



**DESIGN-BUILD AGREEMENT**

**I-35 NEX CENTRAL PROJECT**

**between**

**TEXAS DEPARTMENT OF TRANSPORTATION**

**and**

**ALAMO NEX CONSTRUCTION, LLC**

**Dated as of: July 22, 2021**

Bexar County

Guadalupe County

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**DESIGN-BUILD AGREEMENT**

**I-35 NEX CENTRAL PROJECT**

This Design-Build Agreement (this “**DBA**”), dated as of July 22, 2021 (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:** Alamo NEX Construction, LLC, a limited liability company (“**LLC**”) organized and existing under the laws of the State of Texas. the location of whose principal office is:

9600 Great Hills Trail, Suite 200E  
Austin, Texas 78759.

**RECITALS**

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

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

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

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

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

**F.** On or before February 4, 2021 (the “**Proposal Due Date**”), TxDOT received two 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 March 25, 2021 the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this DBA.

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

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

K. The Executive Director of TxDOT has been authorized to enter into this DBA pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order 115989, dated March 25, 2021.

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

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

N. The Reference Information Documents include the Schematic Design, which may be used by DB Contractor as the basis for the design to be furnished by DB Contractor, subject to the terms, conditions and limitations of the Contract Documents. DB Contractor will assume full responsibility and liability with respect to the design of the Project.

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

**SECTION 1. CONTRACT**

**1.1 Abbreviations**

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

<b>CFO</b>	Chief Financial Officer
<b>CMA</b>	Capital Maintenance Agreement
<b>CMC</b>	the Capital Maintenance Agreement and the CMA General Conditions, including all exhibits attached thereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC.
<b>DBA</b>	Design-Build Agreement
<b>FONSI</b>	Finding of No Significant Impact
<b>UIR</b>	Utility Installation Review

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.

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

**Betterment**

has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreements or, for the SAWS Utilities, the SAWS ILA; in all other cases, "Betterment" means any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) any upgrading that is required for accommodation of the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by published, current design practices regularly followed by the Utility Owner in its own work; or
- (g) any upgrading for which there are direct benefits to or are required for the Project.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.

**Capital Maintenance Agreement**

means that certain Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project.

**Capital Maintenance Contract Documents or CMC Documents**

has the meaning set forth in Section 1.2 of the Capital Maintenance Agreement.

**Chargeable Lane Closure Code**

has the meaning set forth in Section A.2 of Exhibit 15 to this DBA.

**Contract Documents**

has the meaning set forth in Section 1.3 of this DBA.

**CPS Energy**

means CPS Energy, a municipally-owned utility of the City of San Antonio.

**DB Contractor or Design-Build Contractor**

means Alamo NEX Construction, LLC, a Texas limited liability company, together with its successors and assigns.

**Delay Deductible Aggregate Cap**

has the meaning set forth in Section 6.11 of this DBA.

**Design-Build Agreement**

has the meaning set forth in the preamble hereof.



<b>Design-Build Specifications</b>	means the Design-Build Specifications, Items 10-28, dated as of the Effective Date.
<b>Differing Site Conditions</b>	means (a) man-made subsurface or man-made latent conditions of an unusual nature, (b) subsurface or surface natural physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract Documents, (c) an Abandoned Utility that is a water or wastewater Utility 18 inches in diameter or greater; or (d) an Abandoned Utility that is a Utility duct bank with 4 or more conduits. This term shall specifically exclude all such conditions of which DB Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content and variations in the water table; (iii) Utility facilities, including Abandoned Utilities (other than as described in clause (c) or (d) above); (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; (vi) any conditions which constitute or are caused by a Relief Event; (vii) any subsurface or surface conditions that are ascertainable from the information included in the RIDs; and (viii) karst and the discovery of Karst Features.
<b>Differing Site Conditions Deductible</b>	has the meaning set forth in <u>Section 6.1</u> of this DBA.
<b>Differing Site Conditions Deductible Cap</b>	has the meaning set forth in <u>Section 6.1</u> of this DBA.
<b>Dispute Resolution Procedures</b>	means the formal process for resolving Disputes described in <u>Section 11.1</u> and <u>Exhibit 20</u> to this DBA. None of the Disputes Review Panel Process and Informal Resolution Procedures are included in the Dispute Resolution Procedures.
<b>DRP Rules</b>	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.
<b>Effective Date</b>	has the meaning set forth in the preamble to this DBA.
<b>Eminent Domain Delay</b>	has the meaning set forth in <u>Section 6.5</u> of this DBA.
<b>Final Acceptance Deadline</b>	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.
<b>Full Roadway Closure</b>	has the meaning set forth in Section C.1 of <u>Exhibit 15</u> to this DBA.
<b>General Conditions</b>	has the meaning set forth in <u>Section 1.3.2</u> of this DBA.
<b>I-35 NEX Central Project</b>	has the meaning set forth in <u>Recital B</u> to this DBA.
<b>Ineligible Matters</b>	<ul style="list-style-type: none"> <li>(i) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;</li> <li>(ii) Any claim or dispute that does not arise under the Contract Documents;</li> </ul>

- (iii) Any claim that is not actionable against TxDOT by DB Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 4.9 of the General Conditions and Exhibit 20 hereof;
- (iv) Any claim for indemnity under Section 7.12 of the General Conditions;
- (v) Any claim for injunctive relief;
- (vi) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;
- (vii) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;
- (viii) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in Section 4.9 of the General Conditions and Exhibit 20 hereof);
- (ix) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in Section 4.9 of the General Conditions and Exhibit 20 hereof do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in Section 4.9 of the General Conditions and Exhibit 20 hereof apply;
- (x) Any claim for, or dispute based on, remedies expressly created by statute; and
- (xi) Any Dispute that is actionable only against a Surety.

**Initial Maintenance Term Commencement Date**

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

**Instructions to Proposers**

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

**Karst Feature**

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

**Karst Investigation Delay**

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

**Karst Species Specialist**

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

**Key Personnel**

means the positions identified in Exhibit 18 to this DBA.

**Lane Closure**

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

**Lane Closure Notice**

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

**Lane Rental Bank**

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

<b>Licensed Professional Geoscientist</b>	means the specialist that is designated by the DB Contractor to assist in the mapping of Karst Features and development of Karst Feature closure plans, as more particularly described in Section 12.3.7 of the Design-Build Specifications.
<b>Liquidated Damages</b>	means the liquidated damages, including, Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, specified in DBA <u>Sections 7.2, 7.3 and 7.4</u> , and General Conditions Sections 8.3.1, 8.7.1.1 and 8.7.2.
<b>Maintenance Management System (MMS)</b>	has the meaning set forth in Section 27.5 of the Design-Build Specifications.
<b>Maintenance Performance Bond</b>	has the meaning set forth in Section 1.2.2 of the CMA General Conditions.
<b>Maintenance Security</b>	has the meaning set forth in Section 1.2 of the CMA.
<b>Maintenance Services</b>	has the meaning set forth in Section 1.2.2 of the CMA General Conditions.
<b>Maximum Payment Schedule</b>	means the table of aggregate amounts included in <u>Exhibit 10</u> to this DBA and the earliest date by which each such aggregate amount shall become due to DB Contractor, which constitute a cap on the aggregate amount of payments, excluding any Milestone Payments, that may be made to DB Contractor hereunder at any specified time.
<b>Milestone(s)</b>	means one or both of Milestone 1 and Milestone 2, as applicable.
<b>Milestone 1</b>	means construction of the work items for Milestone 1 identified in <u>Appendix 1 to Exhibit 1</u> to this DBA.
<b>Milestone 1 Completion</b>	means achievement of Milestone Completion for Milestone 1.
<b>Milestone 1 Completion Target</b>	means the Milestone Completion Target for Milestone 1 set forth in the table in <u>Section 4.4.3</u> of this DBA.
<b>Milestone 2</b>	means construction of the work items for Milestone 2 identified in <u>Appendix 1 to Exhibit 1</u> to this DBA.
<b>Milestone 2 Completion</b>	means achievement of Milestone Completion for Milestone 2.
<b>Milestone 2 Completion Target</b>	means the Milestone Completion Target for Milestone 2 set forth in the table in <u>Section 4.4.3</u> of this DBA.
<b>Milestone Completion</b>	means, for each Milestone, the satisfaction of the criteria set forth in <u>Section 4.4.4</u> of this DBA as and when confirmed by TxDOT's issuance of an acknowledgement of Milestone Completion.
<b>Milestone Completion Target(s)</b>	means one or both of the Milestone 1 Completion Target and Milestone 2 Completion Target, as applicable.
<b>Milestone Payment</b>	has the meaning set forth in <u>Section 4.4.1</u> of this DBA.
<b>NCE Cure Period</b>	means the period of time DB Contractor has to cure a particular Noncompliance Event as set forth in the Noncompliance Events Table attached to <u>Exhibit 16</u> to this DBA.
<b>NEPA Approvals</b>	means the following TxDOT-Provided Approvals: 2015 Finding of No Significant Impact, 2015 Final Environmental Assessment, Re-evaluation of the 2015 Final EA and FONSI and Re-evaluation #2 of the 2015 Final EA and FONSI.

<b>New Pavement</b>	means any pavement areas where DB Contractor constructs or fully reconstructs the Project pavement as required in Sections 1.2.1 and 1.5.1 of <u>Exhibit 1</u> to this DBA.
<b>New Utility</b>	means a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to DB Contractor prior to the Proposal Due Date. The term does not include any Utilities that SAWS has cost responsibility for adjusting pursuant to Section 3.B.2 of the SAWS ILA.
<b>Non-Chargeable Lane Closure</b>	has the meaning set forth in Section A.1 of <u>Exhibit 15</u> to this DBA.
<b>Noncompliance Charges</b>	means the liquidated amounts specified in <u>Exhibit 16</u> to this DBA.
<b>Noncompliance Event (NCE)</b>	means any DB Contractor breach or failure to meet one of the requirements as set forth in <u>Exhibit 16</u> to this DBA.
<b>Noncompliance Events Table</b>	means the table set forth in Attachment 1 to <u>Exhibit 16</u> to this DBA.
<b>Noncompliance Points</b>	means the points that may be assessed for certain breaches or failures to perform by DB Contractor, as set forth in <u>Exhibit 16</u> to this DBA.
<b>Notice of Determination</b>	means a notice issued by TxDOT to DB Contractor pursuant to Section 2.1.3 of <u>Exhibit 16</u> to this DBA.
<b>NTP1 Maximum Payment Amount</b>	means the amount set forth in <u>Section 4.2.2</u> of this DBA.
<b>NTP1 Payment Bond Amount</b>	means the amount set forth in <u>Section 5.1.2</u> of this DBA.
<b>NTP1 Performance Bond Amount</b>	means the amount set forth in <u>Section 5.1.1</u> of this DBA.
<b>NTP2 Payment Bond Amount</b>	means the amount set forth in <u>Section 5.1.4</u> of this DBA.
<b>NTP2 Performance Bond Amount</b>	means the amount set forth in <u>Section 5.1.3</u> of this DBA.
<b>Persistent DB Contractor Default</b>	has the meaning set forth in <u>Exhibit 16</u> to this DBA.
<b>Preliminary Exhibit A</b>	means an Exhibit A for Work involving railroad property, that is either included in the Reference Information Documents folders titled "Railroad Documents" or is approved by the applicable railroad after the Effective Date.
<b>Price</b>	means the price set forth in <u>Section 4.1</u> of this DBA, as it may be modified from time to time in accordance with the express provisions of the DBC.
<b>Private Water Meter</b>	means a private line, facility or system used for the carriage or transmission of water or sewage from a service meter to improvements on an individual property and that is identified in the document entitled "I-35_NEX_SUE_WATER_METERS_IN_CONFLICT.dgn" that is included in the Reference Information Documents or that TxDOT requests be relocated. Private Water Meters are not Utilities.
<b>Project</b>	has the meaning set forth in <u>Recital B</u> to this DBA.
<b>Project Overhead Percentage</b>	means 8.5 percent.

<b>Proposal</b>	has the meaning set forth in <u>Recital F</u> to this DBA.
<b>Proposal Due Date</b>	has the meaning set forth in <u>Recital F</u> to this DBA.
<b>Railroad Agreement Delay</b>	has the meaning set forth in <u>Section 6.10.2.1</u> of this DBA.
<b>Railroad Documents</b>	means the documents listed in <u>Section 6.10.1</u> of this DBA that are included in a folder labeled "Railroad Documents" in the RIDs.
<b>Reference Information Documents (RIDs)</b>	means the documents posted to the RID folders for the Project located at <a href="https://protect-us.mimecast.com/s/4eLYCgJxn8SqZm4qiN-fwm?domain=ftp.txspd.com">https://protect-us.mimecast.com/s/4eLYCgJxn8SqZm4qiN-fwm?domain=ftp.txspd.com</a> and identified on the RID list located at <a href="https://protect-us.mimecast.com/s/794JCDkYQ6holnP2cWclMF?domain=portal.txspd.com">https://protect-us.mimecast.com/s/794JCDkYQ6holnP2cWclMF?domain=portal.txspd.com</a> , as of the Effective Date. Except as otherwise expressly provided in <u>Exhibit 3</u> to this DBA, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.
<b>Request for Proposals (RFP)</b>	has the meaning set forth in <u>Recital E</u> to this DBA.
<b>Resurfaced Pavement</b>	means any pavement areas where DB Contractor performs work to mill and overlay the existing pavement as required in Sections 1.2.2, 1.5.2 and 1.6 of <u>Exhibit 1</u> to this DBA.
<b>Retained Security Amount</b>	has the meaning set forth in Section 5 of <u>Exhibit 4</u> to this DBA.
<b>RFP Documents</b>	means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, the CMC Documents, the Reference Information Documents and any addenda issued in connection therewith.
<b>Request for Qualifications (RFQ)</b>	has the meaning set forth in <u>Recital C</u> to this DBA.
<b>Rules</b>	has the meaning set forth in <u>Recital C</u> to this DBA.
<b>San Antonio District Utility Requirements</b>	means the utility related drawings, documents and standards provided in the "San Antonio District Utility Requirements" folder in the RIDs.
<b>San Antonio Pipeline</b>	means the pipeline owned by Allied Aviation impacted within the Project limits by the Project from approximately I-35 SB Station 3455+00 to Station 3476+00.
<b>SAWS</b>	means the San Antonio Water System, a municipally-owned utility of the City of San Antonio.
<b>SAWS Cost Work</b>	has the meaning set forth in the SAWS ILA.
<b>SAWS Delay</b>	has the meaning set forth in <u>Section 6.4.2</u> of this DBA.
<b>SAWS ILA</b>	means the Interlocal Agreement for the Installation and Adjustment of San Antonio Water System Utilities in connection with the I-35 NEX Central Project, dated March 30, 2021.
<b>SAWS Utilities</b>	means all water and wastewater Utilities owned and operated by the City of San Antonio, acting through SAWS.
<b>SAWS Utility Adjustments</b>	means all Utility Adjustments performed pursuant to the SAWS ILA.

<b>SAWS Utility Adjustment Work</b>	means all efforts and costs necessary to complete the SAWS Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by SAWS. The term also includes any reimbursement of SAWS that is DB Contractor's responsibility pursuant to Section 4.5.6 of the General Conditions.
<b>Schematic Design</b>	means the RID titled "I-35 NEX Central Schematic Design EXECUTION".
<b>Special Event</b>	means any event described in Section H of <u>Exhibit 15</u> to this DBA, as such list may be modified by TxDOT in accordance with <u>Exhibit 15</u> to this DBA.
<b>Subcontractor Dispute</b>	has the meaning set forth in <u>Exhibit 20</u> to this DBA.
<b>Substantial Completion Deadline</b>	has the meaning set forth in <u>Section 2.4.1</u> of this DBA.
<b>Third Party Agreement</b>	means any agreement or memorandum of understanding between TxDOT and a third party that governs or impacts the Work. The term "Third Party Agreement" does not include Governmental Approvals, TxDOT issued permits and approvals, agreements with municipalities in their capacity as Utility Owners, Utility Agreements, the SAWS ILA, the Advance Utility Relocation Agreements with CPS Energy and Allied Aviation, or railroad agreements.
<b>Time Period A</b>	means the period shown as "A" on Table 15-3 in <u>Exhibit 15</u> to this DBA.
<b>Time Period B</b>	means the period shown as "B" on Table 15-3 in <u>Exhibit 15</u> to this DBA.
<b>Time Period C</b>	means the period shown as "C" on Table 15-3 in <u>Exhibit 15</u> to this DBA.
<b>TxDOT-Directed Changes</b>	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 <u>Exhibit 3</u> 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.
<b>TxDOT-Provided Approvals</b>	means the approvals set forth in the table in <u>Section 3.1</u> of this DBA.
<b>Ultimate Project Configuration</b>	means the project as depicted on the RID titled "I-35 NEX Ultimate Schematic Design EXECUTION".
<b>Uncured Noncompliance Points</b>	means Noncompliance Points assessed on account of breaches for failures that remain uncured.

<b>Unidentified Utility(ies)</b>	means any Utility impacted by the Project (other than a Service Line or Abandoned Utility) that is neither an Identified Utility nor a New Utility, including any Utility that would be a New Utility but for the fact that it is an extension of an Identified Utility. The term does not include any Utilities that SAWS has cost responsibility for adjusting pursuant to Section 3.B.2 of the SAWS ILA.
<b>Unidentified Utilities Deductible</b>	has the meaning set forth in <u>Section 6.4</u> of this DBA.
<b>Unidentified Utilities Deductible Cap</b>	has the meaning set forth in <u>Section 6.4</u> of this DBA.
<b>Utility Adjustment</b>	means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously Abandoned Utilities as well as of newly Abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance or use of the Project; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad, or any work described in an Advance Utility Relocation Agreement. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.
<b>Utility Adjustment Work</b>	means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by the Utility Owners, provided that any SAWS Utility Adjustment Work performed by SAWS is not part of the Utility Adjustment Work. The term also includes any reimbursement of Utility Owners that is DB Contractor's responsibility pursuant to Section 4.5.6 of the General Conditions. Any Utility Adjustment Work furnished or performed by DB Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.
<b>Utility Agreement</b>	means a PUAA or UAAA, as the context may require. The SAWS ILA and Advance Utility Relocation Agreements are not Utility Agreements.
<b>Utility Management Plan</b>	means the plan setting forth procedures by which DB Contractor will manage the Utility Adjustment Work and SAWS Utility Adjustment Work as more particularly described in Section 4.2.8 of the General Conditions.
<b>Widening</b>	means any pavement area where DB Contractor constructs or fully reconstructs shoulders and widening/extension of the travel lane pavement section into the shoulder as required in Sections 1.2.1 and 1.5.1 of <u>Exhibit 1</u> to this DBA.

**Work**

means all of the work required under the Contract Documents, all administrative, Professional Services, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by DB Contractor, reimbursement of Utility Owners for Utility Adjustment Work or SAWS Utility Adjustment Work, as applicable, furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, landscaping, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by DB Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project, except for those efforts that such Contract Documents expressly specify will be performed by Persons other than the DB Contractor-Related Entities.

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

### 1.3 Contract Documents and Order of Precedence

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

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

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

1. Amendments and Change Orders to the Design-Build Contract, including all exhibits and attachments thereto;
2. This DBA, including all exhibits hereto, except Exhibit 2 (DB Contractor’s Proposal Commitments and ATCs);
3. TxDOT’s Design-Build Agreement General Conditions, Items 1-9 dated as of the Effective Date (the “**General Conditions**”);
4. Change Orders to the Design-Build Specifications;
5. Exhibit 2 (DB Contractor’s Proposal Commitments and ATCs) to this DBA;
6. The Design-Build Specifications; and
7. Released for Construction Documents to be developed in accordance with the Contract Documents, provided that (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist between the Released for Construction Documents and the other Contract Documents with respect to requirements of the Released for Construction Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (c) any



Deviations contained in the Released for Construction Documents shall have priority over conflicting requirements of other Contract Documents to the extent that the conflicts are specifically identified to TxDOT by DB Contractor and such Deviations are approved by TxDOT in writing.

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

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

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

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

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

## **1.4 Reference Information Documents**

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

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

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

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

## **SECTION 2. SCOPE OF WORK**

### **2.1 Project Scope; Special Terms and Conditions**

#### **2.1.1 Project Scope**

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

#### **2.1.2 Termination Based on Delayed Issuance of NTPs**

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

#### **8.9.9 Termination Based on Delay to Issuance of NTPs**

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

8.9.9.2 If NTP2 has not been issued within 365 days after the issuance of NTP1 and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any DB Contractor-Related Entity (including DB Contractor's failure to satisfy any particular condition(s) to NTP2), DB Contractor may conditionally elect to terminate this Design-Build Contract by providing TxDOT with written notice of such conditional election. If DB Contractor delivers a written notice of its conditional election to terminate, TxDOT shall have the choice of either accepting such notice of termination or continuing this Design-Build Contract in effect by delivering to DB Contractor written notice of TxDOT's choice not later than 30 days after receipt of DB Contractor's notice. If TxDOT does not

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

### **2.1.3 Special Utility Provisions**

#### **2.1.3.1. Cost Responsibility**

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

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

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

### **2.1.4 Obligations After Final Acceptance**

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

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

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

### **2.1.5 Project-Specific Amendments to the General Conditions**

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

### **2.1.6 Private Water Meters**

DB Contractor is responsible for the relocation of Private Water Meters that must be relocated to a new location due to TxDOT's ROW acquisition and all such work shall be a component of the Work. DB Contractor responsibilities include all coordination with property owners and SAWS that is necessary to complete the relocation of the Private Water Meters, obtaining all necessary ROEs, the physical relocation of the Private Water Meters and the connection of the Private Water Meters to the applicable Utilities. DB Contractor shall perform all Private Water Meter relocations in accordance with Section 14.4.2.2 of the Design-Build Specifications.

DB Contractor shall provide an Allowance of \$230,000 for the relocation of the Private Water Meters and its payment for such Work shall be subject to the terms of Section 4.1.1.

### **2.1.7 Panel Meetings**

Section 4.9.3.2 of the General Conditions is amended as follows, provided (i) underlined text is hereby added to Section 4.9.3.2 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.9.3.2 of the General Conditions:

#### 4.9.3.2 Regular Meetings

The Panel shall ~~visit the Project and~~ meet with representatives of TxDOT and DB Contractor on a quarterly basis and at such other times as may be requested by the Parties. The regular meetings shall be held at the Project site unless TxDOT, DB Contractor and the Panel unanimously agree that a particular regular meeting may be held by video conference (i) at least 28 days prior to such meeting or (ii) a lesser period of time prior to such meeting as unanimously agreed to by TxDOT, DB Contractor and the Panel. Each meeting shall consist of an informal round table discussion and, if the meeting is in-person, followed by a field inspection of the Project. The round table discussion shall be attended by selected personnel from TxDOT and DB Contractor. The agenda shall generally include the following or other matters requested by the Panel:

- (a) Meeting convened by the chairman of the Panel;
- (b) Opening remarks by TxDOT's representative;
- (c) A description by DB Contractor of the Work accomplished since the last meeting, current status of the Project Schedule, schedule for future Work, potential Disputes and proposed solutions for any problems;
- (d) Discussion by TxDOT's representative of the Project Schedule as TxDOT views it, potential Disputes, and status of past Disputes; and
- (e) Set tentative date for next meeting.

The Parties may request the Panel Chairperson to prepare a summary of regular meetings, and if no request is made, the Panel Chairperson at his or her sole discretion may prepare a summary of regular meetings and circulate them for comments, revisions, and/or approval of all concerned.

The field inspection shall cover all active segments of the Work. Representatives of both TxDOT and DB Contractor shall accompany the Panel on field inspections.

### **2.2 DB Contractor's Proposal Commitments**

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

### **2.3 DB Contractor's ATCs**

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

### **2.4 Completion Deadlines**

### 2.4.1 Deadlines for Project Completion

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

<b>SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE DEADLINES</b>	
Substantial Completion Deadline	NTP1 plus 2,210 Days
Final Acceptance Deadline	Date of Substantial Completion plus 120 Days

### 2.4.2 Time is of the Essence

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

### 2.4.3 No Time Extension

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

### 2.5 Job Training Plan

DB Contractor's approved Job Training Plan for the Project is set forth in Exhibit 5 to this DBA. The OJT program trainee goal for this Project is 50 for trainees described in Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions.

### 2.6 DBE Goals

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

### 2.7 DBE Performance Plan

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

### 2.8 Prevailing Wages

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

## 2.9 Project-Specific NTPs

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

### SECTION 3. APPROVALS AND THIRD PARTY AGREEMENTS

#### 3.1 TxDOT-Provided Approvals

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

APPROVAL	DATE
2015 Finding of No Significant Impact	July 2, 2015
2015 Final Environmental Assessment (EA)	July 2, 2015
Re-evaluation of the 2015 Final EA and FONSI	September 23, 2019
Interstate Access Justification Report Approval (IAJR)	After Effective Date
I-35 NEX Central Design Exception Approval Report (Design Exception Approval)	After Effective Date
Re-evaluation #2 of the 2015 Final EA and FONSI (Re-evaluation #2)	After Effective Date

**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.

**3.1.3** The following TxDOT-Provided Approvals have not yet been obtained as of the Effective Date: Re-evaluation #2, IAJR and Design Exception Approval. Section 6.2 sets forth DB Contractor's rights with respect to Change Orders for TxDOT-Provided Approvals not obtained as of the Effective Date.

#### 3.2 Project Specific Third Party Agreements

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

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

## SECTION 4. COMPENSATION

### 4.1 Price

As full compensation for performance of the Work and all other obligations of DB Contractor under the Contract Documents, TxDOT shall pay DB Contractor the lump sum price of \$1,513,539,839.37 ("Price"), which shall be subject to adjustment in accordance with the Design-Build Contract. The Price shall be increased or decreased only by a Change Order issued in accordance with Section 4.6 of the General Conditions and Section 6 of this DBA. Payments shall be made in accordance with the terms and conditions of the General Conditions.

#### 4.1.1 Allowances

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

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

### 4.2 Limitations on Payments

#### 4.2.1 Maximum Payment Schedule

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

#### 4.2.2 NTP1 Maximum Payment Amount

The "NTP1 Maximum Payment Amount" is \$40,000,000.

### 4.3 Price Adjustment Due to Delay in NTPs

#### 4.3.1 Delay in NTP1

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

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

where:

" $\Delta$ " 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:

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

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 91<sup>st</sup> day after issuance of NTP1 and the 271<sup>st</sup> day after the Proposal Due Date and ending on the effective date of NTP2;

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

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

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

#### 4.4 Milestone Payments

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

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

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

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

#### 4.4.3 The Milestone Completion Targets are set forth below:

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

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

- (a) DB Contractor has completed the Work with respect to Milestone 1 or Milestone 2, as applicable, described in Appendix 1 to Exhibit 1 to this DBA in accordance with the Contract Documents and the Released for Construction Documents;
- (b) All lanes of traffic (including elevated lanes, mainlanes, ramps, and direct connectors) set forth in the Released for Construction Documents are in their final configuration and available for public use. With respect to Milestone 2, Milestone Completion requires that the crossovers are constructed and available for public use;
- (c) The Milestone Work is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public;

- (d) All major safety features for the subject Milestone Work are installed and functional, including guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;
- (e) All required utility services for the subject Milestone Work are provided for signage, illumination, and ITS;
- (f) All associated drainage, signage, and illumination for the subject Milestone Work are installed and functional; and
- (g) All ITS infrastructure and equipment for the subject Milestone Work has been installed and is operational.

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

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

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

#### **4.4.8 Amendments to General Conditions Regarding Milestone Payments**

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

##### 9.2 Maximum Payment Schedule

The Project Schedule shall provide for payment, excluding any Milestone Payments, to be made solely on the basis of progress by DB Contractor, subject to a cap on payments shown on the Maximum Payment Schedule established for the Project. The Milestone Payments shall be paid in accordance with Section 4.4 of the Design-Build Agreement, and not as progress payments. In other words, at no time shall DB Contractor's cumulative total progress payments (including mobilization payments and payments for Change Order Work) exceed the cumulative total expenditure permitted by the Maximum Payment Schedule. The Maximum Payment Schedule is set forth in Exhibit 10 to the Design-Build Agreement and shall only be revised by a Change Order issued in accordance with Section 4.6. At no time shall the total amount of anticipated draws and the total amount of cumulative draws set forth in the Maximum Payment Schedule exceed the Price, as it may be adjusted in accordance with Section 4.6. The Maximum Payment Schedule shall be revised to account for any Change Orders or amendments, at a minimum, (a) each time cumulative adjustments to the Price through one or more Change Orders or amendments issued since the later of the Effective Date or any previous revision of the Maximum Payment Schedule exceed five percent of the original Price, and (b) at DB Contractor's request, provided DB Contractor demonstrates to TxDOT's satisfaction that its progress payments will exceed the Maximum Payment Schedule within 60 days of the date of DB Contractor's request. DB Contractor and TxDOT may mutually agree to revise the Maximum Payment Schedule more frequently through Change Orders issued in accordance with Section 4.6. The aggregate amount of progress

payments to DB Contractor hereunder shall not exceed the amount allowed by the Maximum Payment Schedule at any time.

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

#### 9.3.6 Payment by TxDOT

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

## SECTION 5. PERFORMANCE SECURITY

### 5.1 Bonds

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

**5.1.1 The "NTP1 Performance Bond Amount" is \$40,000,000.**

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

**5.1.3 The "NTP2 Performance Bond Amount" is \$1,375,375,180.89.**

**5.1.4 The "NTP2 Payment Bond Amount" is \$1,375,375,180.89.**

**5.1.5** Each bond 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

As of the Effective Date, Guarantees 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 Guarantors: Ferrovial Construction US Corp., a Delaware corporation; and Webber, LLC, a Texas limited liability company.

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

**5.2.2** DB Contractor shall report the Tangible Net Worth of DB Contractor, its Equity Members and Guarantors, if any, to TxDOT, on or before each anniversary of the Effective Date by means of audited financial statements of DB Contractor, its Equity Members and any Guarantors, and on a quarterly basis during the Term by means of certifications by the CFOs of the DB Contractor, its Equity Members and any Guarantors.

**5.2.3** If at any time during the course of this DBA, the total combined Tangible Net Worth of DB Contractor, its Equity Members (as applicable) and any Guarantors, is less than \$275,000,000, DB Contractor shall provide one or more guarantees from a Guarantor acceptable to TxDOT so that the combined Tangible Net Worth of DB Contractor, its Equity Members (as applicable) and any Guarantors is at least \$275,000,000. Each such Guaranty shall be in the form attached as Exhibit 13, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations.

### **5.3 Insurance Special Provisions**

Except as is otherwise specified in this Section 5.3, DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance coverage in accordance with Section 3.5 of the General Conditions, and in accordance with the insurance policies, coverage, deductibles and limits specified therein. In addition, DB Contractor shall add SAWS as an additional insured to certain insurance policies in accordance with Section 4.5.9.2 of the General Conditions, as amended by Exhibit 24.

## **SECTION 6. CHANGE ORDERS**

### **6.1 Differing Site Conditions**

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

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

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

### **6.2 Relief Events**

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

**6.2.1** With respect to any TxDOT-Provided Approvals that had not yet been obtained as of the Proposal Due Date, if such approvals contain conditions or requirements that differ materially from the Environmental Commitments included in the Reference Information Documents, and such conditions or requirements (a) have a material adverse impact on DB Contractor’s obligations under the Contract Documents and (b) were not caused by modifications to the Schematic Design that were initiated by DB Contractor, this shall constitute an Other Relief Event and DB Contractor may request a Change Order in accordance with the Relief Event provisions set forth in Section 4.6.9.3.2 of the General Conditions, subject to the requirements in Section 4.6 of the General Conditions.

**6.2.2** Any delays in obtaining a TxDOT-Provided Approval shall not be eligible to be considered an Other Relief Event pursuant to Section 4.6.9.3.2(f) of the General Conditions until the effective date of NTP2. In no event shall DB Contractor be entitled to any Change Order for delays to the Critical Path or additional costs that are attributable to delays in obtaining such TxDOT-Provided Approval prior to the effective date of NTP2.

**6.2.3** Section 4.6.9.3.2(f) of the General Conditions is amended as follows, provided underlined text is hereby added to Section 4.6.9.3.2(f) of the General Conditions:

(f) Subject to Section 6.2 of the Design-Build Agreement, ~~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;

### **6.3 Hazardous Materials**

DB Contractor shall be entitled to a Price increase or an extension of a Completion Deadline due to Hazardous Materials only as provided in Section 4.6.9.4 of the General Conditions and subject to Section 4.6 of the General Conditions, unless otherwise specified in this Section 6.3.

#### **6.3.1 Reimbursable Amount**

In accordance with Section 4.6.9.4.1 of the General Conditions, and subject to Section 4.6 of the General Conditions, DB Contractor shall be entitled to an increase in the Price as compensation for (a) 50% of DB Contractor's Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor that exceed \$14,000,000 but do not exceed \$40,000,000, (b) 100% of Reimbursable Hazardous Materials Management Costs for Pre-Existing Hazardous Materials encountered by DB Contractor that exceed \$40,000,000, and (c) 100% of Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered on Additional Properties acquired as a result of a Necessary Basic Configuration Change or TxDOT-Directed Change. DB Contractor shall be responsible for all other costs related to Pre-existing Hazardous Materials.

#### **6.3.2 Time Extensions**

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

### **6.4 Utilities**

#### **6.4.1 Unidentified Utilities**

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

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

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

#### **6.4.2 SAWS Delays**

The term "SAWS Delay" means a delay to a Critical Path that is directly attributable to SAWS failing to provide a required approval, acceptance, or comment in connection with a "Design Submittal" under the SAWS ILA within the applicable time periods set forth in the agreement. If a SAWS Delay occurs, then (a) DB Contractor shall bear 100%

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

### **6.4.3 NOT USED**

### **6.4.4 Advance Utility Relocations**

**6.4.4.1.** TxDOT has entered into an agreement with CPS Energy and will enter into an agreement with Allied Aviation for the relocation of the Utilities as described in the respective agreements ("Advance Utility Relocation Agreements"). DB Contractor is not responsible for preparing or entering into any agreements with CPS Energy or Allied Aviation for the relocation of such Utilities. TxDOT will cause each of CPS Energy and Allied Aviation to relocate the Utilities as shown in the applicable Advance Utility Relocation Agreement included in the RIDs.

**6.4.4.2.** Subject to the limitations and restrictions in Section 4.6 of the General Conditions, DB Contractor shall be entitled to a Change Order for certain costs and delays to the Critical Path directly attributable to the failure of CPS Energy or Allied Aviation, as applicable, to relocate the Utilities as shown in the applicable Advance Utility Relocation Agreement or by the applicable "Adjustment Completion Date" for the relocation of the Utilities set forth in Section 14.1.2.6.1 and 14.1.2.6.2 of the Design-Build Specifications. DB Contractor shall not be entitled to a Change Order unless such failure (a) has a material negative cost or schedule impact on DB Contractor's obligations under the Contract Documents, and (b) was not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design that were initiated by DB Contractor. In no event shall DB Contractor be entitled to a Change Order due to delays or costs attributable to the limitations described in Section 14.1.2.6.1 and 14.1.2.6.2 of the Design-Build Specifications on DB Contractor's ability to perform Construction Work. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs resulting from the changed Utility relocation. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Except to the extent that this Section 6.4.4.2 allows compensation for Project Overhead, Change Orders under this Section 6.4.4 shall not include compensation for delay or disruption damages.

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

### **6.4.5 Amendments to General Conditions Regarding Utilities**

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

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

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

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

## **6.5 Access to Right of Way**

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

## **6.6 Necessary Basic Configuration Changes**

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

## **6.7 Form of Change Order**

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

## **6.8 DB Contractor Reimbursement for Eminent Domain Assistance**

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

## **6.9 Karst Feature Investigations**

### **6.9.1 Time Extensions**

Subject to Section 4.6 of the General Conditions and this Section 6.9, DB Contractor shall be entitled to an extension of applicable Completion Deadlines for delays to a Critical Path attributable to performance of presence/absence surveys at a Karst Feature required by Section 12.2.5.6 of the Design-Build Specifications, and the need to work around

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

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

### **6.9.2 Limitations on Change Orders for Karst Feature Investigations**

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

### **6.9.3 Amendments to General Conditions Regarding Karst Relief**

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

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

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

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



## 6.10 Railroad Agreements

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

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

### 6.10.1 Railroad Documents

The following documents ("Railroad Documents") are included in a folder labeled "Railroad Documents" in the Reference Information Documents as of the Effective Date: Preliminary Exhibit As for the following locations: SL 1604 Grade, I-410 East to I-35 South DC, I-410 East to I-35 North DC, I-35 North to I-410 West DC, I-35 South to I-410 West DC. If the final executed version of a construction and maintenance agreement with a railroad contains conditions or requirements that differ materially from those contained in the applicable Railroad Documents pertaining to that railroad, and such changed conditions or requirements (a) increase DB Contractor's Direct Costs by more than \$10,000 or result in a delay to the Critical Path and (b) were not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design or the Railroad Documents that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order for certain costs and for delays to the Critical Path resulting from such material changes in conditions and requirements to the extent permitted by this Section 6.10.1. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs to comply with the changed conditions or requirements. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.2.3 and Section 4.6.6.3.

### 6.10.2 Railroad Agreement Delay

**6.10.2.1.** TxDOT shall be responsible for negotiating and entering into construction and maintenance agreements necessary for the Project. DB Contractor shall provide final plan submittals as are required by the railroad and as described in Section 22.2 of the DB Specifications in order for TxDOT to obtain the construction and maintenance agreements. DB Contractor shall be responsible for cooperating and coordinating with TxDOT, including by providing any schematics, plans or other information within 14 days of a request by TxDOT or the railroad for such schematics, plans or other information. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor shall be responsible for obtaining any approvals from railroads or agreements with railroads, including construction and maintenance agreements or modifications thereto, that are necessary to implement an ATC included in Appendix 2 to Exhibit 2 or modifications to the Schematic Design or Preliminary Exhibit A. The term "Railroad Agreement Delay" means a delay to a Critical Path that is directly attributable to the failure of TxDOT and a railroad to execute a construction and maintenance agreement by the dates set forth in this Section 6.10.2.1, as applicable. DB Contractor shall be entitled to a time extension extending affected Completion Deadlines for delays to the Critical Path and increasing the Price for certain additional costs incurred directly attributable to a Railroad Agreement Delay as follows:

DB Contractor shall be entitled to a time extension extending the applicable Completion Deadlines for any Railroad Agreement Delay if the construction and maintenance agreement related to a Preliminary Exhibit A is not executed on or before the following dates:

<b>Location</b>	<b>Construction and Maintenance Agreement</b>
SL 1604 Grade	120 days after submission of final plans submittals to the railroad
I-410 East to I-35 South DC	150 days after submission of final plans submittals to the railroad
I-410 East to I-35 North DC	180 days after submission of final plans submittals to the railroad
I-35 North to I-410 West DC	180 days after submission of final plans submittals to the railroad
I-35 South to I-410 West DC	150 days after submission of final plans submittals to the railroad

For Change Orders extending a Completion Deadline in accordance with this Section 6.10.2.1, DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2 of the General Conditions. Except to the extent that this Section 6.10.2.1 allows compensation for Project Overhead, Change Orders under this Section 6.10.2.1 shall not include compensation for delay or disruption damages.

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

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

- (a) the general requirements and conditions for Change Orders set forth in Section 4.6 of the General Conditions, including Sections 4.6.6.2.3 and 4.6.6.3, have been met;
- (b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that DB Contractor took advantage of Float time available early in the Project Schedule with respect to the affected railroad;
- (c) DB Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct the applicable work; and
- (d) no other circumstance exists that would delay the affected railroad related work even if the construction and maintenance agreement was obtained.

## **6.11 Delay Deductible Aggregate Cap**

The "**Delay Deductible Aggregate Cap**" for the Project is 398 days of Delay Deductibles borne by DB Contractor.

## 6.12 Milestone Completion Delays

DB Contractor shall be entitled to an extension of a Milestone Completion Target for delays due to a Force Majeure Event or a TxDOT-Caused Delay only to the extent set forth in this Section 6.12. In the event TxDOT issues a Change Order to DB Contractor to extend the Substantial Completion Deadline due to a Force Majeure Event or a TxDOT-Caused Delay and such Force Majeure Event or TxDOT-Caused Delay causes delay to the critical path for Milestone Completion of one or more Milestones, the Milestone Completion Target for the affected Milestone may be extended by one day for each day of delay to the critical path for Milestone Completion of the applicable Milestone. In no event shall the number of days by which a Milestone Completion Target is extended exceed the number of days remaining, as of the date the Force Majeure Event or TxDOT-Caused Delay began, until the Milestone Completion Target. As used in this Section 6.12, "critical path" means, for each Milestone, the activities and durations associated with the longest chains of logically connected activities through the Project Schedule to achieve the applicable Milestone, with the least amount of positive slack or the greatest amount of negative slack. DB Contractor may request an extension of a Milestone Completion Target by submitting a Request for Change Order in the form of Appendix 1 to Exhibit 14 with modifications to address the request to extend the applicable Milestone Completion Target.

## SECTION 7. FEES; LIQUIDATED DAMAGES

### 7.1 Fees for Early Issuance of NTP2

TxDOT may condition any early issuance of NTP2 pursuant to Section 8.1.1.6 of the General Conditions upon payment by DB Contractor to TxDOT the amount of \$1,000 for each day during the period that NTP2 has been issued and any condition to NTP2 remains unsatisfied.

### 7.2 Liquidated Damages and Fees Respecting Delays

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

- (a) \$92,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 365 days; and
- (b) \$31,200 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

- (a) \$46,000 for each day after the Substantial Completion Deadline and through the date of Substantial Completion, but not to exceed 398 days (the number of days in the Delay Deductible Aggregate Cap); and
- (b) \$15,600 per day for each day after the Final Acceptance Deadline and through the date of Final Acceptance.

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

### 7.3 Liquidated Damages for Lane Closures and Lane Rental Charges

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

### 7.4 Key Personnel Change Fees; Key Personnel Unavailability Liquidated Damages

#### 7.4.1 Key Personnel Change Fees

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

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

#### 7.4.2 Key Personnel Unavailability Liquidated Damages

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

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

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

DB Contractor further agrees and acknowledges that:

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

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

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

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

## **7.6 Noncompliance Points**

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

## **SECTION 8. IDENTIFIED SUBCONTRACTORS AND KEY PERSONNEL**

### **8.1 Identified Subcontractors**

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

### **8.2 Key Personnel**

Key Personnel positions for the Project, and the approved individuals filling such Key Personnel roles as of the Effective Date, are as set forth in Exhibit 18 to this DBA. TxDOT requires the ability to contact certain Key Personnel, as specified in Section 8.3.1.2 of the General Conditions, 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:

Alamo NEX Construction, LLC  
9600 Great Hills Trail, Suite 200E  
Austin, Texas 78759  
Attention: Felix Martin Cuesta  
Telephone: 512-637-8588  
E-mail: felix.martin@alamonex.us

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

Ferrovial Construction US Corp.  
9600 Great Hills Trail, Suite 200E  
Austin, Texas 78759  
Attention: Legal Department

Telephone: 512-637-8588  
E-mail: legal@ferrovial.us

Webber, LLC  
1725 Hughes Landing Blvd., Suite 1200  
The Woodland, Texas 77380  
Attention: Legal Department  
Telephone: 281-907-8600  
Email: legal@wwebber.com

**9.1.3** All notices, correspondence and other communications to TxDOT shall be marked as regarding the I-35 NEX Central Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

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

With a copy to:

Texas Department of Transportation  
Project Finance, Debt & Strategic Contracts Division  
125 East 11th Street  
Austin, Texas 78701  
Attention: Mr. Benjamin Asher  
Telephone: (512) 463-8611  
E-mail: Benjamin.Asher@txdot.gov

In addition, copies of all notices regarding Disputes, termination and default notices shall be delivered to the following:

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

## **9.2 Designation of Representatives**

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

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

## **SECTION 10. REPRESENTATIONS AND WARRANTIES**

### **10.1 Representations and Warranties**

DB Contractor represents and warrants that:

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

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

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

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

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

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



and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

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

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

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

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

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

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

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

**10.1.14** At any time a Guaranty is required to be in place pursuant to the Contract Documents, all required approvals have been obtained with respect to the execution, delivery and performance of such Guaranty, and

performance of such Guaranty will not result in a breach of or a default under the applicable Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected.

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

## **10.2 Survival of Representations and Warranties**

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

## **SECTION 11. MISCELLANEOUS PROVISIONS**

### **11.1 Dispute Resolution Procedures**

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

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

### **11.2 Entire Agreement**

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

### **11.3 Severability**

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

### **11.4 Survival**

DB Contractor's representations and warranties, the dispute resolution provisions contained in Section 11.1 and Exhibit 20 hereof and Sections 4.9 and 4.10 of the General Conditions, the indemnifications and releases contained in Section 7.12 of the General Conditions, the express rights and obligations of the Parties following termination of this DBA under Section 8.8 and Section 8.9 of the General Conditions, the provisions regarding invoicing and payment under Section

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

### **11.5 Counterparts**

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

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

**DB CONTRACTOR:**

Alamo NEX Construction, LLC,  
a Texas limited liability company

**TEXAS DEPARTMENT OF TRANSPORTATION**

DocuSigned by:  
*Felix Martin*  
By: \_\_\_\_\_  
Name: Felix Martin Cuesta  
Title: Authorized Representative  
Date: 7/18/2021

DocuSigned by:  
*Marc D. Williams*  
By: \_\_\_\_\_  
Name: Marc D. Williams, P.E.  
Title: Executive Director  
Date: 7/22/2021

## EXHIBIT 1

### PROJECT SCOPE

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



Figure 1-1: Project Map

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

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

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

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

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

## 1. Elements of the Work

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

### 1.1. Elevated Lanes

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

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

## 1.2. Mainlanes

### 1.2.1. New Pavement Areas

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

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

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

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

### 1.2.2. Resurfaced Pavement and Base Repair

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

## 1.3. Bridges

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

### 1.3.1. New Bridges (Mainlanes)

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

### 1.3.2. New Bridges (Braided Ramps)

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

### 1.3.3. New Bridges (Direct Connectors)

- N410-ELNB: Eastbound I-410 mainlanes to northbound I-35 elevated lanes
- N410-ELSB: Eastbound I-410 mainlanes to southbound I-35 elevated lanes
  - o Include a two-lane stub-out at approx. Sta. 103+49 to accommodate, in plan and profile, the future southern extension of the elevated lanes
  - o DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the N410-ELNB to traffic
- ELSB-N410: Southbound I-35 elevated lanes to westbound I-410 mainlanes
- ELNB-N410: Northbound I-35 elevated lanes to westbound I-410 mainlanes
  - o Include a two-lane stub-out at approx. Sta. 110+94 to accommodate, in plan and profile, the future southern extension of the elevated lanes
  - o DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the ELSB-N410 to traffic
- ELNB-1604WB: Northbound I-35 elevated lanes to westbound Loop 1604 mainlanes
  - o Structure shall be wide enough to accommodate two lanes, in accordance with shoulder width and stopping sight distance requirements in Design-Build Specifications Table 19-2
- ELSB-1604WB: Southbound I-35 elevated lanes to westbound Loop 1604 mainlanes
  - o Include a one-lane stub-out at approx. Sta. 103+50 to accommodate, in plan and profile, a future ELSB-1604EB direct connector
  - o DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the ELSB-1604WB to traffic, as described in Section 26.3.7 of the Design-Build Specifications
- 1604EB-ELNB: Eastbound Loop 1604 mainlanes to northbound I-35 elevated lanes
  - o Include a one-lane stub-out at approx. Sta. 128+50 to accommodate, in plan and profile, a future 1604WB-ELNB direct connector
  - o Include a 22-foot outside shoulder from stub-out at approx. Sta. 130+00 to tie in with I-35EL NB at approx. Sta. 141+00
  - o DB Contractor shall place portable concrete traffic barrier across the stub-out prior to opening the 1604EB-ELNB to traffic
- 1604EB-ELSB: Eastbound Loop 1604 mainlanes to southbound I-35 elevated lanes
  - o Structure shall be wide enough to accommodate two lanes, in accordance with shoulder width and stopping sight distance requirements in Design-Build Specifications Table 19-2

### 1.3.4. New Bridges (Frontage Roads/Cross Streets)

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

### 1.3.5. Bridge Widening

- I-410 frontage road: Salado Creek (eastbound)
- I-410 mainlanes: Perrin Beitel Rd./FM 2252 (westbound)
- I-35 frontage road: Retama Pkwy. drainage ditch (northbound)
- I-35 mainlanes: Evans Rd. and FM 1518 (northbound and southbound)



### 1.3.6. Bridge Removals

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

## 1.4. Ramps

### 1.4.1. Eastbound Ramps – I-410/Loop 1604

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

### 1.4.2. Westbound Ramps – I-410/Loop 1604

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

### 1.4.3. Northbound Ramps – I-35/I-410

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

### 1.4.4. Southbound Ramps – I-35/I-410

- I-35 mainlanes: Design and reconstruction of exit ramp EXRPSB35-TO between Thousand Oaks Dr. and N. Weidner Rd.

