance Points to be assessed with respect thereto. TxDOT may deliver the Notice of Determination via the electronic database or in writing, and delivery shall be deemed given upon proper entry of the information into the electronic database or receipt by DB Contractor of the written notice, whichever is sooner. DB Contractor acknowledges that it is responsible for the notification to TxDOT of all Noncompliance Events and that a notification of a Noncompliance Event initiated by TxDOT rather than by DB Contractor constitutes a Noncompliance Event as 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 the 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 10th 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. Upon the assessment of each additional Noncompliance Point pursuant to Section 3 in excess of the 10 Noncompliance Point threshold, TxDOT shall be entitled to immediate and automatic Noncompliance Charges from DB Contractor in an amount equal to $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 (q) is hereby added to Section 8.8.1.1 of the General Conditions as follows:

> (q) 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 Design-Build Agreement 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 (e) and (f) are hereby added to Section 8.8.1.2 of the General Conditions:

(e) Respecting a DB Contractor Default under clause (q)(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.

(f) Respecting a DB Contractor Default under clause (q)(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 DB Contractor Default 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 Design-Build Agreement exist, TxDOT may declare that an **"Event of Default"** has occurred and notify DB Contractor to discontinue the Maintenance Services. The declaration of an Event of Default shall be in writing and given to DB Contractor and the Surety.

# 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 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. | 2 | C | None |
| 6 | General | Maintain a Noncompliance Event Database | Maintain a fully functional and up to date Noncompliance Events database accessible to TxDOT in accordance with this Exhibit 16. | 2 | A | 7 Days |
| 7 | General | TxDOT Review of Governmental Approval | Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity, as required by the Contract Documents, including Section 5.2.6 of the General Conditions and Section 3 of the DBA. | 1 | A | 7 Days |
| 8 | General | Provide Safe and Unrestricted Access to the Project | Provide TxDOT or its Authorized 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 to the QMP. | 1 | C | None |
| 10 | General | Inspections | Comply with the requirements of the QMP as regarding 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 is not required, as required by the Contract Documents including Section 5.2 of the General Conditions. | 4 | C | None |
| 13 | General | Submittals | Maintain an accurate and complete daily log of all inspections performed, or failure to submit a daily 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 | 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 |

| Noncompliance Events Table | | | | | | |
|---|---|---|---|---|---|---|
| **Ref No.** | **Main Heading** | **Sub-heading** | **Failure to:** | **Number of Points** | **Assessment Category** | **NCE Cure Period** |
| 15 | Project Management | Document Management System | Establish and maintain a document management system as required by and in accordance with the Contract Documents, including Section 4.2.1.2 of the General Conditions. | 2 | A | 7 Days |
| 16 | Project Management | Submit or Revise PMP when Required | Develop and submit a part of, or change or addition or revision to, the Project Management Plan at the time required all in accordance to Section 4.2 of the General Conditions. | 1 | B | 7 Days |
| 17 | Project Management | Audit PMP when Required | Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Attachments 4-1 and 4-2 to the General Conditions. | 1 | B | 7 Days |
| 18 | Project Management | Safety and Health Plan | Observe a requirement of the Safety and Health Plan, or to carry out any Work in contravention of (or in absence of) the Safety and Health Plan or in a manner that represents a hazard to Project workers or the general public, as required by the Contract Documents, including Section 4.2.3 of the General Conditions. | 3 | C | None |
| 19 | Project Management | Comply with Progress Meetings | Comply with the requirements for any Project meeting, including for meeting attendance, proper issuance of an agenda, draft or final meeting minutes, or to accurately integrate TxDOT comments with the meeting minutes as required and in accordance with the Contract Documents, including Section 11.2 of the Design-Build Specifications. | 1 | A | 2 Days |
| 20 | Contracting and Labor Practices | Adopt Policies of Ethical Standards | Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 8.2.5 of the General Conditions. | 2 | B | 14 Days |
| 21 | Contracting and Labor Practices | Comply with DBE Reporting Requirements | Comply with the reporting requirements or any requirement of the DBE Performance Plan in accordance with Section 3 of the General Conditions and Exhibit 6 to the DBA. | 2 | B | 14 Days |
| 22 | Reporting | Federal Reporting Requirements | Report compliance with, or to comply with the reporting requirements of, any of the Federal Requirements, as required by the Contract Documents, including Section 3.3 of the General Conditions. | 2 | B | 30 Days |

