[_____] PROJECT
DESIGN-BUILD CONTRACT TERM SHEET

This document provides background information and summarizes the major terms of the Design-Build Contract ("DBC") for the design and construction of the [_____] ("Project"), which may be entered into by the Texas Department of Transportation ("TxDOT") and a firm ("DB Contractor") to be selected based on responses to a Request for Proposals ("RFP"). The DBC is comprised of the Design-Build Agreement ("DBA") and the DBA General Conditions Items 1-9. This document is intended as a general description of the anticipated major contract terms of the DBC (which terms are subject to change by TxDOT in its sole discretion during the procurement process), and is not a restatement or interpretation of the DBC requirements. There are numerous details, exceptions and qualifications associated with the anticipated provisions described below that can only be ascertained by reviewing the DBC itself.

CONTRACT OVERVIEW	
DB Contractor & Design-Build Contract Date	DB Contractor to be determined. TxDOT currently anticipates executing the DBC in [_____].
Contract Documents	The Contract Documents include the Design-Build Agreement and exhibits; DBA General Conditions Items 1-9; Design-Build Specifications Items 10-[28] and __; and all amendments to the foregoing and all Change Orders issued.
Proposal Commitments	The Proposal will also be a Contract Document to the extent that it exceeds the requirements of the other Contract Documents, such that commitments made by the DB Contractor in the Proposal relating to the Work will be binding to the extent TxDOT determines such commitments are advantageous to TxDOT.
Reference Information Documents	The Reference Information Documents ("RIDs") are provided with the RFP. Portions of the RIDs are explicitly referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. Such portions are deemed incorporated in the Contract Documents solely to the extent that they are so referenced. The DB Contractor may rely on the RIDs only to the extent expressly set forth in the DBA.
Scope of Work	Except as otherwise specified, all work for design and construction of the Project (the "Work") will be the responsibility of the DB Contractor. 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. See the RFQ for further details regarding the Scope of Work.
Alternative Technical Concepts ("ATC")	If the Contract Documents incorporate any approved ATCs and either: (a) the DB Contractor does not comply with one or more TxDOT conditions applicable to the ATC; or (b) the DB Contractor does not obtain a third-party approval that may be required for the ATC, then the DB Contractor must comply with the Contract Document requirements that would have applied but for the ATC, including acquiring DB Contractor-Designated ROW necessary to comply with the Contract Documents, without any increase in the Price, extension of the Completion Deadlines, or any other Change Order.
Notices to Proceed	TxDOT anticipates issuing two Notices to Proceed ("NTP"). Notice to Proceed 1 ("NTP1") is expected to be issued concurrently with

	execution of the DBC. Issuance of NTP1 authorizes the DB Contractor to perform the portion of the Work necessary to obtain TxDOT's approval of the Project Management Plan, Quality Management Plan and Project Baseline Schedule 2; to enter the Project Right of Way ("ROW") that TxDOT owns in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations; to perform certain ROW acquisition services; and to commence negotiating and entering into Utility Agreements with Utility Owners. TxDOT anticipates issuing Notice to Proceed 2 ("NTP2") concurrently with: (a) TxDOT's approval of the Project Management Plan and Quality Management Plan, and (b) TxDOT's approval of the Project Baseline Schedule 2. Issuance of NTP2 authorizes the DB Contractor to perform all other Work and activities pertaining to the Project. If NTP1 is not issued within [180] days after the Proposal Due Date and the DB Contractor does not, in whole or in part, cause the delay, the Price will be subject to adjustment (based on the ENR Construction Cost Index) until issuance of NTP1. If NTP1 is not issued within [365] days from the Effective Date, the DB Contractor may terminate the DBC. If NTP2 is not issued within [270] days after the Proposal Due Date or [90] days after the issuance of NTP1 and the DB Contractor does not, in whole or in part, cause the delay, the Price will be subject to escalation (based on the ENR Construction Cost Index) that will begin to apply on the date of issuance of NTP2.
PRICE, SECURITY & PAYMENTS	
Price	This is a fixed price, lump sum contract, to be paid based on progress and subject to a Maximum Payment Schedule. The Price will remain valid without adjustment until [180] days after the Proposal Due Date. Except in the case of adjustment due to delays to NTPs, the Price is only subject to adjustment via Change Order.
Payment Obligations & Progress Payment Limitations	TxDOT will make payments based on Work progress as evidenced by a monthly Draw Request submitted by the DB Contractor in the form attached to the DBC. A Maximum Payment Schedule provided with the Proposal establishes a cap on the aggregate amount of progress payments that may be paid to the DB Contractor each month over the term of the DBC. The Maximum Payment Schedule is subject to change to account for any changes in the Price due to Change