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

## 1.5. Frontage Roads

### 1.5.1. New Pavement Areas

#### 1.5.1.1 I-410/Loop 1604 Eastbound

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

#### 1.5.1.2 I-410/Loop 1604 Westbound

- I-410: Widening from approx. Sta. 81065+10 to approx. Sta. 81087+40
- Loop 1604: Design and reconstruction of frontage road from approx. Sta. 4884+40 to eastbound to westbound turnaround at Union Pacific Railroad
- Loop 1604: Design and construction of 1604FR WB BYPASS
- Loop 1604: Design and reconstruction of westbound to eastbound turnaround at Union Pacific Railroad
- Loop 1604: Design and reconstruction of westbound to eastbound turnaround at Lookout Rd.

#### 1.5.1.3 I-35/I-410 Northbound

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

#### 1.5.1.4 I-35/I-410 Southbound

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

#### 1.5.2. Resurfaced Pavement and Base Repair Areas

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

#### 1.6. Cross Streets

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

#### 1.7. Driveways

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

#### 1.8. Sidewalks

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

#### 1.9. Park and Rides

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

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

#### 1.10. Noise Walls

DB Contractor shall design and construct new noise walls consistent with the Schematic Design and the requirements set forth in the Design-Build Specifications. Locations for the new noise walls are as follows:

- I-410 eastbound frontage road from approx. Sta. 81025+20 to approx. Sta. 81029+02.

### **1.11. Ultimate Project Configuration**

The Work shall accommodate and be consistent with the improvements associated with the Ultimate Project Configuration. DB Contractor shall ensure that any Utilities that require relocation or adjustment to accommodate the Work shall also accommodate the Ultimate Project Configuration to the greatest extent possible within Schematic ROW. The design documents furnished by DB Contractor shall be consistent and compatible with the improvements associated with the Ultimate Project Configuration and provide for a smooth transition from the Work to the Ultimate Project Configuration. The Work shall minimize “throwaway” costs associated with the Project and shall provide for minimal disruption to traffic during the construction of the Ultimate Project Configuration. Additionally, the Project shall be designed and constructed to minimize the cost associated with the Ultimate Project Configuration to the extent that DB Contractor costs to construct the Work are not unreasonably increased. DB Contractor shall design and construct the Project to allow for future construction of the cross street ultimate configurations as described in Item 19, Table 19-3.

**APPENDIX 1 TO EXHIBIT 1****MILESTONE DESCRIPTIONS****1. Milestone 1**

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

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

**2. Milestone 2**

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

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

**EXHIBIT 2**

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

**APPENDIX 1 TO EXHIBIT 2****DB CONTRACTOR'S PROPOSAL COMMITMENTS**

The following Proposal Commitments are in addition to the requirements set forth elsewhere in the Contract Documents and are therefore express requirements of the Design-Build Agreement.

<b>No.</b>	<b>Proposal Location</b>	<b>Proposal Commitments</b>
1.	Technical Proposal A. Executive Summary D. Management Structure, Page 5 (PDF Page 7)	DB Contractor's Board of Managers that includes DB Contractor's senior management will oversee the organization and major strategic decisions.
2.	Technical Proposal A. Executive Summary E. Technical Solutions Summary, Page 6 (PDF Page 8)	DB Contractor will self-perform the beam and deck panel launching scope with specialized crews.
3.	Technical Proposal C. Technical Solutions Project Management, Project Administration VARs, Page 257 (PDF Page 283)	DB Contractor will co-locate all project management Key Personnel (PM, Construction Manager, Utility Manager, Safety Manager, Lead MOT Implementation Manager, IQFM) from NTP1 until Final Acceptance and make such individuals available for in-person meetings at TxDOT's discretion within 24 hours for six months after Final Acceptance.
4.	Technical Proposal C. Technical Solutions Project Management, Project Administration VARs, Page 257 (PDF Page 283)	DB Contractor will empower all DB Contractor's construction management personnel with stop-work authority if they observe unsafe acts.
5.	Technical Proposal C. Technical Solutions Project Management, Project Administration VARs, Page 257 (PDF Page 283)	The Safety Manager will be certified as a Board Certified Safety Professional (BCSP) Safety Management Specialist (SMS).
6.	Technical Proposal C. Technical Solutions Project Management, Project Administration VARs, Page 257 (PDF Page 283)	DB Contractor will appoint a Document Control Manager who will be co-located from DBC execution to Final Acceptance. The electronic data management system (EDMS) will be established and operational by NTP1.

No.	Proposal Location	Proposal Commitments
7.	Technical Proposal C. Technical Solutions Project Management, P Project Administration VARs, age 257 (PDF Page 283)	DB Contractor will provide a Skilled Labor Specialist, a Fleet Manager and a Supply Chain Manager that will be responsible for procuring and managing labor, equipment, and materials. The Fleet/Equipment Manager will also manage equipment maintenance to minimize contamination. All three individuals will be fully available at NTP2 and will be available for in-person meetings as of Conditional Award.
8.	Technical Proposal C. Technical Solutions Project Management, PICP VARs, Page 257 (PDF Page 283)	DB Contractor's project website ( <a href="http://www.alamonexconstruction.com">www.alamonexconstruction.com</a> ) will contain a "tell us how we're doing" page to solicit feedback from the public and stakeholders. DB Contractor will respond to actionable public and stakeholder feedback within 48 hours. DB Contractor will post any announcements or notices requested by TxDOT.
9.	Technical Proposal C. Technical Solutions Project Management, PICP VARs, Page 257 (PDF Page 283)	DB Contractor will provide public relations training, public information personnel contact cards, and provide the public relations phone number on safety badges to ensure all workers are prepared in the event of public inquiry, incident, media or emergency situations.
10.	Technical Proposal C. Technical Solutions Project Management, PICP VARs, Page 257 (PDF Page 283)	DB Contractor will publicize major closures and traffic switches through sponsored ads on social media.
11.	Technical Proposal C. Technical Solutions Project Management, PICP VARs, Page 257 (PDF Page 283)	DB Contractor will dedicate two public involvement team members to assist TxDOT with outreach efforts.
12.	Technical Proposal C. Technical Solutions Project Management, PICP VARs, Page 258 (PDF Page 284)	DB Contractor will use the results of the DB Contractor-performed traffic modeling in the public information campaign to communicate and educate the traveling public of construction activities.



No.	Proposal Location	Proposal Commitments
13.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will provide and require OSHA 30 training for assistant superintendents, superintendents, segment managers, Construction Manager and Project Manager. Surveyors, quality inspectors, and environmental inspectors will be OSHA 10 trained.
14.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will empower all DB Contractor employees to stop work for potentially unsafe conditions.
15.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will provide and require CPR training for all office supervisor personnel. Project offices (field and core) will contain at least one defibrillator.
16.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	The onsite Shift Safety Representatives will be OSHA 30 certified.
17.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	A Safety Training Classroom Trailer will be available to provide onsite regular training or on demand specific training needs.
18.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	Daily toolbox meetings will be led by each foreman to review Job Hazard Analyses (JHAs) to identify work hazards and develop mitigation actions.
19.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will implement accident and incident prevention techniques at all levels prior to and during construction to avoid unnecessary accidents and incidents to workers and the traveling public. Such techniques include: work-plans; pre-task, site-specific orientations; daily toolbox meetings to review JHAs; daily safety field audits; and weekly safety meetings and hazard assessments.

No.	Proposal Location	Proposal Commitments
20.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will provide and require American Traffic Safety Service Association traffic control training for traffic control staff.
21.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will implement procedures to adhere to pandemic restrictions and protocols including: making testing available for all employees at any time; providing paid leave for employees who test positive; providing PPE at all times as requested; requiring face masks; and installing hand washing stations. DB Contractor will continue to innovate and adapt to changing health and safety concerns relating to COVID-19 and any other risks that arise.
22.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will implement “Safety Interactive Pauses”, which are weekly safety memos that explain and analyze a specific job hazard, review the past week’s work and outline the week ahead. DB Contractor will encourage readership by periodically emailing/texting a question about a Safety Interactive Pause and rewarding the first correct answer with a gift card to a local restaurant or business.
23.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will implement a safety incentive program that provides awards (with special recognition events, prizes, gift cards, etc.) on a quarterly basis to segments or crews for achieving predetermined goals for OSHA incident rates.
24.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	DB Contractor will investigate every OSHA recordable incident and near miss incident. The lessons learned from such incidents will be shared with TxDOT and with the entire DB Contractor team, including employees.
25.	Technical Proposal C. Technical Solutions Project Management, S&H Plan VARs, Page 258 (PDF Page 284)	The Safety Manager or Safety Manager Night Shift will be onsite at all times when work is performed.

No.	Proposal Location	Proposal Commitments
26.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 258 (PDF Page 284)	Prior to performing pavement or foundation work, DB Contractor will perform electrical resistivity imaging analysis of the applicable area to proactively identify any karst features, if the area is susceptible to having karst features.
27.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 258 (PDF Page 284)	DB Contractor will measure dust levels and have equipment available to mitigate when (i) based on visual observations and Best Management Practices, the dust levels exceed levels generally acceptable on TxDOT projects, (ii) dust levels could compromise the safety of drivers, laborers and adjacent communities or (iii) both parties agree that dust mitigation is necessary. DB Contractor will run a vacuum truck and sweepers once a week and/or after significant rain, specifically near the construction area egress/ingress.
28.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 258 (PDF Page 284)	DB Contractor will sponsor an annual clean-up of Cibolo Creek and Salado Creek within Project limits.
29.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	DB Contractor will hold a pre-activity meeting for each work area and/or for specific activities, such as dewatering operations, to discuss environmental resources, construction sequencing, construction challenges, environmental compliance construction constraints, and erosion and sediment control.
30.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	DB Contractor will provide dedicated erosion and sediment control crews and resources, such as excavators, trenchers, sweepers, vac trucks, dump trucks and hydroseeders. Each control crew will be staffed with a foreman, operators, and drivers.
31.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	DB Contractor will include environmental staff at Monday morning weekly safety meetings to present issues and address any questions or concerns.

No.	Proposal Location	Proposal Commitments
32.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	DB Contractor will recycle 100% of the milling material from the asphalt resurfacing.
33.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	DB Contractor will separate and recycle 100% of material picked up by maintenance crews during construction (plastics, wood, cans, metal, tires, etc.)
34.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	DB Contractor will not use dry lime for stabilization of base and subgrade.
35.	Technical Proposal C. Technical Solutions Project Management, CEPP VARs, Page 259 (PDF Page 285)	At NTP1, DB Contractor will hold a partnering meeting with TCEQ Region 13 San Antonio to discuss needs, concerns, responsibilities and develop an action plan for the work.
36.	Technical Proposal C. Technical Solutions Project Management, Communication Plan VARs, Page 259 (PDF Page 285)	DB Contractor will hold weekly coordination meetings with TxDOT to review schedule, major traffic switches, design submittal safety and community outreach to ensure unified approach to construction.
37.	Technical Proposal C. Technical Solutions Project Management, Communication Plan VARs, Page 259 (PDF Page 285)	DB Contractor will implement a text group application for sharing notices, reminders, and alerts with DB Contractor staff and TxDOT to prepare for incoming storms, facilitate safety monitoring during storms, and immediately assess and respond to action items following storm events such as dust issues, tracking of sediment on roadways, and other environmental public or third party concerns.
38.	Technical Proposal C. Technical Solutions Project Management, Communication Plan VARs, Page 259 (PDF Page 285)	DB Contractor Project Manager will do biweekly Project car drives with the TxDOT Project Manager through the Project corridor to discuss issues and foster partnering.

No.	Proposal Location	Proposal Commitments
39.	Technical Proposal C. Technical Solutions Project Management, Third Parties Plan VARs, Page 259 (PDF Page 285)	DB Contractor will assign a Third-Party Coordinator to specifically liaise and coordinate DB Contractor activities with key third parties such as IKEA, RBFCU, Northeast Methodist Hospital, HEB Distribution Center and Amazon Fulfillment Center. This person will be the point of contact for all businesses along the corridor and will respond to inquiries within 24 hours.
40.	Technical Proposal C. Technical Solutions Project Management, Third Parties Plan VARs, Page 259 (PDF Page 285)	DB Contractor will assign a Railroad Coordinator with extensive experience to manage design coordination and construction activities with railroads.
41.	Technical Proposal C. Technical Solutions Project Management, Third Parties Plan VARs, Page 259 (PDF Page 285)	DB Contractor will perform quarterly satisfaction surveys to solicit feedback from affected third parties, businesses, residents, and members of the traveling public. These surveys will be advertised through website, social media and jobsite signage. DB Contractor will provide responses to address actionable survey feedback within 48 hours.
42.	Technical Proposal C. Technical Solutions Project Management, Third Parties Plan VARs, Page 259 (PDF Page 285)	DB Contractor will keep the same number of driveways existing as of the Execution Date at each parcel (business or residential) operable at all times during construction, unless it is not needed (i.e. abandoned parcel), it is unsafe, or the parcel owner agrees to reduce the number of driveways temporarily.
43.	Technical Proposal C. Technical Solutions Project Management, Third Parties Plan VARs, Page 259 (PDF Page 285)	DB Contractor will maintain access to the park and ride facilities and VIA Metropolitan Transit bus stops at all times during construction.
44.	Technical Proposal C. Technical Solutions Project Management, Third Parties Plan VARs, Page 259 (PDF Page 285)	DB Contractor will add 2,000 SF of additional sidewalks to connect the new park and ride facilities #3 and #4 with the closest existing/proposed sidewalk network.

No.	Proposal Location	Proposal Commitments
45.	Technical Proposal C. Technical Solutions Project Management, Risk Management VARs, Page 259 (PDF Page 285)	DB Contractor will conduct preconstruction surveys of properties along the corridor to document pre-existing conditions and adjacent building/property status.
46.	Technical Proposal C. Technical Solutions Project Management, Risk Management VARs, Page 260 (PDF Page 286)	DB Contractor will monitor vibration while excavating and drilling rock during construction. DB Contractor will provide mitigation plans when noise levels are excessive in areas where the hardest rock was identified in DB Contractor's geotechnical investigations (between Forum Parkway and Olympia Parkway).
47.	Technical Proposal C. Technical Solutions Project Management, Risk Management VARs, Page 260 (PDF Page 286)	DB Contractor will update the Risk Management Plan monthly and as risks are retired or realized.
48.	Technical Proposal C. Technical Solutions Project Management, Utility Management VARs, Page 260 (PDF Page 286)	DB Contractor will assign a Utility Coordinator that is solely dedicated to CPS and telecom Utility Adjustments.
49.	Technical Proposal C. Technical Solutions Project Management, Utility Management VARs, Page 260 (PDF Page 286)	DB Contractor will assign a separate crew, including a dedicated coordinator under the Utility Manager, that is solely dedicated to managing Milestone#1 Utility conflicts.
50.	Technical Proposal C. Technical Solutions Project Management, Utility Management VARs, Page 260 (PDF Page 286)	At NTP1, DB Contractor will dedicate two crews to perform test holes for design and boreholes during construction.
51.	Technical Proposal C. Technical Solutions Project Management, Utility Management VARs, Page 260 (PDF Page 286)	DB Contractor's Utility Manager will conduct a utility awareness campaign, "Know Before You Go," to inform all crews to the presence of existing utilities and coordinate all crews' activities before construction.
52.	Technical Proposal C. Technical Solutions Project Management, ROW Acquisition VARs, Page 260 (PDF Page 286)	DB Contractor will update the ROW Acquisition Management Plan monthly.

No.	Proposal Location	Proposal Commitments
53.	Technical Proposal C. Technical Solutions Project Management, ROW Acquisition VARs, Page 260 (PDF Page 286)	Upon execution of the DBC, DB Contractor will hold monthly meetings with related companies and subject matter experts (i.e., Cintra Holding US Corp. subsidiaries in Dallas/Fort Worth projects and Grand Parkway Infrastructure, LLC (an indirect subsidiary of Ferrovia Construction US Corp. and Webber, LLC) in SH 99 Grand Parkway H&I in Houston) to review best practices and lessons learned from existing projects that had relevant ROW acquisition activities and issues. The meetings will include mentoring activities and round tables.
54.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 260 (PDF Page 286)	DB Contractor will dedicate a Traffic Control Crew to check all traffic control devices twice a day. The information obtained from the traffic control device checks will be catalogued in a database daily. If there is a reoccurrence of defects or issues, the Lead MOT Implementation Manager will perform a detailed investigation to fix the issue(s).
55.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 260 (PDF Page 286)	DB Contractor will require all DB Contractor superintendents to receive annual training provided by DB Contractor's Traffic Safety Officer on how to monitor for TCP compliance and how to quickly identify and resolve issues (i.e., correct number and location of cones).
56.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 260 (PDF Page 286)	DB Contractor will require and provide American Traffic Safety Service Association traffic control training for all traffic control and construction supervision staff.
57.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 260 (PDF Page 286)	DB Contractor will integrate traffic management software (Nodum or similar) that evaluates the projected lane closures and combines all the activities involved with the resulting traffic flow patterns. The system will be used with Lane Closure Notices to help to anticipate traffic issues and eliminate impacts caused by different closures occurring simultaneously by using an algorithm to prevent LCR conflicts and last-minute cancellations.

No.	Proposal Location	Proposal Commitments
58.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 261 (PDF Page 287)	DB Contractor will form a special Technical Working Group between the maintenance and traffic control design and construction team that will meet weekly and conduct site visits as needed. The Technical Working Group will analyze traffic control device temporary locations and maintenance during Construction. The Technical Working Group will use such analysis to update and improve the MOT plan.
59.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 261 (PDF Page 287)	DB Contractor will hold weekly coordination meetings with TransGuide (City of San Antonio and TxDOT) to share and coordinate information on alternative routes, including those outside of Project limits, to improve corridor mobility and safety.
60.	Technical Proposal C. Technical Solutions Project Management, Traffic Management VARs, Page 261 (PDF Page 287)	DB Contractor will dedicate a Law Enforcement Coordinator to schedule and liaise with law enforcement to ensure that traffic control activities (eg, traffic shifts and lane closures) are appropriately staffed by police officers. DB Contractor will coordinate with adjacent municipalities to cover demand when police officer staffing shortages occur.
61.	Technical Proposal C. Technical Solutions Project Management, Maintenance Management VARs, Page 261 (PDF Page 287)	The Maintenance Manager will be co-located six months before the start of construction to provide input on long-term maintenance and life-cycle considerations to the design.
62.	Technical Proposal C. Technical Solutions Project Management, Maintenance Management VARs, Page 261 (PDF Page 287)	Two months before NTP2, DB Contractor will provide the maintenance services related to the Amenity Element Category (graffiti, animals and stalled or abandoned vehicles and equipment, references C1 and 15.1-15.3) and the Sweeping and Cleaning Element Category (obstructions and debris, reference C4) as described in Design-Build Specifications Attachment 27-1.



No.	Proposal Location	Proposal Commitments
63.	Technical Proposal C. Technical Solutions Project Management, DBE VARs, Page 261 (PDF Page 287)	Beginning at NTP1, DB Contractor will hold quarterly DBE outreach meetings/events throughout the first two years of the Project and will engage in targeted community outreach and partnering with local minority contractors and diverse organizations.
64.	Technical Proposal C. Technical Solutions Project Management, DBE VARs, Page 261 (PDF Page 287)	DB Contractor will maintain annual membership with the Hispanic Contractors Association de San Antonio, Alamo City Black Chamber of Commerce, Alamo Asian Chamber of Commerce, South Central Texas Regional Certification Agency, and Bexar County Small Business & Entrepreneurship Department (San Antonio, Texas).
65.	Technical Proposal C. Technical Solutions Project Management, DBE VARs, Page 261 (PDF Page 287)	DB Contractor will use proprietary and customized labor compliance software to complement the TxDOT LCP Tracker (labor compliance software) and to assist with monitoring and tracking certified payrolls to ensure Davis-Bacon/prevaling wages and labor compliance.
66.	Technical Proposal C. Technical Solutions Project Management, DBE VARs, Page 261 (PDF Page 287)	DB Contractor will hold education workshops quarterly to teach and empower local DBEs with targeted topics such as design-build methods, quantity takeoffs, estimating, construction law, safety, taxes and certified payrolls. DB Contractor will solicit feedback at these workshops from DBEs before establishing bid packages to ensure packages are sized suitably.
67.	Technical Proposal C. Technical Solutions Quality Management, General Quality VARs, Page 262 (PDF Page 289)	DB Contractor and its indirect parent companies will perform two levels of internal QC audits annually. The entities performing the QC audits will be: 1) DB Contractor's quality control department; 2) Ferrovia Construction US Corp/Webber, LLC.

No.	Proposal Location	Proposal Commitments
68.	Technical Proposal C. Technical Solutions Quality Management, General Quality VARs, Page 262 (PDF Page 289)	DB Contractor will apply and follow Ferrovial Construction US Corp's "Good Practice Template," which is a list of Quality Management System good practices, supplemented with construction details, drawings or photos that illustrate the experience, from Ferrovial Construction US Corp's affiliates's projects worldwide.
69.	Technical Proposal C. Technical Solutions Quality Management, General Quality VARs, Page 262 (PDF Page 289)	DB Contractor will implement a specialized electronic document control system (such as Procore or equivalent).
70.	Technical Proposal C. Technical Solutions Quality Management, Senior Management VARs, Page 262 (PDF Page 289)	Ferrovial Construction US Corp. /Webber, LLC will perform management reviews (separate from the quarterly senior management reviews of the QMP described in DB General Conditions Section 4.3.2) annually. The review will analyze and evaluate: key performance indicators; percent of open NCRs versus total NCRs; client complaints; client satisfaction questionnaire results; subcontractor and supplier performance; corrective and preventive actions; percent of quality objectives achieved; and trainings performed.
71.	Technical Proposal C. Technical Solutions Quality Management, Senior Management VARs, Page 263 (PDF Page 290)	DB Contractor will request that TxDOT complete client satisfaction questionnaires (for both DB Contractor and the IQF) yearly.
72.	Technical Proposal C. Technical Solutions Quality Management, PSQMP VARs, Page 263 (PDF Page 290)	DB Contractor's Lead MOT Design Engineer, or designated representative familiar with the MOT design, will perform monthly site visits during the first six months of construction staging implementation during initial construction stages.
73.	Technical Proposal C. Technical Solutions Quality Management, PSQMP VARs, Page 263 (PDF Page 290)	ProjectWise will be used by all the design firms involved in the production of all the drawings during the detailed design phase.

No.	Proposal Location	Proposal Commitments
74.	Technical Proposal C. Technical Solutions Quality Management, PSQMP VARs, Page 263 (PDF Page 290)	DB Contractor will provide training and workshops to all personnel involved in or affected by the modifications to the PSQMP when the modifications are released and, at a minimum, on a quarterly basis.
75.	Technical Proposal C. Technical Solutions Quality Management, PSQMP VARs, Page 263 (PDF Page 290)	The PSQAM will provide direct, real-time notification to construction staff through the EDMS.
76.	Technical Proposal C. Technical Solutions Quality Management, PSQMP VARs, Page 263 (PDF Page 290)	DB Contractor will conduct virtual meetings and facilitate the use of secure digital signatures for TxDOT and the PSQAM to allow all meetings and approvals to occur remotely, if needed.
77.	Technical Proposal C. Technical Solutions Quality Management, PSQMP VARs, Page 263 (PDF Page 290)	PSQAM will retain ASQ Certified Quality Manager accreditation.
78.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 263 (PDF Page 290)	DB Contractor will provide a monthly log that lists quality staff certifications and the certifications' expiration dates.
79.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 263 (PDF Page 290)	DB Contractor will test critical materials (soils/concrete) in advance by DB Contractor's QC laboratory
80.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	The IQF will provide specialized training to DB Contractor's field staff through community colleges and technical schools on critical items such as Safety Certified Transportation Project Professionals by ARTBA, Work Zone Traffic Control by TEEX, Roadway Illumination & Electrical Installation by TEEX, Storm Water & Erosion by TEEX, and Traffic Control Safety by American Traffic Safety Services Association.
81.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	DB Contractor will provide intern opportunities to local college and trade school students.

No.	Proposal Location	Proposal Commitments
82.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	DB Contractor will exceed the number of soil field density tests required in the DB Guide Schedule for Testing in the TxDOT QAP for DB Projects by 40 percent.
83.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	DB Contractor will provide an employee specifically dedicated to monitoring that tools, gauges, instruments, and devices are properly maintained, controlled, calibrated, certified, and adjusted at specified periods to maintain accuracy within industry standards.
84.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	DB Contractor will review TxDOT's Material Producer List on a monthly basis and send notifications through a specialized text group to alert all construction staff when materials are no longer approved.
85.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	The IQF and Owner Verification Firm laboratories will use the same calibration company.
86.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	There will be daily coordination between IQF and OV teams.
87.	Technical Proposal C. Technical Solutions Quality Management, CQMP VARs, Page 264 (PDF Page 291)	DB Contractor will submit quantity reports bi-weekly or more frequently, if requested by TxDOT.
88.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 265 (PDF Page 293)	DB Contractor will promote safety through consistent and regular use of advance notices, integration with TransGuide, message boards and continuous interaction with first responders, TxDOT maintenance staff and TxDOT's public information officer.

No.	Proposal Location	Proposal Commitments
89.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 266 (PDF Page 294)	With different design packages, the design and permitting will be segmented by discipline: roadway design, structures design, drainage design, traffic engineering, environmental and support functions, such as survey and geotechnical.
90.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 268 (PDF Page 296)	DB Contractor will complete pavement resurfacing during allowable Lane Closures after traffic is in its final configuration, covering any temporary striping markings ("ghost stripes") from the construction.
91.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 268 (PDF Page 296)	At locations with existing high mast poles, DB Contractor will maintain the existing high mast lighting without interruption
92.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 269 (PDF Page 297)	During execution, and based on construction feasibility, DB Contractor will expedite the construction in areas where related Lane Closures worsen traffic impacts.
93.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 269 (PDF Page 297)	DB Contractor will share information and coordinate with San Antonio and TxDOT TransGuide to synchronize efforts that improve the mobility in the area.
94.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 269 (PDF Page 297)	During detailed design and construction phases, DB Contractor will continue studying traffic performance and develop solutions to improve performance while maintaining construction feasibility.

No.	Proposal Location	Proposal Commitments
95.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 269 (PDF Page 297)	<p>To maintain access and mitigate access issues, DB Contractor will:</p> <ul style="list-style-type: none"> <li>• ensure that storm water quality controls are implemented prior to starting construction that maintain or exceed existing storm water quality standards on the Project;</li> <li>• ensure access to businesses and residences by providing temporary access during construction;</li> <li>• communicate with businesses and residents before construction impacts their accessibility; and</li> <li>• in cases where properties have only one driveway, construct in two phases to keep access to the applicable property available at all times.</li> </ul>

No.	Proposal Location	Proposal Commitments
96.	<p>Technical Proposal                      C. Technical Solutions Design and Construction Plan, Page 270 (PDF Page 298)</p>	<p>DB Contractor will mitigate and minimize impacts to the neighboring communities by:</p> <ul style="list-style-type: none"> <li>• requiring construction vehicle speed reductions and using watering and chemical stabilization to control dust;</li> <li>• conditioning the major construction entrances with crushed stone to prevent dust accumulating in travel lanes and reduce dust pollution;</li> <li>• using an ultra-robust hydroseed product as solution for steep slopes where roll matting will not work for erosion and sediment control;</li> <li>• establishing and enforcing emissions and noise control standards for construction equipment and vehicles delivering materials;</li> <li>• incorporating non-intrusive, self-adjusting noise level reverse signal alarms, noise meters to monitor acceptable noise levels, and Next Generation Concrete Surface Grinding;</li> <li>• minimizing or eliminating night work adjacent to communities that may be impacted by noise/light;</li> <li>• using portable lights for night work to minimize light from construction activities and pointing lights in a way to minimize light intrusion on neighboring communities and oncoming traffic;</li> <li>• verifying equipment muffler systems are in effect and properly maintained;</li> <li>• using vibration detectors to monitor vibrations from construction activities (such as pavement demolition) that can cause vibration and/or noise that might disturb residents; and</li> <li>• limiting work hours for activities (such as pavement demolition) that can cause vibration and/or noise that might disturb residents.</li> </ul>

<p>97.</p>	<p>Technical Proposal C. Technical Solutions Design and Construction Plan, Page 270 (PDF Page 298)</p>	<p>DB Contractor will implement environmental mitigation measures (listed below) in addition the mitigation measures required by the EA and NEPA reevaluation documents. DB Contractor will:</p> <ul style="list-style-type: none"> <li>• implement mandatory one-hour environmental training orientation (in conjunction with the mandatory safety training) for all employees that covers federal, state and project-specific environmental compliance issues;</li> <li>• hold joint construction and environmental management team meetings weekly to set expectations and directly account for actionable items and areas of environmental risk;</li> <li>• require Job Hazard Analysis (JHA) forms to be filled out daily by all crews - which also contains items for daily BMP inspections;</li> <li>• implement “Environmental Incident Review” for permit violations observed in the field, with consequences for violations up to and including termination;</li> <li>• hold regular formal (with design and quality personnel) and informal (tailgate) meetings between TxDOT and DB Contractor’s construction and environmental teams;</li> <li>• conduct regular field inspections to review environmental compliance;</li> <li>• produce and provide regularly to TxDOT weekly statistical tracking of all BMPs identified on weekly environmental inspection reports;</li> <li>• conduct preconstruction surveys of the properties on the corridor or document pre-existing conditions and adjacent building / property status minimizing complaints and potential litigation;</li> <li>• install noise walls during the first half of construction;</li> <li>• collaborate with TxDOT and stakeholders on ensuring hazardous materials are properly remediated;</li> <li>• adhere to the water quality management</li> </ul>
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No.	Proposal Location	Proposal Commitments
		<p>standards for the Edwards Aquifer Contributing and Recharge Zones; and</p> <ul style="list-style-type: none"> <li>• conduct geophysical investigation consisting of resistivity profiles to assess potential cavities affecting both pavement and foundation of structures.</li> </ul>
98.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 273 (PDF Page 301)	DB Contractor's bridge foundations will be monshafts where possible.
99.	Technical Proposal C. Technical Solutions Design and Construction Plan, Pages 273 & 287 (PDF Pages 302 & 315)	DB Contractor will place more than half of all concrete girders and deck panels with the launching system
100.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 274 (PDF Page 302)	When placing bridge girders, the precast girders (majority Tx70 will be launched in place during the nighttime allowable Lane Closures (planned during Time Period C) where traffic is in conflict with the operation. DB Contractor will perform auxiliary activities during the day with minimal or no traffic control needed.
101.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 276 (PDF Page 304)	DB Contractor will monitor settlement at bridge abutments to verify the primary settlement is complete prior to placing that last lift of fill and placing the approach slab and final pavement.
102.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 276 (PDF Page 304)	DB Contractor will perform geotechnical borings on 100% of the bridge monshafts.
103.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 279 (PDF Page 307)	DB Contractor will design and construct ramp EXRPEBRB with a design speed of 45mph.

No.	Proposal Location	Proposal Commitments
104.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 280 (PDF Page 308)	DB Contractor will design and construct the outside shoulder of the westbound SL-1604 mainlanes from approx. STA 4882+00 to approx. STA 4990+00 such that further widening to the outside will not be required to accommodate the future four lane configuration presented in the "Loop 1604 Future Improvement Schematic" posted in the RID.
105.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 281 (PDF Page 309); CONSTRUCTION STAGING AND TEMPORARY DRAINAGE PLAN roll plots, sheet 2, general note 2	DB Contractor will perform the base repair overnight (Time Period C) in the first stages of the construction (prior to construction staging "Phase 1" described in the Proposal)
106.	Technical Proposal C. Technical Solutions Design and Construction Plan, Page 282 (PDF Page 310)	DB Contractor will eliminate the following existing ponding zones: <ul style="list-style-type: none"> <li>• EXRPSBEVANS Outside Shoulder</li> <li>• I-35 ML SB grass median between ML and FR near FM 3009</li> <li>• I-35 ML NB grass median between ML and FR near FM 3009</li> <li>• I-35 ML SB grass median between ML and FR, between Mid Cities Pkwy and Tri Country Pkwy</li> <li>• I-35 FR NB outside shoulder between Cabana Dr and FM 3009</li> <li>• I-35 FR NB outside shoulder between Schertz Pkwy and Plaza Dr</li> </ul>

**APPENDIX 2 TO EXHIBIT 2****ATCs**

The following table lists DB Contractor's ATCs and ATCs submitted by unsuccessful proposers that DB Contractor may incorporate into the Project. DB Contractor's ATCs and ATCs submitted by unsuccessful proposers are described in further detail in the applicable ATC submittals and the letter, dated April 9, 2021, sent from TxDOT to DB Contractor re Unsuccessful Proposer's ATCs ("ATC Letter"). TxDOT approves the Deviations listed below, subject to the satisfaction of any conditions set forth in the approval letters from TxDOT to DB Contractor or in the ATC Letter, as applicable. Such Deviations, subject to satisfaction of any conditions to approval, expressly supersede any conflicting provisions in the Design-Build Specifications. No other Deviations are permitted in connection with the ATCs. DB Contractor is solely responsible for and bears the schedule and cost risk associated with the implementation or non-implementation of any ATC, including (a) obtaining any third party approvals (including Environmental Approvals and all other Governmental Approvals) required to implement the ATC, (b) the acquisition of any right of way outside the Schematic ROW that is necessary to implement the ATC, and (c) any studies, analyses or further environmental evaluations required to implement the ATC. Moreover, DB Contractor is not entitled to a Change Order for time or money as a result of (i) Site conditions (e.g., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on any right of way outside the Schematic ROW that is necessary to implement the ATC, or (ii) any delay, inability or cost associated with the acquisition of right of way required to implement the ATC. The ATCs, to the extent utilized by DB Contractor, shall otherwise meet all requirements of the Design-Build Specifications.

<b>ATC No.</b>	<b>ATC Description</b>	<b>Section(s) of the Contract Documents from which Deviations are Permitted</b>	<b>Date of Approval Letter</b>
5.	Modifies the vertical and horizontal alignments of the proposed direct connectors at the I-35 and I-410 North interchange except for the ELSB N410 DC. Modifies the relative location between direct connectors and between direct connectors and the elevated lanes. The four-leg intersection between Interchange Pkwy and Fratt Rd remains as per the Schematic Design.	DBA Exhibit 1, Section 1.1. Deviation of the requirement of bridge sections. Sections of the ELNB can be relocated at grade (not bridge section as required). DBA Exhibit 1, Section 1.3.3. Deviation of the requirement of bridge sections. Sections of the ELNB-N410 can be relocated at grade (not bridge section as required).  . Deviation from the border width requirement to Schematic Design 10 ft instead of 15 ft for the intersection between Interchange Pkwy and Fratt Rd.	September 4, 2020

ATC No.	ATC Description	Section(s) of the Contract Documents from which Deviations are Permitted	Date of Approval Letter
13.	Removal of existing off-ramp on Loop 1604 WB at approx. STA 4946+00 and redistribution of traffic to the nearby exit ramp on Loop 1604 at STA 4965+00.	<p>DBA Exhibit 1, Section 1.4.2. Replacement of the following wording "Loop 1604 mainlanes: Design and reconstruction of exit ramp between Lookout Rd. and Randolph Brooks Pkwy." by "Loop 1604 mainlanes: Eliminate exit ramp between Lookout Rd. and Randolph Brooks Pkwy, named "EXRPWBLO, EXRPWBLO-1, WB LP 1604 EXIT @ LOOKOUT RD." in Schematic Design.</p> <p>Schematic Design. Eliminate exit ramp EXRPWBLO between Lookout Rd. and Randolph Brooks Pkwy.</p> <p>DB Specification 19.2. Deviation on the length of acceleration lane required in the Figure 3-34 of the TxDOT Roadway Design Manual Chapter 1-Design Waiver for Speed Change Lanes.</p>	September 4, 2020
22.	Increases the prestressed concrete girder release strengths from 6,000 psi to 6,500 psi.	DB Specifications, Section 21.1. Deviation for concrete girder release strength included in Section 2, Chapter 3 of the TxDOT Bridge Design Manual.	September 4, 2020
56.	Uses a modified SSTR barrier that will act as barrier/retaining wall at specific locations where the required retaining wall height is 5'-6" or less.	<p>DB Specifications, Section 19.2. Deviation on the use of TxDOT Engineering Standard Sheets.</p> <p>DB Specifications, Section 21.1. Deviation from the use of structural elements designed in conformance with TxDOT Engineer Standard Sheets and information listed at <a href="http://www.txdot.gov/inside-txdot/division/bridge.html">http://www.txdot.gov/inside-txdot/division/bridge.html</a>.</p> <p>DB Specifications, Section 21.2.6. Deviation from the following requirement: "All barrier systems used on the Project shall meet current crash test criteria as specified in the AASHTO Manual for Assessing Safety Hardware (MASH), TxDOT Bridge Railing Manual, and other safety requirements as determined by TxDOT."</p>	October 19, 2020

ATC No.	ATC Description	Section(s) of the Contract Documents from which Deviations are Permitted	Date of Approval Letter
57.	Increases the number of strands for the Tx prestressed concrete girders (others than Tx84) while maintaining all design requirements.	DB Specifications, Section 21.1. Deviation from the maximum number of strands required In the TxDOT Bridge Design Guide (BDG) Chapter 3 Section 6.	October 19, 2020
58.	Shifts the I-35 EL NB to the east at Judson Rd. so that the Symmetric Hammerhead columns and their foundations avoid the impact on the existing retaining wall. The ATC also shifts I-35 FR to the east.	DB Specifications, Section 19.2.3 Deviation from the border width at approx. station 3657+00 from 15 ft to 5.5 ft.	October 19, 2020
B-01	Allows elimination of column/cap "flares" at multi-column/straddle bents. DB Contractor is permitted to use aesthetic treatments presented in sheets ATC B-01 HC-23A, HC-23B, HC-23C, and HC-23D,	Design-Build Specification 23.1.1 and the San Antonio District Urban Design Themes for Bexar and Outlying Counties, specifically the elimination of the column/cap "flare" at multicolumn/straddle bents. Sheet HC-23 is replaced by sheets ATC B-01 HC-23A, HC-23B, HC-23C, and HC-23D.	June 25, 2021
B-02	Allows use of Single Sealed Expansion Joint (SEJ) Systems at Inverted Tee Bent Caps.	TxDOT Standard IGMS (Sheet 2 of 2) shows two (2) expansion joints, one on each side of inverted tee stem.	June 3, 2021

ATC No.	ATC Description	Section(s) of the Contract Documents from which Deviations are Permitted	Date of Approval Letter
B-06	Allows modification of the existing SB frontage road alignment at the SW quadrant of the Thousand Oaks Drive intersection, shifting the horizontal alignment approximately four feet to the west, enabling the foundation and columns of the SB elevated lanes to be constructed without impacting the existing MSE walls between the frontage road and SB mainlanes.	<p>Design-Build Specification 19.2.3 and the Schematic Design. Deviation from the border width from 15 ft to 8 ft.</p> <p>Design-Build Specification 19.2.2 and the Schematic Design. Deviation from the outer frontage road lane width from 12 ft to 11 ft.</p> <p>Design-Build Agreement Exhibit 1, Section 1.4.4. and Schematic. Deviation from the Design and reconstruction of exit ramp EXRPSB35-RAN between Whirlwind Dr. and Thousand Oaks Dr. The existing exit ramp EXRPSB35-RAN between Whirlwind Dr. and Thousand Oaks Dr. is permitted to remain in place.</p> <p>Design-Build Agreement Exhibit 1, Section 1.5.2. Deviation from the Reference Information Document entitled, "Resurfaced Pavement and Base Repair Areas". The exit ramp EXRPSB35-RAN scope is deviated from "New Pavement/Structures" to "Resurfaced Pavement Areas."</p>	June 25, 2021
B-09	Allows use of Special Shaped Columns at Geometrically Constrained Locations	DB Specification 23.1.1 and the San Antonio District Urban Design Themes for Bexar and Outlying Counties	June 3, 2021

ATC No.	ATC Description	Section(s) of the Contract Documents from which Deviations are Permitted	Date of Approval Letter
B-11	<p>This concept allows the use of precast concrete bent caps without requiring that voided regions in the precast caps be accessible for future inspections. The proposed construction for precast concrete cap elements on the Project will adhere to Specification Items 424 and 425 for precast and prestressed structure members. DB Contractor, in case of use precast concrete voided bent caps without access for future inspections, shall create, execute, and apply a testing program that adheres to the following criteria:</p> <ol style="list-style-type: none"> <li>a. Applies simulated dead and live loads, and incorporates cyclic effects, if relevant;</li> <li>b. Captures service load level performance;</li> <li>c. Tests to failure to capture ultimate behavior, and documents realized shear or flexural resistance and compares against calculated resistance; and</li> <li>d. Applies load over a duration that would help capture long term losses, specifically</li> <li>e. interpretation of creep losses with an understanding of the limitations of the Project schedule.</li> <li>f. Compares measured observations with the range of industry models and incorporates results into the design to ensure actual service-level stresses are within AASHTO LRFD limits.</li> </ol>	DB Specification 21.2.4. Voided precast bent caps will not be required to provide a six-foot minimum voided height and not be required to provide access to interior surfaces of the cap sections.	June 25, 2021

### EXHIBIT 3

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

- The Design-Build Contract references the following RIDs for purposes of granting a Price increase or extension of a Completion Deadline to DB Contractor:
  - The documents under the folder titled "Utility Strip Map" in the RIDs to the extent set forth in Section 4.5.1 of the General Conditions and Section 4.6.9.2 of the General Conditions;
  - The following level A SUE documents for the purpose of subsection (d) of the definition of TxDOT-Directed Changes: "I-35NEX\_SUE-QL-A.dgn", "I-35NEX\_SUE-QL-A\_THs.pdf", "IH35 NEX - Test Hole Summary Sheet - 20.03.20.pdf", "Level\_A\_SUE\_Box\_Culverts\_IH410\_Interchange.zip", "I-35NEX\_SUE-QL-A\_TH2-4\_20210128.pdf"; and
  - The portions of the Schematic Design that define "Basic Configuration" for purposes of a Change Order for Necessary Basic Configuration Changes or for TxDOT's failure to make available a portion of the Schematic ROW, to the extent set forth in Section 4.6.9.6 of the General Conditions and Section 6.5 of this DBA, respectively.
  
- The following documents constitute the Signed and Sealed Engineering Data for the Project for purposes of a TxDOT-Directed Change:
  - I-35\_NEX\_Geotechnical\_Data\_Report\_Boring\_Logs\_20.07.17.pdf
  - DE19-226 - IH-35 NEX - Final Bridge Boring Logs.20.08.12.pdf
- The Preliminary Exhibit As under the folder titled "Railroad Documents" in the RIDs to the extent set forth in Section 6.2.1.



**EXHIBIT 4****CMC AMENDMENTS**

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

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

**4.6.5.6 Change Order Affecting Capital Maintenance Agreement**

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

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

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

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

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

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

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

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

#### **9.4.3 Withholding for Maintenance Security**

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

**EXHIBIT 5**

**JOB TRAINING PLAN**

**(Attached)**

**I-35 NEX Central Project**

**Job Training Plan**  
 Contract ID#: 89-7XXDB014



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Prepared by:	Stella Vargas (ANC) Diversity Contract Compliance Manager	<b>Version History</b>		
		Number	Date	Doc. Ref.
Reviewed by:	Jose Luis Beltran, Construction Manager	0	04/14/2021	Initial Draft
		01	05/25/2021	Draft Rev. 01
Approved by: <b>ANC</b>	Felix Martin Cuesta, Acting Project Manager	02	06/17/2021	Draft Rev. 02
Approved by: <b>TxDOT</b>	(TxDOT)			

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## 1 Overview

Alamo NEX Construction (ANC) is committed to recruit minorities, females, and disadvantaged persons to fulfill the established On-the-Job Training (OJT) goal on this project and shall perform and comply with all requirements as described in Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions of this Design Build Agreement as well as this Job Training Plan. Alamo NEX Construction understands that the purpose of the Job Training Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Therefore, Alamo NEX Construction's goal is to maintain and grow a diverse, skilled local workforce and commit to achieving the goals of the TxDOT Federal OJT Program Manual through offering an effective Job Training program addresses the key areas and skill categories needed on the project. This includes not only recruiting but also upgrading of women, minorities, and socially and economically disadvantaged persons towards journey-level status. To accomplish this goal ANC will utilize the approved training programs listed in Appendix B of the TxDOT Federal OJT Program Manual.

Alamo NEX Construction's reasonable efforts will include but are not limited to the following:

- Demonstrating outreach to community organizations and groups as well as used other channels to inform and recruit local minority or female workers to fill the training positions.
- Reviewed its current workforce for potential upgrade, including all subcontractors.
- Interviewed minority or female applicants of which did not produce a viable employee.

## 2 Recruitment

Alamo NEX Construction will demonstrate the steps taken to recruit minorities and women for training to comply with this plan and TXDOT's specifications. The recruitment process will begin early in the project well before construction operations start to ensure that trainees are able to complete their training program and the project OJT goal is achieved. Alamo NEX Construction will conduct systematic and direct recruitment within the greater San Antonio area through public and private sources likely to yield minority and women employees especially trainees including outreach to established local, statewide and federal programs.

In addition to the above programs, Alamo NEX Construction will make every effort to identify minorities and women for job opportunities through other local groups and organizations such as the local diverse chambers of commerce. Alamo NEX Construction will also conduct focused outreach to community groups and churches as well as the several diverse colleges and universities in the Greater San Antonio and especially the project area.

## 3 Program Implementation

The Alamo NEX Construction Job Training program is committed to providing opportunities for women and minorities in the skilled construction trades, especially the "critical crafts". We will also make concerted efforts for the inclusion of the physically challenged and veterans. Considering TXDOT's workforce development initiatives, we understand that job creation is a vital part of this project and we will integrate an initiative to encourage the employment of the local community in our program.

We also understand that workforce retention is critical for any project; therefore, we will have a comprehensive job training program in conjunction with the on-the-job training program. Training programs will include the training curriculum that will be provided to the trainee, and the number of hours in the classification code. Our job training programs will train and advance employees toward journeyman worker status. Our plan is to implement proactive methods to exceed the project workforce goal established by TXDOT on the Project.

DB Contractor will use proprietary and customized labor compliance software to complement the TxDOT LCP Tracker (labor compliance software) and to assist with monitoring and tracking certified payrolls to ensure Davis-Bacon/prevaling wages and labor compliance including OJT monitoring and tracking. ANC will upload certified payrolls into the owner's Project SharePoint site on a biweekly basis by its Document Control.

#### **4 Reporting**

Alamo NEX will submit OJT Program training plan, enrollment, and monthly reporting data via the Diversity Management System (DMS) OJT Module. ANC's Document Control will upload all OJT documentation through TxDOT's Project SharePoint site.

#### **5 Reimbursement**

Alamo NEX may upon request will be reimbursed 80 cents per hour upon completion of training given an employee is trained in accordance with an approved training program. ANC understands the following:

- Reimbursement is not allowed if either the failure to provide the required training, or the failure to hire the trainee as journeyworker in the training classification is caused by the contractor.
- Reimbursement is not allowed if the contractor evidences a lack of good faith effort in meeting the requirements of the Training Special Provision, which includes maintenance of records and timely submission of program reporting.
- Reimbursement is not allowed for training on projects that do not contain federal funds.

#### **6 Trainee Wage Rates**

ANC will pay the appropriate Davis-Bacon wage rate or the prevailing wage rate for training rate for training crafts on Department projects.

DB shall compensate the trainee 60 percent of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period; 75 percent for the third quarter; and 90 percent for the last quarter, respectively.

If the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

#### **7 On-Site and Off-Site Training Goals**

To accomplish this training goal, on-site and offsite training programs will provide both direct hire employees and especially subcontractor employees the education needed to safely perform job functions in an efficient manner and to improve skills toward journeyman worker status.

##### **7.1 On-Site Training**

Our personnel will train on the technical aspects of the specific trades including any training for the use of equipment required to perform the tasks. We will use the comprehensive On-the-Job Training program accepted by TXDOT and approved apprenticeship programs will also be customized for each trade. According to the TxDOT On-the-Job Training Program Special Provision for Design-Build and Comprehensive Development Agreement Projects which should be Section 3 of Exhibit 9 to Attachment 3-1 to the General Conditions of the Design Build Agreement, this project has been assigned 50 trainees.