| Noncompliance Events Table | | | | | | |
|---|---|---|---|---|---|---|
| **Ref No.** | **Main Heading** | **Sub-heading** | **Failure to:** | **Number of Points** | **Assessment Category** | **NCE Cure Period** |
| 23 | Reporting | DB Contractor Reporting Requirements | Comply with any of the reporting, recording keeping, or documentation requirements, including quality reporting requirements, monthly and annual reporting, or any Subcontractor reporting requirements, as required by and in accordance with the Contract Documents, including Section 9.3 of the General Conditions. | 1 | B | 14 Days |
| 24 | Invoicing | Invoicing and Draw Request | Submit a Draw Request, with all required information as required by the Contract Documents, including Section 9.3 of the General Conditions. | 2 | A | 7 Days |
| 25 | Change Orders | Cost and Schedule Proposal | Submit a timely and sufficient cost and schedule proposal in response to a Request for a Change Proposal, as required by the Contract Documents including Section 4.6.2.1.2 of the General Conditions, or as otherwise agreed to by TxDOT in writing. | 2 | A | 7 Days |
| 26 | Environmental Compliance | Comply with Dust Control Requirements | Take measures to minimize or mitigate the effects of dust in accordance with Section 12.2.2.11 of the Design-Build Specifications. | 1 | B | 4 Hours |
| 27 | Environmental Compliance | Maintain and Update CEPP | Maintain and update the complete Comprehensive Environmental Protection Plan (CEPP) as required by Section 12 of the Design-Build Specifications and Section 4.2.4 of the General Conditions. | 2 | A | 7 Days |
| 28 | Environmental Compliance | Notify TxDOT of Hazardous Materials | Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 4.8.1.1 of the General Conditions. | 2 | B | 1 Day |
| 29 | Environmental Compliance | Comply with Karst Requirements | Maintain or cause a Utility Owner to maintain temporary and permanent protection measures in accordance with Section 6.9 of the DBA. | 2 | B | 4 Hours |
| 30 | Environmental Compliance | Comply with Tree Protection | Inspect and maintain temporary and permanent protection measures in accordance with Section 2.1.2.1 of the DBA and Item 10,001 of the Design-Build Specifications. | 2 | B | 4 Hours |
| 31 | Environmental Compliance | Comply with Tree Protection | Provide an updated health assessment of the Iconic Trees on an annual basis following NTP2 in accordance with Design-Build Specification Item 10,001.1; provide an updated assessment of the Iconic Trees immediately before and after performing any Warranty Action within 100 feet of any Iconic Tree in accordance with Section 2.1.4 of this DBA. | 2 | B | 1 Day |
| 32 | Environmental Compliance | Comply with Water Quality Plan | Inspect and maintain temporary and permanent protection measures in accordance with Section 20.3.1 of the Design-Build Specifications. | 1 | B | 1 Day |

| Noncompliance Events Table | | | | | | |
|---|---|---|---|---|---|---|
| **Ref No.** | **Main Heading** | **Sub-heading** | **Failure to:** | **Number of Points** | **Assessment Category** | **NCE Cure Period** |
| 33 | 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 |
| 34 | 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 |
| 35 | 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 |
| 36 | Maintenance Services | Ensure Timely Hazard Mitigation of Category 1 Defect | Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications. | 3 | B | Defect Remedy Period |
| 37 | Maintenance Services | Ensure Timely Hazard Mitigation of Category 1 Defect | Perform a permanent remedy to a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications. | 3 | B | Defect Remedy Period |
| 38 | Maintenance Services | Ensure Timely Permanent Remedy of Category 2 Defect | Address a Category 2 Defect such that the hazard to Users is mitigated in accordance with Section 27.3 of the Design-Build Specifications. | 1 | B | Defect Remedy Period |
| 39 | Maintenance Services | Prevent a Category 1 Defect from Deteriorating | Prevent a Category 2 Defect from deteriorating to become a Category 1 Defect in accordance with Section 27.3 of the Design-Build Specifications. | 4 | C | None |
| 40 | 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 |
| 41 | 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 27.5 of the Design-Build Specifications. | 2 | B | 3 Days |
| 42 | 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 |