	Orders or amendments. If the DB Contractor falls behind schedule, no progress payments will be paid until a recovery schedule is approved by TxDOT.
Proposal, Performance, Payment & Warranty Bonds	A Proposal Bond in the amount of $[●] million will remain in place as security for performance of the DB Contractor's obligations. Upon receipt of Payment and Performance Bonds meeting the requirements of the DBC (and other documents required for NTP1), the Proposal Bond will be released. Payment and Performance Bonds in the amount of $[●] million will be required as security for the DB Contractor's obligations as a condition for issuance of NTP1. Upon issuance of NTP2, the amount of the Payment and Performance Bonds will increase to an amount equal to the portion of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners, in accordance with the rider forms included in the DBC. The Performance Bond will be released after Final Acceptance if DB Contractor is not in default under the Contract Documents and TxDOT has received the Warranty Bond. The Payment Bond will be released upon: (a) receipt of (i) evidence that all Persons eligible to file a claim against the Payment Bond have been fully paid, and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed a preliminary notice of a claim against the Payment Bond; or (b) expiration of the statutory period for Subcontractors to file a claim against the Payment Bond if no claims have been filed. After Final Acceptance, DB Contractor may obtain a release of the Performance Bond by satisfying certain conditions, including providing a Warranty Bond in the amount of 10% of the Price, which will guarantee performance of the Work required to be performed during the Warranty Term. The Warranty Bond will be released upon: (a) expiration of the Warranty Term; (b) receipt of (i) evidence 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 (c) expiration of the statutory period for Subcontractors to file a claim against the Warranty Bond if no claims have been filed. If the Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond.
Guaranty	Each guaranty assures performance of DB Contractor's obligations under the Contract Documents and must be maintained in full force and effect so long as DB Contractor has

	any obligations under the Contract Documents. Guaranties may be required pursuant to the terms of the RFQ and RFP. In addition, if at any time the total combined net worth of DB Contractor, its equity members (as applicable) and any Guarantors, is less than $[●], DB Contractor must provide one or more guarantees from a Guarantor acceptable to TxDOT so that the combined net worth is at least $[●]. DB Contractor must report the net worth of DB Contractor, its equity members and Guarantors, if any, to TxDOT, every year by means of audited financial statements and on a quarterly basis by means of certifications by the CFOs of the DB Contractor, its equity members and any Guarantors.
Mobilization	The DB Contractor is entitled to payment for mobilization in installments in an amount equal to the bid item price for mobilization, not to exceed 10% of the Price.
COMPLETION DEADLINES, SCHEDULE AND DELAY	
Completion Deadlines	Time is of the essence. DB Contractor commits to develop the Project in accordance with the time periods set forth in the Contract Documents. [*If the project is tolled, include the following language here*: The deadline for Toll Zone Completion is the earlier of (a) the date of Substantial Completion minus [●] days or (b) the Substantial Completion Deadline minus [●] days.] The deadline for Substantial Completion of the Project will be the date set forth in the Proposal (which may be constrained in accordance with the RFP). The entire Project must be opened to traffic [*If the project is tolled, include the following language here*: and ready for toll collection] on or before such deadline. The deadline for Final Acceptance is [__] days after Substantial Completion. TxDOT has no obligation to extend the Completion Deadlines, except as specifically provided. (See Change Order section below.)
Schedule	The DB Contractor must perform the Work in accordance with an approved comprehensive critical path schedule. The baseline schedule will be the schedule submitted with the Proposal and any changes must be approved by TxDOT as a condition to NTP2. The schedule will be updated monthly during the Work and used for payment, planning and monitoring progress of the Work. If the DB Contractor falls behind schedule, a recovery

	schedule to regain lost time is required.
Delay	Liquidated damages may be assessed for delays in meeting the deadlines for Substantial Completion [*If the project is tolled, include the following language here*:, Toll Zone Completion] and Final Acceptance. (See Liquidated Damages section below.) TxDOT has the right to terminate the DBC if Substantial Completion is delayed beyond 365 days after the Substantial Completion Deadline [*If the project is tolled, include the following language here*: , Toll Zone Completion is delayed beyond [180] days after the Toll Zone Completion Deadline] or Final Acceptance is delayed beyond 180 days after the Final Acceptance Deadline.
Toll Zone Completion	[If the project is tolled, include the following language: TxDOT will issue a written Certificate of Toll Zone Completion when Toll Zone Completion occurs. DB Contractor shall provide written notice to TxDOT prior to Toll Zone Completion, after which TxDOT shall conduct (i) an inspection of the Toll Zone Work and its components, (ii) a review of the applicable Final Design Documents and Construction Documents and (iii) such other investigation as may be necessary to evaluate whether Toll Zone Completion is achieved.]
Substantial Completion	TxDOT will issue a written Certificate of Substantial Completion when Substantial Completion occurs. The DBC provides certain criteria that TxDOT may consider and require satisfaction of in determining whether Substantial Completion has occurred: ▪ whether all major safety features, all required illumination, and required signs and signals are installed and functional ▪ whether the need for temporary traffic controls or for Lane Closures at any time has ceased ▪ whether all lanes of traffic set forth in the Released for Construction Documents are in their final configuration and available for public use ▪ whether the DB Contractor has otherwise completed the Work in accordance with the Contract Documents and Released for Construction Documents ▪ [Add any project-specific conditions to Substantial Completion] ▪ any additional conditions set forth in the DBC are fulfilled
Final Acceptance	Promptly after Substantial Completion, the DB Contractor must perform all remaining Work, including: (a) completion of all Punch