## 7.2 Off-Site Training

Our off-site training will consist of access to OSHA safety classes in addition to classroom instruction about topics such as scheduling, construction best practices and some project management skills for prospective foremen and supervisors. The off-site training will provide additional training for project workers that complements the on-site or on-the-job training and will not comprise a significant part of the overall training. Even though aspects of the training will involve internal project experts, we will welcome the opportunity to collaborate with the workforce initiatives of TXDOT, local community colleges as well as other organizations with work skills training and workforce development initiatives in the Greater San Antonio area.

## 8 Two-Tiered Program

A project specific OJT program will be designed to provide opportunities for both professional work OJT classifications for project support / management and general construction OJT classifications for heavy highway construction trades, such as labor, asphalt and concrete paving, carpentry, and equipment operations. The job training program will maximize trainee retention through recruiting those minority, female and disadvantaged applicants whom are most likely to succeed in graduating into full journey persons.

Key elements of Alamo NEX Construction's job training program include:

- Workforce training programs to safely perform job functions in an efficient manner; programs are available for any contractor and designed to benefit the entire workforce,
- Maximizing the use of hands-on training for both employees and subcontractors,
- Training provided by technical experts in the field and/ or qualified trainers; and
- Follow-up training provided as needed to enhance and reinforce skills

### 8.1 Expanded Work Classifications

We will also explore opportunities to expand the work classifications in the current on-the-job training program to reflect today's technological advancements in the construction industry. This strategy provides trainees with true opportunities to move upward during the completion of a long-term design-build project. We believe that additional classifications align the 35NEX project with similar projects across the country that have advanced beyond the narrowly focused skilled crafts or trades to include semi-skilled crafts, technical, professional and other construction-related services. Any expanded work classifications that Alamo NEX Construction would submit as part of the project-specific OJT program would need to be approved by CIV and FHWA in order to receive goal credit. Those submissions would include the proposed training programs and wage classifications for each additional training classification similar to the additions that were recently approved for our Grand Parkway project in Houston. Some possible expanded technical classifications include:

- quality control technician,
- survey office technician,
- concrete technician,
- office technician,
- GPS operator and
- project manager.



## **9 Program Summary**

The project job training program, especially the recruitment efforts, will begin shortly after NTP2. At that time, we will present the final customized job training program including more specific details regarding the cost and schedule for training. As we stated earlier, our job training program will incorporate our efforts to enroll women and minorities (as well as the physically challenged and veterans) and also establish programs to retain trainees through completion of the project.

In order to maximize the success and impact of the Alamo NEX Construction Job Training program, Alamo NEX Construction will utilize local experienced Diversity and Workforce resources along with our Diversity and Human Resources team members dedicated for workforce development. This workforce team will help maximize outreach efforts, guide the program as well as guide the strategy to and ensure compliance of the team's OJT efforts and ensure compliance through extensive reporting and good faith effort documentation necessary to track those efforts especially with subcontractors who may have OJT positions on the project. Additionally, Alamo NEX Construction will maintain documentation of such efforts including but not limited to emails, letters, interview results, internal and external reports.

Alamo NEX Construction is committed to meet, if not exceed, the workforce goals on this project and will provide good faith documentation of our efforts to meet OJT goal. Members of Alamo NEX Construction Team have a proven record of civil rights compliance and commitment and is committed to exert the same consistent efforts for the 35 NEX project to meet the goals.

**EXHIBIT 6**

**DBE PERFORMANCE PLAN**  
**(Attached)**

**I-35 NEX Central Project**

**DBE Performance Plan**

Contract ID#: 89-7XXDB014



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Prepared by:	Stella Vargas (ANC) Diversity Contract Compliance Manager	<b>Version History</b>		
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Approved by: <b>TxDOT</b>	(TxDOT)			

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Appendix #	Description
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2	Standard Subcontract Document
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## DBE PERFORMANCE PLAN

### 1. DEFINITIONS

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

### 2. POLICY STATEMENT

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

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

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

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

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

### 3. DISADVANTAGED BUSINESS ENTERPRISES (DBE) COMMITMENT

Alamo NEX Construction is committed to fully integrating meaningful DBE participation into our team for this TxDOT I-35 Northeast Expansion (NEX) through outreach, technical assistance/supportive services, compliance monitoring and reporting. Alamo NEX proposes to accomplish DBE participation through an organized outreach, solicitation, and subcontracting plan.

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

The DBE participation goals for the Project are established as 20% of the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners and 13% of the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners. Alamo NEX commits to:

- i. Submitting commitments on DBE design firms within 60 days of NTP1 (contract execution) and
- ii. Submitting commitments on the remaining professional services DBE firms prior to the commencement of construction. Commitments for construction work will be submitted throughout the project as the opportunities are available. Should an existing DBE firm receive additional work, the DB Contractor will notify the Department and submit documentation of the additional amount for the firm to the Department.

Alamo NEX 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 Alamo NEX team is

aware of its obligations as stated in 26 CFR 26.53(e) and Department's DBE Special Provision (Attachment 3-2). Alamo NEX is committed to complying with all DBE program regulations.

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

ANC will hold education workshops quarterly to teach and empower local DBEs with targeted topics such as design-build methods, quantity takeoffs, estimating, construction law, safety, taxes and certified payrolls. We will solicit feedback at these workshops from DBEs before establishing bid packages to ensure packages are sized suitably.

Prior to notification of selection, Alamo NEX Construction began performing *Good Faith Efforts (GFE)* towards achieving the DBE participation goals in Professional Services and Construction and providing opportunities for the minority and DBE subcontracting community to participate on the I-35 NEX Project. GFE by the DB Contractor included:

- 1) A project specific website was created to provide interested subcontractors/subconsultant an overview of the Project, identify the team members and enroll in Alamo NEX vendor database. The vendor database will be the foundation of ANC's vendor directory that the Procurement Team will look to first as opportunities become available.
- 2) Communication and engagement about Alamo NEX's pursuit of the I-35 NEX Project began in November 07, 2019 at the DBE networker held in Austin for the Oak Hill Parkway Project (TxDOT) by Hill Country Infrastructure (Ferrovia-Webber JV) and the 183 North Mobility Project (CTRMA) DBE Networker on February 19, 2020. This pursuit was a Ferrovia-Webber JV under the name Capital Express Partners. Key Team members were present at both events to discuss possible opportunities, phases and anticipated timeframes with all interested vendors. Two project opportunities hand-outs were also created that contained a brief project overview, contact information and procurement timeline that were available at both networkers.
- 3) Communication and Notifications were sent to minority business organizations within the San Antonio and statewide, TxDOT's Office of Civil Rights and ANC's project vendor database. The minority business organization included the Hispanic Association de San Antonio, Alamo City Black Chamber of Commerce, Alamo Asian Chamber of Commerce and the Regional Hispanic Contractors Association. ANC utilized phone calls, emails and Constant Contact as our method of advertisement and communication.
- 4) ANC had identified very early on key DBE consultants to be a part of the team. However, one of our strategies to grow our pool of subconsultants/ subcontractors was to ensure that we engaged in conversation early and often and also by identifying scopes that have DBE availability and cross referencing DBE subcontractors on our past and current P3s, DBs and hard bid projects. This engagement during the proposal stage allowed ANC to identify firms that we can engage soon after an agreement with the has been reached and throughout design, pre-construction and construction phases.

#### 4. ANTICIPATED AREAS OF CONSULTING & CONTRACTING OPPORTUNITIES

Our team has demonstrated success in utilizing DBE firms not just in the construction phase but also in the pre-construction/design phases of the project to achieve the DBE project goals.

Alamo NEX will make every effort to meet the 20% professional services goal and has identified the following professional services areas of work for potential DBE participation to include but not exclusive of the following work scopes:

Targeted Scopes of Work	
Divisions of Work	% Towards Professional Services Goal
Traffic Control Engineering	14.00%
Roadway Engineering	
Structural Engineering	
Drainage Engineering	
Temporary & Erosion Sedimentation Control Engineering	
Lighting Engineering	
ITS Engineering	
3-D Modeling	
Geotechnical Exploration: drilling, field logging & laboratory testing	2.00%
Survey	0.22%
Aesthetic Services	0.26%
CAD Support	0.10%
Professional Services for Quality Assurance	3.20%
Construction Phase Engineering	0.30%
Materials Testing	TBC
Quality Assurance/Control	TBC
<b>TOTALS**</b>	<b>&gt;20%</b>

For our efforts to achieve the 13% DBE participation goal for construction work, Alamo NEX has already identified potential DBE participation in certain construction related opportunities to include but not exclusive of the following work scopes:

Targeted Scopes of Work	
Divisions of Work	% Towards Construction
Guardrail	0.35%
Environmental SW3P & Erosion Control	0.22%
Temporary & Permanent Shoring:	
Shotcrete Placement	0.06%
Rock Nails Walls (Anchors)	0.20%
Soil Nail Walls (Anchors)	
Utility Relocation	0.66%
Rebar (Furnish & Installation)	2.80%
Trucking/Hauling	0.66%
Electrical /Illumination/Traffic Signs (ITS)	0.23%
Traffic Control / MOT Services	0.59%
Concrete Flatwork/Misc. Concrete	0.29%
Walls – MSE and Sound	0.11%
Miscellaneous Concrete Pavement Services	1.74%
Asphalt Milling	0.33%
Misc. Excavation/Earthworks/Grading	0.08%
RCP & RCB Supplies	0.43%
Signage	0.07%
Bridge Rehabilitation	0.04%
Miscellaneous Construction Services	1.16%
Portable Concrete Barrier	0.71%
<b>TOTALS**</b>	<b>&gt;13%</b>

These areas were also identified as areas of high DBE availability by the data initially provided by TxDOT. We have also seen proven success with DBE utilization in the following non-traditional areas of construction work such as structural concrete work, drainage and ITS work.

DB Contractor will provide a procurement timeline for each professional services contracting opportunity, initially, within 30 days of NTP1 (contract execution) and update the timeline with the construction services



contract opportunities on a regular basis as the project schedule progresses in accordance to DBE Special Provision, Attachment 3-2.

A link to the list of qualified DBEs can be found in 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

Beginning at NTP1, ANC will hold quarterly DBE outreach meetings/events throughout the first two years of the Project and will engage in targeted community outreach and partnering with local minority contractors and diverse organizations. Our outreach programs in partnership with the Department should occur throughout the term of the Design- Build Contract and will include:

- Holding DBE project informational meetings.
- Incorporation of opportunities in project website.
- Notifying and advertising Project information and contracting opportunities with local and minority organizations and groups.
- Collaboration with local diverse organizations to outreach programs and events.
- Collaboration with TxDOT's outreach programs and initiatives for the DBE community.
- Participation at local DBE-related events.
- Effective project marketing collateral.
- One-on-one Meetings with interested firms.
- Internal and external project presentations about the project and opportunities

Alamo NEX is also committed to extensive local outreach efforts to several agencies and organizations including but not exclusive of:

- Hispanic Contractors Association de San Antonio (HCA de San Antonio)
- Small Business & Entrepreneurship Department of Bexar County
- Conference of Minority Transportation Officials (COMTO) San Antonio Chapter
- Small Business Development Center Network (University of Texas – San Antonio)
- Alamo City Black Chamber of Commerce
- Black Contractors Association of San Antonio
- Alamo Asian American Chamber of Commerce (Alamo AACC)
- Southwest Minority Supplier Development Council
- Women in Transportation Seminar (WTS) - San Antonio

Additionally, ANC will maintain annual partnerships (if applicable) with the Hispanic Contractors Association de San Antonio, Alamo City Black Chamber of Commerce, Alamo Asian Chamber of Commerce, South Central Texas Regional Certification Agency, and Bexar County Small Business & Entrepreneurship Department (San Antonio, Texas).

## 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.

### b. Proposal Phase Solicitation

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

- OTHON, INC., Consulting Engineers (DBE) – Lead Engineering Firm Member
- VRX, Inc. Professional Services Quality Assurance Support – Environmental
- KYSU Group, PLLC. Professional Services Quality Assurance Support – Traffic and TCP

Alamo NEX will work to start finalizing the professional services opportunities needed during the pre-construction phase within 60 days after NTP2. Due to the nature of design-build contracts, professional services like miscellaneous design services, material testing and QA support can be solicited throughout the project and mainly in the construction phase. The Alamo NEX team has successfully implemented this strategy for DBE participation in the professional services area on other projects and has exceeded the established DBE participation goal.

### 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.

The Professional Services DBE participation goal for the Project are based on the Price allocable to Professional Services less the cost of Professional Services performed by Utility Owners.

- (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. DB Contractor will require Professional Services consultants to notify

ANC when they are considering a subconsultant agreement with a DBE firm, and before entering a subconsultant agreement. 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:

- (a) Ability to provide the number of qualified personnel to complete the required tasks on time;
- (b) Possess the requisite licenses for both the firm and personnel to authorize participation;
- (c) Documentation of design project completion on time and within budget;
- (d) Quality of previous project work completed, including references from past project owners (clients);
- (e) Ability to start when required; and
- (f) Consideration of the DBE goals for the Project.

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

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

**7. CONSTRUCTION SUBCONTRACTOR PROCUREMENT**

**a. General**

The Construction DBE goal is based on the Price allocable to Construction Work less the cost of Construction Work performed by Utility Owners. The DBE participation value may increase or decrease based on changes to the project contract value. Alamo NEX will continue to seek additional DBE firm participation in construction scopes throughout the project. The team anticipates utilizing construction DBE firms throughout the duration of the project to perform such services as clearing and demolition, erosion control and miscellaneous site preparation during the pre-construction phase of the project.

**b. Bid Package Development**

Alamo NEX will encourage any subcontractor (regardless of tier) working on the project to utilize DBE participation to perform work and to notify ANC when they are considering a subcontract agreement or purchase order with a DBE firm and before entering into a subcontract agreement or

purchase order . Our team will actively and strategically solicit DBE participation We will achieve the participation goals using the following strategies:

- Solicit, through all reasonable and available means, the interest of certified DBE firms who have the capability to perform the work of the contract. Allow sufficient time for response.
- Complete proper documentation to ensure all DBE firms are solicited with follow-up emails/calls to firms that do not respond to the initial solicitation to ensure receipt and elicit reasons for not responding to earlier solicitations (e.g., not interested, bidding other jobs, already have sufficient work).
- Select portions of work to be performed by DBE firms in order to increase the likelihood that the project goals for participation will be achieved.
- Provide interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to the solicitation.
- Negotiate in good faith with interested DBE firms.
- Do not reject DBE firms for being unqualified without sound reasons, based on a thorough investigation of their capabilities. Document firms solicited who were found to be unqualified and list the reasons they have been found to be unqualified. This information will be shared with the DBE firms to improve their qualification for future opportunities.
- Actively participate with federal, state and local efforts in the recruiting and training of DBE firms.

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
- (2) Every effort will be made to allow sufficient time to respond to any price proposal solicitation however this cannot be guaranteed. Exceptions may be granted on a case basis for non- critical items at the option of Alamo NEX

d. **Proposal Evaluation**

- (1) Responses to Alamo NEX solicitations will be evaluated 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.
- (2) Responsiveness – Alamo NEX will attempt to contact any qualified that did not respond to the solicitation. The reason for not quoting, if provided, will be documented.

**8. SUBCONTRACT AGREEMENT**

Subcontract agreement templates (Subcontract) for professional services and construction will be reviewed by the DBE Program Manager to ensure that all DBE Special Provision/s and federally required provisions are included. 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.

**9. EXECUTION OF 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 requirements of its subcontract and the Contract.
- (5) The subcontractor will be required to provide monthly progress in the Department's Compliance Monitoring System.

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

- (1) Alamo NEX recognizes that the Department will conduct 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 about any CUF findings.
- (4) In the event of a non-CUF finding by the Department, consult with the Alamo NEX on:
  - (a) Impacts to the project goals and the need for additional DBE credit; and
  - (b) Whether other administrative actions are appropriate.

**c. Assistance to DBEs**

- (6) Alamo NEX 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.
- (7) The only exceptions permitted by specification and allowed by Alamo NEX 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.
- (8) In the event of any emergencies as defined by Section 9.h (2), the Project Manager or is designated representative will notify the Compliance Manager outlining the circumstances and the assistance rendered. The DBE Liaison Officer will assess the value of the assistance and notify the Department the following workday. The value of the assistance will be deducted from the Project DBE monthly progress report.
- (9) Alamo NEX serves as an advocate for all its subcontractors (DBE and non- DBE) with the Department in the event of changes, change orders, and payment.
- (10) 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 Alamo NEX, 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 Alamo NEX.
  - (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 Alamo NEX 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 Alamo NEX 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) Several 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) Violations of apparent prompt pay or 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 Alamo NEX or
  - (c) Failure to comply with any subcontract provision that creates a non-compliance with the Contract.
- (2) Efforts by Alamo NEX 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.
- (4)

**11. REPORTING**

Alamo NEX will comply with the contract compliance monitoring and tracking requirements as stipulated in General Conditions, Attachment 3-2. Alamo NEX and DBEs will provide any noted and requested contract compliance-related data electronically into its own compliance monitoring and tracking system. This includes commitments, monthly payments, substitutions, good faith efforts, and Final Report (see Attachment 3-2). The DB Contractor B2Gnow compliance software is compatible with the owner's Diversity Management System (DMS) and will allow ANC to sync payment information into TxDOT's DMS. This method is being successfully utilized on the Grand Parkway Infrastructure and North Tarrant Express 3C projects.

ANC will use proprietary and customized labor compliance software to complement the TxDOT LCP Tracker (labor compliance software) and to assist with monitoring and tracking certified payrolls to ensure Davis-Bacon/prevaling wages and labor compliance. ANC's Document Control will upload certified payroll through TxDOT's Project SharePoint site. Uploads will occur on a biweekly basis. This method is currently being utilized on Grand Parkway Infrastructure & North Tarrant Express 3C.

DB Contractor understands that it will be responsible for demonstrating the accuracy of the electronic transfer of information using its own proprietary and customized labor compliance software.

**a. DBE Commitment Schedule**

We will attach a DBE commitment Form and supporting documentation, as described in Section 2.3.4 of Attachment 3-2, via the Department's tracking system upon selection of DBE

subcontractor. Progress of commitments towards goal attainment will be monitored as required in Attachment 3-2.

b. **Monthly Reporting Schedule**

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

c. **Quarterly DBE Progress Tracking**

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

d. **Final DBE Report Schedule**

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

e. **DBE Truckers**

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

f. **Plan Updates**

The Alamo NEX shall update the DBE Performance Plan annually. If the Project's Preliminary Baseline Schedule is updated impacting the DBE firm schedule, Alamo NEX 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 project schedule
  - (8) Failure to provide adequate resources;
  - (9) Unprofessional conduct; and
  - (10) A subcontractor removal request by the Department.
- d. Any actions that could lead to termination for a DBE subcontractor must be documented and forwarded to the Department for concurrence. DB Contractor must adhere to the requirements set forth in Attachment 3-2 – DBE Special Provision.
  - e. Adequate opportunities must be afforded to the DBE to remedy deficiencies in accordance with the terms of the subcontract.
  - f. Consultation with and approval by the Department must occur prior to taking any termination action for a DBE subcontractor.

#### **14. REPLACEMENT**

If the DBE is part of a Project goal and the DBE quits and/or is terminated, Alamo NEX should solicit new quotations for the remaining work from other DBEs or solicit quotations for other work available for DBEs. Alamo NEX 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) ANC Acting Project Manager –Felix Martin Cuesta, CEO
  - (2) DBE Liaison Officer – Stella Vargas, Diversity Contract Compliance Manger
  - (3) Labor Compliance Coordinator - TBD
- b. The Department:
  - (1) District DBE Coordinator
  - (2) District Project Manager



Appendix #	Description
1	Standard Professional Services Agreement



Appendix #	Description
2	Standard Subcontract Document



Appendix #	Description
3	Federally Required Provisions

## EXHIBIT 7 PREVAILING WAGE RATES

The wage rates listed herein are those predetermined by the Secretary of Labor and State Statute and listed in the United States Department of Labor's (USDOL) General Decisions dated 01-01-2021 and are the minimum wages to be paid accordingly for each specified classification. 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 herein and not in the USDOL's general decision, must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS: only the controlling wage rate zone applies to the contract. Effective 01-01-2021.

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 (TX20210002)	ZONE TX03 (TX20210003)	ZONE TX04 (TX20210004)	ZONE TX05 (TX20210005)	ZONE TX06 (TX20210006)	ZONE TX07 (TX20210007)	ZONE TX08 (TX20210008)	ZONE TX24 (TX20210024)	ZONE TX25 (TX20210025)	ZONE TX27 (TX20210027)	ZONE TX28 (TX20210028)	ZONE TX29 (TX20210029)	ZONE TX30 (TX20210030)	ZONE TX37 (TX20210037)	ZONE TX38 (TX20210038)	ZONE TX42 (TX20210042)
1428	Agricultural Tractor Operator						\$12.69					\$12.35			\$11.75		
1300	Asphalt Distributor Operator	\$14.87	\$13.49	\$13.88	\$15.72	\$15.58	\$15.55	\$15.72	\$13.28	\$15.32	\$15.62	\$14.36	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87	\$14.05	\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21	\$11.65	\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	\$11.78
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						\$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.09	\$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	\$12.96	\$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				\$19.22		\$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	\$15.90	
1306	Crawler Tractor Operator	\$13.96	\$16.65	\$13.82	\$14.26		\$15.67			\$14.07	\$13.15	\$13.36			\$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	\$13.48	\$12.56	\$13.87	\$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	\$9.50	\$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	\$12.62	\$14.73	\$12.23	\$12.25
1160	Farm Setter, Paving & Curb	\$12.36	\$12.16	\$13.93	\$11.83	\$10.71	\$12.94			\$13.16	\$12.54	\$11.33	\$10.69		\$13.33	\$12.34	\$13.93
1360	Foundation Drill Operator, Crawler Mounted				\$17.99					\$17.99							\$17.43
1363	Foundation Drill Operator, Truck Mounted		\$16.86	\$22.05	\$21.51		\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	\$22.05
1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40	\$13.85		\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33	\$14.96		\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	\$13.02
1329	Joint Sealer																
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.03	\$10.64	\$11.02	\$10.15
1175	Laborer, Utility	\$11.80	\$11.63	\$12.70	\$12.17	\$11.81	\$12.27	\$12.11	\$11.33	\$12.32	\$11.80	\$11.63	\$11.23	\$11.50	\$11.95	\$11.73	\$12.37

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02	ZONE TX03	ZONE TX04	ZONE TX05	ZONE TX06	ZONE TX07	ZONE TX08	ZONE TX24	ZONE TX25	ZONE TX27	ZONE TX28	ZONE TX29	ZONE TX30	ZONE TX37	ZONE TX38	ZONE TX42
		*(TX20210002)	*(TX20210003)	*(TX20210004)	*(TX20210005)	*(TX20210006)	*(TX20210007)	*(TX20210008)	*(TX20210024)	*(TX20210025)	*(TX20210027)	*(TX20210028)	*(TX20210029)	*(TX202210030)	*(TX20210037)	*(TX20210038)	*(TX20210042)
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$15.68		\$14.12			\$15.18	\$13.58	\$12.87		\$13.21	\$14.13	\$14.29	\$12.90
1187	Mechanic	\$20.14	\$15.47	\$17.47	\$17.74	\$17.00	\$17.10			\$17.68	\$18.94	\$18.58	\$17.00	\$16.61	\$18.46	\$16.96	\$17.47
1380	Milling Machine Operator	\$15.84	\$14.64	\$12.22	\$14.29		\$14.18			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	\$12.90
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
1336	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	\$14.84	\$13.17	\$11.17	\$12.79		\$11.37	\$13.24	\$12.68	\$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	Service	\$13.98	\$12.34	\$14.11	\$14.74		\$14.51	\$15.96	\$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	\$13.59	\$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-Floot	\$14.46	\$13.63	\$13.41	\$15.00	\$15.93	\$15.66			\$16.24	\$16.39	\$14.30	\$16.62	\$15.63	\$14.26	\$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	\$13.18		\$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	\$12.98	\$10.54	\$11.67	\$11.76

Notes:

\*Represents the USDOL wage decision.

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.

For reference, the titles and descriptions for the classifications listed here are detailed further in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas* posted on the AGC's 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		

01-01-2021

**EXHIBIT 8**

**DB CONTRACTOR OBLIGATIONS RELATED TO PROJECT-SPECIFIC THIRD PARTY AGREEMENTS**

All DB Contractor obligations related to Third Party Agreements have been incorporated, as appropriate, into the requirements found in the Design-Build Specifications.

The parties acknowledge and agree that no draft Third Party Agreements are included in the RID.



**EXHIBIT 9**  
**ALLOWANCES**

<b>Allowance Name</b>	<b>Allowance Amount</b>	<b>Reference</b>
Core Office Furniture Allowance	\$15,000	Design-Build Specifications Section 10.1.1.5
Field Office Furniture Allowance	\$15,000	Design-Build Specifications Section 10.1.2.5
Private Water Meters Allowance	\$230,000	Design-Build Agreement Section 2.1.6

**EXHIBIT 10****MAXIMUM PAYMENT SCHEDULE**

(all figures are in U.S. dollars, nominal)

<b>Months after NTP 1</b>	<b>Anticipated Draw</b>	<b>Cumulative Draw</b>
1	\$ 20,281,433.85	\$ 20,281,433.85
2	\$ 19,688,271.82	\$ 39,969,705.67
3	\$ 0.00	\$ 39,969,705.67
4	\$ 63,102,357.39	\$ 103,072,063.06
5	\$ 43,287,239.41	\$ 146,359,302.47
6	\$ 38,292,557.94	\$ 184,651,860.41
7	\$ 38,292,557.94	\$ 222,944,418.35
8	\$ 38,443,911.92	\$ 261,388,330.27
9	\$ 53,427,956.33	\$ 314,816,286.60
10	\$ 41,319,637.61	\$ 356,135,924.21
11	\$ 41,470,991.60	\$ 397,606,915.81
12	\$ 41,319,637.61	\$ 438,926,553.42
13	\$ 25,276,115.32	\$ 464,202,668.74
14	\$ 25,124,761.33	\$ 489,327,430.07
15	\$ 25,276,115.32	\$ 514,603,545.39
16	\$ 25,276,115.32	\$ 539,879,660.71
17	\$ 25,124,761.33	\$ 565,004,422.04
18	\$ 25,276,115.32	\$ 590,280,537.36
19	\$ 21,643,619.70	\$ 611,924,157.06
20	\$ 21,643,619.70	\$ 633,567,776.76
21	\$ 20,281,433.85	\$ 653,849,210.61
22	\$ 20,281,433.85	\$ 674,130,644.46
23	\$ 19,978,725.88	\$ 694,109,370.34
24	\$ 18,767,894.01	\$ 712,877,264.35
25	\$ 17,405,708.15	\$ 730,282,972.50
26	\$ 17,405,708.15	\$ 747,688,680.65
27	\$ 17,405,708.15	\$ 765,094,388.80
28	\$ 17,405,708.15	\$ 782,500,096.95
29	\$ 17,405,708.15	\$ 799,905,805.10
30	\$ 17,405,708.15	\$ 817,311,513.25
31	\$ 21,340,911.74	\$ 838,652,424.99
32	\$ 21,189,557.75	\$ 859,841,982.74
33	\$ 21,189,557.75	\$ 881,031,540.49
34	\$ 21,189,557.75	\$ 902,221,098.24
35	\$ 21,189,557.75	\$ 923,410,655.99
36	\$ 21,189,557.75	\$ 944,600,213.74
37	\$ 21,189,557.75	\$ 965,789,771.49

Months after NTP 1	Anticipated Draw	Cumulative Draw
38	\$ 21,189,557.75	\$ 986,979,329.24
39	\$ 21,038,203.77	\$ 1,008,017,533.01
40	\$ 21,038,203.77	\$ 1,029,055,736.78
41	\$ 21,038,203.77	\$ 1,050,093,940.55
42	\$ 24,519,345.40	\$ 1,074,613,285.95
43	\$ 20,281,433.85	\$ 1,094,894,719.80
44	\$ 20,130,079.86	\$ 1,115,024,799.66
45	\$ 20,281,433.85	\$ 1,135,306,233.51
46	\$ 20,130,079.86	\$ 1,155,436,313.37
47	\$ 20,130,079.86	\$ 1,175,566,393.23
48	\$ 20,130,079.86	\$ 1,195,696,473.09
49	\$ 15,135,398.39	\$ 1,210,831,871.48
50	\$ 15,286,752.38	\$ 1,226,118,623.86
51	\$ 15,135,398.39	\$ 1,241,254,022.25
52	\$ 15,135,398.39	\$ 1,256,389,420.64
53	\$ 14,984,044.41	\$ 1,271,373,465.05
54	\$ 15,135,398.39	\$ 1,286,508,863.44
55	\$ 20,735,495.80	\$ 1,307,244,359.24
56	\$ 20,735,495.80	\$ 1,327,979,855.04
57	\$ 20,735,495.80	\$ 1,348,715,350.84
58	\$ 20,584,141.82	\$ 1,369,299,492.66
59	\$ 20,735,495.80	\$ 1,390,034,988.46
60	\$ 20,584,141.82	\$ 1,410,619,130.28
61	\$ 20,584,141.82	\$ 1,431,203,272.10
62	\$ 20,584,141.82	\$ 1,451,787,413.92
63	\$ 20,584,141.82	\$ 1,472,371,555.74
64	\$ 20,584,141.82	\$ 1,492,955,697.56
65	\$ 20,584,141.82	\$ 1,513,539,839.38
66	\$ 0.00	\$ 1,513,539,839.38
67	\$ 0.00	\$ 1,513,539,839.38
68	\$ 0.00	\$ 1,513,539,839.38
69	\$ 0.00	\$ 1,513,539,839.38
70	\$ 0.00	\$ 1,513,539,839.38
71	\$ 0.00	\$ 1,513,539,839.38
72	\$ 0.00	\$ 1,513,539,839.38
73	\$ 0.00	\$ 1,513,539,839.38
74	\$ 0.00	\$ 1,513,539,839.38
75	\$ 0.00	\$ 1,513,539,839.38
76	\$ 0.00	\$ 1,513,539,839.38
77	\$ 0.00	\$ 1,513,539,839.38
78	\$ 0.00	\$ 1,513,539,839.38
<b>TOTAL PRICE (MAXIMUM PAYMENT)</b>	<b>\$1,513,539,839.37</b>	

**TOTAL MOBILIZATION PAYMENT ACTIVITY AMOUNT:**

**\$151,353,983.94**

**EXHIBIT 11**

**MAXIMUM REIMBURSEMENT AMOUNTS FOR  
EMINENT DOMAIN ASSISTANCE**

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

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

**EXHIBIT 12**

**FORMS OF BONDS**

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

**APPENDIX 1 TO EXHIBIT 12**

**FORM OF PERFORMANCE BOND**

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

**I-35 NEX Central Project**

Bond No. \_\_\_\_\_

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Alamo NEX Construction, LLC, a Texas limited liability company (“Principal”), a Design-Build Contract for the I-35 NEX Central Project, duly executed and delivered as of [●], 2021 (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 \_\_\_\_\_ (“Co-Sureties”), all admitted surety insurers in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$40,000,000, which amount shall increase automatically to the amount of \$1,375,375,180.89, effective upon issuance by the Obligee of NTP2 under the DBC (the “Bonded Sum”), for payment of which sum Principal and each Co-Surety jointly and severally firmly bind themselves and their successors and assigns. Each of Co-Sureties and Principal hereby consent to the automatic increase of the Bonded Sum as set forth in the prior sentence and waive notice related to such increase.

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.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Qualifying Delay Late Fees, Noncompliance Charges, Key Personnel Change Fees and Lane Rental Charges, as specified in the Contract Documents, but not to exceed the Bonded Sum.

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

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Co-Sureties 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 their 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 Co-Sureties do not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Co-Sureties shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from the Obligee to Co-Sureties demanding that Co-Sureties perform their obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Co-Sureties proceed as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Co-Sureties have 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 Co-Sureties elect to act under Subparagraph 4.a, 4.b or 4.c above, then the responsibilities of Co-Sureties to the Obligee shall not be greater than those of the Principal under the DBC, and the responsibilities of the Obligee to Co-Sureties 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, Co-Sureties are 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 Co-Sureties under Paragraph 4 of this Bond; and

c. Liquidated Damages, Qualifying Delay Late Fees, Noncompliance Charges, Key Personnel Change Fees and Lane Rental Charges under the DBC.

7. Co-Sureties agree that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the Contract Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any of the Contract Documents, or any rescission or attempted rescission of the DBC, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of Co-Sureties on this Bond, and Co-Sureties hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications. Co-Sureties agree that payments made to contractors and suppliers to satisfy claims on the Payment Bond do not reduce Co-Sureties' legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where Co-Sureties have arranged for completion of the work to satisfy this Bond will not be considered Payment Bond claims.



8. Correspondence or claims relating to this Bond should be sent to Co-Sureties at the following address:

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9. No right of action shall accrue on this Bond to or for the use of any entity other than Oblige or its successors and assigns.

*[Signature page follows]*

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this Bond to be executed and delivered as of \_\_\_\_\_, 2021.

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

\_\_\_\_\_  
or secretary attest

By: \_\_\_\_\_  
Name  
Title:  
Address:

**APPENDIX 2 TO EXHIBIT 12**

**FORM OF PAYMENT BOND**

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

**I-35 NEX Central Project**

Bond No. \_\_\_\_\_

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Alamo NEX Construction, LLC, a Texas limited liability company (“Principal”), a Design-Build Contract for the I-35 NEX Central Project, duly executed and delivered as of [●], 2021 (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 \_\_\_\_\_ (“Co-Sureties”), all admitted surety insurers in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$40,000,000, which amount shall increase automatically to the amount of \$1,375,375,180.89 effective upon issuance by the Obligee of NTP2 under the DBC (the “Bonded Sum”), for payment of which sum Principal and each Co-Surety jointly and severally firmly bind themselves and their successors and assigns. Each of Co-Sureties and Principal hereby consent to the automatic increase of the Bonded Sum as set forth in the prior sentence and waive notice related to such increase.

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 Co-Sureties shall pay for the same in an amount not to 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. Co-Sureties agree that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the Contract Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any of the Contract Documents, or any rescission or attempted rescission of the DBC, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of Co-Sureties on this Bond, and Co-Sureties hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications. Co-Sureties agree that payments made under the Performance Bond do not reduce Co-Sureties’ legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where Co-Sureties have arranged for completion of the work to satisfy the Performance Bond will not be considered claims on this Bond.

3. Correspondence or claims relating to this Bond should be sent to Co-Sureties 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.

*[Signature page follows]*

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this Bond to be executed and delivered as of \_\_\_\_\_, 2021.

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

\_\_\_\_\_  
or secretary attest

By: \_\_\_\_\_  
Name  
Title:  
Address:

**EXHIBIT 13****FORM OF GUARANTY****GUARANTY**

THIS GUARANTY (this "Guaranty") is made as of [●] by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

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

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

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

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

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

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

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

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

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

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

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

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

**4. Liability of Guarantor.**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to TxDOT:

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

With copies to:

Texas Department of Transportation  
Project Finance, Debt & Strategic Contracts Division  
125 East 11th Street  
Austin, Texas 78701  
Attention: Mr. Benjamin Asher  
Telephone: (512) 463-8611  
E-mail: Benjamin.Asher@txdot.gov

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

If to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 14**

**CHANGE ORDER AND DELAY DEDUCTIBLE DETERMINATION FORMS**

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

**APPENDIX 1 TO EXHIBIT 14**

**FORM OF REQUEST FOR CHANGE ORDER**

REQUEST FOR CHANGE ORDER NO. \_\_\_\_\_

CSJ NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

**SECTION I**

Originator: \_\_\_\_\_ Date: \_\_\_\_\_

• Title: \_\_\_\_\_

Contract No: \_\_\_\_\_

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCOPE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REASON FOR REQUEST FOR CHANGE ORDER:**

\_\_\_\_\_  
\_\_\_\_\_

**SECTION II**

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

This Request for Change Order is for (check all that apply):

- \_\_\_\_\_ 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<sup>1</sup>**

Lump sum price is \$ \_\_\_\_\_

**Section IIB<sup>2</sup>**

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<sup>3</sup>**

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

- A. DB Contractor Labor (construction)
  - 1. Wages (unburdened) \$ \_\_\_\_\_
  - 2. Insurance and taxes<sup>4</sup> (45% of A.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) \$ \_\_\_\_\_

<sup>1</sup> Section IIA to be included and completed for negotiated, lump sum Change Orders pursuant to General Conditions Section 4.6.7.

<sup>2</sup> Section IIB to be included and completed for unit price Change Orders pursuant to General Conditions Section 4.6.7.7.

<sup>3</sup> Section IIC to be included and completed for Force Account Change Order pursuant to General Conditions Section 4.6.8.

<sup>4</sup> 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)



D.	Equipment <sup>5</sup> (includes 15% overhead and profit)	\$ _____
E.	Subcontracts (Force Account basis)	\$ _____
F.	Utility Owner Direct Costs	\$ _____
G.	Overhead and Profit	
	1. Labor <sup>6</sup> (25% of A.1)	\$ _____
	2. Materials (15% of C)	\$ _____
	3. Subcontracts (5% of E)	\$ _____
	4. Utility Owner Direct Costs (5% of F)	\$ _____
H.	Project Overhead (Qualifying Delay)	\$ _____
I.	Grand Total	\$ _____

**SECTION III**

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

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

**SECTION IV<sup>7</sup>**

The status of the Substantial Completion Deadline is as follows:

- Unaffected by this Request for Change Order
- Affected by (increasing) (decreasing) the Substantial Completion Deadline by \_\_\_\_\_ calendar days.

The status of the Final Acceptance Deadline is as follows:

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

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

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

<sup>5</sup> Tabulated in accordance with the most recent version of the Rental Rate Blue Book and General Conditions Section 4.6.8.3.1

<sup>6</sup> For overhead, superintendence, profit, and small tools (see General Conditions Section 4.6.8.1)

<sup>7</sup> Revise list of Completion Deadlines if applicable to the Project

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Change order required under CMC? Yes\_\_\_\_\_/No\_\_\_\_\_

If yes, state reason:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

- (a) the above four sections represent a true and complete summary of all aspects of this Request for Change Order;
- (b) the amount of Delay Deductible credit, time and/or compensation requested is justified as to entitlement and amount;
- (c) this Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;
- (d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and
- (e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

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

\_\_\_\_\_  
**DB Contractor Authorized Representative**

**Date:** \_\_\_\_\_

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

\_\_\_\_\_  
TxDOT District Engineer

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
FHWA Project Representative

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VII**    **(Reviewed by TxDOT Chief Engineer, if applicable)<sup>8</sup>**

\_\_\_\_\_  
TxDOT Chief Engineer

Date: \_\_\_\_\_

Comments:

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VIII**    **(Reviewed by Chief Financial Officer, if applicable)<sup>9</sup>**

\_\_\_\_\_  
TxDOT Chief Financial Officer

Date: \_\_\_\_\_

<sup>8</sup> If not required, insert "NOT APPLICABLE" in signature line.

<sup>9</sup> If not required, insert "NOT APPLICABLE" in signature line.

**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.]

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**SECTION IX (Reviewed by TxDOT Executive Director, if applicable)<sup>10</sup>**

\_\_\_\_\_  
**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.]

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<sup>10</sup> If not required, insert "NOT APPLICABLE" in signature line.

**APPENDIX 2 TO EXHIBIT 14**

**FORM OF CHANGE ORDER**

CHANGE ORDER NO. \_\_\_\_\_ CSJ NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

**SECTION I**

Originator: \_\_\_\_\_ Date: \_\_\_\_\_

• Title: \_\_\_\_\_

Contract No: \_\_\_\_\_

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCOPE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REASON FOR CHANGE ORDER:**

\_\_\_\_\_  
\_\_\_\_\_

**SECTION II**

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

This Change Order is for (check all that apply):

- \_\_\_\_\_ 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<sup>1</sup>**

Lump sum price is \$ \_\_\_\_\_

**Section IIB<sup>2</sup>**

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<sup>3</sup>**

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

- |    |  |          |
|----|--|----------|
| A. | DB Contractor Labor (construction)                                   |          |
|    | 1. Wages (unburdened)  | \$ _____ |
|    | 2. Insurance and taxes <sup>4</sup> (45% of A.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)                        | \$ _____ |

<sup>1</sup> Section IIA to be included and completed for negotiated, lump sum Change Orders pursuant to General Conditions Section 4.6.7.

<sup>2</sup> Section IIB to be included and completed for unit price Change Orders pursuant to General Conditions Section 4.6.7.7.

<sup>3</sup> Section IIC to be included and completed for Force Account Change Order pursuant to General Conditions Section 4.6.8.

<sup>4</sup> 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)

- D. Equipment<sup>5</sup> (includes 15% overhead and profit) \$ \_\_\_\_\_
- E. Subcontracts (Force Account basis) \$ \_\_\_\_\_
- F. Utility Owner Direct Costs \$ \_\_\_\_\_
- G. Overhead and Profit
  - 1. Construction Labor<sup>6</sup> (25% of A.1) \$ \_\_\_\_\_
  - 2. Materials (15% of C) \$ \_\_\_\_\_
  - 3. Subcontracts (5% of E) \$ \_\_\_\_\_
  - 4. Utility Owner Direct Costs (5% of F) \$ \_\_\_\_\_
- H. Project Overhead (Qualifying Delay) \$ \_\_\_\_\_
- I. Not To Exceed Amount \$ \_\_\_\_\_

**SECTION III**

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

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

**SECTION IV<sup>7</sup>**

The status of the Substantial Completion Deadline is as follows:

- Unaffected by this Change Order
- Affected by (increasing) (decreasing) the Substantial Completion Deadline by \_\_\_\_\_ calendar days.
- Affected by (increasing) (decreasing) the \_\_\_\_\_ Float by \_\_\_\_\_ calendar days.

The status of the Final Acceptance Deadline is as follows:

- Unaffected by this Change Order
- Affected by (increasing) (decreasing) the Final Acceptance Deadline by \_\_\_\_\_ calendar days.
- Affected by (increasing) (decreasing) the \_\_\_\_\_ Float by \_\_\_\_\_ calendar days.

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

<sup>5</sup> Tabulated in accordance with the most recent version of the Rental Rate Blue Book and General Conditions Section 4.6.8.3.1

<sup>6</sup> For overhead, superintendence, profit, and small tools (see General Conditions Section 4.6.8.1)

<sup>7</sup> Revise list of Completion Deadlines if applicable to the Project

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)
3. Number of days of Project Float \_\_\_\_\_

Justification for Change Order with reference to the Contract Documents:

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Change order required under Capital Maintenance Contract? Yes \_\_\_\_\_/No \_\_\_\_\_

If yes, state reason:

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

- (a) the above four sections represent a true and complete summary of all aspects of this Change Order;
- (b) the amount of Delay Deductible credit, time and/or compensation requested is justified as to entitlement and amount;
- (c) this Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;
- (d) the cost and pricing data forming the basis for the Change Order is complete, accurate and current; and
- (e) there has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

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

\_\_\_\_\_  
**DB Contractor Authorized Representative**

**Date:** \_\_\_\_\_



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

\_\_\_\_\_  
TxDOT District Engineer

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
FHWA Project Representative

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VII**    **(Reviewed by TxDOT Chief Engineer, if applicable)<sup>8</sup>**

\_\_\_\_\_  
TxDOT Chief Engineer

Date: \_\_\_\_\_

Comments:

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VIII**    **(Reviewed by Chief Financial Officer, if applicable)<sup>9</sup>**

\_\_\_\_\_  
TxDOT Chief Financial Officer

Date: \_\_\_\_\_

<sup>8</sup> If not required, insert "NOT APPLICABLE" in signature line.

<sup>9</sup> If not required, insert "NOT APPLICABLE" in signature line.

**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.]

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**SECTION IX (Reviewed by TxDOT Executive Director, if applicable)<sup>10</sup>**

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**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.]

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<sup>10</sup> If not required, insert "NOT APPLICABLE" in signature line.

**APPENDIX 3 TO EXHIBIT 14**

**FORM OF REQUEST FOR DELAY DEDUCTIBLE DETERMINATION**

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. \_\_\_\_\_

CSJ NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

**SECTION I**

Originator: \_\_\_\_\_ Date: \_\_\_\_\_

• Title: \_\_\_\_\_

Contract No: \_\_\_\_\_

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION OF QUALIFYING DELAY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IMPACT TO CRITICAL PATH:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:**

\_\_\_\_\_  
\_\_\_\_\_

**SECTION II**

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
**DB Contractor Authorized Representative**

Date: \_\_\_\_\_

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

\_\_\_\_\_  
**TxDOT District Engineer**

Date: \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
FHWA Project Representative

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION V**    **(Reviewed by TxDOT Chief Engineer, if applicable)<sup>1</sup>**

\_\_\_\_\_  
TxDOT Chief Engineer

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VI**    **(Reviewed by Chief Financial Officer, if applicable)<sup>2</sup>**

\_\_\_\_\_  
TxDOT Chief Financial Officer

Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VII**    **(Reviewed by TxDOT Executive Director, if applicable)<sup>3</sup>**

\_\_\_\_\_  
TxDOT Executive Director

Date: \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup> If not required, insert "NOT APPLICABLE" in signature line.

<sup>2</sup> If not required, insert "NOT APPLICABLE" in signature line.

<sup>3</sup> If not required, insert "NOT APPLICABLE" in signature line.

**Comments:**

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**APPENDIX 4 TO EXHIBIT 14**

**FORM OF DELAY DEDUCTIBLE DETERMINATION**

DELAY DEDUCTIBLE DETERMINATION NO. \_\_\_\_\_

REQUEST FOR DELAY DEDUCTIBLE DETERMINATION NO. \_\_\_\_\_

CSJ NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

**SECTION I**

Originator: \_\_\_\_\_ Date: \_\_\_\_\_

• Title: \_\_\_\_\_

Contract No: \_\_\_\_\_

• DB Contractor Name: \_\_\_\_\_

**DESCRIPTION OF QUALIFYING DELAY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IMPACT TO CRITICAL PATH:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REASON FOR REQUEST FOR DELAY DEDUCTIBLE DETERMINATION:**

\_\_\_\_\_  
\_\_\_\_\_

**SECTION II**

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

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

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

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

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

\_\_\_\_\_  
TxDOT District Engineer

Date: \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
FHWA Project Representative

Date: \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION V**    **(Reviewed by TxDOT Chief Engineer, if applicable)<sup>1</sup>**

\_\_\_\_\_  
TxDOT Chief Engineer

Date: \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup> If not required, insert "NOT APPLICABLE" in signature line.



**SECTION VI**    **(Reviewed by Chief Financial Officer, if applicable)<sup>2</sup>**

\_\_\_\_\_  
TxDOT Chief Financial Officer

Date: \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VII**    **(Reviewed by TxDOT Executive Director, if applicable)<sup>3</sup>**

\_\_\_\_\_  
TxDOT Executive Director

Date: \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>2</sup> If not required, insert "NOT APPLICABLE" in signature line.

<sup>3</sup> If not required, insert "NOT APPLICABLE" in signature line.

**EXHIBIT 15****LANE RENTAL CHARGES AND LIQUIDATED DAMAGES  
FOR LANE CLOSURES**

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

**A. Non-Chargeable Lane Closures and Chargeable Lane Closures**

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

**B. General Requirements for Lane Closures**

1. Except for Lane Closures required due to Incidents or Emergencies, advance written notice of any Lane Closure (a "Lane Closure Notice" or "LCN") must be provided to TxDOT no fewer than fifteen days before the placement of any traffic control devices associated with the Lane Closure, if the Lane Closure is expected to exceed 24 hours in duration. If the Lane Closure is expected to be 24 hours or less, the LCN must be provided to TxDOT no later than seven days before the placement of any traffic control devices associated with the Lane Closure, or as otherwise approved by TxDOT. The LCN shall provide information as to the location and duration of the Lane Closure and shall contain such other information as requested by TxDOT.
2. Except for Lane Closures required due to Incidents or Emergencies, all Lane Closures shall be pursuant to a TCP submitted to TxDOT for approval fourteen days in advance of the Lane Closure. This requirement is increased to 21 days for Full Roadway Closures. Approval of the TCP shall be in TxDOT's good faith discretion. TxDOT and DB Contractor may agree on a standard TCP which can be used on a recurring basis for Lane Closures that come within the parameters of the TCP.
3. Lane Closures shall comply with the approved Traffic Management Plan and an approved TCP. No Lane Closure will be permitted unless DB Contractor can demonstrate that the Lane Closure will provide clear benefit to the progress of the Work. Lane Closures must be coordinated with adjacent projects. When simultaneous requests for traffic control are received from DB Contractor, adjacent projects, and/or Governmental Entities, TxDOT will give priority to the closure request submitted first. For Lane Closures on a non-TxDOT controlled facility, DB Contractor shall obtain approval from the applicable Governmental Entity in addition to approval from TxDOT. DB Contractor shall coordinate Lane Closures that may affect crossing TxDOT facilities with appropriate TxDOT Project staff, as needed, to ensure that no conflicts occur. In addition to obtaining applicable Governmental Entity and TxDOT advance approval, DB Contractor shall inform the PIO no less than ten days in advance of all Full Roadway Closures or Lane Closures exceeding 24 hours in duration, and five days in advance for all Lane Closures 24 hours or less so the PIO can inform the public, emergency services, schools, etc. as needed.
4. DB Contractor shall consider the safety of workers and the traveling public as the primary factor when determining the appropriate time to implement a Lane Closure.