| Noncompliance Events Table | | | | | | |
|---|---|---|---|---|---|---|
| **Ref No.** | **Main Heading** | **Sub-heading** | **Failure to:** | **Number of Points** | **Assessment Category** | **NCE Cure Period** |
| 43 | 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 |
| 44 | 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 of Exhibit 15 to the DBA. | 2 | B | 1 Day |
| 45 | Traffic | Lane Closure | Obtain approval from TxDOT prior to implementing a Lane Closure in accordance with Section B of Exhibit 15 to the DBA. The failure to obtain approval for the closure of each individual lane closed shall be a distinct Noncompliance Event. | 4 | C | None |
| 46 | Traffic Management | Traffic Control Construction Requirements | Implement a traffic control measure in accordance with the Traffic Control Plan or Lane Closure Notice 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 |
| 47 | 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 |
| 48 | Public Involvement | Comply with Public Involvement Plan | Provide information within the time frames designated in the PICP and Contract Documents in accordance with Section 11.3 of the Design-Build Specifications. | 1 | B | 4 Hours |
| 49 | Materials Compliance | Comply with QC/QA Program Reporting Requirements | Provide material and inspection results to TxDOT within the time frames required by the Contract Documents, including Section 4.2.1.2.1 of the General Conditions. | 1 | B | 4 Days |

# EXHIBIT 17

## KEY 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 | |
| Lead Maintenance of Traffic (MOT) Design Engineer | |
| Independent Quality Firm Manager | |
| Professional Services Quality Assurance Manager | |
| Right of Way Acquisition Manager | |
| Utility Manager | |
| Certified Arborist | |
| Environmental Compliance 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 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 discretion. DB Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work even if DB Contractor's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

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

**7. Interest.**

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

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

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

# EXHIBIT 21

## OPERATING PROCEDURES

## 1. GENERAL

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

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

The 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 Dispute Review Panel procedure.

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 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 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 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 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 DRP as part of the DB Contractor's package, all as above described.

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

### 5.6 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 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 a unanimous recommendation but in the event that is not possible, a minority or dissenting recommendation will be prepared and included with the majority recommendation. All 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 recommendation, the Panel shall meet with TxDOT and the DB Contractor to provide additional clarification of its recommendation.

Pursuant to Section 4.9.13 of the General Conditions, 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 the three members of the Disputes Review Panel, hereinafter referred to as the "Panel", consisting of _____, _____, and _____ hereinafter referred to as the "Panel Chairperson". TxDOT, DB Contractor, and the members of the Panel may be referred to individually herein as a "Party" or collectively as the "Parties". All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated _____ [*Insert the Effective Date of the DBA*] between TxDOT and DB Contractor (the "DBC").

WHEREAS, TxDOT is now engaged in the development of the Oak Hill Parkway Project ("Project"); and

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

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

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

### I.
### DESCRIPTION OF WORK

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

### II.
### SCOPE OF SERVICES

The scope of services of the Panel includes the following:

A. Adopting Operating Procedures:

At the first regular meeting after the effective date of this Agreement, the Panel will meet with DB Contractor and TxDOT to establish the rules and procedures ("Operating Procedures") which will govern the Panel's participation in the Project as set forth in the 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 and make any revisions necessary to the effective operation of the Panel and efficient resolution of Disputes. The agreed upon Operating Procedures shall not conflict with any provisions of the DBC. The Panel may establish any internal rules and procedures not covered in the DBC.