	List items, (b) all landscaping, and (c) aesthetic features. DB Contractor must prepare and adhere to a timetable for planting and establishing the landscaping, which will provide for landscaping to be planted prior to Final Acceptance. TxDOT will issue a Certificate of Final Acceptance at such time as certain conditions are satisfied. These conditions include, but are not limited to: ▪ TxDOT has issued the Certificate of Substantial Completion ▪ all Punch List items have been completed and delivered to the reasonable satisfaction of TxDOT ▪ TxDOT has received the as-built drawings ▪ all manufacturers' warranties, guarantees, instruction sheets, parts lists, and other product data have been submitted to TxDOT ▪ the DB Contractor has delivered to TxDOT a certification representing there exists no uncured DB Contractor Default ▪ no uncured DB Contractor Defaults exist ▪ all of the DB Contractor's other obligations under the Contract Documents have been satisfied in full or waived
Early Opening	Prior to Substantial Completion, TxDOT has the right to open to traffic portions of the Project, to the extent such portions are safe and necessary or advisable, in TxDOT's sole determination, for traffic circulation. Early openings do not constitute Substantial Completion or Final Acceptance of the Project or waive any requirements.
CONTRACT RIGHTS & RESPONSIBILITIES	
Control of Work	The DB Contractor is solely responsible for and will have control over Project safety, the construction, and the Site, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents. [*If the project is tolled, include the following language here*: DB Contractor shall coordinate the performance of the Work with the work to be performed by the Systems Integrator.] The DB Contractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work. The DB Contractor must ensure that all of its activities are undertaken in a manner that will minimize the effect on surrounding property and the traveling public to the maximum

	extent practicable.
Prevailing Wages	DB Contractor must 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 DBA and in the statutes and regulations applicable to public works contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act.
Right of Way	TxDOT has begun ROW acquisition for the Project and will continue the acquisition effort until execution of the DBC. If the ROW acquisition is not completed by such time, the DB Contractor must acquire the remaining Project ROW, including real property within the boundaries included in the NEPA schematics ("Schematic ROW") and any additional real property needed for the Project outside the Schematic ROW, in accordance with the Contract Documents, the approved Right of Way Acquisition Management Plan and all applicable Laws. All Project ROW must be acquired by the DB Contractor in the name of the State. The scope of DB Contractor's ROW acquisition services includes condemnation support services and the provision of expert witnesses for condemnation proceedings. For real property needed for ROW within the Schematic ROW, TxDOT is responsible for the purchase price of the real property, market rental consideration paid for possession and use agreements, relocation assistance payments, title insurance, and reimbursing the DB Contractor for its reasonable out-of-pocket costs for condemnation support services for such property. The reimbursement for condemnation support services costs is subject to a cap of $10,000 per parcel plus expert witness fees. DB Contractor is responsible for all costs and expenses in connection with acquiring real property, improvements and fixtures outside of the Schematic ROW that DB Contractor determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT. DB Contractor is responsible for the cost of any temporary construction easements or other temporary property interests.
Design and Construction	The DB Contractor is responsible for the design and construction of the Project in accordance with the Contract Documents.
Design Liability	The DB Contractor assumes full responsibility and liability with respect to design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the Schematic Design affecting constructability.
Quality	DB Contractor is responsible for all quality assurance and quality control activities necessary to fulfill all of its obligations under the

Management	Contract Documents. DB Contractor must undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the approved Quality Management Plan and Good Industry Practice.
Oversight	TxDOT and its Authorized Representative have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable to: (a) comply with the Federal Highway Administration ("FHWA"), U.S. Army Corps of Engineers ("USACE") or other applicable federal agency requirements, and (b) verify the DB Contractor's compliance with the Contract Documents. The DB Contractor at all times must coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with TxDOT and its representatives to facilitate TxDOT's oversight activities.
Standards	The DB Contractor must furnish all aspects of the Work and construct the Project and Utility Adjustments included in the Work as designed, free from defects and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the Contract Documents, (c) the Project Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan, Quality Management Plan and all component plans prepared or to be prepared thereunder, and (g) the Released for Construction Documents, in each case taking into account the Project ROW limits and other constraints affecting the Project. The DB Contractor may apply for TxDOT's approval of Deviations from applicable Design-Build Specifications regarding the Work in accordance with the Contract Documents. (See Deviations section below.)
Warranties	DB Contractor warrants that: (a) all Work furnished pursuant to the Contract Documents will conform to Good Industry Practice, (b) the Project will be free of defects, including design Errors, (c) the Project will be fit for use for the intended function, (d) materials and equipment furnished under the Contract Documents will be of good quality and new, and (e) the Work will meet all of the requirements of the Contract Documents. [*Option 1*: The Warranty Term extends from the date of Substantial Completion until one year after Final Acceptance of the Project, except that for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners), the Warranty Period will be from the date of acceptance by such Persons until one year thereafter.] [*Option 2*: The Warranties commence at Substantial Completion

	and include a general warranty for the Project that runs concurrently with performance warranties for specified elements of the Project. The Warranty Term for the general warranty commences on the date of Substantial Completion and extends until one year after Final Acceptance of the Project, except that for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners), the Warranty Period will be from the date of acceptance by such Persons until one year thereafter. The Warranty Term for the performance warranties is five years.] The Warranties apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of the DBC. Following acceptance by TxDOT of re-done, repaired, corrected or replaced Work, the Warranties as to each such element of the Work will extend beyond the original Warranty Term.
Clayton Act Assignment	DB Contractor assigns to TxDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to the Contract Documents or any Subcontract. This assignment becomes effective at the time TxDOT tenders Final Payment to DB Contractor, without further acknowledgment by the Parties.
ENVIRONMENTAL & PERFORMANCE RISKS	
Permits & Approvals	TxDOT has obtained or will obtain the following permits and governmental approvals as specified in the Contract Documents: _____ [*List TxDOT-Provided Approvals*]. The DB Contractor will be responsible for obtaining all other permits and government approvals.
New Environmental Approvals	The DB Contractor is responsible for obtaining all new environmental approvals or changes to existing approvals. If a new or revised environmental approval becomes necessary for any reason other than for a TxDOT-Directed Change or Other Relief Event, the DB Contractor will bear full responsibility for all costs and delays.
Environmental Compliance	The DB Contractor is responsible for performance of all environmental mitigation measures and compliance with all other conditions and requirements of the Contract Documents and Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals for the Project, other than any mitigation requirements which TxDOT has expressly agreed to perform.