5. The following TxDOT standards, specifications, procedure manuals, and references apply to all Lane Closures:
- Texas Manual of Uniform Traffic Control Devices (TMUTCD);
  - TxDOT Traffic Control Plan (TCP) standards;
  - TxDOT Barricade and Construction (BC) standards; and
  - TxDOT Standard Specifications Item 502 (Barricades Signs and Traffic Handling).

**C. Liquidated Damages for Lane Closures and Lane Rental Charges**

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

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

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

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

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

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

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

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

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

**Notes:**

1. DB Contractor shall be subject to Liquidated Damages and Lane Rental Charges for Lane Closures of the elevated lanes after the date DB Contractor achieves "Milestone Completion" for the applicable lanes.
2. Liquidated Damages shall be assessed for Lane Closures of Thousand Oaks Drive during Friday Night home football game days at Heroes Stadium from 4:00 pm to 11:00 pm. Such Liquidated Damages shall be \$45,000 per hour for a single Lane Closure and \$60,000 per hour for a Full Roadway Closure.
3. Liquidated Damages for the closure of Pat Booker Road and Forum Pkwy on Special Event days shall be \$30,000 per hour for a single Lane Closure and \$40,000 per hour for a Full Roadway Closure. Lane Rental Charges for Lane Closures of Pat Booker Road or Forum Pkwy on weekends during Time Period B shall be \$20,000 per hour for a single Lane Closure and \$30,000 per hour for a Full Roadway Closure. Lane Rental Charges for Lane Closures of Pat Booker Road or Forum Pkwy on weekends during Time Period C shall be \$500 per hour for a single Lane Closure and \$7,500 per hour for a Full Roadway Closure.
4. During Time Period C, single Lane Closures are not subject to Lane Rental Charges provided DB Contractor maintains one lane of traffic in each direction.
5. Lane Closures of acceleration lanes on frontage roads from cross streets shall be subject to Liquidated Damages or Lane Rental Charges, as applicable, in an amount equal to the amount charged for a single Lane Closure on 3-lane frontage roads, unless DB Contractor identifies the applicable Lane Closure in a TCP and the Lane Closure is allowed with TxDOT approval of the TCP.
6. An auxiliary lane for the purposes of this Exhibit 15 is defined as an additional mainlane or frontage road lane adjoining the through-traffic lanes for the purpose of speed change, turning, weaving, truck climbing, maneuvering of entering and leaving traffic, and other purposes supplementary to through-traffic movement.

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

**D. Lane Rental Bank**

The Lane Rental Bank amount for the Project shall be \$130,000,000. DB Contractor shall use the Lane Rental Bank amount during the term of the DBC to pay for Lane Rental Charges assessed for Lane Closures during Time Periods B and C in accordance with Table 15-1. Time Period A and Holidays / Special Events Lane Closures are not eligible for the Lane Rental Bank provisions. Any Lane Rental Charges in excess of the Lane Rental Bank amount will be deducted from DB Contractor's monthly Draw Request or Final Payment.

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

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

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

The allowable Lane Closures defined in Sections E.1 - E.7 are allowable for specific durations at specific locations and are not subject to Liquidated Damages or Lane Rental Charges, as applicable, pursuant to an approved TCP. The allowable Lane Closures shall have the maximum allowable durations shown in Tables 15-2.1 to 15-2.5. Such durations



shall exclude the time periods for Holidays and Special Events listed in Sections G and H, respectively. If Work extends beyond the allowable durations for such operations, then Liquidated Damages and/or Lane Rental Charges will be assessed, as applicable.

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

#### E.1 Mainlanes

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

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

Table 15-2.1 – Allowable Mainlane Closures

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

#### E.2 Ramps

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

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

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

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

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

Table 15-2.2 – Allowable Ramp Lane Closures

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

Notes:

- The Lane Closures identified in Table 15-2.2 that are listed below are not eligible to be allowable Lane Closures without prior TxDOT approval, which may be granted or denied in TxDOT's sole discretion:
  - Location No. 2: I-35 SB to Randolph Exit Ramp at STA 3525+00 (I35 CL)
  - Location No. 4: Weidner to I-35 SB Entrance Ramp at STA 3560+00 (I35 CL)
  - Location No. 6: Weidner to I-35 NB Entrance Ramp at STA 3587+00 (I35 CL)

E.3 Direct Connectors

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

E.4 Frontage Roads

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

lanes in the existing frontage road configuration than in the final frontage road configuration, DB Contractor may maintain the final configuration number of frontage road lanes during construction.

Lane Closures that comply with the minimum number of lanes requirements and the allowable Lane Closure requirements specified in this Section E.4 are neither subject to Liquidated Damages nor Lane Rental Charges, pursuant to an approved TCP. No ramp closures are permitted adjacent to, and in the same direction as, the allowable frontage road Lane Closures specified in Table 15-2.3 during Time Period A for the duration of such frontage road closures, unless the temporary or adjacent ramp access provided for the ramp closure under Section E.2 allows frontage road traffic to enter or exit the highway without passing through an intersection that traffic would not pass through if there was no ramp closure. In addition, if a mainlane exit ramp is closed, DB Contractor may close the frontage road lane serviced by the ramp provided that at least two adjacent frontage road lanes are open to traffic in the same direction.

- During Time Period C and on Sundays, and only in locations where there are three frontage road lanes, excluding auxiliary lanes, single lane frontage road closures are allowed.
- Auxiliary Lane Closures are allowed during the periods when the exit ramp to the applicable frontage road auxiliary lane is closed.
- During Time Period C, and only for the purpose of performing base repairs and pavement resurfacing operations, DB Contractor is allowed to reduce frontage roads to a single lane, excluding auxiliary lanes. The allowable duration for reducing the frontage road to a single lane during Time Period C to perform the base repairs is 415 days.
- For the sole purpose of constructing the I-35 SBEL to I-410N WB connector ramp, the following provisions apply:
  - The existing frontage road adjacent to the proposed I-35 SBEL to I-410N WB connector ramp between approximately STA 128+00 and STA 145+00 (I-35 SBEL to I-410N WB) may be reduced from 2 lanes to a single lane for a maximum allowable duration of 240 days.
  - During Time Periods B and C, a Full Roadway Closure of the frontage road is allowed for a maximum duration of 5 days during Time Period B and 56 days during Time Period C.
  - A Full Roadway Closure of the existing I-410N WB to LP 368 SB connector ramp is allowed for a maximum of 240 days.

Table 15-2.3 – Allowable Frontage Road Lane Closures

No.	Station	Closure Type	Closure Description	Allowable Duration (Days)
1	1499+00 to 1507+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	80
2	1529+00 to 1530+50 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure (See Note 1)	20
3	1537+00 to 1555+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	160
4	1562+00 to 1573+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	90

No.	Station	Closure Type	Closure Description	Allowable Duration (Days)
5	1574+00 to 1585+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	80
6	1586+00 to 1610+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	190
7	1623+00 to 1635+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	100
8	1646+00 to 1658+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	100
9	1667+00 to 1681+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	110
10	1707+00 to 1720+00 (I-35EL NB)	NB Frontage Road	1 Lane Frontage Road Closure	110
11	1720+00 to 1729+50 (I-35 EL NB)	NB Frontage Road	1 Lane Frontage Road Closure	40
12	102+50 to 109+00 (ELNB-1604EB)	Two-Way Frontage Road	1 Lane Frontage Road Closure (See Note 2)	30
13	1724+00 to 1729+00 (I-35 EL NB)	NB Frontage Road	1 Lane Frontage Road Closure (See Note 3)	15
14	1786+00 to 1810+00 (I35 NBEL)	NB Frontage Road	1 Lane Frontage Road Closure	170
15	2490+00 to 2499+00 (I35 SBEL)	SB Frontage Road	1 Lane Closure (See Note 4)	40
16	2514+00 to 2532+50 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	260
17	2532+50 to 2547+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	150
18	2558+00 to 2588+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	110
19	2600+00 to 2612+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	90
20	2612+00 to 2638+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	200
21	2638+00 to 2665+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	190
22	2669+00 to 2671+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	20
23	2696+00 to 2704+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	60
24	109+00 to 116+00 (ELSB-1604WB)	SB-WB Direct Connector	1 Lane I35SB-1604WB DC Closure	30
25	109+00 to 128+00 (ELSB-1604WB)	SB Frontage Road	1 Lane Frontage Road Closure	100
26	2457+00 to 2461+00 (I-35EL SB)	SB Frontage Road	1 Lane Frontage Road Closure	30
27	2665+00 to 2669+00 (I-35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	30

No.	Station	Closure Type	Closure Description	Allowable Duration (Days)
28	2735+00 to 2746+00 (I-35SBEL)	SB Collector Distributor	1 Lane Collector Distributor Closure	70
29	2761+00 to 2771+00 (I-35SBEL)	SB Collector Distributor	1 Lane Collector Distributor Closure	40
30	2733+00 to 2748+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	90
31	2758+00 to 2775+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	130
32	2792+00 to 2811+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	140
33	2815+00 to 2830+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	60
34	2830+00 to 2864+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	270
35	2864+00 to 2866+00 (I35 SBEL)	SB Frontage Road	1 Lane Frontage Road Closure	60

## Notes:

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

## E.5 Cross Streets

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

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

## E.6 Turnarounds

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

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

Table 15-2.4 – Allowable Turnaround Lane Closures

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

## E.7 Existing Retaining Wall Reconstruction

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

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

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

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

No.	Retaining Wall No.	Station (I-35 CL)	Closure Type	Closure Description	Allowable Duration (Days)
1	1	3456+69 to 3458+59	Ramp	I410 EB/Thousand Oaks to I35 SB Entrance Ramp	30
2	2	3456+68 to 3458+79	Ramp	I410 EB/Thousand Oaks to I35 SB Entrance Ramp	30
3	4	3506+66 to 3523+51	NB Frontage Road	1 Lane Frontage Road Closure	90

No.	Retaining Wall No.	Station (I-35 CL)	Closure Type	Closure Description	Allowable Duration (Days)
4	5	3516+25 to 3523+25	Ramp	I35 SB to Randolph Exit Ramp	60
5	6	3520+15 to 3531+96	SB Frontage Road	Must maintain two Lanes	240
6	7	3534+12 to 3545+80 (See Note 1)	Ramp	I35 SB to Thousand Oaks/Starlight Rd. Exit Ramp	30
7	8	3534+12 to 3545+80 (See Note 1)	SB Frontage Road	1 Lane Frontage Road Closure	200
8	9	3543+30 to 3551+25	Ramp	I35 SB to Thousand Oaks/Starlight Rd. Exit Ramp	60
9	10	3558+25 to 3562+75	Ramp	Weidner Rd to I35 SB Entrance Ramp	30
10	11	3560+10 to 3563+00	Ramp	Weidner Rd to I35 SB Entrance Ramp	30
11	12	3582+00 to 3585+50	Ramp	I35 SB to Weidner Rd Exit Ramp	30
12	13	3583+20 to 3593+16	Ramp	I35 SB to Weidner Rd Exit Ramp	60
13	14	3593+67 to 3606+65	Ramp	I35 NB to O'Connor Rd Exit Ramp	140
14	15	3597+05 to 3602+41	Ramp	O'Connor Rd to I35 SB Entrance Ramp	30
15	16	3603+23 to 3610+00	Ramp	I35 NB to O'Connor Exit Ramp	120
16	17	3610+00 to 3623+11	NB Frontage Road	1 Lane Frontage Road Closure	120
17	18	3601+22 to 3617+84	SB Frontage Road	1 Lane Frontage Road Closure	120
18	19	3633+13 to 3640+08	NB Frontage Road	1 Lane Frontage Road Closure	60
19	20	3654+00 to 3655+81	Ramp	Judson Rd to I35 SB Entrance Ramp	30
20	21	3648+40 to 3653+22	NB Frontage Road	1 Lane Frontage Road Closure	60
21	22	3656+48 to 3661+25	NB Frontage Road	1 Lane Frontage Road Closure	60
22	23	3655+10 to 3658+00	Ramp	Judson Rd to I35 SB Entrance Ramp	30
23	24	3658+00 to 3675+00	SB Frontage Road	Must maintain two Lanes	110
24	26	3689+82 to 3697+06	Ramp	I-35 NB to Pat Booker Exit Ramp	120

No.	Retaining Wall No.	Station (I-35 CL)	Closure Type	Closure Description	Allowable Duration (Days)
25	32	3772+88 to 3781+80	NB Frontage Road	1 Lane Frontage Road Closure	120
26	33	3774+22 to 3783+70	SB Frontage Road	1 Lane Frontage Road Closure	120
27	34	3910+20 to 3935+04	NB Frontage Road	Maintain 2 Frontage Road Lanes (See Note 2)	450
28	35	3910+97 to 3930+19	SB Frontage Road	Maintain 2 Frontage Road Lanes (See Note 2)	250

## Notes:

1. Location Nos. 6 and 7 (Retaining Wall Nos. 7 and 8) are the same wall. DB Contractor may implement an allowable ramp closure of 30 days for reconstruction of the existing wall adjacent to the I-35 SB exit ramp to Thousand Oaks and an allowable frontage road Lane Closure of 200 days for reconstruction of the remainder of the existing wall.
2. For Location Nos. 27 and 28 (Retaining Wall Nos. 34 and 35), the allowable Lane Closures are the left-turn, turnaround and acceleration lanes only. DB Contractor must maintain 2 frontage road lanes at all times at these retaining wall locations.
3. If DB Contractor is able to optimize their design to cause an impact of less than 10% to an existing retaining wall listed in Table 15-2.5, then the allowable closure provided in Table 15-2.5 to reconstruct the wall shall have an allowable duration of 30 days.
4. The Lane Closures identified in Table 15-2.5 that are listed below are not eligible to be allowable Lane Closures without prior TxDOT approval, which may be granted or denied in TxDOT's sole discretion:
  - Location No. 1 (Retaining Wall No. 1): I-410 EB/Thousand Oaks to I-35 SB Entrance Ramp from STA 3456+69 to 3458+59 (I-35 CL)
  - Location No. 2 (Retaining Wall No. 2): I-410 EB/Thousand Oaks to I-35 SB Entrance Ramp from STA 3456+68 to 3458+79 (I-35 CL)
  - Location No. 3 (Retaining Wall No. 4): 1 Lane NB Frontage Road Closure from STA 3506+66 to 3523+51 (I-35 CL)
  - Location No. 4 (Retaining Wall No. 5): I-35 SB to Randolph Exit Ramp from STA 3516+25 to 3523+25 (I-35 CL)
  - Location No. 15 (Retaining Wall No. 16): I-35 NB to O'Connor Exit Ramp from STA 3603+23 to 3610+00 (I-35 CL)
  - Location No. 16 (Retaining Wall No. 17): 1 Lane NB Frontage Road Closure from STA 3610+00 to 3623+11 (I-35 CL)
  - Location No. 21 (Retaining Wall No. 22): 1 Lane NB Frontage Road Closure from STA 3656+48 to 3661+25 (I-35 CL)
  - Location No. 24 (Retaining Wall No. 26): I-35 NB to Pat Booker Exit Ramp from STA 3689+82 to 3697+06 (I-35 CL)
  - Location No. 25 (Retaining Wall No. 32): 1 Lane NB Frontage Road Closure from STA 3772+88 to 3781+80 (I-35 CL)
  - Location No. 26 (Retaining Wall No. 33): 1 Lane SB Frontage Road Closure from STA 3774+22 to 3783+70 (I-35 CL)



## F. Other Lane Closure Restrictions

- Any Lane Closure of the same facility in the same direction, with the beginning of one Lane Closure separated from the end of another adjacent Lane Closure by more than 1 mile, shall be considered two separate Lane Closures.
- DB Contractor shall not close two consecutive entrance or two consecutive exit ramps at the same time.
- DB Contractor shall not close two consecutive signalized frontage road intersections at the same time during construction.
- DB Contractor shall maintain a minimum of one driveway per business and residence at all times. For businesses with multiple driveways, when driveway closure is necessary to progress Work, no driveway may be closed for more than 30 consecutive days or more than 45 days in a 90-day period.
- DB Contractor is not permitted to schedule a Full Roadway Closure of the mainlanes simultaneous with a frontage road Lane Closure within the same proximity that might further impact traffic operations.
- Liquidated Damages shall be assessed as a Full Roadway Closure in accordance with Table 15-1 for rolling lane closures that occur during a Holiday, a Special Event, or Time Period A. DB Contractor shall not be assessed Lane Rental Charges where rolling lane closures are implemented if the rolling lane closure is less than 15 minutes in duration during Time Periods B and C and provided that the queued traffic can be dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the rolling lane closure. The determination of whether the queued traffic can be dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the rolling lane closure shall be based on an assessment and joint decision by the IQF and TxDOT. If the traffic queue resulting from rolling lane closure cannot be dispersed within 10 minutes, then Lane Rental Charges shall be assessed. Lane Rental Charges shall also be assessed if any rolling lane closure is greater than 15 minutes in duration.

## G. Holidays

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

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

## H. Special Events

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

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

TxDOT has the right to modify the list of Special Events as they are renamed or replaced. Subject to DB Contractor's right to a Change Order in accordance with Section 4.6.9.8 of the General Conditions. TxDOT also has the right to (a) reschedule a Special Event, (b) lengthen, shorten, or otherwise modify these restrictions as actual traffic conditions may warrant, or (c) add a "Special Event" for certain major events that are currently unknown to TxDOT, which will be handled on an individual basis as they arise. TxDOT shall provide written notice to DB Contractor of any changes to the Special Events. These events could include, but are not limited to, parades for sports championships, major political events, major Arts District events, and large athletic events (such as marathons).

**I. Incidents and Emergencies**

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

**J. Time Periods**

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

Table 15-3 Period Per Hour of the Day

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

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

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

## EXHIBIT 16

### NONCOMPLIANCE POINTS PROVISIONS

#### 1. Noncompliance Points System

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

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

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

#### 2. Assessment Notification and Cure Process

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

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

- (a) Include a description of the Noncompliance Event in reasonable detail, including the number of Noncompliance Points assigned thereto as set forth in the Noncompliance Events Table;
- (b) Identify the party entering the Noncompliance Event, whether DB Contractor, the PSQAF or IQF;
- (c) Identify the reference number and headings and sub-headings assigned to the Noncompliance Event in the Noncompliance Events Table;
- (d) Identify the Project location (if applicable);
- (e) Identify the date and exact time of occurrence;
- (f) Identify the applicable response date and time, if any;
- (g) Indicate the applicable NCE Cure Period, if any, as set forth in the Noncompliance Events Table;

- (h) Indicate status of cure, whether the item is open, cured (by DB Contractor), verified and closed (by the PSQAF or IQF), rejected by TxDOT, or disputed by DB Contractor;
- (i) Indicate the date and exact time of cure (if any);
- (j) Provide either as an attachment or as a cite, documentation otherwise submitted to TxDOT of the cure (if any); and
- (k) Provide such other information as may be required by the electronic database.

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

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

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

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

## **2.2 Notification Initiated by TxDOT**

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

## 2.3 NCE Cure Periods

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

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

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

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

**2.3.5** For each “Category C” Noncompliance Event, no NCE Cure Period is applicable.

## 2.4 Notification of Cure

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

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

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

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

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

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

### **3. Assessment of Noncompliance Points**

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

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

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

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

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

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

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

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

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

#### **4. Trigger Points for Persistent DB Contractor Default**

**4.1** A "Persistent DB Contractor Default", entitling TxDOT to require submittal of DB Contractor's remedial plan under Section 8 of this Exhibit 16, shall exist any time prior to Substantial Completion when 50 or more Noncompliance Points have been assessed in any consecutive six month period. For the purpose of this determination all assessed Noncompliance Points shall be included, regardless of whether the breaches or failures giving rise to the Noncompliance Event were cured.

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

#### **5. Special Provisions for Certain Noncompliance Events**

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

**5.2** If any such Noncompliance Event occurs, then:

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

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

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

#### **6. Provisions Regarding Dispute Resolution**

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

**6.2** DB Contractor may object to TxDOT's rejection of any certification of completion of a cure given pursuant to Section 2.4.4 by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its notice of rejection.



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

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

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

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

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

## **7. Noncompliance Charges**

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

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

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

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

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

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

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

**8.2** Upon the occurrence of a Persistent DB Contractor Default (refer to the trigger points in Section 4.1), DB Contractor shall, within 45 days after notice of the Persistent DB Contractor Default, prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by DB Contractor to improve its performance and reduce (a) DB Contractor's cumulative number of Noncompliance Points assessed under Section 4 to the point that such Persistent DB Contractor Default is cured and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent. TxDOT may require that such actions include improving DB Contractor's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacement of Subcontractors, and delivering security to TxDOT. For the avoidance of doubt, the achievement by DB Contractor of the requirements set forth above shall not relieve DB Contractor from the obligation to submit and act upon a remedial plan.

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

**8.4** DB Contractor's failure to deliver to TxDOT the required remedial plan within such 45-day period shall constitute a material DB Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material DB Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a 30-day cure period. If either of the events remains uncured within the period specified in this Section 8.4, TxDOT may declare that an Event of Default has occurred in accordance with Section 8.8.1 of the General Conditions.

## **9. General Conditions Amendments**

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

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

(t) There occurs any Persistent DB Contractor Default, TxDOT delivers to DB Contractor written notice of the Persistent DB Contractor Default, and either (i) DB Contractor fails to deliver to TxDOT, within 45 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in

Section 8 of Exhibit 16 to the DBA or (ii) DB Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan.

**9.2** New subsections (g) and (h) are hereby added to Section 8.8.1.2 of the General Conditions:

(g) \_\_\_\_\_ Respecting a DB Contractor Default under clause (t)(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;

(h) \_\_\_\_\_ Respecting a DB Contractor Default under clause (t)(ii) of Section 8.8.1.1, a period of 30 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default.

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

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

**ATTACHMENT 1 TO EXHIBIT 16**

<b>Noncompliance Events Table</b>						
<b>Ref No.</b>	<b>Main Heading</b>	<b>Sub-heading</b>	<b>Failure to:</b>	<b>Number of Points</b>	<b>Assessment Category</b>	<b>NCE Cure Period</b>
1	General	Records and Documents	Make all books, records and documents available for inspection and audit by TxDOT or its Authorized Representatives as required by the Contract Documents, including Section 5.13 of the General Conditions.	1	A	1 Day
2	General	Insurance Coverage	Provide TxDOT with a copy of any insurance certificate or evidence of payment of any premium all in accordance with Section 3.5.1.4 of the General Conditions and Section 5.3 of the DBA.	2	B	7 Days
3	General	Implement Directive Letter	Proceed immediately to implement the requirements of a Directive Letter in accordance with Section 4.6.1.2 of the General Conditions.	3	A	7 Days
4	General	Key Personnel	Meet the requirements for Key Personnel set forth in the Contract Documents, including Section 8.2 of the DBA, except to the extent such failure results in Key Personnel Change Fees or Key Personnel Unavailability Liquidated Damages under Section 7.4 of the DBA.	3	B	1 Day
5	General	Noncompliance Events	Notify TxDOT of the occurrence of any Noncompliance Event specified in this the Noncompliance Events Table and as required by the Contract Documents, including this <u>Exhibit 16</u> to the DBA.	2	C	None
6	General	Maintain a Noncompliance Event Database	Maintain a fully functional and up to date Noncompliance Events database accessible to TxDOT in accordance with this <u>Exhibit 16</u> to the DBA.	2	A	7 Days
7	General	TxDOT Review of Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity, as required by the Contract Documents, including Section 5.2.6 of the General Conditions and Section 3 of the DBA.	1	A	7 Days
8	General	Provide Safe and Unrestricted Access to the Project	Provide TxDOT or its Authorized Representatives with safe and unrestricted access to the Project in accordance with Section 5.10.1.2.5 of the General Conditions.	1	B	1 Day

**Noncompliance Events Table**

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

**Noncompliance Events Table**

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

**Noncompliance Events Table**

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

**Noncompliance Events Table**

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



**Noncompliance Events Table**

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

**EXHIBIT 17**

**IDENTIFIED SUBCONTRACTORS**

Lead Engineering Firm: CONSOR-OTHON, a joint venture consisting of CONSOR Engineers, LLC and OTHON, Inc.  
Independent Quality Firm and Professional Services Quality Assurance Firm: Atlas Technical Consultants LLC  
Quality Assurance Support – Traffic and Traffic Control Plan: KYSU Group, PLLC  
Quality Assurance Support - Roadway: Bowman Consulting Group Ltd and Lina T. Ramey & Associates, Inc.  
Quality Assurance Support – Environmental: VRX, Inc.  
Quality Assurance Support – Structures: Wiss, Janney, Elstner Associates, Inc.  
Key Task Lead – Maintenance: Cintra Holding US Corp.  
Key Task Lead – Utilities: CSJ Engineering Associates, LLC  
Key Task Lead – Geotechnical and Quality Support: Terracon Consultants, Inc.  
Key Task Lead – Public Relations: Mosaic Strategy Partners, LLC  
Key Task Lead – Environmental: SWCA, Inc.  
Engineering Firm – T.Y. Lin International

**EXHIBIT 18****KEY PERSONNEL**

<b>POSITIONS</b>	<b>INDIVIDUAL</b>
Project Manager	Pablo Molla
Construction Manager	Jose Luis Beltran
Design Manager	Sandeep Patil, PE
Independent Quality Firm Manager	Marvin Garcia, PE
Lead Structural Engineer	Ben Anderson, PE
Lead Maintenance of Traffic (MOT) Design Engineer	Danny Davila, PE
Professional Services Quality Assurance Manager	Juan Villareal, PE
Lead MOT Implementation Manager	Dean Conrad
Utility Manager	Javier Moino
Safety Manager	Kyle Freeman, BCSP, SMS

**EXHIBIT 19**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

TxDOT Authorized Representatives: TxDOT's Executive Director, the San Antonio District Engineer and their designees

DB Contractor's Authorized Representatives:

Project Manager

Managing Director of Ferrovia Construction Texas, LLC

Heavy Civil Division President of Webber, LLC

## 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 Disputes Review Panel Process and Informal Resolution Procedures process, including all notices, submissions, testimony, working documents, reports and recommendations in connection therewith, are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in any administrative or judicial proceeding subsequent to such dispute resolution process.

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

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

**7. Interest.**

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

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

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

## EXHIBIT 21

### OPERATING PROCEDURES

#### 1. GENERAL

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

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

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

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

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

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

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

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

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

#### 2. FREQUENCY OF MEETINGS

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

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

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

### **3. AGENDA FOR MEETINGS**

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

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

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

The Panel may conduct certain meetings via video conference in accordance with Section 4.9.3.2 of the General Conditions, as amended by Section 2.1.7 of the DBA. At the conclusion of each meeting held at or near the Project site, the Panel will conduct a field observation of active sections of the Work accompanied by representatives of both the DB Contractor and TxDOT. The Parties will point out all areas of the Project that are subject to a potential issue.

### **4. MINUTES OF MEETINGS**

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

### **5. PROCEDURES FOR DISPUTE HEARINGS**

#### **5.1 Procedure to Take a Dispute to the Panel**

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

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

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

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

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

#### **1. Statement of Dispute and Stipulated Facts**

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



## 2. Common Reference Document (CRD)

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

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

- A. Correspondence, in chronological order.
- B. Contract Documents: Portions of specifications, drawings, geotechnical reports, change orders, etc. that are pertinent to the dispute.
- C. Job Records: Pertinent shift, daily and weekly reports, diary pages, submittals, schedules, drawings, pictures, etc.
- D. Reports: Any reports prepared specifically for the dispute by outside parties, consultants, etc.
- E. Other

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

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

### 5.2 List of Representatives

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

### 5.3 Presentation of Dispute

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

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

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

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

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

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

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

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

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

#### **5.4 Redundant Evidence and Oral Statements**

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

#### **5.5 Disputes Involving Subcontractors**

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

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

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

## **5.6 Panel Deliberations**

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

## **5.7 Recommendation**

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

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

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

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

## **6. OTHER**

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

**EXHIBIT 22****DISPUTES REVIEW PANEL AGREEMENT**

THIS DISPUTES REVIEW PANEL AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, among: the Texas Department of Transportation, hereinafter referred to as “TxDOT”, Alamo NEX Construction, LLC, a Texas limited liability company, hereinafter referred to as “DB Contractor”, and \_\_\_\_\_, hereinafter referred to as “Panel Member”. Panel Member is a member of the Disputes Review Panel, hereinafter referred to as the “Panel” for the I-35 NEX Central Project (“Project”). TxDOT, DB Contractor, and Panel Member may be referred to individually herein as a “Party” or collectively as the “Parties”. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Design-Build Contract, dated \_\_\_\_\_, 2021 between TxDOT and DB Contractor (the “DBC”).

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

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

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

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

**I.  
DESCRIPTION OF WORK**

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

**II.  
SCOPE OF SERVICES**

The scope of services of the Panel includes the following.

**A. Adopting Operating Procedures:**

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

B. Conducting Regular Progress Meetings:

All regular meetings are expected to be held at or near the Project site, provided that certain regular meetings may be held by video conference in accordance with Section 4.9.3.2 of the General Conditions, as amended by Section 2.1.7 of the DBA. 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, except for meetings held by video conference, a field inspection of the work being performed on the Project. A member of TxDOT's staff is expected to conduct the round table discussion, and the round table discussion attendees are expected to include selected personnel from TxDOT and DB Contractor. The agenda for each meeting will be set by the Panel in accordance with Section 4.9.3.2 of the General Conditions.

C. Advisory Opinions:

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

D. Conducting Hearings on Disputes:

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

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

### III. PANEL RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV. DB CONTRACTOR RESPONSIBILITIES**

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

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

**V.  
TxDOT'S RESPONSIBILITIES**

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

TxDOT shall furnish the following:

A. Contract Documents and Other Documents

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

B. Coordination

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

C. Services

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

**VI.  
TIME FOR BEGINNING AND COMPLETION**

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

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

**VII.  
PAYMENT**

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

A. Payment for Services and Expenses

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

telephonic meetings and discussions with the Panel and parties to a Dispute, post-hearing deliberations with the other members of the Panel, drafting Panel Recommendations, and reconsideration and modifications of Panel Recommendations when appropriate. Panel Member shall not be entitled to compensation for travel time.

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

#### B. Payments

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

#### C. Inspection of Cost Records

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

### **VIII. ASSIGNMENT**

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

### **IX. TERMINATION OF AGREEMENT**

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

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

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

Should the need arise to appoint a replacement Panel member, the replacement member shall be appointed in the same manner as the original member was appointed. The selection of a replacement Panel member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 28 days.

### **X. LEGAL RELATIONS**

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



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

**XI.  
MISCELLANEOUS**

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

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

PANEL MEMBER

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

DB CONTRACTOR:  
Alamo NEX Construction, LLC,  
a Texas limited liability company

TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 23**

**NOT USED**

**EXHIBIT 24****AMENDMENTS TO UTILITY PROVISIONS**

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

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

4.5 Utilities

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

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

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

4.5.1 New Utilities and Unidentified Utilities

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

4.5.2 Utility Enhancements

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

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

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

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

4.5.2.4 DB Contractor is fully responsible for coordinating its efforts with Utility Owners and for addressing requests by Utility Owners that DB Contractor design or construct Utility Enhancements, except as otherwise provided in this Section 4.5.2. Any Betterment performed as part of a Utility Adjustment, whether by DB Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement or the SAWS ILA. Under no circumstances shall DB Contractor proceed with any Utility Enhancement that is incompatible with the Project or that cannot be performed within the other constraints of applicable Law, the Governmental Approvals and the Contract Documents, including the Completion Deadlines. Under no circumstances Except as otherwise provided for SAWS Utility Enhancements, will DB Contractor will not be entitled to any Price

increase or time extension hereunder as the result of any Utility Enhancement, whether performed by DB Contractor or by the Utility Owner. DB Contractor may, but is not obligated to, design and construct Utility Enhancements, except that DB Contractor is obligated to perform SAWS Utility Enhancements that are incorporated into the Work. DB Contractor shall promptly notify TxDOT of any requests by Utility Owners that DB Contractor considers to be Betterments, and shall keep TxDOT informed as to the status of negotiations with Utility Owners concerning such requests. DB Contractor shall provide TxDOT with such information, analyses, and certificates as may be requested by TxDOT in order to determine compliance with this Section 4.5.2.

#### 4.5.3 Utility Agreements

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

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

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

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

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

#### 4.5.4 Failure of Utility Owners to Cooperate

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

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

4.5.4.3 If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1, based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(a) and (b), then DB Contractor shall take such action as is appropriate to satisfy the conditions and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1 based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(c) and (d), then DB Contractor shall take such action as DB Contractor deems advisable during the next 30 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until DB Contractor succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence DB Contractor presents, that the conditions to assistance have been satisfied. DB Contractor shall have the right to submit the question of the reasonableness of TxDOT's determination through the dispute resolution process described in Section 4.9, Section 4.10 and DBA Exhibit 20.

#### 4.5.5 Delays by Utility Owners

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

- (a) DB Contractor shall bear 100% of the risk of Uncooperative Utility Delays for the first 60 cumulative days and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;
- (b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Uncooperative Utility Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;
- (c) DB Contractor and TxDOT shall share equally in the risk of Uncooperative Utility Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Uncooperative Utility Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and
- (d) TxDOT shall bear 100% of the risk of Uncooperative Utility Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2 for Uncooperative Utility Delays that exceed 180 cumulative days.

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

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

4.5.5.2.1 The Utility Agreement shall include an anticipated start date for the Utility Adjustment Work to be performed by the Utility Owner to begin. If the Utility Owner is not provided with sufficient access to the work area on the anticipated start date set forth in the executed Utility Agreement, the time period for the Utility Owner’s performance established in the Utility Agreement shall be extended with a new time period to be agreed upon by DB Contractor, Utility Owner, and TxDOT.

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



- (a) DB Contractor shall bear 100% of the risk of the first 60 cumulative days of Utility Owner Delays and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;
- (b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Utility Owner Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;
- (c) DB Contractor and TxDOT shall share equally the risk of Utility Owner Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and
- (d) TxDOT shall bear 100% of the risk of Utility Owner Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to an extension of affected Completion Deadlines and Project Overhead to the extent permitted by Section 4.6.6.2.2 for Utility Owner Delays that exceed 180 cumulative days.

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

- (a) the general requirements and conditions for Change Orders set forth in Section 4.6 have been met;
- (b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that (i) DB Contractor took advantage of Float time available early in the Project Schedule for coordination activities with respect to the affected Utility and (ii) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation but has been unable to obtain such cooperation;
- (c) if applicable, DB Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner;
- (d) DB Contractor or the Utility Owner has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct such Utility Adjustment;
- (e) no other circumstance exists that would delay the affected Utility Adjustment even if the Utility Owner were cooperative; and
- (f) the delay is allowable under Section 4.6.6.3.

4.5.5.4 Except as set forth in Section 4.5.5.1 and Section 4.5.5.2 and Sections 6.4.2 and 6.4.4 of the Design-Build Agreement, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs (other than for Project Overhead) which it may incur as a result of any delays caused by a Utility Owner, except as provided in Sections 6.4.2 and 6.4.4 of the Design-Build Agreement, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 4.5.5.1 or Section 4.5.5.2. Any action or inaction by TxDOT as described in Section 4.5.4.2 or Section 4.5.5.2 shall have no bearing on the restriction set forth in this Section 4.5.5.4.

#### 4.5.6 Utility Adjustment Costs

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

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

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

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

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

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

#### 4.5.7 FHWA Utility Requirements

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

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

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

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

4.5.7.5 TxDOT will forward the approved list to DB Contractor.

#### 4.5.8 Applications for Utility Permits

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

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

4.5.8.3 DB Contractor shall assist TxDOT in deciding whether to approve a permit described in Section 4.5.8.1. Within a time period that will enable TxDOT to timely respond to the application, DB Contractor shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, DB Contractor shall furnish to TxDOT Utility No Conflict Sign-Off Forms, signed by both DB Contractor's Utility Design Coordinator (UDC) and DB Contractor's Utility Manager (UM), using

the standard forms included in the Contract Documents. DB Contractor shall limit the grounds for its recommendation to the grounds on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval. However, TxDOT shall have the right to issue Utility permits in its sole discretion. Applications for Utility permits and associated coordination described in this Section 4.5.8 shall not be subject to a Change Order and are not considered a New Utility or Unidentified Utility as described in Section 4.5.1.

#### 4.5.9 Security for Utility Adjustment Costs; Insurance

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

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

#### 4.5.10 Additional Restrictions on Change Orders for Utility Adjustments

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

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

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

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

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

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

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

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

- (a) any increase in the extent or change in the character of the Utility Adjustment Work necessary to Adjust any Utility from that anticipated by DB Contractor;
- (b) any difference in the cost to Adjust a Utility from that anticipated by DB Contractor;
- (c) any inaccuracy in the information included in the Reference Information Documents as to the existence, location, ownership, type, or any other characteristic of any Utility;
- (d) any inaccuracy in the Reference Information Documents as to whether any Utility is located within privately owned property or public right of way; or
- (e) any inaccuracy in the Reference Information Documents as to the existence or nature of any rights or interest relating to the occupancy of any real property by any Utility.

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

- (a) DB Contractor shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes.
- (b) DB Contractor shall not be entitled to any increase in the Price for any such additional costs that DB Contractor incurs (including both additional costs of Utility Adjustment Work and the costs of any additional Work on other aspects of the Project undertaken in order to avoid or minimize Utility Adjustments).

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

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

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

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

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

### 3.8.1 Warranty

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

#### 3.8.1.1 Warranty Term

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

#### 3.8.1.2 Remedy

Within seven days of receipt by DB Contractor of notice from TxDOT specifying a failure of any of the Work to satisfy the Warranties, or of the failure of any Subcontractor representation, warranty, guarantee or obligation that DB Contractor is responsible for enforcing, DB Contractor and TxDOT shall mutually agree

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

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

### 3.8.1.3 Permits and Costs

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

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

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

### 3.8.2 Applicability of Warranties to Re-Done Work

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

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

### 3.8.4 Effect of TxDOT or DB Contractor Activities on Warranties

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

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

4.2.8 Utility Management Plan

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

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

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

4.6.8.5 Work Performed by Utility Owners

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Utility Owners entitled to receive reimbursement for their costs from DB Contractor, the Change Order shall provide for compensation to DB Contractor equal to: (a) the actual and reasonable amount paid by DB Contractor to the Utility Owner for such work (but not greater than the amount allowed pursuant to the SAWS ILA or applicable Utility Agreements, as applicable), plus (b) 5% of such allowed actual amount, less any amounts that may be deducted pursuant to Section 4.5. Back-up documentation supporting each cost item for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

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

4.6.9.2 Utilities

DB Contractor shall be entitled to a Change Order with respect to certain additional costs and delays relating to Utility Adjustments, as specified in this Section 4.6.9.2 and Section 4.5.2.1 and Section 6.4 of the Design-Build Agreement and subject to the restrictions and limitations set forth in Sections 4.5.1, 4.5.10 and 4.6, including this Section 4.6.9.2 and Section 6.4 of the Design-Build Agreement. DB Contractor shall be



entitled to certain additional costs and delays relating to delays by Utility Owners to the extent permitted by Sections 4.5.5.1 and 4.5.5.2 and Sections 6.4.2 and 6.4.4 of the Design-Build Agreement. In all other respects, DB Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in DB Contractor's obligations relating to the Work resulting from the existence of any Utilities on the Site.

8. A new Section 4.6.9.2.5 is hereby added to Section 4.6.9.2 of the General Conditions as follows:  
 4.6.9.2.5 In the event that SAWS Cost Work described in Section 3.B.2 or Section 3.B.5 of the SAWS ILA is incorporated into the scope of work under the SAWS ILA, DB Contractor shall be entitled to a Change Order to increase the Price by the amount SAWS pays TxDOT for the performance of such work under Section 3.A.3 of the SAWS ILA. Notwithstanding any other provisions of this Design-Build Contract, DB Contractor shall not be entitled to any increase in the Price for performing SAWS Cost Work that exceeds the amount paid by SAWS to TxDOT for the performance of such Work.
9. Section 4.6.9.4 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.6.9.4 of the General Conditions:  
 4.6.9.4 Hazardous Materials Management

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

10. Section 4.8.1.1 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.8.1.1 of the General Conditions:  
 4.8.1.1 Subject to Section 4.8.1.3 and 4.8.1.4, DB Contractor shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents. If during the course of the Work, DB Contractor encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the Contract Documents, DB Contractor shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify Governmental Entities under applicable Law and notify such Governmental Entities as required under applicable Law and (b) take reasonable steps, including design modifications or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. Additionally, DB Contractor shall promptly notify SAWS, in accordance with the SAWS ILA, if DB Contractor encounters soil or groundwater contamination potentially caused by SAWS Utilities when performing SAWS Utility Adjustment Work. If during the performance of the Work TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, TxDOT shall promptly notify DB Contractor in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, DB Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Wherever feasible and consistent with the Contract Documents, applicable Law and Good Industry Practice, contaminated soil and groundwater shall not be disposed off-site.

11. Section 4.8.1.2 of the General Conditions is amended as follows, provided the underlined text is hereby added to Section 4.8.1.2 of the General Conditions:

4.8.1.2 Except where DB Contractor is required to take immediate action under the Contract Documents or applicable Law, DB Contractor shall afford TxDOT the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions before any action is taken that would inhibit TxDOT's ability to ascertain the nature and extent of the contamination. In addition, with respect to SAWS Cost Work to remedy Hazardous Materials or a Recognized Environmental Condition, DB Contractor shall afford both TxDOT and SAWS the opportunity to inspect the relevant sites for purposes of reaching agreement as to the terms for the incorporation of such work under the SAWS ILA. DB Contractor shall not perform any SAWS Cost Work with respect to Hazardous Materials or Recognized Environmental Conditions before such work is incorporated into the scope of the SAWS ILA, except as allowed under Sections 3.A and 3.B of the SAWS ILA.

12. A new Section 4.8.1.4 is hereby added to Section 4.8.1 of the General Conditions as follows:

4.8.1.4 If SAWS elects to perform assessment, remediation or other corrective action with respect to Hazardous Materials and Recognized Environmental Conditions pursuant to Section 3.B.5 of the SAWS ILA, then, as of the date of SAWS commences such actions, DB Contractor shall have no obligation to manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of any such Hazardous Materials or Recognized Environmental Conditions or to prepare any investigative work plans or SIR with respect to such Hazardous Materials or Recognized Environmental Conditions.

13. The first paragraph of Section 4.2.4.4.1 is hereby amended as follows, provided (i) underlined text is hereby added to Section 4.2.4.4.1 of the General Conditions and (ii) stricken text is hereby deleted from Section 4.2.4.4.1 of the General Conditions:

Subject to Section 4.8.1.4, if Hazardous Materials are encountered within any of the Project ROW or Additional Properties used as DB Contractor's staging area, Project office site, plant sites, borrow site, or stockpile location, DB Contractor shall prepare an investigative work plan that addresses the methods, techniques, and analytical testing requirements to adequately characterize the extent of the contaminated media (soil and/or groundwater) potentially impacting the Project. DB Contractor shall locate and assess the likely source of contamination.