B. Conducting Regular Progress Meetings:

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

C. Advisory Opinions:

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

D. Conducting Hearings on Disputes:

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

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

## III.
## PANEL RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## IV.
## DB CONTRACTOR RESPONSIBILITIES

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

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

## V.
## TxDOT'S RESPONSIBILITIES

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

TxDOT shall furnish the following:

A. Contract Documents and Other Documents

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

B. Coordination

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

C. Services

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

## VI.
## TIME FOR BEGINNING AND COMPLETION

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

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

## VII.
## PAYMENT

Invoices of the Panel members for services performed and all direct expenses of the Panel incurred without mark-up shall be paid by DB Contractor subject to approval by TxDOT and DB Contractor. Payments shall constitute full compensation for work performed and services rendered, and for all materials, supplies and incidentals necessary to serve on the Panel. TxDOT shall reimburse the DB Contractor for one half of these fees and expenses.

A. Payment for Services and Expenses

The Party-appointed members will be reimbursed for their time and expenses devoted to choosing the Panel Chairperson.

Direct expenses will be reimbursed at the actual cost to the Panel member. These expenses may include, but are not limited to, travel expenses from the Panel member's point-of-departure to the initial point-of-arrival (including automobile mileage at the standard IRS rate in effect at the time the trip is taken, parking, airfare, automobile rental,

food and lodging), printing, long distance telephone, postage and courier delivery. Billing for these expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting date. All expenses shall be subject to TxDOT standard requirements.

B. Payments

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

C. Inspection of Cost Records

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

## VIII.
## ASSIGNMENT

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

## IX.
## TERMINATION OF AGREEMENT

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

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

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

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

## X.
## LEGAL RELATIONS

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

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

## XI.
## MISCELLANEOUS

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

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

PANEL MEMBER

By:_____

PANEL MEMBER

By:_____

PANEL MEMBER

By:_____

DB CONTRACTOR:
_____

By:_____

Title:_____

TEXAS DEPARTMENT OF TRANSPORTATION

By:_____

Title:_____

# EXHIBIT 23

## AMENDMENTS TO UTILITY PROVISIONS

As contemplated in Section 2.1.3.2 of the DBA, the General Conditions are amended as follows: (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 4.5 of the General Conditions is hereby amended as follows:

**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 Austin Water Utility Adjustment Work is included in the Work, and the Price includes all costs associated with DB Contractor's performance of the Austin Water Utility Adjustment Work, including DB Contractor's coordination and permitting costs attributable to such Work. As a component of the Austin Water Utility Adjustment Work, DB Contractor shall Adjust all Austin Water Critical Infrastructure in conformance with the "City Drawings" attached to the Austin Water Utility Agreement, unless the requirement for any such performance is waived in writing by Austin Water pursuant to the Austin Water Utility Agreement.

DB Contractor is not required to enter into a PUAA with Austin Water. Nothwithstanding anything to the contrary in the Contract Documents, DB Contractor shall comply with the requirements and standards, including submittal requirements and the Adjustment Standards, set forth in the Austin Water Utility Agreement for performance of the Austin Water Utility Adjustment Work without any right to any increase in the Price or an extension of any Completion Deadline, except as set forth in this Section 4.5 and Section 4.6.9.2 of the General Conditions and Section 6.9 of the Design-Build Agreement.

**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 this Section 4.5.1 and Section 4.6.9.2, and to minimize any delay for which DB Contractor is entitled to an extension of a ~~the~~ Completion Deadline pursuant to this Section 4.5.1 and 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; Austin Water Betterments**

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").

**4.5.2.1** If a Utility Owner 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.

**4.5.2.2** 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 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 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.

**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. Any Betterment performed as part of a Utility Adjustment, whether by DB Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Under no circumstances shall DB Contractor proceed with any Utility Enhancement that is incompatible with the Project or that cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the Completion Deadlines. Under no circumstances will DB Contractor be entitled to any Price increase or time extension hereunder as the result of any Utility Enhancement whether performed by DB Contractor or by the Utility Owner.