CONTRACT CHANGES & COSTS OUTSIDE THE CONTRACT	
Change Orders	A Change Order or Directive Letter is required for any increase to Price or time extension. TxDOT may issue a unilateral Change Order at any time. For each Request for Change Order, DB Contractor must prepare a scope of work, cost estimate, time impact analysis and other information. If the DB Contractor requests a time extension, then TxDOT may require DB Contractor to provide two alternative Requests for Change Order, one that provides for a time extension and any permitted additional costs, and another that shows all Acceleration Costs associated with meeting the non-extended Completion Deadlines, as well as any permitted additional costs. Change Orders are subject to strict requirements (including notice & delivery). Any increase to the Price under any Change Order may not include: (i) the amount of any insurance available to the DB Contractor, (ii) any deductible or self-insured retention associated with such insurance, or (iii) the amount of any insurance coverage required under the DBC that is deemed to be self-insured by the DB Contractor.
Differing Site Conditions	Subject to the following limits, the DB Contractor is entitled to a Change Order for certain additional costs resulting from the existence of Differing Site Conditions. The DB Contractor is fully responsible for costs up to the Differing Site Conditions Deductible ($[●]) incurred for changes in the Work resulting from each separate occurrence of Differing Site Conditions, subject to the Differing Site Conditions Aggregate Deductible Cap ($[●]). Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable. DB Contractor will be allowed a time extension for certain delays to the Critical Path resulting from Differing Site Conditions. The risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. If DB Contractor is prohibited from working at a particular location due to the discovery of Differing Site Conditions for which DB Contractor is entitled to a Change Order during the last 12 months prior to a Completion Deadline, then DB Contractor shall be entitled to an extension of the applicable Completion Deadline(s) for any Critical Path delays resulting from such discovery of Differing Site Conditions.
Supply Chain	DB Contractor is entitled to a Change Order extending the Completion Deadlines for delays to the Critical Path resulting from

Disruptions	unavailability of materials due to: (a) Any earthquake, tornado, hurricane or other natural disaster that (i) occurs in Texas and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator; (b) Any epidemic in the State of Texas; (c) Any blockade, rebellion, war, riot, act of sabotage, act of terrorism or civil commotion, in each case that occurs on the soil of the continental United States; (d) Any other cataclysmic phenomena of nature, as determined by TxDOT in its good faith discretion; and (e) Any other national shortage of materials that is the subject of a directive by the State of Texas or federal government. The risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. DB Contractor shall only be entitled to a time extension for delays due to the foregoing events if such events (and the effects of such events) are beyond the control of the DB Contractor-Related Entities and are not due to (1) an act, omission, negligence, recklessness or intentional misconduct of or (2) breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB Contractor-Related Entity. DB Contractor will be entitled to project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended. DB Contractor will not be entitled to an increase in the Price for any other additional costs incurred as a result of supply chain disruptions.
Special Events Delays	The DBC will include lane closure restrictions during special events in the region. DB Contractor will be entitled to a Change Order extending the Completion Deadlines for certain delays to the Critical Path due to changes in the dates or times of such special events or the addition of a new special event. DB Contractor will not be entitled an increase in the Price for additional costs incurred by DB Contractor due to changes to the special events.
Third Party Agreements	DB Contractor is entitled to a Change Order (a) to compensate DB Contractor for certain additional costs incurred and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path, directly caused by modifications to DB Contractor's obligations resulting from new third party agreements

	or modifications to existing third party agreements. DB Contractor shall not be entitled to any relief for any new third party agreements or modifications to existing third party agreements unless the delays and the effects of such delays are beyond the control of the DB Contractor-Related Entities. Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable. (See Other Relief Events section below for relief for modifications to draft third party agreements included in the RIDs as of the proposal due date.)
Eminent Domain Delays	DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as a result of any failure by TxDOT to make available portions of the ROW (other than DB Contractor designated parcels) described in a condemnation packet within [●] [*insert number of days from 180 to 365 for TxDOT to make parcels available*] days after approval of the condemnation package. The risk of any such eminent domain delay will be borne equally by each Party for the first [●] [*insert number of days of equal risk sharing up to 100*] days thereafter (i.e., for each parcel, DB Contractor shall be entitled to one day of time extension for every two days of delay). After the first [●] [*insert number of days from previous sentence*] days, DB Contractor shall be entitled to one day of time extension for each day of eligible delay. DB Contractor's responsibility for such delays is subject to an aggregate cap as set forth in the DBC. DB Contractor will be entitled to project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended. DB Contractor will not be entitled to an increase in the Price for any other additional costs incurred as a result of eminent domain delays.
Railroads	[*insert if railroad agreements will be required for the Project*] [TxDOT is responsible for obtaining construction and maintenance agreements with the railroad(s) on the Project, provided however, DB Contractor is responsible for obtaining any modifications required due to DB Contractor's ATCs or design. DB Contractor is entitled to a Change Order (a) increasing the Price to compensate the DB Contractor for any increase in costs incurred and (b) extending the applicable Completion Deadline as a result of any delay in the Critical Path, directly attributable to material changes to the terms and conditions in the railroad-related documents that will be included in the RIDs prior to the Proposal Due Date to the extent such changes are required by a railroad. Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not