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

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



# Texas Department of Transportation

## DESIGN-BUILD AGREEMENT GENERAL CONDITIONS

### Items 1-9

July 22, 2021

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**ITEM 1            DEFINITIONS OF TERMS**

**1.1                Abbreviations**

Unless otherwise specified, wherever the following abbreviations or terms are used in the Contract Documents, they shall have the meanings set forth below:

<b>AAP</b>	AASHTO Accreditation Program
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>ACI</b>	American Concrete Institute
<b>ACM</b>	Asbestos-containing material
<b>ADA</b>	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
<b>ADT</b>	Average Daily Traffic
<b>ALJ</b>	Administrative Law Judge
<b>ANSI</b>	American National Standards Institute
<b>APS</b>	Accessible Pedestrian Signal
<b>AREMA</b>	American Railway Engineering and Maintenance of Way Association
<b>ARI</b>	Annual Recurrence Interval
<b>ASB</b>	Asphalt Bond Breaker
<b>ASTM</b>	American Society of Testing and Materials
<b>ATC</b>	Alternative Technical Concept
<b>ATP</b>	Acceptance Test Plan
<b>AWG</b>	American Wire Gauge
<b>AWS</b>	American Welding Society
<b>BMP</b>	Best Management Practices
<b>CADD</b>	Computer Aided Drafting and Design

<b>CAP</b>	(Environmental) Compliance Action Plan
<b>CCI</b>	Construction Cost Index
<b>CCTV</b>	Closed Circuit Television
<b>CEPP</b>	Comprehensive Environmental Protection Plan
<b>CMP</b>	Construction Monitoring Plan
<b>CFR</b>	Code of Federal Regulations
<b>CGP</b>	Construction General Permit
<b>CLOMR</b>	Conditional Letters of Map Revisions
<b>CORS</b>	Continuous Operating Reference Stations
<b>CP</b>	Communication Plan
<b>CPM</b>	Critical Path Method
<b>CQCM</b>	Construction Quality Control Manager
<b>CQMP</b>	Construction Quality Management Plan
<b>CRCP</b>	Continuously Reinforced Concrete Pavement
<b>CRM</b>	Comment Resolution Matrix
<b>CSBE</b>	Cement Stabilized Backfill Embankment
<b>CSJ</b>	Control Section Job
<b>CTB</b>	Cement Treatment Base
<b>CTMS</b>	Computerized Traffic Management System
<b>CWA</b>	Clean Water Act
<b>DB</b>	Design-Build
<b>DBA</b>	Design-Build Agreement
<b>DBC</b>	Design-Build Contract
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DMS</b>	Dynamic Message Signs
<b>DOT</b>	U.S. Department of Transportation

<b>DSS</b>	Decent, Safe and Sanitary (dwelling)
<b>DUC</b>	DB Contractor Utility Coordinator
<b>ECI</b>	Environmental Compliance Inspector
<b>ECM</b>	Environmental Compliance Manager
<b>ECMP</b>	Environmental Compliance and Mitigation Plan
<b>EDMS</b>	Electronic Document Management System
<b>EMS</b>	Environmental Management System
<b>EMT</b>	Electrical Metallic Tubing
<b>ENR</b>	Engineering News Record
<b>EOR</b>	Engineer of Record
<b>EPD</b>	Escrowed Proposal Documents
<b>EPIC</b>	Environmental Permits, Issues and Commitments
<b>EPTP</b>	Environmental Protection Training Program
<b>ESA</b>	Endangered Species Act of 1973, as amended
<b>ESAL</b>	Equivalent Single-Axle Load
<b>ESOC</b>	Early Start of Construction
<b>ET</b>	Environmental Team
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	Federal Highway Administration
<b>FIS</b>	Flood Insurance Study
<b>FM</b>	Farm-to-Market Road
<b>FPS-21</b>	Flexible Pavement System version 21
<b>FWCA</b>	Fish and Wildlife Coordination Act
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GIS</b>	Geographical Information System



<b>GPK</b>	GEOPAK
<b>GPS</b>	Global Positioning System
<b>HAZWOPER</b>	Hazardous Waste Operations and Emergency Response
<b>HCR</b>	Highway Construction Report
<b>HEC</b>	Hydraulic Engineering Circular
<b>HEC - HMS</b>	Hydrologic Engineering Center's – Hydrologic Modeling System
<b>HEC-RAS</b>	Hydrologic Engineering Center's – River Analysis System
<b>HMA</b>	Hot Mix Asphalt
<b>HMMP</b>	Hazardous Materials Management Plan
<b>HPS</b>	High Pressure Sodium
<b>HVAC</b>	Heating Ventilation and Air Conditioning
<b>HY-8</b>	HY-8 Culvert Hydraulic Analysis Program
<b>ID</b>	Identification
<b>IEMP</b>	Incident and Emergency Management Plan
<b>IQ</b>	independent quality
<b>IQF</b>	Independent Quality Firm
<b>IQFM</b>	Independent Quality Firm Manager
<b>IRI</b>	International Roughness Index
<b>ISO</b>	International Standards Organization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>IWP</b>	Investigative Work Plan
<b>LAN</b>	Local Area Network
<b>LBP</b>	Lead Based Paint
<b>LCCA</b>	Life-Cycle Cost Analysis
<b>LED</b>	Light-Emitting Diode

<b>LOMR</b>	Letters of Map Revision
<b>LPA</b>	Local Public Agency
<b>LRFD</b>	Load and Resistance Factor Design
<b>MBTA</b>	Migratory Bird Treaty Act
<b>MDMP</b>	Maintenance Document Management Plan
<b>MMP</b>	Maintenance Management Plan
<b>MMS</b>	Maintenance Management System
<b>MOA</b>	Memorandum of Agreement
<b>MOT</b>	Maintenance of Traffic
<b>MOT IM</b>	Maintenance of Traffic Implementation Manager
<b>MOU</b>	Memorandum of Understanding
<b>MPH</b>	Miles Per Hour
<b>MPLS</b>	Multiple Protocol Label Switching
<b>M<sub>R</sub></b>	Resilient Modulus
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSDS</b>	Material Safety Data Sheet
<b>MSE</b>	Mechanically Stabilized Earth
<b>NAVD</b>	North American Vertical Datum
<b>NBI</b>	National Bridge Inventory
<b>NBIS</b>	National Bridge Inspection Standards
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NCR</b>	Nonconformance Report
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturing Association
<b>NEPA</b>	National Environmental Policy Act
<b>NHPA</b>	National Historical Preservation Act

<b>NOI</b>	Notice of Intent
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NTCIP</b>	National Transportation Communications for ITS Protocol
<b>NTP</b>	Notice to Proceed
<b>NTP1</b>	Notice to Proceed 1
<b>NTP2</b>	Notice to Proceed 2
<b>OJT</b>	On-the-Job Training
<b>OSHA</b>	Occupational Safety and Health Administration
<b>PA</b>	Programmatic Agreement
<b>PBS</b>	Project Baseline Schedule
<b>PBS1</b>	Preliminary Project Baseline Schedule
<b>PBS2</b>	Project Baseline Schedule 2
<b>PBS3</b>	Project Baseline Schedule 3
<b>PC</b>	Point of Curvature
<b>PCC</b>	Point of Compound Curvature
<b>PCO</b>	Potential Change Order
<b>PDF</b>	Portable Document Format
<b>PE</b>	Registered Professional Engineer
<b>PFC</b>	Permeable Friction Course
<b>PI</b>	Plasticity Index or Point of Intersection, as appropriate
<b>PICP</b>	Public Information and Communications Plan
<b>PM</b>	Project Manager
<b>PMP</b>	Project Management Plan
<b>POB</b>	Point of Beginning
<b>POC</b>	Point of Commencing
<b>PRC</b>	Point of Reverse Curvature

<b>PSL</b>	Project Specific Location
<b>PSQAF</b>	Professional Services Quality Assurance Firm
<b>PSQAM</b>	Professional Services Quality Assurance Manager
<b>PSQCM</b>	Professional Services Quality Control Manager
<b>PSQMP</b>	Professional Services Quality Management Plan
<b>PT</b>	Point of Tangency
<b>PUA</b>	Possession and Use Agreement
<b>PUAA</b>	Project Utility Adjustment Agreement
<b>PVC</b>	Polyvinyl Chloride
<b>PVR</b>	Potential Vertical Rise
<b>QA</b>	Quality Assurance
<b>QAP</b>	QAP for DB Projects
<b>QC</b>	Quality Control
<b>QMP</b>	Quality Management Plan
<b>RCSJ</b>	ROW CSJ
<b>RCP</b>	Reinforced Concrete Pipe
<b>RDVCS</b>	Regional Data and Video Communications System
<b>RFC</b>	Release (or Released) for Construction
<b>RFI</b>	Request for Information
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RID</b>	Reference Information Documents
<b>ROD</b>	Record of Decision
<b>ROE</b>	Right of Entry
<b>ROW</b>	Right of Way
<b>ROW AM</b>	Right of Way Acquisition Manager

<b>RP</b>	Recycling Plan
<b>RPLS</b>	Registered Professional Land Surveyor
<b>RQD</b>	Rock-Quality Designation
<b>SDMS</b>	Single-Line Dynamic Message Signs
<b>SF</b>	Square Foot
<b>SFHA</b>	Special Flood Hazard Area
<b>SH</b>	State Highway
<b>SHPO</b>	State Historic Preservation Officer
<b>SHSD</b>	Standard Highway Sign Design for Texas
<b>SI</b>	System Integrator / Serviceability Index
<b>SICP</b>	Snow and Ice Control Plan
<b>SIR</b>	Site Investigation Report
<b>SMA</b>	Stone Matrix Asphalt
<b>SOAH</b>	Texas State Office of Administrative Hearings
<b>SOFR</b>	Secured Overnight Financing Rate
<b>SSTR</b>	Single Slope Traffic Railing
<b>SUE</b>	Subsurface Utility Engineering
<b>SW3P</b>	Storm Water Pollution Prevention Plan
<b>SWEP</b>	Severe Weather Evacuation Plan
<b>SWMM</b>	Storm Water Management Model
<b>SWSF</b>	Storm Water Storage Facilities
<b>TAC</b>	Texas Administrative Code
<b>TBPELS</b>	Texas Board of Professional Engineers and Land Surveyors
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<b>TDLR</b>	Texas Department of Licensing and Regulation

<b>TCP</b>	Traffic Control Plan
<b>THC</b>	Texas Historical Commission
<b>TIA</b>	Time Impact Analysis
<b>TMC</b>	Traffic Management Center
<b>TMP</b>	Traffic Management Plan
<b>TMUTCD</b>	Texas Manual on Uniform Traffic Control Devices
<b>TOM</b>	Thin Overlay Mixture
<b>TPDES</b>	Texas Pollutant Discharge Elimination System
<b>TPWD</b>	Texas Parks and Wildlife Department
<b>TREC</b>	Texas Real Estate Commission
<b>TRM</b>	Texas Reference Marker
<b>TxDOT</b>	Texas Department of Transportation
<b>UAAA</b>	Utility Adjustment Agreement Amendment
<b>UAFM</b>	Utility Adjustment Field Modification
<b>UAR</b>	TxDOT Utility Accommodation Rules
<b>UCS</b>	Unconfined Compressive Strength
<b>UDC</b>	Utility Design Coordinator
<b>UJUA</b>	Utility Joint Use Agreement / Acknowledgement
<b>UM</b>	Utility Manager
<b>US</b>	United States
<b>USACE</b>	United States Army Corps of Engineers
<b>USB</b>	Universal Serial Bus
<b>USCG</b>	United States Coast Guard
<b>USEPA</b>	United States Environmental Protection Agency
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USPAP</b>	Uniform Standard of Professional Appraisal Practices

<b>UST</b>	Underground Storage Tank
<b>UTM</b>	Universal Transverse Mercator
<b>UTP</b>	Unshielded Twisted Pair
<b>UTR</b>	Utility Tracking Report
<b>VAB</b>	Vehicle Arresting Barrier
<b>VGA/HDMI</b>	Video Graphics Adaptor/High Definition Multimedia Interface
<b>WBS</b>	Work Breakdown Structure
<b>XML</b>	Extensible Markup Language

## **1.2 Definitions**

### **1.2.1 Usage**

Capitalized terms used in the General Conditions and Design-Build Specifications not defined in the Design-Build Agreement have the meanings set forth in Section 1.2.2 below. The Design-Build Agreement includes definitions for certain terms that are used in the Design-Build Agreement, as noted in Section 1.2.2 below. If any definition set forth in Section 1.2.2 is also included in Section 1.2 of the Design-Build Agreement, to the extent such definitions conflict, the definition in Section 1.2 of the Design Build Agreement shall govern and control.

### **1.2.2 Defined Terms**

**Abandoned Utility(ies)** means a public, private, cooperative, municipal or government line, facility or system that at one time was used for the carriage, transmission or distribution of cable television, electric power, telephone, telegraph, water, salt water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water, and similar substances but is no longer operated by its owner and does not provide direct or indirect service to the public.

**Abbreviated Utility Assembly** means the collection of plans and other information and materials that DB Contractor is required to submit to TxDOT in connection with each Utility proposed to remain at its original location within the Project ROW, as more particularly described in Section 14.3.4.5 of the Design-Build Specifications; a single Abbreviated Utility Assembly may address more than one such Utility.

**Acceleration Costs** means those fully documented increased costs reasonably incurred by DB Contractor (that is, costs over and above what DB Contractor would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision

and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts or a Recovery Schedule.

**Acquisition Packages** means the series of documentation and information for the acquisition of parcels for the Project ROW described in Section 15.3.6 of the Design-Build Specifications.

**Acquisition Survey Document** means the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 15.3.1 of the Design-Build Specifications.

**Additional Properties** means any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW that will be acquired in connection with the Project, including (a) rest area sites, (b) the DB Contractor-Designated ROW, (c) parcels that must be acquired due to a TxDOT-Directed Change, and (d) parcels that must be acquired due to a Necessary Basic Configuration Change, subject to TxDOT's reasonable determination that the property is necessary. The term "Additional Properties" shall include any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs DB Contractor to acquire for the Project. The term specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that DB Contractor may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of DB Contractor.

**Adjacent Work** means any project, work, improvement or development to be planned, designed or constructed that could or does impact the Project or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

**Adjust** means to perform a Utility Adjustment.

**Adjustment Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the Contract Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to [Section 4.5.3.5](#).

**Administrative Settlement Committee** means a committee appointed by the District Engineer or his designee consisting of the ROW Administrator or his designee and two or more members who will analyze pertinent information and reach consensus on whether an administrative settlement should or should not be recommended.

**Aesthetics and Landscaping Plan** is defined in the Design-Build Agreement.

**Affected Third Parties Plan** shall have the meaning set forth in [Section 4.2.6](#).

**Affidavit of Property Interest** means the document describing an Existing Utility Property Interest claimed by a Utility Owner, as more particularly described in Section 14.2.4.1 of the Design-Build Specifications.



**Affiliate** means:

- (a) any shareholder, member, partner or joint venture member of DB Contractor,
- (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, DB Contractor or any of its shareholders, members, partners or joint venture members; and
- (c) any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) DB Contractor, (ii) any of the shareholders, members, partners or joint venture members of DB Contractor, or (iii) any Affiliate of DB Contractor under clause (b) of this definition.

For purposes of this definition the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

**Affiliated** means having the status of an Affiliate.

**Alternate Procedure** means the alternate procedure for processing Utility Adjustments for TxDOT, as authorized by the FHWA by letter dated September 19, 2014 (FHWA Risk Based Stewardship and Oversight Modifications).

**Alternate Procedure List** means the list of Utilities to be Adjusted (and related information), as the same may be amended from time to time.

**Alternative Technical Concept (ATC)** shall have the meaning set forth in Section 3.1 of the ITP.

**Antiquities Permit** means the permit required under the Antiquities Code of Texas enacted in 1969, to be obtained from the Texas Historical Commission as per Section 4.2.4.2.9.

**Assembly** means the additional Utility Assembly that DB Contractor shall prepare for any Project Utility Adjustment Agreement to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment as more particularly described in Section 14.3.4.5 of the Design-Build Specifications.

**Authorized Representative** has the meaning set forth in Section 9.2.1 of the Design-Build Agreement.

**Baseline Inspections** shall have the meaning set forth in Section 27.3.3.1 of the Design-Build Specifications.

**Baseline Performance and Measurement Table During Construction** means the table in Attachment 27-1 to the Design-Build Specifications.

**Basic Configuration** is defined in the Design-Build Agreement.

**Basic Costs** means the Direct Costs incurred for the following, whether incurred by DB Contractor directly or reimbursed by DB Contractor to a Utility Owner: (i) Professional Services associated with, and construction of, a Utility Adjustment, plus (ii) acquisition of Replacement Utility Property Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Project ROW, in each case as required for a Utility Adjustment.

**Best Management Practices (BMP)** shall have the meaning set forth in Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

**Betterment** has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreements; in all other cases, "Betterment" means any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) any upgrading that is required for accommodation of the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by published, current design practices regularly followed by the Utility Owner in its own work; or
- (g) any upgrading for which there are direct benefits to or are required for the Project.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.

**Boycott Israel** has the meaning set forth in Section 7.16(a).

**Broker** has the meaning set forth in Section 4.4.4.2.1.

**Business Days** means days on which TxDOT is officially open for business.

**Category 1 Defect** means those Defects classified as Category 1 Defects in Section 27.3.2.3 of the Design-Build Specifications.

**Certificate of Final Acceptance** means the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Acceptance.

**Certificate of Substantial Completion** means the certificate issued by TxDOT indicating that the Project has achieved the conditions for Substantial Completion.

**Change in Law** means (a) the adoption of any Law after the Proposal Due Date or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any such change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted

but not yet effective as of the Proposal Due Date. The term “**Change in Law**” also excludes any change in or new Law relating to DB Contractor’s general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, Medicare, unemployment and other payroll-related taxes.

**Change of Control** means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, or otherwise that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of DB Contractor or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of DB Contractor may constitute a Change of Control of DB Contractor if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of DB Contractor. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

- (a) A change in possession of the power to direct or control the management of DB Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of DB Contractor (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is, at the time of the transaction, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (b) An upstream reorganization or transfer of direct or indirect interests in DB Contractor so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of DB Contractor;
- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls DB Contractor; or
- (d) The exercise of minority veto or voting rights (whether provided by applicable Law, by DB Contractor’s organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of DB Contractor, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements.

**Change Order** means a written order to DB Contractor executed by TxDOT that meets the requirements of Section 4.6 and delineates changes in the Work within the general scope of the Contract Documents or in the terms and conditions of the Contract Documents and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

**Claim** means (a) a demand by DB Contractor, which is or potentially could be disputed by TxDOT, for a time extension under the Contract Documents or payment of money or damages from TxDOT to DB Contractor or (b) a demand by TxDOT, which is or potentially could be disputed by DB Contractor, for payment of money or damages from DB Contractor to TxDOT.

**Code** shall have the meaning set forth in Recital A of the Design-Build Agreement.

**Commission** means the Texas Transportation Commission.

**Completion Deadlines** means the Substantial Completion Deadline or Final Acceptance Deadline set forth in Section 2.4 of the Design-Build Agreement.

**Comprehensive Environmental Protection Plan (CEPP)** means the document obligating DB Contractor to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment as further described in Section 4.2.4.

**Condemnation Packages** means the series of documentation and information for the condemnation of parcels for the Project ROW described in Section 15.4.4 of the Design-Build Specifications.

**Construction Documents** means all Released for Construction Documents, shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports, and samples necessary or desirable for construction of the Project and/or the Utility Adjustments in accordance with the Contract Documents.

**Construction General Permit (CGP)** means a permit under the TPDES program for the management of storm water discharges from construction sites.

**Construction Manager** means the senior staff member responsible for ensuring that the Project is constructed in accordance with the Project requirements, as more particularly described in Section 4.2.1.1.3.

**Construction Quality Control Manager (CQCM)** means the person assigned by DB Contractor with responsibility to cause the methods and procedures contained in the approved CQMP to be implemented and followed by DB Contractor's construction staff in the performance of the Work, as more particularly described in Table 1 in Attachment 4-2.

**Construction Quality Management Plan (CQMP)** means the plan that establishes quality control and quality assurance procedures for the Construction Work, as more particularly described in Section 4.3.4.

**Construction Work** means all Work required to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and the Utility Adjustments, including schedule management, DBE management, cost management, and administration of insurance, bonds and warranties.

**Contract Documents** has the meaning set forth in Section 1.3 of the Design-Build Agreement.

**Contracting Information** means all of DB Contractor's books, records and documents required to be maintained by DB Contractor in accordance with Section 5.13.4.

**Controlling Affiliate** means any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, DB Contractor or any of its shareholders, members, partners or joint venture members. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

**Corridor Structure Type Study and Report** means a preliminary bridge type study report to evaluate potential superstructure and substructure configurations that may be suitable for the

proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 21.2 of the Design-Build Specifications.

**Cost to Cure** means an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the *TxDOT ROW Appraisal and Review Manual*.

**Critical Path** means each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e., the term shall apply only following consumption of all available Float 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.

**Customer Groups** means groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, including regulatory and law enforcement agencies, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, transportation authorities and providers affected by the Project (such as local airports, transit operators, toll authorities, and highway concessionaires), community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.), major traffic generators that could be affected by closures or construction (including, for example, universities, hospitals and major employers) and sponsors/coordinators of major regional special events, and other Persons or entities affected by the Project, including those identified in the Design-Build Specifications.

**Days** or **days** means calendar days unless otherwise expressly specified.

**DB Contractor** or **Design-Build Contractor** is defined in the Design-Build Agreement.

**DB Contractor Default** has the meaning set forth in [Section 8.8.1.1](#).

**DB Contractor-Designated ROW** means any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that DB Contractor determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at DB Contractor’s cost and expense. The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the DB Contractor-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that DB Contractor may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of DB Contractor.

**DB Contractor-Related Entities** means: (a) DB Contractor, (b) DB Contractor’s shareholders, partners, joint venturers or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom DB Contractor may be legally or

contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**DB Contractor Releases of Hazardous Materials** means: (a) Releases of Hazardous Materials, or the exacerbation of any such releases, attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity; (b) Releases of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DB Contractor-Related Entity, regardless of cause; or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any DB Contractor-Related Entity in violation of the requirements of the Contract Documents or any applicable Law or Governmental Approval.

**DB Contractor Utility Strip Map** means the map prepared by DB Contractor in accordance with Section 14.3.1 of the Design-Build Specifications.

**DBE Performance Plan** means DB Contractor's plan for meeting the DBE participation goals set forth in the Design-Build Agreement.

**DBE Special Provisions** means TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Attachment 3-2.

**Decent, Safe and Sanitary (DSS) Dwelling** means the condition of a dwelling such that it meets applicable housing and occupancy codes as defined in 49 CFR Part 24.

**Defect** means, in connection with the Maintenance Work, a deficiency in an Element, whether by design, construction, installation, repair, rehabilitation, reconstruction, operation, damage or wear, affecting the condition, use, functionality or operation of any Element, which would cause or have the potential to cause one or more of the following:

- (a) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users of the Project;
- (b) A structural deterioration of the affected Element or any other part of the Project affected by it;
- (c) Damage to the property or equipment of TxDOT or a third party;
- (d) Damage to the environment; or
- (e) Failure of the Element to meet or exceed any of the requirements set forth in the column headed "Measurement Record" in the Performance and Measurement Table.

**Defect Repair Period** means, for a particular Defect, the time period for rectifying such Defect as set forth in the Performance and Measurement Table.

**Delay Deductible** means the number of days of delay to the Critical Path due to a Qualifying Delay for which DB Contractor bears responsibility, without the right to receive an extension of Completion Deadlines (or with the right to receive an extension of Completion Deadlines but without the right to receive compensation for Project Overhead pursuant to Section 4.5.5.1 or 4.5.5.2), pursuant to the delay risk sharing provisions expressly set forth in (a) Section 4.5.5.1 for Uncooperative Utility Delay,

(b) Section 4.5.5.2 for Utility Owner Delay, (c) Section 4.6.9.1.2 for Differing Site Conditions Delay, (d) Section 4.6.9.2.2(c) for Unidentified Utility Delay, (e) Section 4.6.9.3.1.2 for Force Majeure Event Delay, and (f) Section 6.5 of the Design-Build Agreement and Section 4.6.9.5 for Eminent Domain Delay.

**Delay Deductible Aggregate Cap** is defined in the Design-Build Agreement.

**Delay Deductible Determination** means a written determination signed by TxDOT specifying the number of days of a Delay Deductible, if any, to be credited toward the Delay Deductible Aggregate Cap in accordance with Section 4.6.3.2.4.

**Demolition and Abandonment Plan** means the plan prepared by DB Contractor that considers the types and sizes of Utilities and structures that will be abandoned during the Term as more particularly described in Section 18.2 of the Design-Build Specifications.

**Design-Build Contract** or **DBC** means the Design-Build Agreement and these Design-Build Agreement General Conditions, including all exhibits attached hereto, as such may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms of the DBC.

**Design Documents** means all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and Submittals necessary for, or related to, the design of the Project or any Utility Adjustments in accordance with the Contract Documents, the Governmental Approvals, and applicable Law.

**Design Exception** means a deviation from one or more of the 13 controlling criteria found in Chapter 1, Section 2, of the TxDOT *Roadway Design Manual*. The procedures for requesting a Design Exception are found in the TxDOT Project Development Process Manual.

**Design Firm** means the qualified Registered Professional Engineer's firm responsible for the design of the Project.

**Design Manager** means the individual position responsible for ensuring Design Work is completed and design requirements are met, as more particularly described in Section 4.2.1.1.2.

**Design Speed** means the speed used to determine the various geometric design features of the roadway.

**Design Waiver** means a deviation from the minimum requirements in a noncontrolling category as identified in the TxDOT *Roadway Design Manual*.

**Design Work** means all Work of design, engineering or architecture for the Project, Project ROW acquisition or Utility Adjustments.

**Deviations** means (a) any proposed or actual change, deviation, modification, alteration or exception from the Design-Build Specifications or (b) a change in the Work or other requirements of the Contract Documents issued under Section 4.1.2.2.4. "**Deviation**" includes a Design Exception.

**Differing Site Condition** is defined in the Design-Build Agreement.

**Differing Site Conditions Deductible** is defined in the Design-Build Agreement.

**Differing Site Conditions Deductible Cap** is defined in the Design-Build Agreement.

**Differing Site Conditions Delay** shall have the meaning set forth in Section 4.6.9.1.2.

**Direct Costs** means costs that are clearly associated with the Work and can be accurately traced to an item of Work, including materials and labor. The term “Direct Costs” does not include indirect costs, such as overhead, profit, depreciation, administration costs and salaries of supervisors.

**Directive Letter** means a letter directing DB Contractor’s performance of the Work that meets the requirements set forth in Section 4.6.1.2.1.

**Disadvantaged Business Enterprise** or **DBE** shall have the meaning set forth in Attachment 3-2.

**Dispute** means any Claim, dispute, disagreement or controversy between TxDOT and DB Contractor concerning their respective rights and obligations under the Contract Documents including concerning any alleged breach or failure to perform and remedies.

**Dispute Resolution Procedures** is defined in the Design-Build Agreement. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

**Disputes Review Panel Agreement (Panel Agreement)** means a three-party agreement between the Parties and a Panel member as described in Section 4.9.2.7 and set forth in Exhibit 22 to the DBA.

**Disputes Review Panel Process** means the process for Dispute escalation and the Disputes Review Panel set forth in Section 4.9.

**Drainage Design Report** means the report documenting all components of the Project’s drainage system as more particularly described in Section 20.4 of the Design-Build Specifications.

**Draw Request** means a Draw Request and Certificate in the form of Attachment 9-1.

**Early Start of Construction (ESOC)** means any construction activity performed in accordance with construction packages issued by the DB Contractor for construction without receiving TxDOT’s written statement of no exceptions taken with the Design Manager’s and PSQAM’s certification of compliance of such packages consistent with the requirements in Attachment 4-1, Table 2, QCP-11. Early Start of Construction packages do not constitute RFC documents, and are prepared at the DB Contractor’s risk.

**Effective Date** is defined in the Design-Build Agreement.

**Element** means an individual component, system or subsystem of the Project or of a Utility Adjustment included in the Construction Work, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Table, further subdivided by Performance Section where appropriate.

**Element Category(ies)** means any of the categories of Elements set forth in the “Element Category” column of the Performance and Measurement Table.

**Emergency** means any unplanned event within the Project Right of Way that (a) presents an immediate or imminent threat to the long-term integrity of any part of the infrastructure of the Project,



to the environment, to property adjacent to the Project or to the safety of Users or the public; or (b) is recognized by the Texas Department of Public Safety as an emergency.

**Emergency Services** means law enforcement, ambulance service, and other similar services from agencies with whom DB Contractor establishes protocols for incident response, safety and security procedures, as set forth in the Incident and Emergency Management Plan.

**Eminent Domain Delay** is defined in the Design-Build Agreement.

**Engineer** shall have the meaning set forth in Section 2.2.9.2(b).

**Engineer of Record** means the professional described in Table 1 in Attachment 4-1.

**ENR Construction Cost Index** means the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

**Environmental Approvals** means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including New Environmental Approvals, approvals and permits required under NEPA and those approvals identified in Section 12.2 of the Design-Build Specifications.

**Environmental Commitment (Environmental Permits, Issues and Commitments) (EPIC)** means an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

**Environmental Compliance and Mitigation Plan (ECMP)** means DB Contractor's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in Section 4.2.4.2.

**Environmental Compliance Inspector (ECI)** shall have the meaning set forth in Section 12.3.3 of the Design-Build Specifications.

**Environmental Compliance Manager (ECM)** means the person retained or employed by DB Contractor who has the authority and responsibility for monitoring, documenting, and reporting environmental compliance for the Work, as more particularly described in Section 4.2.4.1.1.

**Environmental Law** means any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) The safety of employees and other persons; and
- (g) Notification, documentation, and record-keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 et seq.);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, et seq.), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 et seq.), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.), as amended;

- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 et seq.), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 et seq.), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Code).

**Environmental Management System (EMS)** means the system and program for environmental compliance as more particularly described in Section 4.2.4.1.

**Environmental Protection Training Plan (EPTP)** means that program to be initiated by DB Contractor and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the Environmental Commitments and environmental requirements set forth in all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.2.4.3.

**Environmental Site Assessment** means a report prepared by an environmental professional as described in Section 15.3.5.1 of the Design-Build Specifications.

**Environmental Team (ET)** shall have the meaning set forth in Section 12.3 of the Design-Build Specifications.

**Equity Member** means (a) each entity with a direct equity interest in DB Contractor (whether as a member, partner, joint venture member or otherwise) and (b) each entity with a 10% or greater indirect interest in DB Contractor. Notwithstanding the foregoing, if DB Contractor is a publicly traded company, shareholders with less than a 10% interest in DB Contractor shall not be considered Equity Members.

**Error** means a mistake, miscalculation, error, omission, inconsistency, inaccuracy, deficiency, or other defect.

**Escrowed Proposal Documents** or **EPDs** shall have the meaning set forth in Section 5.13.1.

**Event of Default** shall have the meaning set forth in Section 8.8.1.3.

**Executive Director** means the executive director of the Texas Department of Transportation, or his or her successor.

**Existing Utility Property Interest** means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain. This interest includes all rights, whether the property interest is occupied or not and is affected by the Project. This also may include rights purchased by a utility company for a future installation.

**Expendable Materials** means (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, and concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

**Fast-Track Dispute** means a dispute so designated by the Parties in respect of Section 4.10.2.

**Federal Requirements** means all Laws applicable to work funded or financed with federal funds and the provisions required to be included in federal-aid or FHWA-assisted contracts, including the provisions set forth in Attachment 3-1.

**Final Acceptance** means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 5.12, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

**Final Acceptance Deadline** is defined in the Design-Build Agreement.

**Final Design** means the complete final construction plans, specifications, reports, studies, calculations, electronic files, records, and Submittals released in packages for construction as RFC Documents after receiving TxDOT's written statement of no exceptions taken with the Design Manager's and PSQAM's certification of compliance of the Final Design Submittal packages.

**Final Design Submittal** means the submittal by DB Contractor for review and comment by TxDOT of the complete and final Design Documents along with the required certifications and documentation

demonstrating compliance with the Contract Documents and that all TxDOT comments from prior design stages have been addressed in accordance with Section 5.2.1.7.2.

**Final Payment** means payment by TxDOT of the final installment of the Price.

**Final Reconciliation** means the process described in Section 9.7 for determining the undisputed amount owed to DB Contractor after Final Acceptance of the Project, and a schedule for payment of such amount.

**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 the Substantial Completion Deadline or Final Acceptance Deadline. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

**Force Account Change Order** means a Change Order issued in accordance with Section 4.6.8.

**Force Majeure Event** shall have the meaning set forth in Section 4.6.9.3.1.

**Force Majeure Event Delay** shall have the meaning set forth in Section 4.6.9.3.1.1.

**Form 1295** shall have the meaning set forth in Section 4.6.5.5.

**Form 1295 Laws** shall have the meaning set forth in Section 4.6.5.5.

**Generally Accepted Accounting Principles (GAAP)** means such accepted accounting practice as, in the opinion of the accountant, conforms at the time to a body of generally accepted accounting principles in the United States.

**Geotechnical Engineering Report** means the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 16.2.2 of the Design-Build Specifications.

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or maintenance contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking under the same or similar circumstances and conditions.

**Governmental Approval** means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memorandum of agreement/understanding, and any amendment or modification of any of them required to be provided by Governmental Entities to carry out the Work or provided by TxDOT in its capacity as a regulatory agency for issuing State regulatory permits, which authorize or pertain to the Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

**Governmental Entity** means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT.

**Guaranteed Obligations** shall have the meaning set forth in the Guaranty.

**Guarantor** means each of the entities that provided a guaranty in the form of Exhibit 13 of the Design-Build Agreement of some or all of the obligations of DB Contractor under the Contract Documents.

**Guaranty** means each guaranty executed by a Guarantor guaranteeing some or all of the obligations of DB Contractor under the Contract Documents.

**Hazardous Materials** means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) that may create any unsafe or hazardous condition or pose any threat to human health and safety. The term "**Hazardous Materials**" includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "radioactive materials," "bio-hazardous waste," "pollutant," "toxic pollutant," "contaminant," "restricted hazardous waste," "infectious waste," "toxic substance," "toxic waste," "toxic material," or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum by-product or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment that contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety

of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and

(n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

**Hazardous Materials Delay** has the meaning set forth in Section 4.6.9.4.2.

**Hazardous Materials Management** means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stockpiling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

**Hazardous Materials Management Plan (HMMP)** means the plan prepared by DB Contractor for the safe handling, storage, treatment and disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.2.4.4.

**Hazardous Materials Manager** means the person designated by the DB Contractor to provide expertise in the safe handling of Hazardous Materials, as more particularly described in Section 12.3.4 of the Design-Build Specifications.

**Highway Service Systems** means TxDOT's or Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems, serving street or highway purposes.

**Identified Subcontractor** means the Subcontractors identified on Exhibit 17 to the Design-Build Agreement.

**Identified Utility** means any Utility impacted by the Project to which any one or more of the following applies:

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown);
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type);
- (c) The Utility (i) is an overhead Utility, or (ii) has any appurtenance above ground within the Schematic ROW, so long as, in either case, the Utility is existing as of the Proposal Due Date or which commenced installation prior to the Proposal Due Date;
- (d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility); or
- (e) The Utility is located in the same trench as an Identified Utility (e.g., communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, foundations and Fxboxes, not shown on the Utility Strip Map that is a component or extension of an Identified Utility is considered a part of the Identified Utility.

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on the public right of way, and it is in fact located on the private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

**Incident** means any unplanned event within the Project ROW that causes a localized disruption to the free flow of traffic on, or safety of users of, the Project.

**Incident and Emergency Management Plan (IEMP)** has the meaning set forth in Section 27.6.1 of the Design-Build Specifications.

**Incidental Utility Adjustment Work** means all of the following work that DB Contractor is responsible for performing, or causing to be performed, at its own expense and that is necessary or determined by DB Contractor to be required for the construction or accommodation of the Project:

- (a) Service Line Utility Adjustments including appurtenances (excluding any Service Line Utility Adjustment for which the owner of the affected real property has been compensated pursuant to Section 4.4.2, and provided that DB Contractor shall obtain all temporary rights of entry needed for such adjustments in accordance with Section 4.4.2);
- (b) Temporary Utility Adjustments;
- (c) Utility Appurtenance Adjustments;
- (d) Temporary Protections in Place; and
- (e) Resurfacing and re-striping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by DB Contractor.

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

**Independent Quality Firm (IQF)** means the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for managing the quality assurance program for the Construction Work and performing independent quality assurance material testing, inspection, and audits of the CQMP.

**Independent Quality Firm Manager (IQFM)** means the person appointed by the IQF who is responsible for management and quality assurance functions, as more particularly described in Table 1 set forth in Attachment 4-2.

**Ineligible Matters** is defined in the Design-Build Agreement.



**Informal Resolution Procedures** has the meaning set forth in Section 4.10.

**Inspection and Measurement Method** means the inspection and measurement method for each Element set forth in the applicable column of the Performance and Measurement Table.

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

**Intellectual Property** means all current and future legal or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes traffic management algorithms, and software used in connection with the Project (including software used for management of traffic on the Project), and software source code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

**Intelligent Transportation System (ITS)** means the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in Item 25 of the Design-Build Specifications.

**Investigative Work Plan (IWP)** means a plan prepared by DB Contractor addressing the methods, techniques, and analytical testing requirements to adequately characterize the extent of impacts by Hazardous Materials to an area of concern.

**ITS Implementation Plan** means a plan prepared by DB Contractor for approval as part of the Final Design Submittal to demonstrate system interoperability with other TMCs in the region as more particularly described in Section 25.3.3 of the Design-Build Specifications.

**Job Training Plan** means the plan set forth in Exhibit 5 to the Design-Build Agreement.

**Key Personnel** is defined in the Design-Build Agreement.

**Key Personnel Change Fee** means the fee assessed in accordance with Section 8.3.1.

**Key Personnel Unavailability Liquidated Damages** means the liquidated damages assessed in accordance with Section 8.3.1 herein and Section 7.4 of the Design-Build Agreement.

**Lane Closure** is defined in the Design-Build Agreement.

**Lane Rental Charges** means the fees for certain Lane Closures as specified in Section 8.7.2, and Exhibit 15 to the Design-Build Agreement.

**Law** or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or

referendum process, but excluding those by TxDOT within the scope of its administration of the Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "**Laws**", however, excludes Governmental Approvals.

**Lead Contractor** means the DB Contractor-Related Entity, whether a single entity, joint venture or newly formed limited liability company, primarily responsible for the construction of the Project. If the Lead Contractor is a joint venture or newly formed limited liability company, each of the joint venture or limited liability company members shall also be considered a Lead Contractor.

**Lead Engineering Firm** means the DB Contractor-Related Entity, whether a single entity or joint venture, primarily responsible for the design and engineering of the Project.

**Lead Maintenance of Traffic Design Engineer** or **Lead MOT Design Engineer** means the person responsible for ensuring the Traffic Management Plan is completed and design criteria are met, as more particularly described in Section 4.2.10 and Section 2.0 of Attachment 4-2.

**Lead MOT Implementation Manager** means the person responsible for ensuring the TCPs are implemented in the field and are adhered to during their implementation, as more particularly described in Section 26.1.2 of the Design-Build Specifications.

**Lead Roadway Design Engineer** means the person designated by DB Contractor responsible for ensuring the design of the roadway is completed and design criteria requirements are met, as more particularly described in Section 19.1.1 of the Design-Build Specifications.

**Lead Structural Engineer** means the person designated by DB Contractor responsible for overseeing the design and construction of all structural elements of the Project such that each is complete and design requirements are met, as more particularly described in Section 21.1.1 of the Design-Build Specifications.

**License Agreement** means any license agreement for construction, maintenance, and use of railroad ROW between an operating railroad and TxDOT as more particularly described in Section 22.3.1 of the Design-Build Specifications.

**Lien** means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

**Liquidated Damages** is defined in the Design-Build Agreement.

**Liquidated Damages for Delay** has the meaning set forth in Section 8.7.1.1.

**Liquidated Damages for Lane Closures** means the liquidated damages for certain Lane Closures more particularly described in Section 8.7.2 and Exhibit 15 to the DBA.

**Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in

connection with the enforcement of any indemnity or other provision of the Design-Build Contract)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

**Maintenance Limits** means the limits of DB Contractor's maintenance responsibilities in accordance with Section 27.1.3 of the Design-Build Specifications.

**Maintenance Management Plan (MMP)** means the plan prepared by DB Contractor that defines the processes and procedures for the maintenance of the Project for the Term, as more particularly described in Section 27.2.1 of the Design-Build Specifications.

**Maintenance Manager** shall have the meaning set forth in Section 27.2.3 of the Design-Build Specifications.

**Maintenance Records** means all data in connection with the Maintenance Work, including (a) all inspection and inventory records, whether generated by DB Contractor or a third party, (b) any communication to or from TxDOT or a third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with the Maintenance Work that TxDOT requires DB Contractor to use, implement or operate.

**Maintenance Safety Plan** means the safety plan prepared by DB Contractor as part of the Maintenance Management Plan as described in Section 6 of Attachment 27-4 to Item 27 of the Design-Build Specifications.

**Maintenance Work** means the scope of work described in Section 27.1.1 of the Design-Build Specifications.

**Major Subcontractor** means a Subcontractor who has entered into a Major Subcontract with DB Contractor.

**Major Subcontract** means a Subcontract in excess of 5% of the Price or \$20,000,000, whichever is greater.

**Management Plans** means all of the management plans listed in Section 4.2.

**Materials on Hand** means non-perishable materials that do not have a shelf life or characteristics that would materially change when exposed to the elements, and that have been sample tested approved and certified and are ready for incorporation into the Work. Such materials include structural steel, reinforcing steel, pre-cast concrete elements, and illumination poles, or other non-perishable materials at TxDOT's sole discretion. Materials that would not be considered Materials on Hand include cement, fine aggregate, and fill.

**Maximum Payment Schedule** means the table of aggregate amounts included in Exhibit 10 to the Design-Build Agreement and the earliest date by which each such aggregate amount shall become due to DB Contractor, which constitute a cap on the aggregate amount of payments that may be made to DB Contractor hereunder at any specified time.

**Measurement Record** means, for each Element, the requirement set forth in the column headed "Measurement Record" in the Performance and Measurement Table.

**Mobilization Payment Activity Amount** means the value included in Exhibit 10 to the Design-Build Agreement and subsequently allocated to the mobilization activity in the Schedule of Values. Such amount shall not exceed 10% of the Price, payable in installments according to Section 9.5.1.

**Necessary Basic Configuration Change** means a material change in the Basic Configuration that (a) is necessary to meet the requirements of the Contract Documents as the direct result of an Error in the Schematic Design (with the understanding that a change shall be deemed “necessary” only if the Error creates a situation in which DB Contractor is unable to meet the requirements of the Contract Documents without a material change in the Basic Configuration), (b) necessitates the acquisition of real property falling within clause (d) of the definition of Additional Properties, (c) could not be avoided by the exercise of caution, due diligence, or reasonable efforts by DB Contractor, such as the construction of retaining walls or other reasonable mitigation efforts, and (d) will not be avoided through the granting of a waiver, Deviation or design exception from requirements of the Contract Documents by TxDOT.

**NEPA Approvals** means the final approval(s) issued under the National Environmental Policy Act described in the Design-Build Agreement, and all approved supplements and reevaluations pertaining to the Project, as of the Effective Date.

**New Drainage Permit** means a new drainage permit or modifications to an existing drainage permit, issued by TxDOT after the Proposal Due Date to an adjacent land owner, for proposed drainage infrastructure within or impacting the Schematic ROW, pursuant to a permit application that is not included in the RIDs, and not otherwise known to DB Contractor prior to the Proposal Due Date.

**New Environmental Approval** means (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval, including any such approval, revision, modification, or amendment required for the drainage easements or Additional Properties.

**New Third Party Agreement** means any (1) Third Party Agreement that was not included in the RIDs as of the Proposal Due Date or (2) amendments to a fully executed Third Party Agreement that was included in the RIDs as of the Proposal Due Date. Final executed versions of Third Party Agreements that were included in the RIDs in draft form or were otherwise provided to DB Contractor prior to the Effective Date are not New Third Party Agreements.

**New Utility** means a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to DB Contractor prior to the Proposal Due Date.

**Nonconformance Report (NCR)** means a report documenting Nonconforming Work and the ultimate disposition of such Nonconforming Work, including the efforts undertaken to repair, replace, or otherwise remediate such work in accordance with the Contract Documents.

**Nonconforming Work** means Work that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law or the Released for Construction Documents.

**Notice of Intent (NOI)** means the notice of intent prepared and submitted by DB Contractor to the TCEQ under the Construction General Permit for storm water discharges from construction sites.

**Notice of Partial Termination for Convenience** means written notice issued by TxDOT to DB Contractor terminating part of the Work of DB Contractor for convenience under Section 8.9.1.

**Notice of Termination for Convenience** means written notice issued by TxDOT to DB Contractor terminating the Work of DB Contractor for convenience under Section 8.9.1.

**NTP1** means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the portion of the Work described in Section 8.1.1.3.

**NTP1 Maximum Payment Amount** means the maximum amount for which TxDOT may be liable to DB Contractor under the Contract unless and until NTP2 is issued. The NTP1 Maximum Payment Amount is defined in the Design-Build Agreement.

**NTP1 Payment Bond Amount** is defined in the Design-Build Agreement.

**NTP1 Performance Bond Amount** is defined in the Design-Build Agreement.

**NTP2** means a written notice issued by TxDOT to DB Contractor pursuant to Section 8.1.1.4 authorizing DB Contractor to proceed with the remaining Work and other activities pertaining to the Project.

**NTP2 Payment Bond Amount** is defined in the Design-Build Agreement.

**NTP2 Performance Bond Amount** is defined in the Design-Build Agreement.

**Office of Public Involvement** is the headquarters-level office that serves as the central clearinghouse on all guidelines, policies, and procedures regarding public involvement throughout TxDOT.

**Open Book Basis** means providing TxDOT with all underlying assumptions and data associated with pricing or compensation (whether of DB Contractor or TxDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

**Operating Procedures** means the procedures governing the operations of the Panel, as amended by the Panel. The initial Operating Procedures are set forth in Exhibit 21 to the DBA.

**Other Relief Event** shall have the meaning set forth in Section 4.6.9.3.2.

**Panel** shall have the meaning set forth in Section 4.9.1.1.

**Panel Chairperson** shall have the meaning set forth in Section 4.9.2.2.

**Panel Recommendations** shall have the meaning set forth in Section 4.9.10.

**Party** means DB Contractor or TxDOT, as the context may require, and "**Parties**" means DB Contractor and TxDOT, collectively.

**Pavement Design Report** means the formal engineering document prepared by a Registered Professional Engineer that details the pavement design analysis, data, policies, and other

considerations used in the development of the proposed pavement structure as further described in Section 16.4.1.4 of the Design-Build Specifications.

**Payment Activity** means a Project Baseline Schedule activity with a portion of the Price allocated to it.

**Payment Bond** means the payment bond set forth as Exhibit 12, Appendix 2, to the Design-Build Agreement.

**PCO Notice** shall have the meaning set forth in Section 4.6.3.2.2.

**Performance Bond** means the performance bond set forth as Exhibit 12, Appendix 1, to the Design-Build Agreement.

**Performance and Measurement Table** means the table described in Section 27.3.1 of the Design-Build Specifications, as it may be updated pursuant to Section 27.3.4 of the Design-Build Specifications.

**Performance Requirements** means, for each Element in connection with the Maintenance Work, the requirements set forth in the Performance and Measurement Table. A Performance Requirement is achieved provided DB Contractor addresses each Defect within the specified Defect Repair Period.

**Performance Section** means a defined section of the Project for the purpose of audit, inspection and measurement during performance of Maintenance Work. A Performance Section includes all travel lanes including mainlanes, ramps and access roads of the roadway operating in one direction over a length of 0.1 miles, together with all Elements associated with such 0.1 mile length.

**Person** means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

**Plans** means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

**Possession and Use Agreement (PUA)** shall have the meaning set forth in Section 15.4.1 of the Design-Build Specifications.

**Pre-existing Hazardous Materials** means Hazardous Materials that meet all of the following criteria:

(a) The Hazardous Materials are in, on or under the Schematic ROW, or parcels added to the Site by a TxDOT-Directed Change or required due to a Relief Event or Necessary Basic Configuration Change as of the date TxDOT makes available to DB Contractor the affected parcel or detention pond, as applicable; and

(b) The Hazardous Materials are not required to be removed and disposed of due to a DB Contractor Release of Hazardous Materials.

For purposes of this definition, “makes available” means (i) the Effective Date for parcels acquired as of the Effective Date or (ii) as to parcels not yet acquired as of the Effective Date, the date DB Contractor first receives access to the parcel in accordance with the Contract Documents. The term Pre-existing Hazardous Materials does not include Hazardous Materials falling within paragraph (d) of the definition of “Other Relief Event” set forth in Section 4.6.9.3.2.

**Preliminary Design Submittal** means the Plans, specifications, and reports which capture all major items, elements or portions of the Work such that DB Contractor can demonstrate a comprehensive understanding of the Project.

**Preliminary Project Baseline Schedule (PBS1)** means the original Project Schedule submitted with the Proposal.

**Price** is defined in the Design-Build Agreement.

**Professional Services** means all Work performed under the Contract Documents other than Construction Work, including the following services and Work: (a) design, engineering, and architecture; (b) right of way acquisition services; (c) surveying; (d) Utility Adjustment design; (e) public information and communications; and (f) environmental permitting and compliance services.

**Professional Services Quality Assurance Firm (PSQAF)** means the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for the quality assurance program as set forth in the PSQMP for all Professional Services and performing independent quality assurance reviews of Professional Services submittals and audits of the PSQMP.

**Professional Services Quality Assurance Manager (PSQAM)** means the person appointed by the PSQAF who is responsible for management and quality assurance functions for Professional Services, as more particularly described in Table 1 set forth in Attachment 4-1.

**Professional Services Quality Control Manager (PSQCM)** means the person assigned by DB Contractor with responsibility to cause the methods and procedures contained in the approved PSQMP to be implemented and followed by DB Contractor's design staff in the performance of the Work as more particularly described in Table 1 set forth in Attachment 4-1.

**Professional Services Quality Management Plan (PSQMP)** means the plan prepared by DB Contractor setting forth the internal quality control and quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Attachment 4-1.

**Project** is defined in the Design-Build Agreement.

**Project Baseline Schedule (PBS)** means either PBS2 or PBS3, as more particularly described in Section 8.5.3.

**Project Baseline Schedule 2 (PBS2)** means the Project Schedule that is a condition to NTP2, as more particularly described in Section 8.5.3.

**Project Baseline Schedule 3 (PBS3)** means the Project Schedule that is a condition to commencement of the Construction Work, as more particularly described in Section 8.5.3.

**Project Management Plan (PMP)** means the plan developed by DB Contractor and approved by TxDOT, including all component parts, plans and documentation described in Section 4.2.

**Project Manager (PM)** means the individual more particularly described in Section 4.2.1.1.1, designated by DB Contractor and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of DB Contractor.

**Project Overhead** means the dollar amount determined in accordance with Section 4.6.6.2.2.

**Project Overhead Percentage** is defined in the Design-Build Agreement.

**Project Right of Way or Project ROW** means the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.

**Project Schedule** means the latest Project Baseline Schedule, Project Schedule Revision or Project Recovery Schedule, whichever is most recently accepted by TxDOT, for all Work leading up to and including Final Acceptance of the Project in accordance with Section 8.5.

**Project Schedule Revision** means a revision to the Project Schedule, submitted as necessary to make changes to the Project Schedule within 7 days after submittal of the monthly Project Schedule Update, as more particularly described in Section 8.5.5.

**Project Schedule Update** means the monthly update of the latest accepted Project Schedule that reports the progress of schedule activities, as more particularly described in Section 8.5.4. The Project Schedule Update shall not include proposed Project Schedule Revisions.

**Project Specific Location (PSL)** means an area in which DB Contractor proposes Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the Environmental Approvals, such as construction work sites, field office locations, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

**Project Utility Adjustment Agreement (PUAA)** means an agreement between DB Contractor and a Utility Owner that sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented and as more particularly described in Section 14.1.3.1 of the Design-Build Specifications. A document is a "Project Utility Adjustment Agreement" if it meets the foregoing definition, without regard to the title of the document.

**Project Utility Adjustment Agreement (DB Contractor-Managed)** means a Project Utility Adjustment Agreement providing for design and construction by DB Contractor of the Utility Adjustments addressed therein.

**Project Utility Adjustment Agreement (Owner-Managed)** means a Project Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustments addressed therein.

**Proposal** means DB Contractor's original Proposal submitted in response to the RFP, including any clarifications.

**Proposal Due Date** means the deadline for submission of the Proposal to TxDOT set forth in Recital F of the Design-Build Agreement.