DB Contractor may, but is not obligated to, design and construct Utility Enhancements. DB Contractor shall promptly notify TxDOT of any requests by Utility Owners that DB Contractor considers to be Betterments, and shall keep TxDOT informed as to the status of negotiations with Utility Owners concerning such requests. DB Contractor shall provide TxDOT with such information, analyses, and certificates as may be requested by TxDOT in order to determine compliance with this Section 4.5.2.

**4.5.2.5** If Austin Water requests an Austin Water Betterment, DB Contractor shall, at TxDOT's election, negotiate in good faith with Austin Water and TxDOT to accommodate the request. The design and construction of any Austin Water Betterments shall be subject to TxDOT's approval and issuance of a Change Order in accordance with Section 6.2 of the Design-Build Agreement. No Austin Water Betterment may be performed that (i) is incompatible with the Project, (ii) cannot be performed within the other constraints of applicable Law or any applicable Governmental Approvals, or (iii) requires an extension of any Completion Deadline or absorbs any Float in the Project Schedule.

**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, other than the Austin Water Utility Agreement, with the Utility Owners, and TxDOT agrees to cooperate as reasonably requested by DB Contractor in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. TxDOT is not providing any assurances to DB Contractor that the Utility Owners will accept, without modification, the standard Utility Agreement forms specified in the 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 as set forth in Section 4.5.2.5, 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** Except with respect to the Austin Water Utility Agreement, 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, other than the Austin Water Utility Agreement, and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between DB Contractor and TxDOT.

**4.5.3.4** DB Contractor shall comply with and timely perform all obligations imposed on DB Contractor by any Utility Agreement and all obligations under the Austin Water Utility Agreement that are either assigned to DB Contractor or that TxDOT is otherwise required to cause DB Contractor to perform.

**4.5.3.5** Each Utility Adjustment other than for an Austin Water Utility (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, including Austin Water Utility Adjustment Work, shall comply with all applicable Laws, the applicable Utility Agreements, 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 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 or required under the Austin Water Utility Agreement, (b) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (d) the Utility Owner is not cooperating (the foregoing items (a) through (d) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by DB Contractor to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, that TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its discretion. If TxDOT holds contractual rights, excluding its rights under the Austin Water Utility Agreement, that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its discretion not to exercise those rights, then TxDOT shall assign those rights to DB Contractor upon DB Contractor's request; provided, however, that such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. DB Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to DB Contractor. Any assistance provided by TxDOT shall not relieve DB Contractor of its sole and primary responsibility for the satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth in this Section 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** Except as provided in Section 4.5.5.4, DB Contractor shall bear 100% of the risk of Critical Path delays caused by a Utility Owner's failure to timely comply with the requirements of a Utility Agreement that has been executed by DB Contractor and such Utility Owner or by TxDOT and such Utility Owner

**4.5.5.2** The term "Utility Owner Delay" means a delay to a Critical Path that is directly attributable to a Utility Owner's 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. DB Contractor shall bear 100% of the risk of each Utility Owner Delay prior to and during the first 60 days of any such Utility Owner Delay, provided that such 60-day period shall not commence until TxDOT has received evidence required by Section 4.5.4.2 that is reasonably satisfactory to TxDOT and DB Contractor has complied with all other requirements for a Change Order under this Design-Build Contract, including Section 4.6. The risk of any Utility Owner Delay after such 60-day period shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delay occurring after expiration of the 60-day period). If a Utility Owner Delay is concurrent with another delay which is DB Contractor's responsibility hereunder, DB Contractor shall not be entitled to a time extension on account of such Utility Owner Delay. If a Utility Owner Delay is concurrent with another Utility Owner Delay by the same Utility Owner or by another Utility Owner, only one of the delays shall be counted. If a Utility Owner Delay is concurrent with any other delay for which DB Contractor is entitled to a time extension under Section 4.6, the delay shall be deemed a Utility Owner Delay and the provisions of this Section 4.5.5 shall apply.