	recoverable. [*Option 1: Insert if a Preliminary Exhibit A will be included in the RIDs prior to the Proposal Due Date*] [DB Contractor shall be entitled to a time extension for delays due to the failure of TxDOT and a railroad to execute a construction and maintenance agreement within [●] [*insert number of days to be determined by project team*] days after the Effective Date. Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable. [*Option 2: Insert if a Preliminary Exhibit A will <u>not</u> be included in the RIDs prior to the Proposal Due Date*] [DB Contractor shall be entitled to a time extension for delays due to the failure of TxDOT and a railroad to execute a construction and maintenance agreement within [●] [*insert number of days between 120 and 270 to be determined by project team*] days after the Effective Date. DB Contractor will be entitled to delay and disruption damages for delays to the Critical Path. DB Contractor is entitled to a Change Order (a) increasing the Price to compensate the DB Contractor for any increase in costs incurred and (b) extending the applicable Completion Deadline as a result of any delay in the Critical Path, directly attributable to a railroad's railure to comply with a railroad agreement between TxDOT and the railroad, provided such failure is not due to the acts or omissions of DB Contractor. Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable.]
Deviations	The DB Contractor may apply for TxDOT's approval of Deviations from applicable technical requirements regarding the Work. All applications must be in writing. TxDOT has no obligation to approve any such application. No Deviation is deemed approved or effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's lack of issuance of a written approval for any Deviation within 14 days after DB Contractor's application is deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation is final and not subject to dispute resolution procedures. Any material change in the Basic Configuration must be approved by TxDOT and authorized by a Change Order.
Nonconforming Work	TxDOT may, but is not obligated to, accept Nonconforming Work without requiring it to be fully corrected, in which case TxDOT is entitled to reimbursement of a portion of the Price in accordance

	with the Contract Documents. Nonconforming Work rejected by TxDOT must be removed and replaced so as to conform to the requirements of the Contract Documents, at DB Contractor's cost and without any adjustment to the Price or any Completion Deadline or any other relief, and DB Contractor must promptly take all action necessary to prevent similar Nonconforming Work from occurring in the future.
TxDOT-Directed Changes	The DB Contractor is entitled to a Change Order providing for Price adjustment and/or a time extension for: ▪ changes in the scope of the Work or terms and conditions of the Contract Documents ▪ suspensions of the Work by TxDOT for more than 48 hours per suspension or 96 hours total ▪ 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 ▪ [*If TxDOT will provide level A SUE, include the following language*: 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.] ▪ [*Optional language*: 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.]
Hazardous Materials	The DB Contractor is not entitled to any compensation or time extension with respect to: (a) immaterial quantities, (b) Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) costs that could have been avoided, (d) Hazardous Materials on Additional Properties designated by the DB Contractor, (e) Hazardous Materials encountered during the demolition of buildings, structures, fixtures or other improvements within the Site, (f) Hazardous Materials management costs resulting from DB Contractor's acts or omissions, or (g) Hazardous Materials brought onto the Site by the DB Contractor. The DB Contractor may request a Change Order to extend a Completion Deadline for a delay directly attributable to discovery of Hazardous Materials that changes the duration of a Critical Path. DB Contractor is not entitled to an extension of any Completion Deadline for any delays resulting from the discovery of Hazardous Materials prior to submission of a notice. The DB Contractor may request a Change Order to increase the

	Price for Hazardous Materials Management for Pre-existing Hazardous Materials as follows: DB Contractor is 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 $[●] but do not exceed $[●], (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed $[●], 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. Such reimbursement is limited to the incremental reasonable, out-of-pocket Direct Costs incurred for the handling, transport, removal and disposal of Hazardous Materials after completion of the testing process to determine whether Hazardous Materials are present. The DB Contractor is not entitled to additional compensation or an extension of any Completion Deadline for the investigation and characterization of Hazardous Materials, regardless of the total quantities. If DB Contractor encounters Hazardous Materials for which DB Contractor is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path, DB Contractor bears 100% of the risk of such Hazardous Materials Delay up to an amount of 30 days per location and up to an aggregate amount of 120 days for all locations on the Project. If the DB Contractor is prohibited from working at a particular location due to the discovery of Hazardous Materials for which the DB Contractor is entitled to a Change Order during the last 12 months prior to a Completion Deadline, then the DB Contractor is entitled to an extension of the applicable Completion Deadline for any Critical Path delays resulting from such discovery of Hazardous Materials. As between TxDOT and the DB Contractor, TxDOT will be considered the generator of Hazardous Materials and assume generator responsibility for Hazardous Materials except for DB Contractor Releases of Hazardous Materials.
Utilities	The DB Contractor is responsible for performing all necessary utility adjustment work and is not entitled to a Change Order for performance of adjustment work that was initially anticipated to be performed by a Utility Owner. The DB Contractor is entitled to a Change Order (a) increasing the Price to compensate the DB Contractor for any increase in costs incurred in performing the Utility Adjustment Work that is directly attributable to a New Utility and (b) extending the