**Proposer** means each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project, as amended.

**Proprietary Intellectual Property** means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.



**Protection in Place** means any action taken to avoid damaging a Utility that does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

**Public Information Act** means the Texas Government Code Chapter 552.001 *et seq.*, as amended from time to time.

**Public Information and Communications Plan (PICP)** means the plan setting forth procedures by which DB Contractor works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 4.2.2.

**Public Information Coordinator** means the person designated by DB Contractor to manage DB Contractor's public information activities as more particularly described in Section 11.2.3 of the Design-Build Specifications.

**Punch List** means the itemized list of the Work that remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

**QAP for DB Projects (QAP)** means the version of the TxDOT *Quality Assurance Program for CDA/Design-Build Projects* in effect as of the Effective Date.

**Qualifying Delays** means Uncooperative Utility Delay, Utility Owner Delay, Differing Site Conditions Delay, Unidentified Utility Delay, Force Majeure Event Delay, and Eminent Domain Delay.

**Qualifying Delay Late Fee** means the daily late fee for which DB Contractor is liable to TxDOT as compensation for certain failures to achieve Completion Deadlines as described in and subject to the terms and conditions set forth in Section 8.7.1.2.

**Quality Management Plan (QMP)** means the document approved by TxDOT describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project and Work, as described in Section 4.3.

**Quitclaim Deed** means a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in Section 14.2.4.4 of the Design-Build Specifications.

**Recognized Environmental Condition** shall have the meaning set forth in ASTM E-1527-13.

**Record Documents** means an organized, complete set of Project documents that accurately reflect the actual condition of the constructed Work consisting of the Record Drawings, supporting calculations, and details, including all plans, studies, and reports that are prepared, signed, and sealed by a Registered Professional Engineer and delivered to TxDOT after Substantial Completion of the Project.

**Record Drawings** ("as-built plans") means the Released for Construction Documents that are updated to reflect the as-constructed project with documented changes made during construction

that accurately reflect the actual condition of the constructed Work, signed and sealed by a Registered Professional Engineer.

**Recovery Schedule** means the schedule submitted by DB Contractor when a delay to a Critical Path activity that extends a Completion Deadline (by the greater of either 30 days in the aggregate or that number of days in the aggregate equal to 5% of the days remaining until a Completion Deadline, as more fully described in Section 8.5.6) has not been cured with a Project Schedule Revision to TxDOT's satisfaction for three consecutive months.

**Reference Information Documents (RID)** is defined in the Design-Build Agreement. Except as expressly provided in the Design-Build Agreement, the Reference Information Documents are not considered Contract Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.

**Registered Professional Engineer (PE)** means a person who is duly licensed and registered by the Texas Board of Professional Engineers to engage in the practice of engineering in the State.

**Registered Professional Land Surveyor (RPLS)** means a person registered by the Texas Board of Professional Land Surveying to practice the profession of land, boundary, or property surveying or other similar professional practices.

**Reimbursable Differing Site Conditions Costs** means DB Contractor's incremental increased costs of the performance of changed Work resulting from the existence of Differing Site Conditions, subject to the limitations in Section 4.6.9.1, and as determined in accordance with Section 4.6.8, provided that the 25% and 145% markups allowed under Section 4.6.8.1 shall be reduced to 12.5% and 130%, and the 15% markup allowed under Section 4.6.8.2 shall be reduced to 7.5%.

**Reimbursable Hazardous Materials Management Costs** means DB Contractor's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 4.6.9.4, provided that the 25% and 145% markups allowed under Section 4.6.8.1 shall be reduced to 12.5% and 130%, and the 15% markup allowed under Section 4.6.8.2 shall be reduced to 7.5%.

**Release of Hazardous Materials** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

**Released for Construction Documents** means DB Contractor's final Design Documents issued for the purpose of construction after all prior comments by TxDOT have been addressed to TxDOT's reasonable satisfaction.

**Relief Event** means Force Majeure Events and Other Relief Events.

**Relocation Plan** means a documented relocation plan for owner-occupants or tenants that fulfills the requirement set forth in the TxDOT *Right of Way Manual*, Volume 3, Chapter 8 (Relocation Program Planning and Construction).

**Replacement Housing Calculation** means the opportunity to provide a displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

**Replacement Utility Property Interest** means any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) that is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

**Request for Change Order** means a written notice issued by DB Contractor to TxDOT under Section 4.6.4, advising TxDOT that DB Contractor seeks a Change Order.

**Request for Change Proposal** means a written notice issued by TxDOT to DB Contractor under Section 4.6.2.1.1, advising DB Contractor that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 4.6.2.1.

**Request for Delay Deductible Determination** means a written notice submitted by DB Contractor to TxDOT pursuant to Section 4.6.3.2.4 requesting that a Delay Deductible be credited toward the Delay Deductible Aggregate Cap.

**Request for Information (RFI)** means a written request prepared by DB Contractor and submitted to the Engineer of Record after Final Design Documents have been released for construction to seek direction regarding proposed or constructed Work that deviates from the Released for Construction Documents.

**Request for Proposals (RFP)** is defined in the Design-Build Agreement.

**RFP Documents** means all of the information and materials supplied to DB Contractor in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, the Reference Information Documents and any addenda issued in connection therewith.

**RFQ or Request for Qualifications** is defined in the Design-Build Agreement.

**Right of Entry Agreement** or **ROE Agreement** means a written agreement between the record title owner and DB Contractor granting TxDOT, DB Contractor or assignees permission to enter the applicable parcel that is to be acquired, as set forth in the Section 15.3.5.1 of the Design-Build Specifications.

**Right of Way Acquisition Manager** or **ROW Acquisition Manager (ROW AM)** means DB Contractor's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project ROW.

**Right of Way Acquisition Management Plan** or **ROW Acquisition Management Plan** means DB Contractor's written plan, approved by TxDOT in accordance with Section 4.2.9, for acquisition of real property for all parcels of land necessary to construct, obtain access to and operate the Project and any Additional Properties, prepared under the Project Management Plan (PMP) approved by TxDOT.

**Right of Way Administrator or ROW Administrator** means TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

**Right of Way Maps or ROW Maps** means and consists of right of way maps prepared for the Project and contained in the Reference Information Documents, depicting within the boundary lines shown therein the land or property that TxDOT has made or will make available for the Project.

**Rules** means Chapter 9 of Title 43, Texas Administrative Code.

**Safety and Health Plan** shall have the meaning as set forth in Section 4.2.3.

**Safety Manager** means the person assigned by Design-Build Contractor with responsibility to carry out the Safety and Health Plan and all safety-related activities, including training and enforcement of safety operations, as more particularly described in Section 4.2.3.1.

**Schedule of Values** means the Price, as may be amended by Change Orders, broken down and allocated to the Project Baseline Schedule rolled up to a WBS Level 3, 4, or 5 as appropriate.

**Schematic Design** means the preliminary design plans for the Project identified in the RID.

**Schematic ROW** means any real property (which term is inclusive of all estates and interests in real property), including detention ponds as well as improvements and fixtures, within the proposed ROW lines established on the Schematic Design, as such limits may be adjusted from time to time in accordance with the Contract Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

**Service Lines** means a Utility line, up to and including the meter, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than an individual line to a larger system. However, unless noted otherwise in the Design-Build Specifications, this term excludes any line that supplies an active feed from a Utility Owner's facility(ies) to supply, activate or energize TxDOT's or a Governmental Entity's Highway Service System. Such line, including its actual connection to the Utility facility, shall instead be considered to be part of the applicable Highway Service System.

**Severe Weather Evacuation Plan** shall have the meaning set forth in Section 27.6.3 of the Design-Build Specifications.

**Shift Safety Representative** has the meaning set forth in Section 4.2.3.1.

**Signed and Sealed Engineering Data** means any documents provided by TxDOT to Proposers prior to the Proposal Due Date that are signed and sealed by a registered professional licensed engineer or registered professional land surveyor and are identified as Signed and Sealed Engineering Data in Exhibit 3 to the Design-Build Agreement.

**Site** means Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that DB Contractor may acquire at its own cost and expense in connection with the Project.

**Site Investigation Report (SIR)** means the report required by Section 4.2.4.4.1.

**Snow and Ice Control Plan (SICP)** shall have the meaning set forth in Section 27.6.2 of the Design-Build Specifications.

**SOFR** is a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities. Each business day, the New York Fed publishes the SOFR on the New York Fed website at approximately 8:00 a.m. ET. The SOFR will be published on each business day that is not recognized as a holiday by the SIFMA calendar for secondary market trading of U.S. government securities. The SOFR, reflecting activity for the business day preceding a holiday will be published

on the subsequent business day. All interest based on SOFR shall be calculated on the basis of a 360-day year for the actual days elapsed.

**Source Code and Source Code Documentation** means software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

**Special Event** means any event described in Section G of Exhibit 15 to the Design-Build Agreement, as such list may be modified by TxDOT in accordance with Exhibit 15 to the Design-Build Agreement.

**Special Event Delay** has the meaning set forth in Section 4.6.9.8.1.

**State** means the State of Texas.

**State Highway (SH)** means a highway designated as part of the state highway system under Section 201.103, Texas Transportation Code.

**Subcontract** means any agreement by DB Contractor with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

**Subcontractor** means any Person with whom DB Contractor has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of DB Contractor and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.

**Submittal** means any document, work product or other written or electronic end product or item pertaining to the Work and required under the Contract Documents or the Project Management Plan to be delivered or submitted to TxDOT, except any submitted to TxDOT in connection with applying for, processing or obtaining a Governmental Approval.

**Substantial Completion** means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 5.11.1.2, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

**Substantial Completion Deadline** is defined in the Design-Build Agreement.

**Supplier** means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to DB Contractor or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

**Supply Chain Disruption Delay** has the meaning set forth in Section 4.6.9.7.1.

**Surety** means each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Payment Bond and Performance Bond.

**Tangible Net Worth** means the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets, including goodwill, patents, and licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

**Temporary Work** means portions of the Work that are non-permanent and constructed prior to the permanent elements included in the Released for Construction Documents.

**Term** means the period of time commencing upon issuance by TxDOT of NTP1 and continuing thereafter through Final Acceptance of the Project, unless terminated earlier in accordance with the Design-Build Contract.

**Termination for Convenience** means a termination of the Design-Build Contract made pursuant to Section 8.9.1.

**Texas Accessibility Standards** means the standards for accessibility and regulations issued by the Texas Department of Licensing and Regulation.

**Texas Cone Penetration** means the test method which determines the relative density or consistency and load bearing capacity of materials encountered in foundation exploration work.

**Third Party Agreement** means any agreement or memorandum of understanding between TxDOT and a third party that governs or impacts the Work. The term "Third Party Agreement" does not include Governmental Approvals, TxDOT issued permits and approvals, agreements with municipalities in their capacity as Utility Owners, Utility Agreements or railroad agreements.

**Third Party Claims** means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

**Third Party Release(s) of Hazardous Material** means any and all spills of Hazardous Material on the Schematic ROW by a third party who is not acting in a capacity of a DB Contractor-Related Entity that occurs on or after the date TxDOT makes available to DB Contractor the affected parcel.

**Threatened or Endangered Species** means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

**Time Impact Analysis (TIA)** means a delay analysis performed in accordance with the requirements of Section 4.6.5.2.3.

**Traffic Control Plan (TCP)** has the meaning set forth in Section 26.2.1 of the Design-Build Specifications.

**Traffic Management Plan** means the plan prepared by DB Contractor for the management of traffic during construction, as more particularly described in Section 4.2.10.

**TREC** means the Texas Real Estate Commission, and any entity succeeding to the powers, authorities and responsibilities of the TREC.

**TxDOT** means the Texas Department of Transportation, any assignee and any other entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the Contract Documents.

**TxDOT Administrative Settlement Committee** means the committee established within TxDOT under the direction of the Right of Way Administrator.

**TxDOT-Caused Delays** means unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract, or violation of Law or a Governmental Approval of or by any of the DB Contractor-Related Entities:

- (a) TxDOT-Directed Changes;
- (b) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, Condemnation Packages and Acquisition Packages, and other Submittals and matters for which response is required under the Contract Documents as an express prerequisite to DB Contractor's right to proceed or act (which, for the avoidance of doubt, does not include Submittals and matters governed by Section 5.2.1.3), within the time periods (if any) indicated in the Contract Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from DB Contractor requesting such action in accordance with the terms and requirements of the Contract Documents; and
- (c) uncovering, removing and restoring Work pursuant to Section 5.10.1.3, if such Work exposed or examined is in conformance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Other Relief Event under clause (e) of the definition of "Other Relief Event") despite the fact that TxDOT may specifically direct DB Contractor to suspend the Work.

**TxDOT-DB Contractor Communications Plan** means the TxDOT-DB Contractor Communications Plan as described in Section 4.2.5.

**TxDOT Decision** shall have the meaning set forth in Section 4.9.5.2.

**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, (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, and (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.

**TxDOT Engineering Standard Sheets** means the roadway, bridge and traffic related drawings and standards provided on TxDOT's webpage for Statewide TxDOT CAD Standard Plan Files.

**TxDOT-Provided Approvals** is defined in the Design-Build Agreement.

**TxDOT's Recoverable Costs** means:

- (a) The costs of any assistance, action, activity or Work undertaken by TxDOT that DB Contractor is liable for or is to reimburse under the terms of the Contract Documents, including the charges of third-party contractors and reasonably allocated wages, salaries, compensation and overhead of TxDOT staff and employees performing such action, activity or Work; plus
- (b) Third-party costs TxDOT incurs to publicly procure any such third-party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's General Counsel Division or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third-party contractors; plus
- (d) Interest on all the foregoing sums at a floating rate equal to the SOFR in effect from time to time plus 200 basis points, commencing on the due date under the applicable terms of the Contract Documents and continuing until paid.

**TxDOT Release of Hazardous Material** means, except as provided below, the introduction in, on or under the Project ROW of Hazardous Material directly by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any DB Contractor-Related Entity). TxDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that were in or part of construction materials and equipment incorporated into the Project; and (ii) any Hazardous Materials so introduced that were in, on or under DB Contractor-Designated ROW.

**TxDOT ROW Utility Manual** means the ROW Utility Manual issued by the Right of Way Division of TxDOT on November 5, 1990, as the same may be amended, supplemented or replaced from time to time.

**TxDOT Standards** shall mean TxDOT policies, procedures, guidelines, manuals, typical practices, and standards of care that are readily available to DB Contractor.

**TxDOT Standard Specifications** means the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, adopted by the Texas Department of Transportation including all revisions thereto applicable on the Effective Date, unless otherwise specified.

**Uncooperative Utility Delay** has the meaning set forth in Section 4.5.5.1.



**Unidentified Utility(ies)** means any Utility impacted by the Project (other than a Service Line or Abandoned Utility) that is neither an Identified Utility nor a New Utility, including any Utility that would be a New Utility but for the fact that it is an extension of an Identified Utility.

**Unidentified Utilities Deductible** is defined in the Design-Build Agreement.

**Unidentified Utilities Deductible Cap** is defined in the Design-Build Agreement.

**Unidentified Utility Delay** has the meaning set forth in Section 4.6.9.2.2.

**Uniform Act** means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

**Unilateral Change Order** means a written order issued by TxDOT to DB Contractor delineating changes in the Work within the general scope of the Contract Documents or in the terms and conditions of the Contract Documents in accordance with Section 4.6.2.2 and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

**Users** means the registered owner of a vehicle traveling on the Project or any portion thereof.

**Utility(ies)** or **utility(ies)** means a public, private, cooperative, municipal or government line, facility or system used for the carriage, transmission or distribution of cable television, electric power, telephone, telegraph, water, salt water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility(ies)" or "utility(ies)" also includes radio towers or transmission towers (including cellular). Oil and gas gathering lines and production supply lines are included in this definition and are classified as a Utility.

When used in the context of Utility Adjustments, the term specifically excludes:

- (a) Storm water facilities providing drainage for the Project ROW, and
- (b) TxDOT's or a Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems serving street or highway purposes (including ITS and intelligent vehicle highway system facilities).

The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line up to and including the meter, connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

**Utility Accommodation Rules (UAR)** means the Utility Accommodation Rules issued by TxDOT, at 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, as the same may be amended, supplemented or replaced by TxDOT from time to time.

**Utility Adjustment** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously Abandoned Utilities as well as of newly Abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance or use of the Project; provided, however, that the term "**Utility Adjustment**" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project

ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

**Utility Adjustment Agreement Amendment (UAAA)** means an agreement between DB Contractor and the Utility Owner that amends a Project Utility Adjustment Agreement, as more particularly described in Section 14.1.3.2 of the Design-Build Specifications.

**Utility Adjustment Field Modifications** has the meaning set forth in Section 14.4.7 of the Design-Build Specifications.

**Utility Adjustment Concept Plan** means a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and DB Contractor's recommendation for all of the Adjusted locations, of each Utility impacted by the Project, as more particularly described in Section 14.3.3 of the Design-Build Specifications.

**Utility Adjustment Plans** means, collectively, the plans, specifications, and applicable cost estimates for a Utility Adjustment, whether prepared by DB Contractor or a Utility Owner, in connection with the design work for any Utility Adjustment, as more particularly described in Section 14.3.4 of the Design-Build Specifications.

**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.

**Utility Adjustment Work** means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by DB Contractor or by the Utility Owners. The term also includes any reimbursement of Utility Owners that is DB Contractor's responsibility pursuant to Section 4.5.6. Any Utility Adjustment Work furnished or performed by DB Contractor is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

**Utility Agreement** means a PUA or UAAA, as the context may require.

**Utility Appurtenance Adjustment** means the adjustment of Utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

**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 Project Utility Adjustment 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 Assembly Checklist** means a checklist listing the required components of a Utility Assembly, as referenced in Section 14.3.4.5 of the Design-Build Specifications.

**Utility Assembly Number or Assembly Tracking Number** means the unique number given by DB Contractor to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the

assigned number of the highway and “XXXX” shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

**Utility Design Coordinator (UDC)** means the Registered Professional Engineer designated by DB Contractor to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in Section 14.2.3 of the Design-Build Specifications.

**Utility Enhancement** means a Betterment or a Utility Owner Project, as referenced in Section 4.5.2.

**Utility Joint Use Agreement or Utility Joint Use Acknowledgment (UJUA)** means an agreement between TxDOT and a Utility Owner that establishes the rights and obligations of TxDOT and the Utility Owner with respect to occupancy of the Project ROW by a Utility owned by such Utility Owner.

**Utility Management Plan** means the plan setting forth procedures by which DB Contractor will manage the Utility Adjustment Work as more particularly described in Section 4.2.8.

**Utility Manager (UM)** means the senior staff utility administrator designated by DB Contractor to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 14.2.3 of the Design-Build Specifications.

**Utility Owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Owner Delay** shall have the meaning set forth in Section 4.5.5.2.

**Utility Owner Project** means the design and construction by or at the direction of a Utility Owner (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.

**Utility Record Drawings** means the Released for Construction Documents for Utilities, as such documents are updated to reflect the as-constructed Utility with documented changes made during construction that reflect the actual condition of the constructed Utility, signed and sealed by a Registered Professional Engineer with documented acknowledgement by the applicable Utility. The Utility Record Drawings are maintained for record by both the Utility and TxDOT.

**Utility Strip Map** means the map, any SUE information, any other documents, and exhibits depicting any existing Utilities identified by TxDOT that are included in the folder labeled “Utility Strip Map” in the Reference Information Documents.

**Utility Tracking Report** means the report prepared by DB Contractor and that lists all Utilities located within the Project ROW or otherwise potentially affecting the Project as more particularly described in Section 14.5.2 of the Design-Build Specifications.

**Warranty(ies)** shall have the meaning set forth in Section 3.8.1.

**Warranty Term** shall have the meaning set forth in Section 3.8.1.1.

**Work** means all of the work required under the Contract Documents, all administrative, Professional Services, engineering, real property acquisition and occupant relocation, support services, Utility

Adjustment Work to be furnished or provided by DB Contractor, reimbursement of Utility Owners for Utility Adjustment Work furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, landscaping, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by DB Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project, except for those efforts that such Contract Documents expressly specify will be performed by Persons other than the DB Contractor-Related Entities.

**Work Breakdown Structure or WBS** means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain elements of Professional Services Work and Construction Work. There shall be clearly identifiable linkage between the WBS and activities shown on the Project Schedule. The WBS numbering convention shall be compatible with Project Schedule coding and should be compatible with document control coding.

**ITEM 2                    CONTRACT DOCUMENTS AND INTERPRETATION****2.1                    Contract Documents**

The Contract Documents and order of precedence are listed in Section 1.3 of the Design-Build Agreement.

**2.2                    Contract Interpretation****2.2.1                Interpretation of the Contract Documents:**

- (a)        the singular includes the plural and vice versa;
- (b)        references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;
- (c)        the words “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation” and shall not be considered to set forth an exhaustive list;
- (d)        unless otherwise indicated, the words “Section”, “subsection”, “paragraph”, “sentence”, “clause”, “sub-clauses,” and “Exhibit” mean and refer to the specified section, subsection, paragraph, sentence, clause, sub-clause, or exhibit of or to the Contract Documents and a reference to a subsection or clause “above” or “below” refers to the denoted subsection or clause within the Section in which the reference appears;
- (e)        words such as “herein,” “hereby,” “hereof,” “hereto,” and “hereunder” and words of similar import refer to the entire document in which they are contained and not to any particular provision or section;
- (f)        words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- (g)        references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities;
- (h)        words of any gender used herein shall include each other gender where appropriate;
- (i)        unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive;
- (j)        the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances;
- (k)        unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified, or supplemented from time to time in accordance with its terms;
- (l)        the division of the Contract Documents into parts, sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of the Contract Document and the headings in these Contract Documents are not intended to be

full or precise descriptions of the text to which they refer and shall not be considered part of the Contract Documents; and

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

**2.2.2** DB Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Effective Date, to review the terms and conditions of the Contract Documents (including those Reference Information Documents that are referenced in the Contract Documents, and pursuant to Section 1.4.1 of the Design-Build Agreement, 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.

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

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

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

**2.2.6 Computation of Periods**

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

**2.2.7 Headings**

The captions of the articles, sections, and subsections herein are inserted solely for convenience, and under no circumstances are they or any of them to be treated or construed as part of the Design-Build Contract.

## **2.2.8 Explanations; Omissions and Misdescriptions**

DB Contractor shall not take advantage of or benefit from any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, DB Contractor shall request in writing such further written explanations from TxDOT as may be necessary and shall comply with the explanation provided. DB Contractor shall promptly notify TxDOT in writing of all Errors that it may discover in the Contract Documents (including those Reference Information Documents that are referenced in the Contract Documents, and pursuant to Section 1.4.1 of the Design-Build Agreement are considered Contract Documents to the extent so referenced), and shall obtain specific instructions in writing from TxDOT regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work that are necessary to carry out the intent of the Contract Documents, or that are customarily performed, shall not relieve DB Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 4.6.

## **2.2.9 Referenced Standards, Policies and Specifications**

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

**2.2.9.2** In interpreting standards, policies and specifications referenced in the Design-Build Specifications, the following apply:

- (a) References to the project owner means TxDOT.
- (b) References to the Engineer in the context of provider of compliance judgment may mean the Professional Services Quality Assurance Manager (PSQAM), the Independent Quality Firm Manager (IQFM) or it may mean a TxDOT representative, depending on the context, as determined by TxDOT in its sole discretion.
- (c) References to "plans" means the Released for Construction Documents, unless otherwise indicated.
- (d) Cross-references to measurement and payment provisions contained in the referenced standards, policies and specifications shall be deemed to refer to the measurement and payment provisions contained in the Contract Documents.

## **2.2.10 Incorporation of ATCs**

**2.2.10.1** If the Contract Documents incorporate any approved ATCs and either (a) DB Contractor does not comply with one or more TxDOT conditions applicable to the ATC or (b) DB Contractor does not obtain a third-party approval required for the ATC, including any required agreements with railroads, then DB Contractor shall comply with the Contract Document requirements that would have applied but for the ATC, including acquiring DB Contractor-Designated ROW necessary to comply with the Contract Documents, without any increase in the Price, extension of the Completion Deadlines or any other Change Order.

**2.2.10.2** ATCs contained in proposals submitted by unsuccessful proposers and, except for those ATCs included in Appendix 2 to Exhibit 2 to the Design-Build Agreement, DB Contractor ATCs that were approved by TxDOT for inclusion in the Proposal that were not incorporated into the Proposal may be presented to DB Contractor as a Request for Change Proposal in accordance with Section 4.6.2.1.

**2.2.11 Integration of Contract Documents**

TxDOT and DB Contractor agree and expressly intend that, subject to the severability provisions set forth in the Design-Build Agreement, the Design-Build Agreement, the General Conditions and other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

**2.2.12 Amendments**

The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in the Design-Build Contract. An amendment must be accompanied by a Form 1295, Certificate of Interested Parties completed by DB Contractor, as described in Section 4.6.5.5.

**2.2.13 Waiver**

**2.2.13.1** No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party.

**2.2.13.2** The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

**2.2.13.3** Except as provided otherwise in the Contract Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents.

**2.2.13.4** Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Claims or Disputes.

**2.2.14 Governing Law**

The Contract Documents shall be governed by and construed in accordance with the Laws of the State of Texas.



**ITEM 3                    FEDERAL REQUIREMENTS; INSURANCE; PERFORMANCE SECURITY****3.1                    Federal Requirements**

DB Contractor shall comply and require its Subcontractors to comply with all Federal Requirements. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

**3.2                    DBE Requirements**

**3.2.1**                    TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions applicable to the Project are set forth in Attachment 3-2. The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. DB Contractor shall comply with all applicable requirements set forth in the DBE Special Provisions and TxDOT's Disadvantaged Business Enterprise Program applicable to design-build agreement projects and adopted pursuant to 49 CFR Part 26, and the provisions in DB Contractor's approved DBE Performance Plan, set forth in Exhibit 6 to the Design-Build Agreement. The approved overall DBE participation goal for the Project is established in the Design-Build Agreement.

**3.2.2**                    DB Contractor shall exercise good faith efforts to achieve such DBE participation goal for the Project through implementation of DB Contractor's approved DBE Performance Plan. DB Contractor shall include provisions to effectuate the requirements of Section 3.2.1 in every Subcontract (including purchase orders and in every subcontract of any DB Contractor-Related Entity for the Work), and shall require that they be included in all Subcontracts, so that such provisions will be binding upon each Subcontractor.

**3.2.3**                    DB Contractor shall not cancel or terminate any Subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Subcontracts with DBE firms set forth in the DBE Special Provisions in Attachment 3-2.

**3.3                    Non-Discrimination; Equal Employment Opportunity**

**3.3.1**                    DB Contractor shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. DB Contractor shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by DB Contractor to carry out these requirements is a material breach of this Design-Build Contract, which may result in the termination of this Design-Build Contract or such other remedy as TxDOT deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying DB Contractor from future bidding as non-responsible.

**3.3.2** DB Contractor shall include Section 3.3.1 in every Subcontract (including purchase orders and in every subcontract of any DB Contractor-Related Entity for the Work), and shall require that they be included in all Subcontracts, so that such provisions will be binding upon each Subcontractor.

**3.3.3** DB Contractor confirms for itself and all Subcontractors that DB Contractor and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that DB Contractor and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. DB Contractor shall comply with all applicable Laws relating to equal employment opportunity and nondiscrimination, including those set forth in Attachment 3-1, and shall require its Subcontractors to comply with such provisions.

### **3.4 Surety Bonds**

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

**3.4.1** On or before the issuance by TxDOT of NTP1, DB Contractor shall deliver to TxDOT a performance bond in the initial amount of the NTP1 Performance Bond Amount, which amount will increase automatically to the NTP2 Performance Bond Amount upon issuance by TxDOT of NTP2, and such bond shall be in the form attached to the Design-Build Agreement.

**3.4.2** On or before the issuance by TxDOT of NTP1, DB Contractor shall deliver to TxDOT a payment bond in the initial amount of the NTP1 Payment Bond Amount, which amount will increase automatically to the NTP2 Payment Bond Amount upon issuance by TxDOT of NTP2, and such bond shall be and in the form attached to the Design-Build Agreement.

**3.4.3** Upon the issuance by TxDOT of NTP2, the amount of the Performance Bond shall increase automatically to the NTP2 Performance Bond Amount, in accordance with the Performance Bond included in the Design-Build Agreement effecting such increase.

**3.4.4** Upon the issuance by TxDOT of NTP2, the amount of the Payment Bond shall increase automatically to the NTP2 Payment Bond Amount in accordance with the Payment Bond included in the Design-Build Agreement effecting such increase.

**3.4.5** Reserved.

**3.4.6** DB Contractor shall not commence or permit or suffer commencement of any Design Work or any Construction Work, until DB Contractor delivers to TxDOT the fully executed Performance Bond and Payment Bond in accordance with this Section 3.4.

**3.4.7** Reserved.

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

### **3.5 Insurance**

DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, the insurance policies required in accordance with this Section 3.5.

#### **3.5.1 General Insurance Requirements**

##### **3.5.1.1 Qualified Insurers**

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

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

##### **3.5.1.2 Premiums, Deductibles and Self-Insured Retentions.**

DB Contractor shall timely pay the premiums for all insurance required under this Design-Build Contract. Subject to Section 4.6 and except as provided in the DBA, DB Contractor shall be responsible for and TxDOT shall have no liability for any deductibles, self-insured retentions and amounts in excess of the coverage provided. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the insurance policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

##### **3.5.1.3 Primary and Non-Contributory Coverage**

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

##### **3.5.1.4 Verification of Coverage**

###### **3.5.1.4.1**

At each time DB Contractor is required to initially obtain or cause to be obtained each insurance policy, including insurance coverage required of Subcontractors, and thereafter not later than 10 days prior to the expiration date of each insurance policy, DB Contractor shall deliver to TxDOT a certificate of insurance. Each required certificate must meet the requirements of Texas Insurance Code Chapter 1811 and, to the extent permitted under applicable Laws, state the identity of all carriers, named insureds and additional insureds required under the Contract Documents, state the type and limits of coverage, deductibles, subrogation waiver, and termination provisions of the policy, include as attachments all additional insured endorsements required under the Contract Documents,

and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker and otherwise be in a form satisfactory to TxDOT. Each such certificate of insurance evidencing policies required to be obtained by DB Contractor shall be accompanied by a letter signed by DB Contractor confirming that the insurances represented in the certificate of insurance fully comply with all provisions of this Section 3.5. DB Contractor certifies to TxDOT by submitting each Subcontractor certificate of insurance that the insurances represented in the certificate fully comply with the requirements of this Section 3.5 that are applicable to Subcontractor policies.

**3.5.1.4.2** In addition, within a reasonable time after receipt of a request by TxDOT for copies of insurance policies required to be obtained by DB Contractor (but not to exceed the later of 15 days after the receipt of the actual policy and the receipt of TxDOT's request), DB Contractor shall deliver to TxDOT (a) a complete certified copy of each such requested insurance policy or modification, or renewal or replacement insurance policy and all endorsements thereto and (b) satisfactory evidence of payment of the premium therefor, which may be a letter from DB Contractor's broker stating that all required premium payments have been made in accordance with the policy requirements.

**3.5.1.4.3** If DB Contractor has not provided TxDOT with the foregoing proof of coverage and payment within five days after TxDOT delivers to DB Contractor written notice of an Event of Default under Section 8.8.1.2 and demand for the foregoing proof of coverage, TxDOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force (a) obtain such an insurance policy; and DB Contractor shall reimburse TxDOT for the cost thereof upon demand and (b) suspend all or any portion of Work for cause and close the Project until TxDOT receives from DB Contractor such proofs of coverage in compliance with this Section 3.5.1 (or until TxDOT obtains an insurance policy, if it elects to do so).

**3.5.1.5** Subcontractor Insurance Requirements

**3.5.1.5.1** DB Contractor's obligations regarding Subcontractor's insurance are set forth in Section 3.5.4.9. DB Contractor shall cause each Subcontractor to provide such insurance in the manner and in the form consistent with the requirements contained in Section 3.5.4.9 and also including a requirement to comply with the primary and non-contributory, waiver of subrogation, and notice of cancellation provisions of this Section 3.5.1.

**3.5.1.5.2** If any Subcontractor fails to procure and keep in effect the insurance required of it under Section 3.5.4.9 and TxDOT asserts the same as an Event of Default hereunder, DB Contractor may, within the applicable cure period, cure such Event of Default by (a) causing such Subcontractor to obtain the requisite insurance and providing to TxDOT proof of insurance; (b) procuring the requisite insurance for such Subcontractor and providing to TxDOT proof of insurance; or (c) terminating the Subcontractor and removing its personnel from the Site.

**3.5.1.6** Policies with Insureds in Addition to DB Contractor

All insurance policies that are required to be maintained by DB Contractor under the Design-Build Contract and that insure Persons (whether as named or additional insureds) in addition to DB Contractor, other than those to be provided by Subcontractors in compliance with Section 3.5.1.5 above, shall comply or be endorsed to comply with the following provisions.

**3.5.1.6.1** The insurance policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds, including any additional insureds, provided that professional liability policies shall not be required to comply with this Section 3.5.1.6.1. Without limiting the

foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the insurance policies, any breach of warranty, any action or inaction of a named insured or others, any misrepresentation, act or omission of the named insured, or any change in ownership of all or any portion shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Project consultants).

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

**3.5.1.6.3** All endorsements adding additional insureds to required insurance policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the insurance policy generally. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, DB Contractor (if applicable) and TxDOT shall be included as additional insureds under the DB Contractor's commercial general liability policy, using ISO Additional Insured Endorsements CG 20 10 04/13 and CG 20 37 04/13, or endorsements providing equivalent coverage, including products-completed operations. The commercial general liability policy shall include completed operations liability coverage.

**3.5.1.7** Additional Terms and Conditions

**3.5.1.7.1** Each insurance policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written notice (or 10 days in the case of cancellation for non-payment of premium), return receipt requested, has been given to TxDOT and each other insured or additional insured party; provided that (a) notice is not required for erosion of limits due to claims paid and (b) DB Contractor may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 3.5.1.11. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice. Should such an endorsement not be available, prior to an insurance policy being canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium), DB Contractor shall require its insurance broker to furnish 30 days' prior written notice (or 10 days in the case of cancellation for non-payment of premium) to TxDOT and each other insured or additional insured party, return receipt requested. DB Contractor's agreement to comply with this requirement shall be provided along with the certificates of insurance.

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

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

**3.5.1.8** Waivers of Subrogation

TxDOT waives all rights against DB Contractor-Related Entities, and DB Contractor waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Section 3.5, except such rights as they may have to the proceeds of such insurance. If DB Contractor is deemed to self-insure a claim or loss under Section 3.5.2.3, then DB Contractor's waiver shall apply as if it carried the required insurance. DB Contractor shall require all

Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated above. Subject to Section 3.5.1.11, each policy, including workers' compensation if permitted under the applicable worker's compensation insurance laws, shall include a waiver of any right of subrogation against the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss.

**3.5.1.9** No Recourse

There shall be no recourse against TxDOT for payment of premiums or other amounts with respect to the insurance required to be provided by DB Contractor hereunder, except to the extent such costs are recoverable under Section 4.6.

**3.5.1.10** Support of Indemnifications

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

**3.5.1.11** Inadequacy or Unavailability of Required Coverages

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

**3.5.1.11.2** If DB Contractor demonstrates to TxDOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to maintain the insurance coverages it is required to provide hereunder, and if, despite such diligent efforts and through no fault of DB Contractor, any of such coverages (or any of the required terms of such coverages, including insurance policy limits) become unavailable during the Term on commercially reasonable terms, TxDOT will grant DB Contractor an interim written variance from such requirements under which DB Contractor shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 3.5 as is commercially reasonable under then-existing insurance market conditions.

**3.5.1.11.3** DB Contractor shall not be excused from satisfying the insurance requirements of this Section 3.5.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including insurance policy limits) are not commercially available, DB Contractor shall bear the burden of proving either that (a) the same is not available at all in the global insurance and reinsurance markets or (b) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded. For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for highway facilities, and DB Contractor shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Project or claims or loss experience on the Project or of any DB Contractor-Related Entity or Affiliate, whether under an insurance policy required by this Section 3.5 or in connection with any unrelated work or activity of any DB Contractor-Related Entity or Affiliate, shall be considered in determining whether required insurance is commercially unavailable.

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

**3.5.1.12** Defense Costs

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

**3.5.1.13** Contesting Denial of Coverage

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

**3.5.1.14** Umbrella and Excess Policies

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

**3.5.1.15** Additional Insurance Policies

If DB Contractor carries insurance coverage applicable to the Project in addition to that required under this Design-Build Contract, then DB Contractor shall, to the extent feasible, include TxDOT and its members, directors, officers, employees, agents and the Indemnified Parties as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 3.5.1.6.3 and DB Contractor shall provide to TxDOT the proofs of coverage and copy of the policy described in Section 3.5.1.4. If, however, DB Contractor demonstrates to TxDOT that inclusion of such Persons as additional insureds will increase the premium in a manner that is not cost-effective, TxDOT shall elect either to pay the increase in premium or forego additional insured coverage. The provisions of Sections 3.5.1.4, 3.5.1.6, 3.5.1.8, 3.5.1.9, 3.5.1.13 and 3.5.2 shall apply to all such policies of insurance coverage.

**3.5.2** Prosecution of Claims

**3.5.2.1** Unless otherwise directed by TxDOT in writing with respect to TxDOT's insurance claims, DB Contractor shall be responsible for reporting and processing all potential claims by TxDOT or DB Contractor against the insurance policies required hereunder. DB Contractor agrees to report timely to the insurers under such insurance policies any and all matters which may give rise to an insurance claim by DB Contractor or TxDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such insurance policies,

whether for defense or indemnity or both. DB Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that DB Contractor shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

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

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

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

**3.5.2.3** If in any instance DB Contractor has not performed its obligations respecting insurance coverage set forth in this Design-Build Contract or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining DB Contractor's liability and the limits thereon or determining reductions in compensation due from TxDOT to DB Contractor on account of available insurance, DB Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had DB Contractor performed such obligations and not committed such failure. Nothing in the Contract Documents shall be construed to treat DB Contractor as electing to self-insure where DB Contractor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the insurance policy is written meets the rating qualifications set forth in this [Section 3.5](#).

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



Party may dispense with such notice to DB Contractor if TxDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

**3.5.2.5** All insurance proceeds received by DB Contractor for any insured loss in excess of \$10,000,000 under the builder's risk insurance policies required by this Design-Build Contract shall be paid into a separate insurance proceeds account and shall be held in trust for the purposes of, and to be applied in accordance with, this Design-Build Contract. Any costs under this Design-Build Contract that are covered by insurance proceeds received by (or on behalf of) DB Contractor, shall proportionately reduce any amounts for such costs that would otherwise be owed by TxDOT to DB Contractor under this Design-Build Contract.

**3.5.3 Disclaimer**

**3.5.3.1** DB Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

**3.5.4 Insurance Coverage Requirements**

**3.5.4.1 Builder's Risk Insurance During Construction**

At all times during the period from the commencement of Construction Work until Final Acceptance of the Project, DB Contractor shall procure and keep in force a policy of builder's risk insurance as specified below.

**3.5.4.1.1** The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction including the perils of loss or damage by fire, collapse, lightning, explosion, vandalism and malicious mischief, civil commotion, aircraft, earthquake, earth movement, flood, storm, windstorm, hurricane, and tornado, subsidence and terrorism. Such policy shall contain extensions of coverage that are typical for a project of the nature of the Project including coverage for physical damage resulting from faulty workmanship, and shall contain only those exclusions that are typical for a project of the nature of the Project.

**3.5.4.1.2** The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) all existing property and improvements that are within the construction work zone or are or will be affected by the construction work, subject to the sublimit set forth in in Section 3.5.4.1.3 (iii), and (iii) valuable papers and restoration of data, plans and drawings, subject to the sublimit set forth in Section 3.5.4.1.3 (v).

**3.5.4.1.3** The policy shall provide coverage per occurrence no less than the greater of the maximum probable loss, as determined by the DB Contractor's insurance advisor and agreed to by TxDOT, or \$25,000,000, without risk of co-insurance. The policy may include the following sublimits: (i) for earth movement and flood, not less than \$10,000,000; (ii) for the peril of named windstorm, not less than \$10,000,000; (iii) for existing property and improvements, not less than \$2,000,000; (iv) for "soft cost expense" not less than \$2,000,000; (v) for demolition and debris removal, not less than \$2,000,000; and (vi) for valuable papers and restoration of data, plans and drawings, not less than \$250,000.

**3.5.4.1.4** TxDOT shall be named as an insured on the policy as its interests may appear. DB Contractor also may, but is not obligated to, include other Subcontractors as insureds as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other insureds.

**3.5.4.1.5** The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, or inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) “soft cost expense” (including costs of Governmental Approvals, mitigation costs, attorneys’ fees, and other fees and costs associated with such damage or loss or replacement thereof).

**3.5.4.1.6** The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence; provided, however, that for the perils of windstorm, flood and earthquake, the deductible may be expressed as a percentage of the policy limit, not to exceed five percent (5%).

**3.5.4.2** Commercial General Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force, or cause to be procured and kept in force with DB Contractor as a named insured, commercial general liability insurance as specified below.

**3.5.4.2.1** The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

**3.5.4.2.2** The policy shall insure against the legal liability of DB Contractor and the insureds named in Section 3.5.4.2.4, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

- (a) Contractual liability;
- (b) Premises/operations;
- (c) Independent contractors;
- (d) Products and completed operations (with minimum coverage of seven years after all work is completed on the Project);
- (e) Broad form property damage, providing the same coverage that ISO form CG 00 01 12 07 or equivalent provides;
- (f) Hazards commonly referred to as “XCU”, including explosion, collapse and underground property damage;

- (g) Fellow employee coverage for supervisory personnel;
- (h) Incidental medical malpractice;
- (i) No exclusion for work performed within 50 feet of a railroad;
- (j) No exclusion for claims arising from professional services except for CG 22 80 or its equivalent;
- (k) Broad named insured endorsement; and
- (l) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 3.5.4.3.

**3.5.4.2.3** The policy shall have limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate per policy period with the general aggregate limit to apply on a per-project basis.

**3.5.4.2.4** TxDOT and the Indemnified Parties shall be named as additional insured's, using ISO Forms CG 20 10 04/13 and CG 20 37 04/13 or their equivalents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other additional insureds. If requested by any railroad impacted by the Project, such railroad shall also be named as an additional insured in accordance with this Section 3.5.4.2.4 or otherwise in accordance with the requirements of such railroad.

**3.5.4.2.5** The policy shall have a deductible or self-insured retention no greater than \$1,000,000 per occurrence.

**3.5.4.3** Automobile Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below.

**3.5.4.3.1** Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, borrowed and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

**3.5.4.3.2** DB Contractor shall be the named insured under its automobile liability policy.

**3.5.4.3.3** DB Contractor's policy shall have a combined single limit per policy period of not less than \$1,000,000.

**3.5.4.3.4** Each policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

**3.5.4.3.5** TxDOT and the Indemnified Parties shall be additional insureds under the policy.

**3.5.4.4** Pollution Liability Insurance

DB Contractor shall procure and maintain during the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the

work hereunder by DB Contractor, its agents, representatives, employees or Subcontractors. Coverage shall be at least as broad as:

**3.5.4.4.1** Contractor's pollution liability with coverage for losses caused by pollution conditions that arise from the operations of DB Contractor:

- (a) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring,
- (b) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- (c) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
- (d) Non-owned disposal site coverage for specified sites (by endorsement) if contractor is disposing of waste;
- (e) Coverage for loss, clean-up costs and related legal expense because of a pollution condition arising from the named insured's goods, products, or waste during the course of transportation by a carrier to or from: (i) a job site where contracting services are being performed; or (ii) a covered location, including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay as a result of a claim first made against the insured during the policy period.

**3.5.4.4.2** Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural conditions are released or dispersed as a result of the performance of covered operations.

**3.5.4.4.3** DB Contractor shall maintain limits of no less than \$3,000,000 per occurrence/\$3,000,000 aggregate for the term of the Design-Build Contract. If coverage is written on a claims-made basis the policy shall include a three-year extended reporting period.

**3.5.4.4.4** The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

**3.5.4.4.5** TxDOT and the Indemnified Parties shall be named as additional insureds on the policy. The specific scope of services required under the Contract Documents shall be listed on the certificate of insurance.

**3.5.4.5** Professional Liability Insurance

At all times that Professional Services are rendered under the Design-Build Contract respecting design and construction of the Project until five years after the Professional Services have concluded for the Project, DB Contractor shall procure and keep in force, or cause to be procured and kept in force with DB Contractor listed as named insured, professional liability insurance as specified in Sections 3.5.4.5.1 through 3.5.4.5.4 below. If the professional liability insurance policy does not list

the DB Contractor as a named insured, in addition to the policy or policies specified above, the DB Contractor shall maintain (or procure) and keep in force either a Contractor's Protective Professional Indemnity (CPPI) policy or a Contractor's Professional Liability Insurance policy with coverage of not less than \$5,000,000. DB Contractor may satisfy such insurance requirement via either a series of annual practice policies or a project-specific policy covering the period of design and construction and remaining in effect for five years thereafter; however, the coverage need not extend beyond 10 years in total.

- 3.5.4.5.1** The insurance policy shall provide coverage of liability of DB Contractor and the party performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services or activities for the Project, including the performance of independent quality assurance services. Such insurance policy shall include coverage for bodily injury or property damage; provided, that such insurance policy need not provide coverage of liability of any party that only performs public information and communications.
- 3.5.4.5.2** Each policy shall have a limit of not less than \$5,000,000 per claim and in the aggregate. If a project-specific policy is purchased, the aggregate limit need not reinstate annually.
- 3.5.4.5.3** Each policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per claim.
- 3.5.4.5.4** Such insurance shall provide an indemnified party endorsement for the benefit of TxDOT and the Indemnified Parties with regard to third party claims for bodily injury or property damage.

In addition, if not already covered by the project-specific professional liability insurance policy, DB Contractor shall cause each other Subcontractor that provides Professional Services (other than the services listed in clauses (e), (f), (g), (h), or (i) of the definition of Professional Services) for the Project to procure and keep in force professional liability insurance, covering its professional services practice as follows:

Estimated Total Contract Value	Minimum Limit of Insurance
>\$10 million	\$5 million per claim and aggregate
>\$5 million to \$10 million	\$2 million per claim and aggregate
\$1 million - \$5 million	\$1 million per claim and aggregate
<\$1 million	\$500,000 per claim and aggregate

Such insurance to be carried by the Subcontractor for the period of design and construction and three years thereafter.

**3.5.4.6** Workers' Compensation and Employer's Liability Insurance

At all times when Work is being performed by any employee of DB Contractor, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation and employer's liability insurance in conformance with applicable Law. DB Contractor shall be the named insured on this policy. The workers' compensation insurance policy shall include the following:

- 3.5.4.6.1** A voluntary compensation endorsement;

- 3.5.4.6.2** An alternative employer endorsement;
- 3.5.4.6.3** An extension of coverage to all states operations on an “if any” basis;
- 3.5.4.6.4** U.S. Longshore and Harbor Worker’s Compensation Act and Jones Act coverage (if work is over or adjacent to navigable waters); and
- 3.5.4.6.5** Employer’s liability insurance limits of \$1,000,000 per accident or disease.

**3.5.4.7** Umbrella Liability

DB Contractor shall procure and maintain umbrella liability insurance on a following-form basis over the commercial general liability, automobile liability and employer’s liability insurance policies. The umbrella policy shall have a per occurrence and aggregate limit of at least \$25 million.

**3.5.4.8** Railroad Protective Liability Insurance

DB Contractor shall procure and keep in force, or cause to be procured and kept in force, prior to performing any Work across, under or adjacent to the railroad’s tracks or railroad right-of-way, Railroad Protective Liability Insurance Policy with limits and coverage terms and conditions as required by the operating railroad with the railroad as the named insured. DB Contractor shall submit a copy of the railroad protective liability insurance policy to TxDOT prior to any entry by DB Contractor upon operating railroad property.

**3.5.4.9** Subcontractors’ Insurance

At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that performs work at the site, any off-site fabrication facilities, and any Subcontractor providing professional services off-site, to provide:

- 3.5.4.9.1** Commercial General Liability Insurance with limits of at least \$600,000 per occurrence and in the aggregate with the general aggregate limit to apply on a per project basis. Such coverage shall be carried at all times that the Subcontractor is performing the Work and for three years after the Subcontractor’s completion of the Work.
- 3.5.4.9.2** Automobile Liability Insurance with a combined single limit of at least \$600,000.
- 3.5.4.9.3** Workers’ Compensation and Employer’s Liability Insurance with statutory coverage for worker’s compensation and a \$500,000 limit per accident or disease for employer’s liability. Policy should include, if work is over or next to navigable waters, coverage for U.S. Longshore and Harbor Worker’s Compensation Act and Jones Act claims.