**4.5.5.3** No Change Order for delay to a Critical Path shall be allowable pursuant to 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** The term "Austin Water Delay" means a delay to a Critical Path that is directly attributable to Austin Water failing to provide a required approval, acceptance, comment, or notice in connection with a "Design Submittal" or "Design Resubmittal" under the Austin Water Utility Agreement within the applicable time periods set forth in Section 4.G of the Austin Water Utility Agreement. The term "Austin Water Delay" does not include the City of Austin's failure to issue required permits within the time frames included in the Project Manual. DB Contractor shall bear 100% of the risk of the first 60 cumulative days of Austin Water Delays. After DB Contractor has borne the risk for 60 cumulative days of Austin Water Delays, the risk of any further Austin Water Delays shall be borne equally by each Party (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Austin Water Delays occurring after the first 60 cumulative days of Austin Water Delays). If an Austin Water Delay is concurrent with another delay that is DB Contractor's responsibility hereunder, DB Contractor shall not be entitled to a time extension on account of such Austin Water Delay. If an Austin Water Delay is concurrent with one or more other Austin Water Delays, only one of the delays shall be counted. If an Austin Water Delay is concurrent with another delay for which DB Contractor is entitled to a time extension, the period of TxDOT's responsibility for the delays shall run concurrently. No Change Order for delay to a Critical Path shall be allowable pursuant to Section 4.5.5.2 unless the general requirements and conditions for Change Orders set forth in Section 4.6 have been met and the delay is allowable under Section 4.6.6.3.

**4.5.5.5** Except as set forth in Section 4.5.5.2 with respect to certain Utility Owner Delays and Section 4.5.5.4 with respect to Austin Water Delays, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs which it may incur as a result of any delays caused by a Utility Owner, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 4.5.5.2. Any action or inaction by TxDOT as described in Section 4.5.4.2 shall have no bearing on the restriction set forth in this Section ~~4.5.5.4~~ 4.5.5.5.

**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 other than Austin Water 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 (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). Subject to Section 4.5.1, DB Contractor is responsible for all costs of the Austin Water Utility Adjustment Work, except for any costs incurred by Austin Water for which Austin Water has been compensated under the Austin Water Utility Agreement, including the costs of acquisition of Replacement Utility Property Interests, any costs with respect to the relinquishment of Existing Utility Property Interests and Austin Water's indirect costs related to the Austin Water Utility Adjustment Work. 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, excluding costs attributable to Austin Water Utility Adjustment Work.

**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 Agreements, all of which shall incorporate by reference 23 CFR Part 645 Subpart A.

**4.5.6.3** For each Utility Adjustment, other than Utility Adjustments under the Austin Water Utility Agreement, 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. The Utility Owner will determine which method of compensation is satisfactory. DB Contractor shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith (including any incurred by TxDOT on DB Contractor's behalf for eminent domain proceedings or otherwise) in accordance with Section 4.4.2. Except for real property acquisition costs related to the Austin Water Utility Adjustment Work, DB Contractor shall be responsible for all eligible costs of right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting and related services for compensating the Utility Owner or replacing each Existing Utility Property Interest, including all costs and expenses associated with negotiation and condemnation action. For real property acquisition costs related to the Austin Water Utility Adjustment Work, DB Contractor shall be responsible for its costs of providing real property acquisition services to assist Austin Water pursuant to the Austin Water Utility Agreement and shall not be entitled to any reimbursement under Exhibit 11 of the Design-Build Agreement. 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 other than Austin Water Utility Adjustments (whether incurred by DB Contractor or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and DB Contractor costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. DB Contractor also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the Contract Documents. This Work includes the deliverables identified in the final closeout procedures of Section 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 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 Austin Water, 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 comply with the requirements related to insurance set forth in the Austin Water Utility Agreement.