	applicable Completion Deadline as a result of any delay in the Critical Path directly attributable to performing the Utility Adjustment Work directly attributable to a New Utility. DB Contractor is entitled to an increase in the Price in connection with certain increases in the cost of the Work due to Unidentified Utilities within the Schematic ROW. The amount of the Price increase in any Change Order issued for each such Unidentified Utility facility is equal to the Basic Costs for that facility, less the Unidentified Utilities Deductible ($[●]) (which deductible amount is the DB Contractor's sole responsibility). Notwithstanding the foregoing, DB Contractor is not responsible for a total amount of Unidentified Utilities Deductibles in excess of the Unidentified Utilities Deductible Cap ($[●]). DB Contractor will be allowed a time extension due to certain delays resulting from the need to relocate Unidentified Utilities, delays caused by uncooperative Utility Owners and delays caused by each Utility Owner that fails to comply with any timelines for the Utility Owner's performance in the executed Utility Agreement. The cumulative risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. Except for project overhead to be calculated in accordance with the DBC for certain days that a Completion Deadline is extended, delay and disruption damages are not recoverable for such delays. Subject to the limitations set forth in the DBC, DB Contractor may request a Change Order to (a) increase the Price to compensate the DB Contractor for any increase in costs incurred, including project overhead and disruption damages, and (b) extend the applicable Completion Deadlines as a result of any delay in the Critical Path, directly attributable to changes to the scope of the work for the Utility Adjustment from the scope of the work agreed to by the Utility Owner in a Pre-Proposal Utility Commitment that was made by an authorized representative of the Utility Owner and approved by TxDOT prior to the due date for proposals for the Project. Except for project overhead to be calculated in accordance with the DBC for certain days that a Completion Deadline is extended, delay and disruption damages are not recoverable for such delays. [*insert if TxDOT has entered into an ILA for adjustment of municipal Utilities that will be managed by DB Contractor*][TxDOT anticipates entering into an Utility ILA with [●] for the relocation of [●].DB Contractor will be entitled to a Change Order extending Completion Deadlines for delays to the Critical Path resulting from the public Utility Owner's failure to provide a required approval, acceptance, or comment in connection with a design submittal under the Utility ILA within the applicable time periods set forth in such Utility ILA. The risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's

	responsibility for such delays is capped, as set forth in the DBC. .] [*insert if TxDOT anticipates entering into any Advance Utility Relocation Agreements*] [TxDOT anticipates entering into an Advance Utility Relocation Agreement with [●] for the relocation of [●]. DB Contractor is entitled to a Change Order (a) increasing the Price to compensate the DB Contractor for any increase in costs incurred and (b) extending the applicable Completion Deadline as a result of any failure by such Utility Owner to relocate its Utility in accordance with any advance utility relocation agreement entered into with TxDOT. Except for project overhead to be calculated in accordance with the DBC for each day that a Completion Deadline is extended, delay and disruption damages are not recoverable.]
Force Majeure Events	Subject to the following risk sharing, DB Contractor is entitled to additional time and/or compensation for <u>specified</u> Relief Events, including Force Majeure Events, that materially and adversely affect 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 or intentional misconduct of or (2) breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by any DB Contractor-Related Entity. The Force Majeure Events are: (a) Any earthquake, tornado, hurricane or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or a County Judge of a county in which the Project is located, unless and to the extent such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction; (b) Any epidemic in the region around the Project; (c) Any blockade, rebellion, war, riot, act of sabotage, act of terrorism or civil commotion, in each case that causes direct physical damage to the Project; and (d) Any other cataclysmic phenomena of nature or cataclysmic fire, as determined by TxDOT in its good faith discretion, that (i) causes physical damage to the Project or (ii) prevents any access to the Site. The risk of such delays will be shared between DB Contractor and TxDOT, provided DB Contractor's responsibility for such delays is capped, as set forth in the DBC. Except for project overhead to be calculated in accordance with the DBC for days that a

	Completion Deadline is extended, delay and disruption damages are not recoverable.
Other Relief Events	The DB Contractor will be entitled to additional time and/or compensation for the following other Relief Events, in addition to and subject to the same conditions as Force Majeure Events: (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) Modifications made after the Proposal Due Date to draft Third Party Agreements included in the RIDs. (i) Issuance of a new drainage permit by TxDOT that requires a material modification of the Project design where either (1) DB Contractor was not provided with the permit application or (2) DB Contractor was provided with the permit application and timely notified TxDOT of the specific conflict with DB Contractor's design. [Add any additional Relief Events.]
Delay Deductible Aggregate Cap	DB Contractor's responsibility for delays to the Critical Path due to qualifying delays (Uncooperative Utility Delay, Utility Owner Delay, Differing Site Conditions Delay, Unidentified Utility Delay, Force Majeure Event Delay, and Eminent Domain Delay) shall not exceed [●][*insert 10% - 25% of the number of days from NTP1 until the Substantial Completion Deadline*] days (the "Delay Deductible Aggregate Cap"). If the Delay Deductible Aggregate cap is reached, DB Contractor will be entitled to a Change Order extending the Completion Deadlines for each day of delay to the Critical Path occurring after the Delay Deductible Aggregate Cap is reached that results from a qualifying delay, as well as project overhead to be calculated in accordance with the DBC for any days the Completion Deadlines are extended.
Matters Not Eligible for Change Orders	The DB Contractor is responsible for all risks not specifically accepted by TxDOT. Examples of specific exclusions are identified in the DBC.
BUSINESS RISKS	
Insurance	The DB Contractor is required to provide insurance coverage specified in the DBC, which must include at a minimum: builder's risk, commercial general liability, automobile liability, pollution liability, professional liability, workers' compensation and employer's liability, umbrella liability, and railroad protective liability. Subcontractor insurance requirements are also specified in the