The above requirements do not apply to Subcontractors whose sole role on the Project is delivering materials or supplies to the Site. Each subcontractor insurance policy (other than professional liability and workers’ compensation) shall include TxDOT and each of the Indemnified Parties as additional insureds. Each such policy shall also be endorsed to provide that coverage is primary and non-contributory and that there is a waiver of subrogation in favor of TxDOT and the Indemnified Parties. Each policy shall also provide that 30 days’ notice of non-renewal or cancellation (10 days for non-payment) shall be provided to TxDOT. Each such subcontractor insurance policy must be issued by an insurer authorized to conduct business in Texas and having a minimum current policyholder’s

management and financial size category rating of not less than A-, VII according to A.M. Best's Insurance Reports Key Rating Guide.

### **3.6 Guaranty**

See Section 5.2 of the Design-Build Agreement for requirements regarding guaranties.

### **3.7 No Relief of Liability**

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

### **3.8 Warranties**

#### **3.8.1 Warranty**

DB Contractor warrants that (a) all Work furnished pursuant to the Contract Documents shall conform to Good Industry Practice, (b) all Construction Work shall be free of defects, (c) all Design Work shall meet the standard of care for engineering and architectural services set forth in Section 4.1.2.2.1, (d) the Project shall be fit for use for the intended function, (e) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (f) the Work shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties").

##### **3.8.1.1 Warranty Term**

Subject to extension under Section 3.8.2, the Warranty Term shall commence upon Substantial Completion and remain in effect until one year after Final Acceptance of the Project. The Warranty Term for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons and shall end one year thereafter. If TxDOT determines that any of the Work has not met the standards set forth in this Section 3.8.1 at any time within the applicable Warranty Term, then DB Contractor shall correct such Work as specified in this Section 3.8, even if the performance of such corrective Work extends beyond the applicable Warranty Term. TxDOT and DB Contractor shall conduct a walk-through of the Site prior to expiration of the applicable Warranty Term and shall produce a punch list of those items requiring corrective Work.

##### **3.8.1.2 Remedy**

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

but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by DB Contractor. Reimbursement therefor must be paid to TxDOT by DB Contractor within 10 days after DB Contractor's receipt of an invoice therefor. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.3.2.

### **3.8.1.3** Permits and Costs

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

### **3.8.2** **Applicability of Warranties to Re-Done Work**

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

### **3.8.3** **Subcontractor Warranties**

#### **3.8.3.1** Warranty Requirements

##### **3.8.3.1.1** Without in any way limiting the Warranties and DB Contractor's own representations and warranties and other obligations with respect to all of the Work, DB Contractor shall obtain from all Subcontractors for periods at least coterminous with the Warranties appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors to effectuate the provisions in this Section 3.8.

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

##### **3.8.3.1.3** All representations, warranties, guarantees and obligations of Subcontractors shall be written so as to survive all TxDOT inspections, tests and approvals. DB Contractor hereby assigns to TxDOT all of DB Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty Term that are received by DB Contractor from any of its Subcontractors. To the extent that



any Subcontractor warranty would be voided by reason of DB Contractor's negligence or failure to comply with the Contract Documents in incorporating material or equipment into the Work, DB Contractor shall be responsible for correcting such defect.

### **3.8.3.2 Enforcement**

Upon receipt from TxDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, DB Contractor shall enforce or perform any such representation, warranty, guarantee or obligation, in addition to DB Contractor's other obligations hereunder. TxDOT's rights under this Section 3.8.3.2 commence at the time such representation, warranty, guarantee or obligation is furnished and continue until the expiration of DB Contractor's relevant Warranty Term (including extensions thereof under Section 3.8.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of DB Contractor if such cost is covered by such a representation, warranty, guarantee or obligation, and DB Contractor shall replace or repair defective equipment, material or workmanship furnished by Subcontractors.

### **3.8.4 Effect of TxDOT or DB Contractor Activities on Warranties**

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

### **3.8.5 No Limitation of Liability**

Subject to Sections 8.7.4 and 8.7.5, the Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit DB Contractor's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, intentional misconduct or fraud.

### **3.8.6 Damages for Breach of Warranty**

Subject to Section 8.7.4 and in addition to TxDOT's other rights and remedies hereunder, at law or in equity, DB Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work, including the cost of performance of such obligations by others.

**ATTACHMENT 3-1**  
**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
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Exhibit 3 – Federal Prevailing Wage Rate	1
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Exhibit 5 – Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity	7
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Exhibit 8 - Certification of Nondiscrimination in Employment	1
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Exhibit 10 – Standard Federal Equal Employment Opportunity Construction Contract Specifications	5

**EXHIBIT 1 TO ATTACHMENT 3-1****FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Attachment 3-1. Whenever in said required contract provisions references are made to:

(a) "contracting officer", or "authorized representative" such references shall be construed to mean TxDOT or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder", "Federal-aid construction contractor", "prospective first tier participant", or "First Tier Participant", such references shall be construed to mean DB Contractor or its authorized representative;

(c) "contract", "prime contract", "Federal-aid construction contract" or "design-build contract" such references shall be construed to mean the Design-Build Contract between DB Contractor and TxDOT for the Project;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" "lower tier prospective participant", "Lower Tier participant" or "lower tier subcontractor", such references shall be construed to mean any Subcontractor or Supplier; and

(e) "department", "agency", "department or agency with which this transaction originated" or "contracting agency", such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, DB Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the Contract Documents and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### CONVICT PRODUCED MATERIALS

- a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.
- b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### ACCESS TO RECORDS

- a. As required by 2 CFR § 200.336, DB Contractor and its subcontractors shall allow FHWA, Inspectors General and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of DB Contractor and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 2 CFR § 200.333, DB Contractor and its subcontractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.
- b. DB Contractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

#### USE OF UNITED STATES-FLAG VESSELS

- a. The DB Contractor shall comply with the requirements of 46 CFR Part 381 whenever transporting by oceanic shipment any equipment, material, or commodities acquired solely for the Project, and not to replenish existing inventories independent of the Design-Build Contract.
- b. For such shipments, the DB Contractor agrees:
  - (i) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; and
  - (ii) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) of this section to both TxDOT (through the DB Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- c. The DB Contractor shall insert the substance of this provision in all Subcontracts.

## NONDISCRIMINATION AUTHORITIES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

### Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982. (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments 011972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U .S.C. 1681 et seq).

#### RECOVERED MATERIALS

Design-Build Contractor shall comply with all requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), including the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### PROHIBITION ON CERTAIN TELECOMMUNICATIONS EQUIPMENT OR SERVICES

The Federal Register Notice issued the Final Rule and states that the amendment to 2 CFR 200.216 is effective on August 13, 2020. The new 2 CFR 200.471 regulation provides clarity that the telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable for services and equipment from these specific providers. OMB's Federal Register Notice includes the new 2 CFR 200.216 and 2 CFR 200.471 regulations. <https://www.federalregister.gov/documents/2020/08/13/2020-17468/guidance-for-grants-and-agreements>

Per the Federal Law referenced above, use of services, systems, or services or systems that contain components produced by any of the following manufacturers is strictly prohibited for use on this Project. Therefore, for any telecommunications, CCTV, or video surveillance equipment, services or systems cannot be manufactured by, or have components manufactured by:

- Huawei Technologies Company,
- ZTE Corporation (any subsidiary and affiliate of such entities),
- Hyatera Communications Corporation,
- Hangzhou Hikvision Digital Technology Company,
- Dahua Technology Company (any subsidiary and affiliate of such entities).

Violation of this prohibition will require replacement of the equipment at the DB Contractor's expense.

**EXHIBIT 2 TO ATTACHMENT 3-1**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA Form 1273**

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FHWA-1273 -- Revised May 1, 2012

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**ITEMS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier

subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:



a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's

compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment

to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime

contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor

Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.



c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic

in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:
  - a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible,

or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress,

an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



**EXHIBIT 3 TO ATTACHMENT 3-1**  
**FEDERAL PREVAILING WAGE RATE**

The prevailing wage rates for this Project are included in Exhibit 7 to the Design-Build Agreement.

**EXHIBIT 4 TO ATTACHMENT 3-1****NONDISCRIMINATION**

000-002

## Special Provision to Item 000

### Nondiscrimination



#### 1. DESCRIPTION

All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

#### 2. DEFINITION OF TERMS

Where the term "Contractor" appears in the following six nondiscrimination clauses, the term "Contractor" is understood to include all parties to Contracts or agreements with the Texas Department of Transportation.

#### 3. NONDISCRIMINATION PROVISIONS

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- 3.1. **Compliance with Regulations.** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- 3.2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations

under this Contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

- 3.4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
- 3.5. Sanctions for Noncompliance. In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this Contract, the Recipient will impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- withholding payments to the Contractor under the Contract until the Contractor complies, and/or
  - cancelling, terminating, or suspending a Contract, in whole or in part.
- 3.6. Incorporation of Provisions. The Contractor will include the provisions of paragraphs (3.1) through (3.6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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#### 4. PERTINENT NONDISCRIMINATION AUTHORITIES

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 4.1 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- 4.2 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4.3 Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 4.4 Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 4.5 The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 4.6 Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- 4.7 The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and Contractors, whether such programs or activities are Federally funded or not);
- 4.8 Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- 4.9 The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 4.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 4.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 4.12 Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**EXHIBIT 5 TO ATTACHMENT 3-1**

000-004

# Special Provision to Item 000

## Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)




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### 1. GENERAL

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

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### 2. GOALS

- 2.1. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- 2.2. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade, %	Goals for female participation in each trade, %
See Table 1	6.9

- 2.3. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals will be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- 2.4 A Contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each Contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause

set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other Contractors and subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

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### 3. SUBCONTRACTING

The Contractor must provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation pending concurrence of the Department in the award. The notification will list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

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### 4. COVERED AREA

As used in this special provision, and in the Contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

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### 5. REPORTS

The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1  
Goals for Minority Participation**

County	Participation, %	County	Participation, %
Anderson	22.5	Brooks	44.2
Andrews	18.9	Brown	10.9
Angelina	22.5	Burleson	27.4
Aransas	44.2	Burnet	24.2
Archer	11.0	Caldwell	24.2
Armstrong	11.0	Calhoun	27.4
Atascosa	49.4	Callahan	11.6
Austin	27.4	Cameron	71.0

<b>County</b>	<b>Participation, %</b>	<b>County</b>	<b>Participation, %</b>
Bailey	19.5	Camp	20.2
Bandera	49.4	Carson	11.0
Bastrop	24.2	Cass	20.2
Baylor	11.0	Castro	11.0
Bee	44.2	Chambers	27.4
Bell	16.4	Cherokee	22.5
Bexar	47.8	Childress	11.0
Blanco	24.2	Clay	12.4
Borden	19.5	Cochran	19.5
Bosque	18.6	Coke	20.0
Bowie	19.7	Coleman	10.9
Brazoria	27.3	Collin	18.2
Brazos	23.7	Collingsworth	11.0
Brewster	49.0	Colorado	27.4
Briscoe	11.0	Comal	47.8
Comanche	10.9	Henderson	22.5
Concho	20.0	Hidalgo	72.8
Cooke	17.2	Hill	18.6
Coryell	16.4	Hockley	19.5
Cottle	11.0	Hood	18.2
Crane	18.9	Hopkins	17.2
Crockett	20.0	Houston	22.5
Crosby	19.5	Howard	18.9
Culberson	49.0	Hudspeth	49.0
Dallam	11.0	Hunt	17.2
Dallas	18.2	Hutchinson	11.0
Dawson	19.5	Irion	20.0

<b>County</b>	<b>Participation, %</b>	<b>County</b>	<b>Participation, %</b>
Deaf Smith	11.0	Jack	17.2
Delta	17.2	Jackson	27.4
Denton	18.2	Jasper	22.6
DeWitt	27.4	Jeff Davis	49.0
Dickens	19.5	Jefferson	22.6
Dimmit	49.4	Jim Hogg	49.4
Donley	11.0	Jim Wells	44.2
Duval	44.2	Johnson	18.2
Eastland	10.9	Jones	11.6
Ector	15.1	Karnes	49.4
Edwards	49.4	Kaufman	18.2
Ellis	18.2	Kendall	49.4
El Paso	57.8	Kenedy	44.2
Erath	17.2	Kent	10.9
Falls	18.6	Kerr	49.4
Fannin	17.2	Kimble	20.0
Fayette	27.4	King	19.5
Fisher	10.9	Kinney	49.4
Floyd	19.5	Kleberg	44.2
Foard	11.0	Knox	10.9
Fort Bend	27.3	Lamar	20.2
Franklin	17.2	Lamb	19.5
Freestone	18.6	Lampasas	18.6
Frio	49.4	LaSalle	49.4
Gaines	19.5	Lavaca	27.4
Galveston	28.9	Lee	24.2
Garza	19.5	Leon	27.4



<b>County</b>	<b>Participation, %</b>	<b>County</b>	<b>Participation, %</b>
Gillespie	49.4	Liberty	27.3
Glasscock	18.9	Limestone	18.6
Goliad	27.4	Lipscomb	11.0
Gonzales	49.4	Live Oak	44.2
Gray	11.0	Llano	24.2
Grayson	9.4	Loving	18.9
Gregg	22.8	Lubbock	19.6
Grimes	27.4	Lynn	19.5
Guadalupe	47.8	Madison	27.4
Hale	19.5	Marion	22.5
Hall	11.0	Martin	18.9
Hamilton	18.6	Mason	20.0
Hansford	11.0	Matagorda	27.4
Hardeman	11.0	Maverick	49.4
Hardin	22.6	McCulloch	20.0
Harris	27.3	McLennan	20.7
Harrison	22.8	McMullen	49.4
Hartley	11.0	Medina	49.4
Haskell	10.9	Menard	20.0
Hays	24.1	Midland	19.1
Hemphill	11.0	Milam	18.6
Mills	18.6	Sherman	11.0
Mitchell	10.9	Smith	23.5
Montague	17.2	Somervell	17.2
Montgomery	27.3	Starr	72.9
Moore	11.0	Stephens	10.9
Morris	20.2	Sterling	20.0

<b>County</b>	<b>Participation, %</b>	<b>County</b>	<b>Participation, %</b>
Motley	19.5	Stonewall	10.9
Nacogdoches	22.5	Sutton	20.0
Navarro	17.2	Swisher	11.0
Newton	22.6	Tarrant	18.2
Nolan	10.9	Taylor	11.6
Nueces	41.7	Terrell	20.0
Ochiltree	11.0	Terry	19.5
Oldham	11.0	Throckmorton	10.9
Orange	22.6	Titus	20.2
Palo Pinto	17.2	Tom Green	19.2
Panola	22.5	Travis	24.1
Parker	18.2	Trinity	27.4
Parmer	11.0	Tyler	22.6
Pecos	18.9	Upshur	22.5
Polk	27.4	Upton	18.9
Potter	9.3	Uvalde	49.4
Presidio	49.0	Val Verde	49.4
Randall	9.3	Van Zandt	17.2
Rains	17.2	Victoria	27.4
Reagan	20.0	Walker	27.4
Real	49.4	Waller	27.3
Red River	20.2	Ward	18.9
Reeves	18.9	Washington	27.4
Refugio	44.2	Webb	87.3
Roberts	11.0	Wharton	27.4
Robertson	27.4	Wheeler	11.0
Rockwall	18.2	Wichita	12.4

<b>County</b>	<b>Participation, %</b>	<b>County</b>	<b>Participation, %</b>
Runnels	20.0	Wilbarger	11.0
Rusk	22.5	Willacy	72.9
Sabine	22.6	Williamson	24.1
San Augustine	22.5	Wilson	49.4
San Jacinto	27.4	Winkler	18.9
San Patricio	41.7	Wise	18.2
San Saba	20.0	Wood	22.5
Schleicher	20.0	Yoakum	19.5
Scurry	10.9	Young	11.0
Shackelford	10.9	Zapata	49.4
Shelby	22.5	Zavala	49.4

**EXHIBIT 6 TO ATTACHMENT 3-1****CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

By signing and submitting its proposal or bid, and by executing the Design-Build Contract or Subcontract, each prospective DB Contractor and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective DB Contractor/subcontractor certifies, to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. DB Contractor/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

**EXHIBIT 7 TO ATTACHMENT 3-1****COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

DB Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the Design-Build Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price under the Design-Build Contract.

For Utility Adjustments, "de minimus" non-domestic iron and steel materials may be used provided the cost of such materials does not exceed one-tenth of one percent (0.1 %) of the individual Utility Agreement amount or \$2,500.00, whichever is greater, per 23 CFR 635.410 (b)(4). The de minimus equation is calculated by the following formula: combined cost of only those materials that are subject to Buy America and are non-compliant (limited to the individual Utility Agreement) divided by the total Utility Adjustment cost (cited in the individual Utility Agreement).

Concurrently with execution of the Design-Build Contract, DB Contractor has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, DB Contractor is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Design-Build Contract be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 4.6.3 of these General Conditions.

## BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. DB Contractor shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.
- B. For Utility Adjustments, De Minimus non-domestic iron and steel materials may be used provided the cost of such materials does not exceed one-tenth of one percent (0.1 %) of the individual Utility Agreement amount or \$2,500.00, whichever is greater, per 23 CFR 635.410 (b)(4). The De Minimus equation is calculated by the following formula: combined cost of only those materials that are subject to Buy America and are non-compliant (limited to the individual Utility Agreement) divided by the total Utility Adjustment cost (cited in the individual Utility Agreement).
- C. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, DB Contractor has the burden of proof to establish that it is in compliance.
- D. At DB Contractor’s request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

<b>PROPOSER</b>	
<b>SIGNATURE</b>	
<b>NAME (printed or typed)</b>	
<b>TITLE</b>	
<b>DATE</b>	

**EXHIBIT 8 TO ATTACHMENT 3-1**

000-003

**Special Provision to Item 000**

**Certification of Nondiscrimination in Employment**

1. GENERAL

By signing this proposal, the Bidder certifies that Bidder has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note**—The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**EXHIBIT 9 TO ATTACHMENT 3-1****SPECIAL PROVISION****On-the-Job Training Program for  
Design-Build and Comprehensive Development Agreement Projects**

This training special provision is the Department's implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

By signing the Design-Build Contract, the DB Contractor certifies that it will meet the On-the-Job Training (OJT) goal as stated in the Special Provision or, if the OJT goal as stated in the Special Provision is not met, the DB Contractor will provide acceptable evidence of good faith efforts, including as described in section 6 hereof, to meet the OJT goal.

As part of DB Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

1. The DB Contractor shall ensure that on-the-job training aimed at developing full journey worker status in the type of trade or job classification involved is provided.
2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R. §230.111:
  - 1) Dollar value of the construction services contract;
  - 2) Duration of the construction work activity;
  - 3) Geographic location;
  - 4) Availability of minorities, women, and disadvantaged for training;
  - 5) The potential for effective training;
  - 6) Type of work;
  - 7) Total normal work force that the average proposer could be expected to use;
  - 8) The need for additional journeymen in the area;
  - 9) Recognition of the suggested minimum goal for the State; and
  - 10) A satisfactory ratio of trainees to journeymen expected to be on DB Contractor's work force during normal operations.

<b>Construction Cost Estimate</b>		
<b>From</b>	<b>To</b>	<b>Trainees</b>
\$0	\$9,999,999.99	0
\$10,000,000	\$19,999,999.99	1
\$20,000,000	\$39,999,999.99	2
\$40,000,000	\$59,999,999.99	3



\$60,000,000	\$79,999,999.99	4
\$80,000,000	\$99,999,999.99	5
\$100,000,000	\$119,999,999.99	6
Thereafter for each increment of \$20 million, goal is increased by one trainee up to a maximum of 50 trainees.		

3. The OJT program trainee goal for this project is 50 trainees.
4. The DB Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.
5. In the event that DB Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The DB Contractor should ensure that this training special provision is made applicable to such subcontract. However, DB Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.
6. The DB Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. The DB Contractor shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.
7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.
8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of DB Contractor and aims to train and upgrade employees to journey worker status.
9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.
10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.
11. The number of trainees shall be distributed among the work classifications on the basis of DB Contractor's needs and the availability of journey worker in the various classifications.
12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a

journey worker. The DB Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, DB Contractor's records should document the findings in each case.

13. At or before contract execution, DB Contractor must submit the Contractor OJT Plan form to the Department's Civil Rights Division (CIV). The plan shall specify how DB Contractor intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training. This becomes Exhibit 5 of the DBA.
14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.
15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.
16. CIV must approve all proposed apprentices and trainees before training begins. The DB Contractor must submit the Federal OJT Enrollment Form to SharePoint and CIV. CIV must approve the enrollment in order for training to be counted toward the project goal and be eligible for reimbursement. The DB Contractor shall provide each trainee with a copy of the training program he or she will follow.
17. On a monthly basis, DB Contractor shall submit the Federal OJT Monthly Reporting Form to the District Representative and to CIV. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, DB Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.
18. The DB Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
19. If requested, DB Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless of whether DB Contractor receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit DB Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to DB Contractor if the trainees are concurrently employed on a federal-aid project and when DB Contractor: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to DB Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by DB Contractor and evidences a lack of good faith on the part of DB Contractor in meeting the requirements of this Training Special Provision.

20. Compliance: The DB Contractor shall maintain records and submit monthly reports documenting program performance by the 10th of each month. Noncompliance may be cause for corrective and appropriate measures pursuant to Section 8.9 "Termination," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.
21. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting CIV.

**EXHIBIT 10 TO ATTACHMENT 3-1**

**SPECIAL PROVISION**

**000---005**

**Standard Federal Equal Employment Opportunity Construction Contract  
Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
- 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be

required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

**ATTACHMENT 3-2****DBE SPECIAL PROVISION  
FOR NON-TRADITIONAL CONTRACTS****Disadvantaged Business Enterprise in Federal-Aid Contracts**

## 1. DESCRIPTION

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted contracts.

## 2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

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

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

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

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

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

- 2.2. **Definitions.** The following terms, when used in this Special Provision, shall have the meanings set forth below. Capitalized terms not defined below shall have the meanings set forth in Item 1 of the General Conditions.
- 2.2.1. **Administrative Reconsideration.** A process by which the DB Contractor may request reconsideration of the Department's determination that the DBE goals have not been met or the Good Faith Efforts requirements have not been met.
- 2.2.2. **Commercially Useful Function (CUF).** A DBE performs a commercially useful function 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 commercially useful function, 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. (ref. 49 CFR Part 26, Subpart C (26.55))

- 2.2.3. **DBE Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Design-Build Contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.
- 2.2.4. **Department.** The Texas Department of Transportation.
- 2.2.5. **Disadvantaged Business Enterprise (DBE).** A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, (a) that is at least 51% owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, in which at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 2.2.6. **DOT.** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).
- 2.2.7. **Federal-Aid Contract.** Any contract between the Department and a design-build contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.8. **Good Faith Effort.** All necessary and reasonable steps to achieve the DBE goals which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good Faith Efforts are evaluated prior to award and throughout performance of the Design-Build Contract. For guidance on good faith efforts, see 49 CFR Part 26, Subpart C and 49 CFR Part 26, Appendix A.
- 2.2.9. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website: <http://www.census.gov/eos/www/naics/>.
- 2.2.10. **Prompt Payment** – Federal regulations and state law require DB Contractor and its subcontractors to pay their subcontractors within 10 days of receiving corresponding payment for the applicable scope of the work. This requirement includes the release of retainage when a subcontractor's work is satisfactorily complete, even if final acceptance has not occurred. State law requires that a contractor that withholds retainage on a subcontractor's work shall pay that retainage in full within 10 days after the date of satisfactory completion of all of the subcontractor's work.
- 2.2.11. **Race-Conscious measure or program.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- 2.2.12. **Race-Neutral measure or program.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender – neutrality.

- 2.2.13. **Schedule of Values.** A detailed **schedule** apportioning the subcontract sum among all portions of the work. Each Schedule of Values shall include a description of the work that will be performed, applicable NAICS codes, estimated quantities, unit prices, the total value of the applicable subcontract and break down of the major work activities to support each DBE contract or DBE contract revision.
- 2.2.14. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on the Design-Build Contract may be counted toward achievement of the assigned DBE goals.

2.3. **DB Contractor's Responsibilities.**

- 2.3.1. **DBE Liaison Officer.** The DB Contractor shall designate a DBE liaison officer who will administer the DB Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs
- 2.3.2. **Compliance Monitoring and Tracking System.** This Design-Build Contract is subject to the Department's electronic contract compliance monitoring and tracking system (CMTS). The DB Contractor, DBEs and non DBEs (only if they are in a tiered relationship with a DBE) are required to provide any noted and requested contract compliance-related data in the Department's CMTS, which is accessible at <https://txdot.txdotcms.com/>. Such data includes commitments, terminations, payments, substitutions, and evidence of Good Faith Efforts. The DB Contractor and the applicable DBEs are responsible for responding by any noted response date or due date to any Department instructions or requests for information, and checking the Department's CMTS on a regular basis. The DB Contractor is responsible for ensuring all DBEs have completed all requested items and that their contact information is accurate and up-to-date. The Department may require additional information related to the Design-Build Contract to be provided electronically through the Department's CMTS at any time before, during or after award of the Design-Build Contract.

In its sole discretion, the Department may require that CMTS tracking data be submitted by the DB Contractor and DBEs in an alternative format prescribed by the Department.

- 2.3.3. **DBE Performance Plan.** The DB Contractor shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving the DBE goals for the Design-Build Contract, including DB Contractor's exercise of Good Faith Efforts. Each DBE Performance Plan must at a minimum include the following:
- (a) Specific categories of services and work anticipated for DBE participation on the Project;
  - (b) Schedule for submission of DBE commitment agreements based on the DB Contractor's initial Project schedule and any subsequent revised Project schedule;
  - (c) A description of the Good Faith Efforts performed prior to the date of execution of the Design-Build Contract;
  - (d) A description of the Good Faith Efforts that will be exercised by the DB Contractor following execution of the Design-Build Contract to achieve the DBE goals for the Project; and
  - (e) The name, qualifications, responsibilities and contact information for the DBE Liaison Officer.

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

- 2.3.4. **DBE Contractor.** If the DB Contractor is a DBE, the DB Contractor may receive credit toward the DBE goals for work performed by its own forces and work subcontracted to DBEs. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. In the event a DBE subcontracts to a non-DBE, that information must be reported to the Department monthly.
- 2.3.5. **DBE Commitment.** Only those DBEs certified by the TUCP are eligible to be used for DBE goal attainment. The Department maintains the TUCP DBE Directory at the following Internet address: <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.

DB Contractor shall submit completed forms ADP-4901 DBE Program Commitment Agreement form for Alternative Delivery Projects, ADP-4901-MS DBE Program Material Supplier Commitment Agreement Form for Alternative Delivery Projects and ADP-4901-T DBE Program Trucking Commitment Agreement Form for Alternative Delivery Projects as appropriate. A DBE must be certified on the day the DBE commitment is considered by the Department and at time of subcontract execution. It is the DB Contractor's responsibility to ensure firms identified for participation are certified DBE firms and certified with the NAICS code applicable to the kind of work the DBE will be performing on the Project. The DB Contractor is responsible for ensuring that all submittals are accurate. Any and all omissions, deletions and/or errors that may affect the DBE commitment are the sole liabilities of the DB Contractor.

DBE commitments in excess of the DBE goals are considered Race-Neutral commitments.

If the DBE goals have not been met and the DB Contractor has used DBE subcontractors without committing to them, this participation would be counted as Race Neutral (RN). Additionally, if the DBE goals are not achieved by the Race Conscious (RC) subcontractors, the Race Neutral (RN) participation can neither be counted towards the DBE goals nor considered as a GFE to achieve the DBE goals.

For all DBE subcontracts including all tiered DBE subcontracts, submit a copy of the executed subcontract agreement.

- 2.3.6. **Good Faith Effort Requirements.** If the DB Contractor cannot meet a DBE goal, in whole or in part, the DB Contractor must make adequate Good Faith Efforts to obtain DBE participation, as determined by the Department.
- 2.4. **Administrative Reconsideration.** If the Department determines that the DB Contractor has failed to satisfy the good faith efforts requirement, the Department will notify the DB Contractor of the failure and will give the DB Contractor an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

The DB Contractor must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Texas Department of Transportation, Civil Rights Division, 125 East 11th Street, Austin, Texas 78701-2483.

If a request for administrative reconsideration is not filed within the period specified, the determination made is final and further administrative appeal is barred.

If a reconsideration request is timely received, the reconsideration decision will be made by the Department's DBE liaison officer or, if the DBE liaison officer took part in the original determination, the Department's executive director will appoint a department employee to perform the administrative reconsideration. The employee will hold a senior leadership position and will report directly to the executive director.

The meeting or written documentation must be provided or held within 7 days of the date the request was submitted.

The Department will provide to the DB Contractor a written decision if the DB Contractor did or did not make adequate good faith efforts to meet the contract goal. The reconsideration decision is final and is not administratively appealed to DOT.

- 2.5. **Determination of DBE Participation.** The work performed by a DBE must be reasonably construed to be included in the work area and NAICS work code identified by the DB Contractor in the approved DBE commitment.

Participation by a DBE will not be counted toward a DBE goal unless (a) a DBE commitment was submitted to the Department prior to the committed DBE commencing work on the project (b) the DBE was certified as a DBE before the execution of the subcontract, (c) the DBE performed a Commercially Useful Function and (d) the amount of the participation has been paid to the DBE.

You may only count the credit towards an RC goal after a commitment is provided. You may only count payments to a DBE as RN before the commitment is submitted, but once a commitment is submitted, then the payments may count as RC moving forward (not retroactive).

The DBE must perform at least 30% of the work with its own forces if the work is to be counted toward a DBE goal. The total amount paid to a DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its subcontract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's subcontractor is a DBE.

DBE goal credit for the DBE subcontractors' leasing of equipment or purchasing of supplies from the DB Contractor, Prime contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the DB Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of such DBE's subcontract, the firm may complete the work, and the firm's participation will be counted toward the applicable DBE goal. If a DBE firm is decertified before such firm has signed a subcontract, the DB Contractor is obligated to replace the ineligible firm with a DBE or demonstrate that it has made Good Faith Efforts to do so.

The DB Contractor may count 100% of its expenditure to a DBE manufacturer toward the applicable DBE goal. Pursuant to 49 CFR 26.55(e)(1)(i), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Design-Build Contract and of the general character described by the specifications.

The DB Contractor may count only 60% of its expenditure to a DBE regular dealer toward the applicable DBE goal. Pursuant to 49 CFR 26.55(e)(2)(i), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Design-Build Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Long term leases with logistics companies that provide transportation services (logistics, equipment and drivers) do not meet the regulatory dealer intent for goal credit as a bulk regular dealer; however, the transaction fees may be counted as goal credit. Packagers,

brokers, manufactures representatives, or other persons who arrange or expedite transactions are not regular dealers.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the DB Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site toward the applicable DBE goal.

With respect to trucking, the DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

In order to perform a CUF, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Design-Build Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE that leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Design-Build Contract.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases only trucks from a non-DBE and supplies their own fully employed drivers receives credit for the total value of the transportation services the lessee provides on the Design-Build Contract.

The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives DBE goal credit only for the fee or commission the DBE receives as a result of the lease arrangement.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

The DB Contractor may count toward the applicable DBE goal the portion of the total value of the Design-Build Contract amount paid to a DBE Joint Venture equal to the distinct, clearly defined portion of the work of the Design-Build Contract performed by the DBE.

- 2.6. **Commercially Useful Function.** The DB Contractor shall ensure that each DBE used to perform the work of the Design-Build Contract performs a CUF. The Department will monitor performance during the Design-Build Contract to confirm that each DBE is performing a CUF.

With respect to material and supplies used on the Design-Build Contract, in order to perform a CUF, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Department will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work than would be expected on the basis

of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a CUF.

If the Department determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible DBE participation. The Department may make such determination at any time.

In case of the denial of credit for non-performance of a CUF by a DBE, the DB Contractor will be required to provide a substitute DBE to meet the applicable DBE goal or provide an adequate Good Faith Effort when applicable.

- 2.6.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before Department makes a final finding that no CUF has been performed by a DBE, the Department will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal to the DOT.

- 2.6.2. **Joint Check.** The use of joint checks between a DB Contractor and a DBE is allowed with Department approval. Joint checks will not be allowed simply for the convenience of the DB Contractor. To obtain approval, the DB Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Department.

The Department will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the applicable DBE goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny by the Department and may result in the Department's determination of a lack of participation towards a DBE goal if DBE independence cannot be established.

If the proper procedures are not followed or the Department determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward a DBE goal, and the DB Contractor shall be required to make up the difference elsewhere on the Project.

- 2.7. **DBE Termination and Substitution.** No DBE named in the DBE commitment will be terminated for convenience, in whole or part, without the Department's approval. This includes, but is not limited to, instances in which the DB Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm or another DBE firm.

Unless the Department's consent is provided, the DB Contractor will not be entitled to any payment for work or material allocated to the DBE in the DBE commitment unless it is performed or supplied by the listed DBE.

In order to terminate a DBE for cause, the DB Contractor must first give written notice to the DBE of its intent to terminate for cause and the reason for the termination. The DB Contractor will copy the Department on such notice of intent to terminate.

The notice of intent to terminate for cause must provide the DBE five (5) calendar days to respond to the DB Contractor's notice, which response must advise the DB Contractor and the Department of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the DB Contractor's request for termination. If directed by the Department, the notice of intent to

terminate may require a response time shorter than (5) days by the DBE if required as a matter of public necessity.

The Department will consider both the DB Contractor's request and DBE's stated position prior to approving the request to terminate. The Department may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the DB Contractor has good cause to terminate the DBE. If the Department does not approve the request, the DB Contractor must continue to use the committed DBE in accordance with the Design-Build Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the DB Contractor seeks to terminate, reduce or substitute a DBE so that the DB Contractor can self-perform the work for which the DBE was engaged.

When a DBE is terminated, the DB Contractor must make Good Faith Efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established DBE goals, the work that the original DBE was to have performed under the Design-Build Contract.

Upon termination of a DBE, the DB Contractor will submit Good Faith Effort documentation to find and secure substitute DBE and must enter associated DBE Termination and Substitution data into the Department's CMTS within seven (7) days, which deadline may be extended for an additional seven (7) days if necessary at the request of the DB Contractor. The Department will provide a written determination to the DB Contractor stating whether or not Good Faith Efforts have been demonstrated. If the Department determines that Good Faith Efforts were not demonstrated, the DB Contractor will have the opportunity to appeal the determination via Administrative Reconsideration.

- 2.8. **Reports and Records.** The DB Contractor shall promptly provide all information required in the Department's CMTS with respect to any payments made to DBEs. By the 15th of each month and after Work begins, the DB Contractor must report payments in the Department's CMTS (a) to meet the DBE goals and (b) DBE Race Neutral participation toward Race-Neutral measure or program. These payment entries are required until all DBE subcontracting or material supply activity is completed. Zero payment entries are required when no activity has occurred in a monthly period. All such reports must be entered in the Department's CMTS.

DBE forms required for this DB Contract may be found on the Department's website:  
<http://www.txdot.gov/business/resources/doing-business/dbe-forms.html>.

On a quarterly basis, DB Contractor must submit to the Department a report setting forth the status of DB Contractor's Good Faith Efforts to satisfy the DBE goals and an updated DBE Performance Plan describing the DB Contractor's plan to solicit additional DBE firms to satisfy such DBE goals.

The DB Contractor shall notify the Department's Project Manager (or such other individual as may be designated by the Department) utilizing the Department's CMTS if payment to any DBE subcontractor is withheld or reduced for Department acceptance. See Section 9.8 of these General Conditions (Payment to Subcontractors) for additional information.

As a condition to receipt of the final payment for the work from the Department, the DB Contractor must indicate a final payment in the Department's CMTS. Such final payment indication includes a summary of all payments made to the DBEs on the Project.

The DB Contractor shall retain all records for a period of three (3) years following completion of the Work. Such records must be available at reasonable times and places for inspection by authorized representatives of Department or the DOT. The DB Contractor shall provide copies of subcontracts or agreements and other documentation upon request by the Department or the DOT.

- 2.9. **Failure to Comply.** The DB Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Design-Build Contract. In such a case, the Department reserves the right (a) to terminate the Design-Build Contract, (b) to deduct the amount of the DBE goals not accomplished by DBEs from the compensation due or to become due the DB Contractor, (c) to secure a refund of the amount paid by the Department for the DBE goals not accomplished by DBEs, not as a penalty but as liquidated damages, or (d) such other remedy or remedies as the Department deems appropriate.
- 2.10. **Investigations.** The Department may conduct reviews or investigations of participants as necessary. All participants are required to cooperate fully and promptly with compliance reviews, investigations and other requests for information.
- 2.11. **Falsification and Misrepresentation.** If the Department determines that the DB Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Department to be unallowable, or if the DB Contractor engages in repeated violations, falsification, or misrepresentation, the Department may:
- (a) refuse to count any fraudulent or misrepresented DBE participation toward the DBE goals;
  - (b) withhold progress payments to the DB Contractor commensurate with the violation;
  - (c) refer the matter to the Office of Inspector General of the DOT for investigation; and/or
  - (d) seek any other available contractual remedy.



**ITEM 4            SCOPE OF WORK****4.1            General Obligations****4.1.1            General Obligations of DB Contractor**

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

**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 achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines.

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

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

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

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

**4.1.1.6**            Obtain and pay the cost of obtaining all Governmental Approvals required in connection with the Project (except to the extent TxDOT has expressly agreed to be responsible therefor under Section 4.7.1.)

**4.1.2            Performance Requirements****4.1.2.1            Performance of Work**

**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 Completion Deadline shall be DB Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. DB Contractor shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly impacted by the Work. Subject to the terms of Section 4.6, the costs of all Work, including all necessary materials, services and efforts, are included in the Price.

#### 4.1.2.2 Performance Standards; Deviations

**4.1.2.2.1** DB Contractor shall furnish all aspects of the Work and shall construct the Project and Utility Adjustments included in the Work as designed, free from defects (except to the extent that such defects are included in Design Work that meets the standard of care for engineering and architectural services set forth herein) 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, the 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. Notwithstanding anything to the contrary in this Design-Build Contract, the standard of care for engineering and architectural services is that Design Work shall be performed to a level of professional skill and care that would be provided by an ordinarily prudent engineer or architect with the same professional license and under the same or similar circumstances.

**4.1.2.2.2** All Work shall be subject to certification pursuant to the procedure contained in the approved Quality Management Plan set forth below in Section 4.3.

**4.1.2.2.3** DB Contractor acknowledges that prior to the Effective Date it had the opportunity to identify any provisions of the Design-Build Specifications that are erroneous, conflicting or create a potentially unsafe condition, and the opportunity and duty to notify TxDOT in writing of such fact and of the changes to the provisions that DB Contractor believed were the minimum necessary to render the provisions correct or to render a potentially unsafe condition safe. If it is reasonable or necessary to adopt changes to the Design-Build Specifications after the Effective Date to make the provisions correct or to correct a potentially unsafe condition, such changes shall not be grounds for any adjustment to the Price, Completion Deadline or other Claim, unless (a) DB Contractor neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) DB Contractor knew of and reported to TxDOT the erroneous or potentially unsafe provision prior to the Effective Date and TxDOT did not adopt reasonable and necessary changes. If DB Contractor commences or continues any Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, DB Contractor shall bear any additional costs associated with redoing the Work already performed. Inconsistent or conflicting provisions of the Contract Documents shall not be treated as erroneous provisions under this Section 4.1.2.2.3, but instead shall be governed by Section 1.3 of the Design-Build Agreement and Section 2.2 of the General Conditions.

**4.1.2.2.4** DB Contractor may apply for TxDOT's approval, in TxDOT's sole discretion, of Deviations from applicable Design-Build Specifications regarding the Work in accordance with this Section 4.1.2.2.4. All applications shall be in writing. Where DB Contractor requests a Deviation as part of the submittal of a component plan of the Project Management Plan, DB Contractor shall specifically identify and label the proposed Deviation. DB Contractor shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves TxDOT's applicable safety standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Project Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. TxDOT's lack of issuance of a written approval for any Deviation within 14 days after DB Contractor applies therefor in writing shall be deemed a

disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the procedures for resolving Disputes in the DBC, including the Disputes Review Panel Process, Informal Resolution Procedures and Dispute Resolution Procedures.

**4.1.2.2.5** References in the Design-Build Specifications to manuals or other publications governing the Work shall mean the most recent editions in effect as of the Proposal Due Date, unless expressly provided otherwise. Except as set forth in Section 4.1.2.2.3, any changes to the Design-Build Specifications related to the Work shall be subject to the Change Order process for a TxDOT-Directed Change in accordance with Section 4.6.

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

**4.1.2.3** Changes in Basic Configuration

**4.1.2.3.1** Any material change in the Basic Configuration must be approved by TxDOT and authorized by a Change Order in accordance with Section 4.6 and subject to the limitations contained in Section 4.7. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on DB Contractor's costs. For the avoidance of doubt, any DB Contractor request for an increase in the Price or an extension of a Completion Deadline in connection with a change to the Basic Configuration constitutes a material change.

**4.1.2.3.2** DB Contractor shall be responsible for any cost increases or delays due to inaccuracies or Errors in the Schematic Design, except where such inaccuracies or Errors result in a Necessary Basic Configuration Change in accordance with the requirements and limitations set forth in Section 4.6. Any other changes in the Basic Configuration, including any change due to an Error in the Schematic Design that does not result in a Necessary Basic Configuration Change, shall be the responsibility of DB Contractor, with the exception of a TxDOT-Directed Change, and subject to the limitations set forth in this Design-Build Contract, including Section 4.6.

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

## **4.2 Project Management**

DB Contractor shall establish and maintain an organization that effectively manages all elements of the Work. The Project management effort shall be defined by and follow the Project Management Plan (PMP), which consists of Project administration requirements and a collection of several management plan components (PMP components) shown in Table 4-1 below and as described in this Section 4.2.

The PMP is an umbrella document that describes DB Contractor's managerial approach, strategy, and quality procedures for the design and construction of the Project. The PMP shall achieve all requirements of the Contract Documents and is a living document for the duration of the Term. The PMP shall include the representations in Exhibit 2 to the Design-Build Agreement consistent with Section 1.3 of the Design-Build Agreement. Within the timelines for implementing each component of the PMP, the plan shall include details of external auditing procedures.

DB Contractor shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in this Section 4.2 and Good Industry Practice. Prior to submitting any component part, plan or other documentation of the Project Management Plan, DB Contractor shall address any comments received from TxDOT regarding the relevant section of the initial Project Management Plan submitted by DB Contractor prior to the Effective Date.

DB Contractor shall submit to TxDOT for approval in TxDOT's good faith discretion in accordance with the procedures described in Section 5.2.1 and the timing requirements set forth in this Section 4.2 each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. TxDOT may require any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by DB Contractor.

DB Contractor shall not commence or permit the commencement of any aspect of the Work before the relevant component parts, plans, and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by TxDOT in accordance with the procedures described in Section 5.2.1 and the timing requirements set forth in this Section 4.2.

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

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

**Table 4-1: Components of the Project Management Plan**

<b>Component Title</b>	<b>Section of General Conditions That Defines the Component Requirements</b>	<b>TxDOT Approval is a Condition to Issuance of NTP2</b>	<b>TxDOT Approval is a Condition to Commencement of Construction</b>
<b>Project Administration</b>	Section 4.2.1	Yes	-
<b>Public Information and Communications Plan</b>	Section 4.2.2	Yes	-
<b>Safety and Health Plan</b>	Section 4.2.3	Yes	-
<b>Comprehensive Environmental Protection Plan</b>	Section 4.2.4	Parts as described in referenced sections	Parts as described in referenced sections
<b>TxDOT – DB Contractor Communications Plan</b>	Section 4.2.5	Yes	-
<b>Other Affected Third Parties Plan</b>	Section 4.2.6	Yes	-
<b>Risk Management Plan</b>	Section 4.2.7	Yes	-
<b>Utility Management Plan</b>	Section 4.2.8	Yes	-

Component Title	Section of General Conditions That Defines the Component Requirements	TxDOT Approval is a Condition to Issuance of NTP2	TxDOT Approval is a Condition to Commencement of Construction
<b>Right of Way Acquisition Management Plan</b>	Section 4.2.9	Parts as described in referenced sections	Parts as described in referenced sections
<b>Traffic Management Plan</b>	Section 4.2.10	Yes	-
<b>Maintenance Management Plan</b>	Section 4.2.11	Yes	-

DB Contractor shall include in the PMP all components described in Table 4-1 above, and shall meet the requirements of Table 4-2 in Section 4.2.12.

DB Contractor shall ensure all commitments and requirements contained in the PMP are verifiable and shall allow TxDOT to audit the plans and monitor the activities described in the PMP at all times to assess DB Contractor performance.

#### 4.2.1 **Project Administration**

DB Contractor shall submit for TxDOT approval the project administration component of the PMP that meets the requirements of this Section 4.2.1.

DB Contractor shall include in the project administration component procedures for updating all components of the PMP and quality control to establish and encourage continuous improvement. These shall include:

- (a) Procedures for preparation of amendments and submission of amendments to any part of the PMP;
- (b) Auditing and management review of DB Contractor's own activities under the PMP;
- (c) Auditing and management review of Subcontractor's activities and management procedures; and
- (d) Procedures to facilitate review and audit by TxDOT and consultants.

In addition, the Project Administration component of the PMP shall include procedures for establishing required Plans not specifically stated in this Section 4.2 inclusive of the PMP.

#### 4.2.1.1 Management Organization and Personnel

The project administration component of the PMP shall contain DB Contractor's organizational diagram and the names, contact detail, titles, and job descriptions of Key and any other DB Contractor principal personnel. DB Contractor's management organizational structure and personnel shall meet the organizational and reporting requirements in this Section 4.2.1.1 and as described in the Contract Documents.

In addition, the project administration component of the PMP shall contain procedures to establish how DB Contractor will manage Subcontractors.

##### 4.2.1.1.1 DB Contractor Project Manager

DB Contractor shall employ a Project Manager (PM) responsible for the overall design, construction, maintenance, contract administration, safety, and environmental compliance on behalf of DB Contractor during the Term. The PM shall be in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of DB Contractor during the Term. The PM shall be assigned to the Project full time and co-located/on-Site until Final Acceptance. The Project Manager shall be employed by either: (a) an Equity Member, Lead Engineering Firm or Lead Contractor; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm or Lead Contractor; (c) if the Lead Engineering Firm or Lead Contractor is a joint venture, a member of such joint venture that will perform at least thirty percent (30%) of the relevant work or a controlled subsidiary of such joint venture member; or (d) a parent company of an Equity Member, if such parent company serves as a Guarantor.

##### 4.2.1.1.2 Design Manager

DB Contractor shall employ a Design Manager responsible for ensuring the Design Work is completed and design criteria requirements are met. The Design Manager shall be co-located wherever design activities for the Project are being performed, provided that the Design Manager shall be available for in person meetings upon request by TxDOT. The Design Manager shall be a Registered Professional Engineer (PE). The Design Manager shall report to DB Contractor's PM. The Design Manager shall be employed by either: (a) an Equity Member, Lead Engineering Firm or Lead Contractor; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm or Lead Contractor; (c) if the Lead Engineering Firm or Lead Contractor is a joint venture, a member of such joint venture that will perform at least thirty percent (30%) of the relevant work or a controlled subsidiary of such joint venture member; or (d) a parent company of an Equity Member, if such parent company serves as a Guarantor.

##### 4.2.1.1.3 Construction Manager

DB Contractor shall employ a Construction Manager responsible for ensuring that the Project is constructed in accordance with the Contract Documents. The Construction Manager shall be assigned to the Project full time and co-located/on-Site until Final Acceptance. The Construction Manager shall report to DB Contractor's PM. The Construction Manager shall be employed by either: (a) an Equity Member, Lead Engineering Firm or Lead Contractor; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm or Lead Contractor; (c) if the Lead Engineering Firm or Lead Contractor is a joint venture, a member of such joint venture that will perform at least thirty percent (30%) of the relevant work or a controlled subsidiary of such joint venture member; or (d) a parent company of an Equity Member, if such parent company serves as a Guarantor.

#### 4.2.1.2 Document Management

The project administration chapter of the PMP shall contain procedures for document management including the manner in which records will be maintained in compliance with the Design-Build Specifications and any specific systems DB Contractor will use.