**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 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 costs of performing or furnishing Utility Adjustment Work and Incidental Utility Adjustment Work, and, subject to Section 4.5.5.2, for scheduling all Utility Adjustment Work and Incidental Utility Adjustment Work (whether performed by DB Contractor or the affected Utility Owner) so as to meet the Completion Deadlines herein. Accordingly, if a Utility Owner performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by DB Contractor, or if DB Contractor performs or furnishes Utility Adjustment Work or Incidental Utility Adjustment Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting time extension and no resulting change in the Price. The foregoing shall not affect TxDOT's right to any credit that may be owing under Section 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 errors, omissions, inaccuracies, inconsistencies or other defects in designs furnished by any Utility Owner, including any failure of such designs to comply with the requirements of Section 14.3 of the Design-Build Specifications or (b) any defect in construction performed by any Utility Owner or other failure of such construction 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 or any Utility Owner (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Sections 4.5.1 and 4.6.9.2).

**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 4.5.1).

**4.5.10.8** 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, except to the extent set forth in Appendix 2 to Exhibit 3 to the DBA. 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, except to the extent relief is expressly permitted under Appendix 2 to Exhibit 3 to the DBA, 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 4.5.1 and Appendix 2 to Exhibit 3 to the DBA, DB Contractor shall not be entitled to any increase in the Price or time extension as a result of any of the following:

(i) 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;

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

(iii) 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;

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

(v) 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, the following provisions shall apply with respect to any increase or decrease in the cost of the Work and any delay associated with design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature or extent of anticipated Utility Adjustments:

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

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

(c) If TxDOT incurs any such additional costs, then DB Contractor shall reimburse TxDOT for such costs within 10 days after receipt of TxDOT's invoice therefor, or in TxDOT's discretion, TxDOT may deduct the amount of reimbursement due from any payment due to DB Contractor under this 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, 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. A subsection (c) is hereby added to Section 4.6.9.2.2 and shall provide as follows:

<u>(c) In the event the performance of necessary Utility Adjustment Work attributable to an Unidentified Utility for which DB Contractor is entitled to compensation under this Section 4.6.9.2.2 results in delays to a Critical Path, DB Contractor shall be entitled to a Change Order to extend affected Completion Deadlines. The risk of delay shall be borne equally by each Party (i.e. any affected Completion Deadline shall be extended by one day for every two full days of delay to an affected Critical Path resulting from the performance of Utility Adjustment Work attributable to an Unidentified Utility). If a delay described in this Section 4.6.9.2.2 is concurrent with another delay that is DB Contractor's responsibility, then DB Contractor shall bear 100% of such delay. If a delay due to the performance of Utility Adjustment Work attributable to an Unidentified Utility is concurrent with another delay for which DB Contractor is entitled to a time extension, the period of TxDOT's responsibility for the delays shall run concurrently. DB Contractor's entitlement to a time extension under this Section 4.6.9.2.2 is subject to the limitations and restrictions set forth in Section 4.5 and 4.6.</u>

3. Section 7.12.1(i) of the General Conditions is hereby amended as follows:

(i) DB CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, <u>INCLUDING ITS OBLIGATIONS IN CONNECTION WITH AUSTIN WATER UTILITIES,</u> OR ANY DISPUTE BETWEEN DB CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;

# EXHIBIT 24

## AMENDMENTS TO COMPLETION DEADLINE PROVISIONS

The General Conditions are amended as follows: (i) underlined text is hereby added to the applicable section of the General Conditions and (ii) stricken text is hereby deleted therefrom.

1. Section 4.1.1.1 of the General Conditions is hereby amended as follows:

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

2. Section 4.1.2.1.1 of the General Conditions is hereby amended as follows:

   4.1.2.1.1 The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the Schematic Design and otherwise complying with the requirements of the Contract Documents, except as otherwise approved in writing by TxDOT. All materials, services and efforts necessary to ~~achieve Substantial Completion and Final Acceptance on or before the applicable~~ meet the Completion Deadlines shall be DB Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. DB Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly impacted by the Work. Subject to the terms of Section 4.6, the costs of all Work, including all necessary materials, services and efforts, are included in the Price.