	DBC. TxDOT and their members, directors, officers, employees, agents and Project consultants must be additional insureds, except on the professional liability policy.
DB Contractor Defaults	The following are examples of DB Contractor Defaults: ▪ Failure to begin Work within 30 days following issuance of NTP1 or NTP2, or failure to satisfy all conditions to commencement of the Construction Work, and commence the Construction Work with diligence and continuity ▪ Failure to complete the Work by the applicable Completion Deadline ▪ Failure to perform the Work in accordance with the Contract Documents ▪ Suspending or ceasing the Work or failure to continuously and diligently prosecute the Work ▪ Failure to obtain or maintain any insurance, bonds, guarantees, letters of credit (if any) or other performance security as and when required under the DBC ▪ Voluntary or involuntary assignment or transfer of all or any portion of the DBC without TxDOT's prior written consent ▪ Failure to make payment when due for labor or equipment or failure to make payment to TxDOT when due of any amounts owing to TxDOT ▪ Failure to timely observe or perform any other material obligation, term, or condition under the DBC ▪ Material misrepresentation by the DB Contractor ▪ Voluntary or involuntary bankruptcy or insolvency ▪ DB Contractor or, if DB Contractor is a joint venture, any Equity Member knowingly or intentionally fails to comply with a requirement of Subchapter J, Chapter 552, Government Code that is applicable to DB Contractor. ▪ [Include the following language if Non-Compliance Points are included in the DBA: Persistent DB Contractor Default]
Cure of DB Contractor Defaults	The DB Contractor has an opportunity to cure certain DB Contractor Defaults, as described in the DBC.
TxDOT Remedies for DB Contractor Default	TxDOT has the right to exercise one or more of the following remedies in the event of an uncured DB Contractor Default: ▪ Right to terminate

	▪ Right to deduct amounts (including interest) payable to TxDOT from amounts owing to the DB Contractor ▪ Right to take immediate action in the event of emergency or danger ▪ Right to recover damages ▪ Right to make demand upon, draw on, enforce and collect any bonds, letters of credit, guaranty, or other performance security available to TxDOT for DB Contractor Default ▪ Other remedies as provided by Law
DB Contractor's Right to Stop Work	The DB Contractor has the right to stop Work if TxDOT fails to make an undisputed payment within 15 Business Days after TxDOT's receipt of written notice of nonpayment from the DB Contractor. If such nonpayment continues for more than 180 days, upon written notice from the DB Contractor to TxDOT, the nonpayment may be deemed a Termination for Convenience.
Suspension	TxDOT may order the DB Contractor to suspend all or any part of the Work for the period of time that TxDOT deems appropriate. Such suspension for convenience will be considered a TxDOT-Directed Change, except for brief suspensions (not exceeding 48 hours each up to a total of 96 hours). Adjustments of the Price and the Completion Deadlines are available for any such TxDOT-Directed Change.
Termination	The DB Contractor may terminate the DBC if NTP1 has not been issued by TxDOT within 365 days after the Effective Date. TxDOT may terminate the DBC for convenience or for the DB Contractor's default.
Liquidated Damages	<u>Liquidated Damages for Delay</u>: DB Contractor will pay liquidated damages to TxDOT with respect to any failure to achieve Substantial Completion [*If the project is tolled, include the following language here*: Toll Zone Completion] and/or Final Acceptance by the applicable Completion Deadline unless the delay was directly attributable to a Qualifying Delay. The daily amounts of such liquidated damages are set forth in the DBA. <u>Qualifying Delay Late Fees</u>: DB Contractor will pay liquidated damages to TxDOT with respect to any failure to achieve Substantial Completion [*If the project is tolled, include the following language here*: Toll Zone Completion] and/or Final Acceptance by the applicable Completion Deadline due to a Qualifying Delay. The daily amounts of such Qualifying Delay Late Fees are set forth in the DBA. <u>Lane Closures, Lane Rental Charges and Liquidated Damages</u>: Liquidated damages for Lane Closures and Lane Rental Charges