3. Section 4.6.6.2.2(b) of the General Conditions is hereby amended as follows:

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

4. Section 4.6.6.3 of the General Conditions is hereby amended as follows:

   4.6.6.3 Limitation on Time Extensions

   Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it: (a) did not impact ~~a~~ the Critical Path for the applicable Completion Deadline, (b) was due to the fault or negligence, or act or failure to act of any DB Contractor-Related Entity, or (c) could reasonably have been avoided by DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension unless TxDOT shall have agreed, if requested to do so, to reimburse DB Contractor for its costs incurred, if any, in re-sequencing, reallocating or redeploying its forces). In addition, any extension of a Completion Deadline allowed under this Design-Build Contract other than for a TxDOT-Caused Delay, shall exclude any delay to the extent it is concurrent with any other unrelated delay to a Critical Path for which DB Contractor is responsible hereunder. In the event a delay for

which the DB Contractor is responsible is concurrent with a TxDOT-Caused Delay, DB Contractor shall be entitled to a time extension for the TxDOT-Caused Delay but not to any increase in the Price due to the delay, including any delay or disruption damages. DB Contractor shall be required to demonstrate to TxDOT's satisfaction that the change in the Work or other event or situation that is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work that has impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to ~~achieve Substantial Completion or Final Acceptance beyond~~ meet the applicable Completion Deadline beyond the applicable Completion Deadline).

5. Section 8.1.3.3 of the General Conditions is hereby amended as follows:

8.1.3.3 No Time Extensions

Except as otherwise specifically provided in Section 4.6, TxDOT shall have no obligation to extend a Completion Deadline and DB Contractor shall not be relieved of its obligation to comply with the Project Schedule and to meet all ~~achieve Substantial Completion and Final Acceptance by the applicable~~ Completion Deadlines for any reason.

6. Section 8.7.1.1 of the General Conditions is hereby amended as follows:

8.7.1.1 DB Contractor shall be liable for and pay to TxDOT liquidated damages with respect to any failure to meet the ~~achieve Substantial Completion and Final Acceptance by the applicable~~ Completion Deadlines, as the same may be extended pursuant to this Design-Build Contract. The amounts of such liquidated damages are in the amounts set forth in Section 7.2 of the Design-Build Agreement.

DB Contractor acknowledges that the liquidated damages described in this Section 8.7.1 are reasonable in order to compensate TxDOT for damages it will incur as a result of late completion of portions thereof as set forth in this Section 8.7.1. Such damages include (a) loss of use, enjoyment and benefit, of the Project and connecting TxDOT transportation facilities by the general public, (b) injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the ~~Substantial~~ respective Completion Deadlines (other than the Final Acceptance Deadline), which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities, and (c) additional costs of administering this Design-Build Contract (including engineering, legal, accounting, overhead and other administrative costs). DB Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

7. Section 8.7.3.1 of the General Conditions is hereby amended as follows:

8.7.3.1 In the event that DB Contractor fails to ~~achieve Substantial Completion or Final Acceptance by the applicable~~ meet the Completion Deadlines, or in the event of ~~impermissible~~ Chargeable Lane Closures or Key Personnel Changes TxDOT will incur substantial damages.

8. Section 8.8.3.1 of the General Conditions is hereby amended as follows:

8.8.3.1 If an Event of Default consists solely of DB Contractor's failure to ~~achieve Substantial Completion or Final Acceptance by the applicable~~ meet a Completion Deadline, TxDOT's sole remedy for such Event of Default shall be the right to assess Liquidated Damages, provided that (a) such Event of Default does not delay Substantial Completion beyond 365 days after the Substantial Completion Deadline or Final Acceptance beyond 180 days after the Final Acceptance Deadline, ~~as applicable,~~ and (b) DB Contractor continues to diligently perform the Work despite such Event of Default.