	are set forth in the DBC. [The DBA will include a Lane Rental Bank against which the Lane Rental Charges will apply.] <u>Key Personnel Change Fees</u>: Fees will be assessed, as set forth in the DBC, if DB Contractor changes Key Personnel, regardless of whether TxDOT approves a replacement. <u>Key Personnel Unavailability Liquidated Damages</u>: Liquidated damages will be assessed, as set forth in the DBC, for each day that a relevant Key Personnel role is not filled by an approved individual. [If the project plan of finance includes TIFIA, include the following language here: <u>TIFIA Requirements</u>: DB Contractor will be assessed liquidated damages in the event DB Contractor's failure to comply with the TIFIA-related obligations under the DBA result in TxDOT's inability to obtain a TIFIA loan.]
Non-Compliance Points	[*Include this Non-Compliance Points summary if applicable to the project.*] The performance of the Work is subject to Non-Compliance Points, as set forth in the DBA. Non-Compliance Points may be assessed by TxDOT for certain breaches of the Contract Documents. The DB Contractor will be assessed liquidated damages for certain point thresholds. In addition, TxDOT will have the right to terminate the DBC for a DB Contractor Persistent Default evidenced by the accumulation of a certain number of Non-Compliance Points within a rolling 180-day period.
Indemnification	The DB Contractor shall indemnify, defend, and hold harmless TxDOT, the State of Texas, the Texas Transportation Commission, FHWA, TxDOT consultants, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees for the actual or alleged culpable act, error, omission, negligence, breach, or misconduct of any DB Contractor-related entity in or associated with performance of the Work, any actual or threatened release of hazardous materials, breach of the DBC, and failure to comply with applicable Laws or Governmental Approvals, among other things.
OTHER CONTRACT PROVISIONS	
TIFIA Requirements	[If the project plan of finance includes TIFIA, include the following language here: TxDOT intends to apply for a TIFIA loan from the United States Department of Transportation pursuant to a loan agreement and related documents for the purpose of funding all or a portion of the Project ("TIFIA Loan Agreement"). In the event TxDOT elects to

	negotiate a TIFIA Loan Agreement, DB Contractor shall be required to comply with certain obligations related to the TIFIA Loan Agreement, including the making of representations and warranties regarding claims, default and debarment, as well as compliance by the DB Contractor and its affiliates with certain federal laws. Failure to comply with TIFIA-related obligations may result in liquidated damages, withholding of payments or termination of the DBC for default.
Dispute Resolution	Informal resolution procedures and compliance with the Dispute Review Panel procedures are prerequisites and conditions to resolution of Disputes under the Dispute Resolution Procedures set forth in the DBC. A three-member Disputes Review Panel (Panel) will be established to assist TxDOT and DB Contractor with the resolution of any Disputes that arise during the term of the DBC. TxDOT and DB Contractor will each appoint one Panel member, and the two party-appointed Panel members will appoint a Panel Chairperson. The Panel will meet with TxDOT and DB Contractor and inspect the Project site on at least a quarterly basis and will provide non-binding recommendations regarding any Dispute raised by a party. If a Dispute is not timely resolved after a recommendation is provided by the Panel, the parties must commence the Informal Resolution Procedures, during which the officers/directors of the parties will meet to attempt to resolve the Dispute. After the conclusion of the Informal Resolution Procedures, if the Dispute was not resolved to the Parties' satisfaction: (a) the Parties may mutually agree to initiate mediation, or (b) either Party may refer the Dispute to the formal Dispute Resolution Procedures. The formal Dispute Resolution Procedures include the contract claims process established pursuant to Texas Transportation Code Section 201.112 and Title 43, Texas Administrative Code, Section 9.2. The Disputes Review Panel procedures and Dispute Resolution Procedures do not apply to certain Ineligible Matters.
Records and Documentation	The DB Contractor must submit all submittals to TxDOT through TxDOT's electronic content management system. In addition, the DB Contractor must maintain all project records and documents on its own electronic data management system in accordance with Texas State Records Retention Schedule. DB Contractor is required to provide certain contracting information if requested by TxDOT as a result of a request pursuant to the Public Information Act. The DB Contractor may be required to purchase additional

	software as required for the Project.
Escrowed Proposal Documents ("EPD")	The DB Contractor's detailed Proposal pricing information (EPDs) will be kept at TxDOT's project office in locked fireproof cabinets with the keys held only by the DB Contractor. EPDs are the property of the DB Contractor and will be considered to be in the DB Contractor's possession. EPDs must be available for joint review by DB Contractor, TxDOT and TxDOT's consultants, and any dispute resolver(s). Change Order documentation must be added to EPDs. EPDs will be maintained until all of the following have occurred: (a) 180 days from the later of Final Acceptance or termination of the DBC, (b) all Claims or Disputes regarding the Work have been settled, (c) all Warranty Terms have expired, and (d) Final Payment has been made and accepted.
DBE Provisions; Subcontractors	TxDOT's Disadvantaged Business Enterprise ("DBE") Program for design-build contracts is based on TxDOT's standard DBE Program with certain modifications to accommodate the design-build approach. The DB Contractor must exercise good faith efforts to achieve the DBE participation goal for the Project through implementation of DB Contractor's approved DBE Performance Plan. The DB Contractor may only retain Subcontractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. After execution of the DBC, the DB Contractor must select subcontractors based on procedures approved by TxDOT. DB Contractor must provide 100% of any cost savings to TxDOT, if the DB Contractor replaces a Subcontractor that is identified in the Proposal, unless the replacement is for a reason that is specified in the DBC. The DB Contractor is required to include flow down required terms into subcontracts. Subcontracts must be fully assignable to TxDOT. Dispute procedures involving Subcontractors must contain additional requirements.
Key Personnel	Certain job categories of Key Personnel for the Project are identified. Except for certain reasons specified in the DBC, Key Personnel may not be substituted. Liquidated damages may be assessed for unavailability of Key Personnel.
Assignment	The DB Contractor may not assign its interests in the DBC without TxDOT's prior written approval. TxDOT may assign its interests in the DBC: (a) without the DB

	Contractor's consent, to any other public agency or public entity as permitted by Law, (b) without the DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT, and (c) to any other Person with the prior written approval of the DB Contractor.