All electronic information submitted to TxDOT shall be searchable and legible. The PMP shall describe the controls exercised by DB Contractor to ensure that: documents (including the PMP itself) undergo relevant review and approval prior to release; users have access to current versions of documents; versions of documents are identified; obsolete or superseded documents are so marked and prevented from unintended use; and changes to documents undergo same level of review and approval. Document management plan shall include quality control (QC)/quality assurance (QA) processes.

#### 4.2.1.2.1 Document and Records Storage and Retrieval Requirements

DB Contractor shall establish and maintain a secure electronic data management system to store, catalog, capture metadata, and retrieve all documents and records created or received by DB Contractor or any DB Contractor-Related Entity for the Project pursuant to the Contract Documents. DB Contractor's secure electronic data management system shall be established and operational by the earlier of 30 days after NTP1, or TxDOT's receipt of the first Submittals from DB Contractor. In addition, all Submittals shall be submitted to TxDOT through TxDOT's electronic content management system (SharePoint Site). DB Contractor shall not upload files larger than 100 MB into TxDOT's electronic content management system unless authorized by TxDOT. Unless otherwise directed by TxDOT, DB Contractor shall maintain all Project records and documents, including copies of Submittals, in compliance with the requirements of the Texas State Records Retention Schedule and TxDOT's file plan. As requested by TxDOT, DB Contractor shall submit other Project related documents and records via TxDOT's electronic content management system at the time of the expiration of the Term or earlier termination of the Design-Build Contract.

Construction quality acceptance test results shall be automatically transmitted to TxDOT's I2MS/MATS system using TxDOT's extensible markup language (XML) web service. See TxDOT QAP for DB Projects, Appendix C for IQF Data Transfer Requirements. DB Contractor shall coordinate with TxDOT to obtain the most current version prior to commencing construction quality acceptance testing. The responsible technician and his/her supervisor shall sign the daily test reports. Access to the results of the daily tests shall be provided to TxDOT within 48-hours after test completion.

In the provision of DB Contractor's secure electronic data management system, DB Contractor shall:

- Use data systems, standards, and procedures compatible with those employed by TxDOT and implement any new operating practices required as a result of TxDOT's amendments to any such systems, standards, and procedures;
- Provide a secure location for any interface as may be provided by TxDOT, such that only authorized users have access and that it is protected from loss, theft, damage, unauthorized, or malicious use;
- Employ appropriate standards and procedures, and train DB Contractor personnel to operate any TxDOT's electronic content management system that TxDOT may require in connection with the Project; and



- Provide a mechanism for the electronic transfer of metadata along with the associated PDF images for uploading into an electronic content management system employed by TxDOT.

To allow for disaster recovery, DB Contractor shall back-up all Project-related documents and records on a nightly basis. On a weekly basis, DB Contractor shall back-up and store all Project-related documents and records in a secure off-site location.

DB Contractor shall provide TxDOT at DB Contractor's expense, sufficient access to DB Contractor's secure electronic data management system as deemed necessary by TxDOT.

#### 4.2.1.2.2 Professional Services Submittal Requirements

DB Contractor shall prepare and provide all Project related Submittals and documents using English units of measure.

DB Contractor shall furnish electronic copies of all Submittals. The electronic copies shall be provided in a useable format or in the format in which the Work was originally created.

Unless otherwise directed by TxDOT, DB Contractor shall provide two hard copies of all Submittals within 14 days after completion of the review and comment process set forth in Section 5.2.1 or approval by TxDOT, as applicable.

DB Contractor shall include with each Submittal a transmittal cover sheet in a form acceptable to TxDOT.

The minimum sheet size for the Submittals (other than plan Submittals) shall be 8.5 inches by 11 inches. The maximum sheet size for the Submittals (other than plan Submittals) shall be 18 inches by 120 inches. Plan Submittals shall be 11 inches by 17 inches. Every page in a Submittal shall be numbered in sequence.

Each Submittal shall be full and complete and shall be assigned a unique, sequential number, clearly noted on the transmittal cover sheet. Revised Submittals shall bear an alphanumeric designation which consists of the unique Submittal number assigned to the original Submittal followed by a letter of the alphabet to represent that it is a subsequent Submittal of the original.

Any changes made on a revised Submittal, other than those made or requested by TxDOT, shall be identified and noted on the revised Submittal.

Design Submittals shall include a title block, consistent with the standard Project drawing format established as part of the QMP, with the following information:

- Date of issuance and including all prior revision dates;
- Contract title and number;
- The names of DB Contractor and applicable Affiliates and DB Contractor Related Entities;
- Stage of development;
- Reference to applicable technical documents and amendments;

- If required, review and acceptance or approval from a Governmental Entity, prior to submission to TxDOT;
- Review stamp;
- Action block space – All Submittals shall include a sufficient blank space in which DB Contractor may list required actions to be taken;
- When calculations accompany drawings in a Submittal, cross-references from the body of the calculations to the individual drawing to which the pages of the calculations pertain; and
- Organization of the CADD drawings and associated documents in a logical manner, having a uniform and consistent appearance, and clearly depicting the intention of the design.

#### 4.2.2 Public Information and Communications Plan

DB Contractor shall submit to TxDOT for approval a comprehensive Public Information and Communications Plan (PICP) as part of the PMP, based upon the preliminary public information and communications plan submitted by DB Contractor prior to the Effective Date, which informs, educates, and engages the Customer Groups throughout the Project. The PICP shall be submitted in both hardcopy form and electronic format compatible with TxDOT software.

Following issuance of NTP1, DB Contractor shall organize a communications planning workshop with TxDOT to discuss development of the PICP and to ensure the contents of the PICP meet TxDOT expectations. TxDOT and DB Contractor will jointly develop an agenda and determine a suitable location for the workshop.

DB Contractor shall submit the PICP to TxDOT for approval. The PICP shall contain the following information:

- (a) Organization
  - (i) DB Contractor's main contractual arrangements; and
  - (ii) Organizational structure covering the activities to be performed in accordance with the Contact Documents.
- (b) Personnel
  - (i) DB Contractor's plan to provide experienced Personnel to perform Work in accordance with this Section 4.2.2;
  - (ii) Arrangements for coordinating and managing staff interaction with TxDOT and its consultants, including colocation of Key Personnel and a description of approach to coordinating work of off-site personnel;
  - (iii) Names and contact details, titles, job roles and specific experience required for Key Personnel and for other principal personnel; and

- (iv) Names and contact details, titles, and job roles of principal personnel for Subcontractors and any third party with which DB Contractor will coordinate his activities.
- (c) Subcontractors
  - (i) Overall control procedures for Subcontractors, including consultants and subconsultants;
  - (ii) Responsibility of Subcontractors and Affiliates; and
  - (iii) Steps taken to ensure Subcontractors and suppliers meet the obligations imposed by their respective contracts.
- (d) Interfaces
  - (i) Procedures for liaison with the public, the media, and other Customer Groups in accordance with Item 11 of the Design-Build Specifications and the press media policy of TxDOT; and
  - (ii) Procedures to coordinate with Project Stakeholders, such as Governmental Entities and other Customer Groups.
- (e) Procedures
  - (i) Procedures describing how the principal activities will be performed.
- (f) Quality Control
  - (i) Quality control procedures including a resource table for monitoring and auditing all public information and communication services;
  - (ii) Procedures to ensure accuracy, completion, and quality in submittals to TxDOT, Governmental Entities and Customer Groups; and
  - (iii) Procedures to establish and encourage continuous improvement.
- (g) Audit
  - (i) Name of DB Contractor's representative with defined authority for establishing, maintaining, auditing, and reporting on PMP; and
  - (ii) Name, title, roles and responsibilities of supporting quality management staff reporting to the person with defined authority.
- (h) Document Management
  - (i) The manner in which records will be maintained in compliance with the Design-Build Specifications, including any specific systems DB Contractor will use; and
  - (ii) Document management procedures in compliance with Section 4.2.1.2.

The PICP shall identify specific outreach or engagement activities, the frequency of those activities, the modes of communication that will be used, and the processes that will be used in order to measure the effectiveness of the PICP.

DB Contractor shall identify the Customer Groups and develop specific plans to respond to their concerns and needs regarding the Project. DB Contractor shall continually maintain the plans to ensure delivery of high-quality, well-executed communications from approval of the PICP to the end of the Term.

The PICP shall be flexible enough to capture the full magnitude of yet-to-be-determined impacts from Project activities and the public's reaction to these and other impacts.

Together with TxDOT's designated point of contact for the local public information office, DB Contractor shall periodically review the PICP (at least annually) to forecast, plan, and coordinate updates in the plan and strategies needed to effectively accomplish the stated goals and objectives. DB Contractor shall make appropriate changes to the PICP for TxDOT's approval as required to suit the changing goals and needs of the Project and shall cooperate with TxDOT to amend the PICP as required to suit circumstances as yet unknown, including public reaction to the impacts, real or perceived, from the Work and the depth, breadth, and frequency of information necessitated by Customer Groups.

The PICP shall include a general timeline that lists public information activities throughout the Project. This timeline shall be used as an initial guide and shall be updated by DB Contractor as the Project is implemented but no less than on an annual basis.

DB Contractor shall provide sufficient qualified staff to effectively implement the PICP.

In developing the PICP, DB Contractor shall develop appropriate provisions to achieve the following requirements:

- Gain and maintain support or informed consent from Customer Groups, building on existing community partnerships and communication networks.
- Provide Customer Groups with regular opportunities for input early and often throughout the development process.
- Demonstrate to Customer Groups that the Project will be developed pursuant to a well-executed program.
- Notify Customer Groups in advance of key Project ROW acquisition, construction and maintenance activities, and communicate the potential impacts of these activities.
- Provide public information that facilitates alternative trip planning during construction.
- Address the Project-specific concerns of Customer Groups, including interests in Emergency Services vehicle access, business owner and patron driveway access, delivery access, adjacent neighborhood access, changes to bicycle and pedestrian access and neighborhood traffic patterns, changes to mobility access associated with the Americans with Disabilities Act (ADA), construction noise and lighting, and ongoing noise issues.

In developing the PICP, DB Contractor shall develop appropriate provisions regarding Third Party Claims to achieve the following requirements:

- Respond immediately to public complaints related to damages and to act promptly to resolve claims for damage to vehicles, persons and property caused by the Work (e.g. construction activities) or as a result of the condition of the Project (e.g., broken windshields, damaged tires or damaged vehicle paint).
- Address complaints from the public related to dust, noise and other nuisance caused by the Work, and implement policies and procedures to resolve public complaints, including carwash service vouchers, air filters, etc.
- Log all complaints, dates and times of claims and occurrences, contact information (including the name, address, telephone number, and e-mail address of complainant), name of the respondent, any requirements from the complainant, whether the complaint is closed, and whether the claim has been or will be forwarded to DB Contractor's insurance carrier.

#### **4.2.3 Safety and Health Plan**

DB Contractor shall be responsible for the safety and health of its personnel and of the general public affected by the Project. DB Contractor shall prepare and submit to TxDOT for review and concurrence a comprehensive Safety and Health Plan that is consistent with and expands upon the preliminary Safety and Health Plan submitted by DB Contractor prior to the Effective Date. All members of DB Contractor's team shall adhere to DB Contractor's Safety and Health Plan.

DB Contractor shall take full account of the unique attributes of this Project in preparing the Safety and Health Plan, including but not limited to, the urban environment, and the size and scope of the Project. The Safety and Health Plan shall fully describe DB Contractor's policies, plans, training programs, Work Site controls, and Incident response plans to ensure the safety and health of personnel involved in the Project and the general public affected by the Project. The Safety and Health Plan shall cover all phases of the Work, and DB Contractor shall review, evaluate, and update such plan as often as necessary to reflect relevant changes during the Term. The Safety and Health Plan shall contain, at a minimum, the following provisions described below.

##### **4.2.3.1 Safety Management**

DB Contractor shall identify the personnel and responsible staff who will implement, maintain, and enforce the Safety and Health Plan policies, plans, and training programs in the Safety and Health Plan. At a minimum, DB Contractor shall provide a full time on-the-job Safety Manager. The Safety Manager's qualifications, at a minimum, shall include:

- Roadway construction and safety enforcement experience;
- Complex, heavy civil construction experience, including safety management experience on complex, heavy civil projects;
- Though not required, certification, at or before the Effective Date, as a Construction Health and Safety Technician by the Board of Certified Safety Professionals, or certification as a Certified Safety & Health Official, may be substituted for safety management experience;
- Completion of the OSHA #500 course – Trainer Course in OSHA Standards for Construction;

- Training and current certification for cardiopulmonary resuscitation (CPR) and first aid;
- Completion of the following training sponsored by an accredited agency;
- Work zone traffic control; and
- Flaggers in work zones.

The Safety Manager shall report directly to DB Contractor's executive management team. The Safety Manager shall have authority to stop all Work on the Project. The Safety Manager shall be co-located/on-site from beginning of construction activities through Final Acceptance. The Safety Manager shall be employed by either: (a) Equity Member, Lead Engineering Firm, or Lead Contractor itself; or (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm, or Lead Contractor, or (c) a parent company of an Equity Member if such parent company serves as a Guarantor.

In addition, DB Contractor's safety management team shall also have the minimum additional personnel. As part of DB Contractor's safety and health management, all Work shifts shall have, as a minimum, an on-Site Shift Safety Representative. The Shift Safety Representative shall have the following minimum qualifications:

- Progressive safety experience and general competency in the construction safety disciplines related to the Work;
- Completion of the OSHA 10-hour safety and health course; and
- Training and current certification for CPR and first aid.

The Safety and Health Plan shall define the role and responsibilities of the Safety Manager and safety staff, the hierarchical relationship between the Safety Manager and other managers, supervisors, and employees, and how responsibility and accountability for safety will be incorporated at all levels on the Project.

The Safety and Health Plan shall set forth the obligations of all personnel in adhering to the Safety and Health Plan, as well as establish and communicate clear goals for safety, security, and health, including defined objectives for meeting the goals. Requirements for evaluating the effectiveness of policies and measuring success in meeting the goals and objectives of the Safety and Health Plan shall be set forth in the Safety and Health Plan and an environment and means for continuous evaluation and improvement shall be established to achieve the Safety and Health Plan goals and to identify deficiencies so that the goals and objectives can be revised as needed to improve the safety and health of DB Contractor's personnel and of the general public affected by the Project.

The Safety and Health Plan shall set forth incident response plans to ensure the safety and health of personnel involved in the Project and the general public affected by the Project. In addition, the Safety and Health Plan shall set forth procedures for immediately notifying TxDOT of all incidents arising out of or in connection with the performance of the Work, whether on or adjacent to the Project.

#### 4.2.3.2 Worksite and Jobsite Analysis

The Safety and Health Plan shall establish a reliable system for allowing employees to notify management personnel about conditions that appear hazardous, and to receive timely and appropriate responses, without fear of reprisal.

DB Contractor shall keep readily available at DB Contractor's Project office Site an updated summary of Work related incidents, which may include, at a minimum, a board promoting the number of consecutive incident-free days.

#### 4.2.3.3 Hazard Prevention and Personal Safety

The Safety and Health Plan shall set forth: (i) the methods and procedures to identify and detail all hazards that may be encountered by personnel while performing the Work, and (ii) practices and procedures that have been developed and implemented to address prevention of identified hazards. DB Contractor shall establish a communications protocol to ensure all employers and employees are aware of hazards in all areas and how to deal with them appropriately. Means shall be provided to evaluate all anticipated and unanticipated activities, and address potential hazards related to these activities.

DB Contractor shall provide the means to ensure personnel understand and comply with safe work practices and procedures through training, positive reinforcement, correction of unsafe performance, and if necessary, enforcement through a clearly communicated disciplinary system established within the Safety and Health Plan.

DB Contractor shall handle Hazardous Materials in compliance with Section 4.8 and the applicable requirements of the Design-Build Specifications.

#### 4.2.3.4 Training

DB Contractor shall establish methods within the Safety and Health Plan to identify, develop, and provide relevant training for employees and supervisors designed to ensure that all employees understand and are aware of the hazards to which they may be exposed, and are aware of the proper methods for avoiding the hazards.

DB Contractor shall establish methods within the Safety and Health Plan to identify, develop, and provide supervisory training programs to ensure supervisors understand the key role they play in job Site safety and to enable them to carry out their safety and health responsibilities effectively; to analyze the Work under their supervision to anticipate and identify potential hazards; and to maintain physical protection in their work areas, including the establishment of policies that ensure each employee is provided with the equipment necessary to complete assigned tasks safely.

The Safety and Health Plan shall set forth the procedures to plan and prepare for Emergencies, and to conduct training and Emergency drills.

#### 4.2.3.5 Drug Free Work Zone

The Safety and Health Plan shall set forth the policies and procedures to require adherence to a 100% drug/alcohol free work zone.

#### 4.2.3.6 Incident and Emergency Management

DB Contractor shall establish procedures within the Safety and Health Plan to achieve at a minimum, the following:

- Maintenance of communication for the exchange of information between DB Contractor, TxDOT, and other involved agencies;
- Coordinated support through interaction with local, State, and federal Governmental Entities, as well as other entities, for safe and efficient construction;
- Discussion and coordination with Emergency response, traffic control, security, and operational issues affecting construction of the Project, and associated system feeders and exits;
- Procedures to update participating agencies regarding status of construction of the Project, and associated system feeders and exits, to assure safe and timely response to Emergency events. As a minimum, this shall include off-Site and on-Site traffic routing changes, and changes to Site access, fire suppression system modifications and in-service availability of standpipes or fire suppression water supply, if applicable, and changes in the Work that may create a greater likelihood of occurrence of a particular type of Emergency;
- Procedures for notifying TxDOT of Incidents arising out of or in connection with the performance of the Work; and
- Compliance with the local hurricane evacuation plan.

#### 4.2.4 Comprehensive Environmental Protection Plan

As part of the PMP, DB Contractor shall develop and implement a CEPP, applicable throughout the Term to establish the approach, requirements, and procedures to be employed to protect the environment. The CEPP shall be developed in the form of a comprehensive environmental management program incorporating all features and guidelines outlined in ISO 14001. All component parts shall reflect in order of priority: impact avoidance, minimization, and as last resort, mitigation. The CEPP shall satisfy applicable FHWA, TxDOT and resource agency requirements, including those detailed as commitments in any Environmental Approvals.

The CEPP shall outline the overarching plan by which DB Contractor shall meet all Environmental Commitments made during the Environmental Approval and permitting processes and any other environmental requirements. All environmental requirements and commitments shall be reflected, as appropriate, in the design and implemented throughout the Work.

At a minimum, the CEPP shall include the following component parts:

- Environmental Management System (EMS);
- Environmental Compliance and Mitigation Plan (ECMP);
- Environmental Protection Training Program (EPTP);
- Hazardous Materials Management Plan (HMMP);



- Communication Plan (CP);
- Construction Monitoring Plan (CMP);
- Recycle Plan (RP); and
- Environmental Team resumes.

The dates by which component parts comprising the CEPP are to be submitted for TxDOT approval are set forth throughout this [Section 4.2.4](#). Amendments and updates to the CEPP as necessary to address changing conditions and environmental requirements shall be in accordance with the procedures for amendments to the PMP.

#### 4.2.4.1 Environmental Management System

The EMS is a system of documented plans and procedures in which the roles and responsibilities for the execution of environmental activities are clearly defined including the interaction between those processes. DB Contractor shall utilize the EMS to track on-going issues, identify environmental compliances and non-compliances, and identify actions required/taken to correct any non-compliance.

The EMS shall establish a schedule for periodic CEPP reviews to ensure it is up to date. The EMS shall provide a means to track the reviews and results. At a minimum, the EMS shall require documents in the following list to be on file at the Site and available at any time for TxDOT review:

- CEPP component parts;
- Weekly environmental monitoring reports;
- Investigative Work Plans, Site Investigation Reports (SIRs), and remedial action plans as necessary for hazardous material discovery and remediation;
- Wetland delineations reports and appropriate Section 404 authorized permit application(s);
- Mitigation or resource monitoring reports, as required by resource-specific mitigation plans;
- Design and coordination for wetlands, stream, and floodplain mitigation;
- Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (TXR150000), Notice of Intent;
- TPDES Construction General Permit (TXR150000), Notice of Termination for Work completed;
- Storm Water Pollution Prevention Plan (SW3P) and amendments, as required to reflect Project development and staging, including off-site plans, controls, and reporting from borrow sites, waste sites, and plant location sites;
- Completed permit applications and permits as issued;
- Pre-construction inspection report;

- Training documentation; and
- DB Contractor's final traffic noise analysis, if different than that included in the TxDOT-Provided Approvals.

#### 4.2.4.1.1 Environmental Compliance Manager

DB Contractor shall employ a full-time Environmental Compliance Manager (ECM) responsible for overall environmental compliance. The ECM shall report and coordinate all issues directly with TxDOT and DB Contractor's Project Manager. In the event the ECM, in consultation with DB Contractor's Project Manager and TxDOT, is unable to reach satisfactory resolution of environmental issues, the ECM shall provide written notification to DB Contractor and TxDOT outlining the concerns, actions taken in attempt to correct the concerns, and provide a recommendation as to the suggested course of action.

The ECM shall direct the work of the Environmental Team and shall monitor, document, and report the current status of environmental compliance for the Work. The ECM shall be responsible for implementation and maintenance of the SW3P. The ECM shall report immediately to TxDOT and DB Contractor any violation or non-compliance and shall include with any such report, the appropriate recommendations for corrective action. The ECM shall have the authority to stop Work.

The ECM shall coordinate with TxDOT, DB Contractor, and appropriate Governmental Entities. The ECM shall submit all necessary environmental documentation and monitoring reports to the appropriate Governmental Entities and when applicable, through TxDOT, to the extent necessary to maintain compliance with applicable Environmental Approvals.

DB Contractor shall not have the ability to relieve the ECM of his or her duty without the written consent of TxDOT. Should DB Contractor desire to replace the ECM, DB Contractor shall submit to TxDOT the resume of a replacement candidate. The replacement candidate shall be available fulltime within 30 days after delivery of TxDOT's written acceptance. In the absence of the ECM, DB Contractor's Hazardous Materials Manager shall act as an interim ECM.

The ECM candidate shall have experience successfully managing environmental compliance of highway construction. The ECM shall have the following experience:

- (a) Developing and managing a SW3P;
- (b) Developing and managing a hazardous substance and petroleum products management plan;
- (c) Implementing environmental mitigation plans;
- (d) Providing environmental and personal protection training;
- (e) Monitoring compliance with the MBTA; and
- (f) Monitoring compliance with Section 404/401 permit conditions.

The ECM's qualifying experience must demonstrate the ECM is familiar with:

1. The scope and terminology of American Society of Testing and Materials (ASTM) E 1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process;
2. Provisions of the TPDES CGP (TXR 150000);
3. Requirements of Section 404/401 and permit provisions; and
4. FHWA and TxDOT guidance on NEPA and State environmental compliance.

The ECM shall be employed by (a) an Equity Member; (b) Lead Engineering Firm, Lead Contractor, Independent Quality Firm or DB Contractor's lead maintenance firm; (c) a controlled subsidiary of (a) or (b); (d) if the Lead Engineering Firm, Lead Contractor, Independent Quality Firm or DB Contractor's lead maintenance firm is a joint venture, a member of such joint venture that will perform at least thirty percent (30%) of the relevant work or a controlled subsidiary of such joint venture member; (e) a parent or sister company of an Equity Member, if such parent or sister company serves as a Guarantor; or (f) a first-tier Subcontractor to either the DB Contractor or the Lead Contractor.

#### **4.2.4.2 Environmental Compliance and Mitigation Plan**

The ECMP shall discuss the methods DB Contractor will employ to accomplish the goal of zero environmental violations for the project. The ECMP shall document and fully detail compliance strategies and procedures to be employed by DB Contractor to cause Work performance in accordance with requirements of applicable Environmental Laws and Environmental Approvals. This plan shall establish and document schedules, protocols, and methodologies to be used in accomplishing Work, with an emphasis on monitoring, reporting, corrective actions, and adaptive management. The plan shall include a Compliance Action Plan (CAP).

The CAP shall consist of a decision making matrix, which will define the triggers for initiating or re-initiating environmental compliance actions for construction and maintenance activities, including construction noise mitigation measures and the triggers for initiating mitigation measures. For each trigger, the CAP shall identify the appropriate type or level of environmental study or other compliance action necessary to ensure the ongoing validity of Project Environmental Approvals and commitments. In addition, the ECMP shall detail any mitigation required by Environmental Approvals and DB Contractor's approach to satisfying mitigation requirements, including mitigation requirements identified after completion of the ECMP.

The ECMP shall include the following components as described below.

##### **4.2.4.2.1 Environmental Permits, Issues, and Commitments Sheets**

DB Contractor shall develop and maintain Environmental Permits, Issues, and Commitments (EPIC) construction plan sheets. Applicable permits, issues, and Environmental Commitments shall be identified on EPIC sheets and updated throughout the Term to identify on-Site conditions.

EPIC sheets shall include the Environmental Commitments required to ensure that any discharge from the Project site into a sanitary sewer system complies with appropriate codes and standards of the sanitary sewer owner.

**4.2.4.2.2** Clean Water Act – Sections 404 and 401: Waters and Wetlands of the United States

DB Contractor's obligations with respect to any necessary Section 404 and Section 401 permits are set forth in Section 12.2.5.1 of the Design-Build Specifications. The ECMP shall describe the methods DB Contractor will employ to fulfill such obligations as specified in Section 12.2.5.1 of the Design-Build Specifications.

**4.2.4.2.3** Clean Water Act – Section 402: Texas Pollutant Discharge Elimination System

DB Contractor shall document how it will comply with Section 402 of the Clean Water Act (CWA). The documentation shall provide that DB Contractor has day-to-day operational control over activities necessary to ensure compliance with the SW3P and has the sole responsibility for any potential non-compliance issues. The documentation shall also provide that DB Contractor is responsible for submitting a Notice of Intent (NOI) and Notice of Termination (NOT) to TCEQ. At a minimum, the documentation shall include:

- Process for training personnel on the requirements and conditions of the Texas Construction General Permits (CGP) for storm water discharges from Construction Sites;
- Procedures for incorporating Additional Properties outside the original NEPA approved Schematic Design and any off-right-of-way PSLs within one linear mile of the Project limits to comply with the CGP and the Project's SW3P;
- Procedures for handling non-compliance issues;
- Escalation procedures for SW3P items;
- Procedures for meeting all applicable Municipal Separate Storm Sewer System (MS4) requirements; and
- Procedures for implementing detention Best Management Practices (BMP).

**4.2.4.2.4** Rivers and Harbors Act of 1899 – U.S.C., Title 33**4.2.4.2.5** State Listed Threatened and Endangered Species/Species of Greatest Conservation Need

DB Contractor shall use minimization and avoidance practices to preserve wildlife communities to the greatest extent possible and shall comply with all State laws and regulations relating to State listed threatened and endangered species. Prior to construction, DB Contractor shall review the applicable and most current State threatened and endangered species list to determine if changes to the list (including, but not limited to, addition of species, changes to species habitat range and species listing status) have occurred since authorization of the Environmental Approvals. Per Final Design DB Contractor shall identify all State listed species that have the potential to exist within the Project limits, including PSLs, and determine the extent of Project impacts to the listed species. DB Contractor shall perform any field surveys necessary to determine the presence of all State listed species considered to incur impacts by the Project. If field surveys reveal that State listed species are present within the Project limits, and adverse impacts will occur, DB Contractor shall work with TxDOT to develop suitable best management practices for the Project. DB Contractor shall prepare the materials needed for coordination with regulatory agencies, at TxDOT's direction. TxDOT will conduct coordination with the applicable State agencies. Throughout the course of the Work, DB Contractor shall implement and maintain all best management practices (BMPs) identified in the

Environmental Approvals and through any subsequent coordination/consultation. DB Contractor shall use wildlife-friendly erosion and sediment control BMPs to stabilize disturbed areas where applicable.

#### 4.2.4.2.5.1 Vegetation and Habitat

DB Contractor shall use minimization and avoidance mitigation practices to preserve vegetation communities within the Project to the greatest extent possible. DB Contractor shall perform the surveys necessary to reassess unavoidable impacts to all vegetation communities based on the final design, including PSL locations, in accordance with the September 1, 2013 TxDOT and TPWD Memorandum of Understanding and coordinate those findings with TxDOT. TxDOT shall determine the need for further coordination/consultation with applicable agencies and perform such coordination. DB Contractor shall, at TxDOT's good faith discretion, perform all studies and prepare the materials necessary to coordinate with applicable agencies. DB Contractor shall implement and maintain all best management practices and/or mitigation required as a result of the agency coordination throughout the course of the Work in accordance with TxDOT and TPWD 2013 MOU Best Management Practices 2017 Revision.

DB Contractor shall reseed/re-vegetate all areas of bare ground in accordance with TxDOT standards and Executive Order (EO) 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping.

#### 4.2.4.2.6 Endangered Species Act, Fish and Wildlife Coordination Act and Migratory Bird Treaty Act

DB Contractor shall document how it will comply with the Endangered Species Act (ESA), the Fish and Wildlife Coordination Act (FWCA) and the Migratory Bird Treaty Act (MBTA). The documentation shall reflect that coordination with U.S. Fish and Wildlife Service (USFWS) shall be conducted by TxDOT. At a minimum, the documentation shall include:

- Process for training personnel on the requirements of the ESA, FWCA, and MBTA;
- Process for communicating any commitments regarding ESA, FWCA, and MBTA on the Project; and
- Procedures for complying with any commitments, including mitigation measures or activities.

#### 4.2.4.2.6.1 Federally Listed Species

DB Contractor shall use minimization and avoidance practices to preserve wildlife communities to the greatest extent possible and shall comply with all federal laws and regulations as related to federally listed threatened and endangered species. Prior to construction, DB Contractor shall review the applicable and most current federal threatened and endangered species list to determine if changes to the lists (including, but not limited to, addition of species, changes to species habitat range, and species listing status) have occurred since authorization of the applicable Environmental Approvals. Per Final Design, DB Contractor shall identify all federally listed species with potential to exist within the Project limits, including PSLs, and determine the extent of Project impacts to the listed species. DB Contractor shall perform any field surveys to determine the presence of all the federally listed species considered to incur impacts by the Project. If field surveys indicate that federally listed species are present within the Project limits, and adverse impacts will occur, DB Contractor shall work with TxDOT to develop suitable conservation measures and/or mitigation strategies for the Project. DB Contractor shall prepare any materials needed for

coordination/consultation with regulatory agencies, at TxDOT's direction. TxDOT will conduct coordination/consultation with the applicable federal agencies for the Project. Throughout the course of the Work, DB Contractor shall implement and maintain all conservation and mitigation measures identified in the Environmental Approvals and through any subsequent coordination/consultation.

#### 4.2.4.2.6.2 Migratory Birds

In accordance with the MBTA, no vegetation or man-made structures containing active nests, eggs, or young shall be removed during construction. In the event migratory birds are encountered during construction, DB Contractor shall make every effort to avoid adverse impacts to protected migratory birds, active nests, and their young. DB Contractor shall remove all old migratory bird nests between October 1 and February 15 from any vegetation or structure where construction will occur. In addition, DB Contractor shall be prepared to prevent migratory birds from building nests within applicable structures between February 15 and October 1. All proposed prevention methods shall be approved by TxDOT prior to planned use.

#### 4.2.4.2.7 Traffic Noise

The traffic noise walls proposed for construction will be determined by TxDOT through the public involvement process (polling of adjacent property owners and noise workshops) during the environmental phase of the project, before contract award. DB Contractor shall construct proposed noise walls in the early construction phases of the Project to help minimize construction noise.

In the event that DB Contractor's design requires a re-assessment of the traffic noise impacts, DB Contractor shall document how it will address traffic noise mitigation and how it will perform public involvement associated with noise mitigation (noise workshops). At a minimum, the documentation shall include:

- Process for carrying out noise workshops and noise mitigation measures as identified and discussed in any supplemental noise studies completed by DB Contractor;
- Processes for carrying out noise mitigation measures determined throughout the Term;
- Process for carrying out noise mitigation measures determined throughout the life of the Project; and
- Process to handle changes that may occur to proposed permanent noise mitigation in the TxDOT-Provided Approval and Schematic Design.

DB Contractor is responsible for public notification of affected property owners, the surveying/balloting of affected property owners, and final design of approved noise barriers. If noise walls are warranted, DB Contractor shall perform all noise workshops per TxDOT Guidelines for Analysis and Abatement of Highway Traffic Noise and in accordance with Item 11 of the Design-Build Specifications. DB Contractor shall allow 15 Days for adjacent affected property comments after each noise workshop. DB Contractor shall coordinate with TxDOT all results of noise workshops prior to design of noise walls.

To fulfill the commitments of the previously mentioned TxDOT-Provided Approvals, DB Contractor is responsible for implementing all noise mitigation measures to minimize construction and long-term impacts of the Work as prescribed in TxDOT-Provided Approvals and subsequent Environmental Approvals secured by DB Contractor. DB Contractor acknowledges that TxDOT-Provided Approvals

and proposed permanent noise mitigation are based on the Schematic Design, Schematic ROW, and polling of adjacent property owners (public involvement); consequently, if design changes or additional ROW become necessary, applicable noise analyses may require re-assessment and the proposed permanent noise mitigation may require amending by DB Contractor as the Work progresses. Such amendments shall be submitted to TxDOT for review and approval.

DB Contractor shall communicate any changes to TxDOT's proposed traffic noise mitigation to property owners adjacent to the previously proposed noise walls in accordance with the TxDOT FHWA approved 2011 Guidelines for Analysis and Abatement of Roadway Traffic Noise. If new noise walls are proposed as a result of the design changes, DB Contractor shall plan and perform a noise workshop to address adjacent property owners concerns about the new noise wall and complete polling of adjacent property owners to determine if the new noise walls are desirable. DB Contractor is responsible for all coordination with adjacent property owners and Governmental Entities necessary to obtain all such amendments to TxDOT-Provided Approvals and for ensuring compliance with the conditions and schedules set forth in any amendment of any TxDOT-Provided Approvals.

#### **4.2.4.2.8** Water Well Impacts and Requirements

DB Contractor shall document how they will address wells, including, municipal, domestic, irrigation, oil and gas, unplugged, or monitoring and observations wells, encountered during the life of the Project. The documentation shall include that DB Contractor is responsible for plugging and abandoning all wells in accordance with Item 103, Disposal of Wells, from TxDOT Standard Specifications, as well as DB Contractor is responsible for any required remediation efforts. At a minimum, the documentation shall include:

- Process for training personnel on recognition of wells;
- Procedures for handling wells; and
- Procedures for handling contamination of a well that results from DB Contractor's work. Procedures shall include a requirement to notify TxDOT and with TxDOT's concurrence notify appropriate regulatory agencies within 24 hours of the discovery.

#### **4.2.4.2.9** Cultural Resource Studies

DB Contractor shall be responsible for ensuring compliance with cultural resource Laws and any project Environmental Commitments on the Project through the Term. TxDOT shall perform consultation for the Project according to current procedures for implementing Section 106 of the National Historic Preservation Act, and the Antiquities Code of Texas.

Subsequent to issuance of NTP1, DB Contractor is responsible for performing any necessary cultural resource surveys, evaluations, testing, and mitigation in those areas outside the footprint of the Project ROW shown on the Schematic Design as defined in the TxDOT-Provided Approval and within the area of potential effects. DB Contractor shall coordinate all necessary Antiquities Permits through TxDOT. Antiquities Permits shall be obtained from the Texas Historical Commission (THC) for archeological surveys, testing, monitoring, and data recovery.

DB Contractor shall document efforts to avoid impacts to cultural resources that are listed on or determined to meet the eligibility criteria for listing on the National Register of Historic Places (NRHP)

as specified in 36 CFR 60.4, or that are designated or determined to meet the criteria for designation as State Antiquities Landmarks as specified in 13 TAC 26.8.

If evidence of possible archeological or historical resources is encountered during the course of the Work, DB Contractor shall immediately cease Work in the immediate area and contact TxDOT to initiate post-review discovery procedures under the provisions of the Programmatic Agreement (PA) among TxDOT, SHPO, FHWA, and Advisory Council on Historic Preservation (ACHP), as well as the MOU between TxDOT and the THC. DB Contractor shall undertake appropriate measures to protect the site from further intrusion to the extent feasible until an appropriate evaluation of the site can be made by a qualified representative. Work shall not be resumed in the area until DB Contractor receives notification and approval from TxDOT.

#### **4.2.4.2.10** Public Involvement

DB Contractor shall document how it will comply with all public involvement requirements, including public involvement requirements specifically related to cultural resources. The documentation shall comply with all applicable requirements including, but not limited to, 43 TAC §2.4, Section 106 of the National Historic Preservation Act (36 CFR 800), Chapter 26 of the Texas Parks and Wildlife Code, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. The documentation shall provide that DB Contractor is responsible for conducting all public involvement requirements for the life of the Project except where TxDOT has agreements with Governmental Entities to perform public involvement requirements. At a minimum, the documentation shall include:

- Process for handling public involvements requirements; and
- Procedures for documenting public involvement.

#### **4.2.4.2.11** Standard Operating Procedures

DB Contractor shall develop standard operating procedures for the following activities and include them in the ECMP:

- Controlling dust during construction;
- Mitigating noise and vibration during construction;
- Mitigating light intrusion on adjacent properties;
- Managing contaminated soil and groundwater, especially during excavation, treatment, storage, transportation, and disposal;
- Preventing, controlling, and mitigating fugitive noxious or toxic vapors or particulate matter (dust), contaminated soil, and contaminated groundwater during disturbance of noxious or hazardous materials and media;
- Coordinating and communicating with potentially affected public prior to initiating work that may generate emissions or discharges that could cause public concern;
- Managing material coated with lead based paint during demolition, storage, transport, and disposal;
- Managing asbestos containing material during testing, treatment, storage, and removal;



- Managing all other hazardous materials that may be encountered;
- Identifying protected species habitat, and providing species surveys;
- Identifying impacts to special and unique vegetation habitats, and providing mitigation for such impacts; and
- Identifying Section 404 impacts and complying with issued Section 404 permits for the Project.

#### 4.2.4.3 Environmental Protection Training Plan

DB Contractor shall develop and implement an Environmental Protection Training Program (EPTP) that meets the minimum requirements set forth herein. The EPTP shall include methods and procedures documented in the ECMP to:

- Educate every worker before they begin Work on the Project to:
  - Recognize the overall importance of environmental issues to constructing, operating, and maintaining a successful Project;
  - Recognition of State or Federally-Listed Species that could occur in the Project area; and
  - Appreciate the various environmental sensitivities of the Project.
- Train every worker to:
  - Recognize environmentally sensitive resources that may be encountered during the Work;
  - Avoid or take appropriate action to minimize environmental impacts from the Work;
  - Know the required actions, practices, and procedures regarding regulated resources; and
  - Understand protocols for meeting Environmental Commitments for post-review discoveries.
- Foster DB Contractor's management and supervisory personnel's attitude of commitment to the Project's environmental quality;
- Convey to all workers, DB Contractor's management commitment to the Project's environmental quality; and
- Convey to all workers, TxDOT's and DB Contractor's commitment to zero tolerance for violations.

##### 4.2.4.3.1 EPTP Scope and Content

The goal of the EPTP is to educate Project personnel about the following:

- Overall importance of environmental protection to the Project;
- Compliance responsibility and Governmental Entity authority, including background and environmental issues regulatory overview;

- Overview of DB Contractor's Environmental Commitments and responsibilities at the Project level;
- Worker responsibilities;
- Wetlands and jurisdictional waters of the U.S. identification;
- Environmental Approvals terms and conditions including an overview of the provisions of the ESA, Migratory Bird Treaty Act, and SW3P;
- Best Management Practices (BMP)s for environmental compliance, including pollution prevention, erosion, sedimentation, post construction controls, and dust control measures to maintain water and air quality;
- Procedures for temporary erosion, sedimentation, and environmental controls compliance, including required training listed in Item 506 of the TxDOT Standard Specifications;
- Required mitigation measures for ESA/FWCA compliance;
- Procedures and precautions in the event of spills of or discovery of Hazardous Materials or unknown chemicals or contamination;
- Procedures and precautions in the event human skeletal remains or other archeological or paleontological resources are discovered;
- Procedures for protection of specific vegetation;
- Procedures for waste reduction and recycling;
- Procedures regarding the relocation of historical markers (i.e. Texas Historical Markers, 1936 Texas Centennial markers, TxDOT markers, DAR Insignia markers, and local/county markers);
- Groundwater protection requirements;
- CWA regulations and surface water protection requirements;
- Overview of noise and residential impact reduction procedures;
- Air quality requirements; and
- Penalties and/or fines for violations of and noncompliance with Environmental Approvals and Environmental Laws, including termination of employment.

DB Contractor shall submit to TxDOT course outlines containing learning objectives designed to achieve stated goals and suggested staff attendance for all anticipated training requirements through the Term. Course outlines shall be submitted prior to NTP2.

#### **4.2.4.3.2** EPTP Participation

DB Contractor shall require all non-administrative employees to participate in the EPTP and shall keep accurate records documenting attendance, as well as materials presented.

In addition to English, the workers must be provided the opportunity to receive their training and training materials in Spanish.

DB Contractor shall include activities for implementation of the EPTP in the Project Schedule. The length of training sessions and their frequency shall be sufficient to achieve the goals set forth above. Periodic training sessions at key times (e.g., prior to construction, major maintenance in sensitive areas, or construction timing restrictions to protect Threatened or Endangered Species) shall be used to update workers on specific restrictions, conditions, concerns, and/or requirements.

#### 4.2.4.4 Hazardous Materials Management Plan

DB Contractor shall prepare an HMMP for the safe handling, storage, treatment, and disposal of Hazardous Materials, whether encountered at or brought onto the Project Site by DB Contractor, encountered or brought onto the Project site by a third party, or otherwise, during the Term. DB Contractor shall submit the final HMMP to TxDOT for review and approval in its good faith discretion within 60 Days of NTP1; approval of the Plan by TxDOT shall be a condition of commencement of Construction Work.

The HMMP shall provide the identification and contact information for designated responsible individuals in the management of Hazardous Materials and include procedures compliant with all applicable Environmental Laws and include, at a minimum:

- For all chemicals to be used on the Project, DB Contractor shall keep and update Material Safety Data Sheets (MSDS), per OSHA requirements, for the Term;
- Designated individuals responsible for implementation of the plan;
- Procedures for identifying and documenting potential contaminated sites which might impact Project development;
- Procedures for mitigation of known contaminated sites anticipated to impact construction;
- Procedures for mitigation of unanticipated contaminated sites encountered during construction;
- Procedures for mitigation of contamination during the operation and maintenance of the Project;
- Procedures for developing a detailed spill response plan for the Term;
- Process for training personnel for responding to and mitigating Incidents involving contamination or waste;
- Provisions for appropriate storage and disposal of all waste encountered or disposed of on the Project for the Term;
- Provision for a Hazardous Materials training module as an element of the EPTP component of the CEPP;
- Procedures for preparing an Investigative Work Plan (IWP) and Site Investigation Report (SIR) in the event that Hazardous Materials are discovered during construction; operations or maintenance activities;

- Procedures for maintaining appropriate communication with the public regarding the planned handling and unplanned Incidents involving contamination or Hazardous Materials;
- Identification and contact information for designated responsible individuals; and
- Procedure for notifying TxDOT within two hours of discovering Hazardous Materials.

The HMMP shall include provisions for making all on-site workers aware of and able to recognize the potential Hazardous Materials to which they may be exposed, limiting Subcontractors and other Site workers' exposure to Hazardous Materials, and providing all necessary personal protection equipment to protect workers from exposure. The HMMP shall require DB Contractor to provide any non-DB Subcontractor personnel who visit the Project with the appropriate personal protection equipment.

The HMMP shall require that all personnel of DB Contractor-Related Entities handling Hazardous Materials be trained and certified at least to the minimum requirements established under the current guidelines of OSHA 1910.120 (HAZWOPER Training).

Further, the HMMP shall include procedures for ensuring that all applicable certifications, licenses, authorizations, and Governmental Approvals for Contractor personnel handling Hazardous Materials are current and valid through the duration of the Work.

#### 4.2.4.4.1

##### Investigative Work Plans and Site Investigation Reports

If Hazardous Materials are encountered within any of the Project ROW or Additional Properties used as DB Contractor's staging area, Project office site, plant sites, borrow site, or stockpile location, DB Contractor shall prepare an investigative work plan that addresses the methods, techniques, and analytical testing requirements to adequately characterize the extent of the contaminated media (soil and/or groundwater) potentially impacting the Project. DB Contractor shall locate and assess the likely source of contamination.

A Registered Professional Engineer and other qualified professionals, as needed, shall prepare the IWP and other necessary reports in accordance with applicable, relevant, or appropriate Laws and guidance.

Upon satisfactorily completing the investigative work, DB Contractor shall summarize the findings within a SIR and make recommendations regarding potential response actions necessary for Project development. DB Contractor shall take Hazardous Materials contamination into account during all subsequent phases of Project development, including Additional Properties negotiation and acquisition, property management, design, and construction.

The SIR shall address the following:

- The characterization of the impacted area;
- Sampling efforts and findings;
- Opportunities to avoid the contamination by adjusting the design;
- Level of response action warranted if the contamination cannot be avoided;

- Feasibility of initiating response actions prior to construction;
- Pursuit of cost-reimbursement from responsible parties;
- The need for completing response actions concurrent with construction; and
- The nature of any special specifications and provisions necessary for incorporation into the Project.

DB Contractor may initiate a preventative or corrective action after TxDOT review and approval of the SIR from appropriate Federal or State agencies.

#### **4.2.4.5** Communication Plan

DB Contractor shall develop a CP which describes in detail the communication hierarchy for information distribution related to the compliance with the CEPP. The CP will include names and contact information, including contact information for use in an Emergency, and the preferred methods of routine communication, and communication during an Emergency.

#### **4.2.4.6** Construction Monitoring Plan

The CMP shall identify times, locations, and other conditions where monitoring of construction activities are to be performed to maintain and cause compliance with Environmental Laws, Environmental Approvals, and the Contract Documents. The CMP shall establish and/or document schedules, protocols and methodologies to be used for monitoring Work with an emphasis on timely reporting, corrective actions, and adaptive management. The CMP shall establish reporting procedures, identify reporting requirements, and establish controls for report distribution and records retention. All environmental monitoring reports shall be made available for review by TxDOT at TxDOT's request. Should any non-compliance or violation be observed that represents an imminent danger to human health or the environment, the CMP shall include procedures to cause immediate notification of TxDOT.

Prior to NTP2, DB Contractor and TxDOT shall jointly inspect existing facilities, structures, and environmentally sensitive areas in the vicinity of the Site, but not included as part of the Work. DB Contractor shall provide a minimum two-week advance notice to TxDOT of this joint inspection. The post award inspection shall document the pre-construction condition of vegetation, streets, sidewalks, landscaping, residential, and commercial property, creeks, storm drainage, and infrastructure. The purpose of the inspection is to provide a point of reference from which TxDOT can determine if any facility, structure, and environmentally sensitive area damaged during the Work is restored to its pre-construction condition or mitigated according to the ECMP. DB Contractor shall document the inspection with a report that shall include photographs, sketches, maps, and narratives clearly depicting the pre-construction Site condition.

All photographs shall be archival quality and shall be accompanied by a caption describing the date; time of day; location and direction in which the photograph was taken. If the photograph shows existing damage, the damage must be clearly shown and noted in the caption. All sketches and maps must be no larger than 11 inches x 17 inches. All photographs must be 4 inches x 6 inches.

The post award inspection shall inspect the MS4 located within and adjacent to the Site. During the inspection, DB Contractor shall note the following:

- Storm drains, culverts, swales, and other components of the MS4 that DB Contractor verified as free of floatable trash, silt, debris, and functioning as originally intended;
- Storm drains or culverts that do not function or appear not to function as originally intended;
- Siltation of culverts, concrete swales, and other components of the MS4;
- The presence of construction on adjacent, up-gradient, or down-gradient properties. If construction on other properties is noted, DB Contractor shall photographically document the general condition of these properties and their compliance with storm water regulations;
- Pre-existing off-site tracking from the Site or surrounding properties;
- Potential pre-existing contamination (i.e., any areas of soil discoloration or distressed vegetation); and
- Any other pre-existing condition that, by its nature, could be construed as a violation of the TPDES General Construction Permit.

Within 90 days following Substantial Completion, DB Contractor shall conduct an inspection to monitor and repair any of the above mentioned deficiencies in the storm water system. DB Contractor shall complete all repairs as a condition of Final Acceptance.

#### **4.2.4.7 Recycling Plan**

The recycling plan shall document and fully detail DB Contractor's commitment to recycling, waste minimization, and use of "green products" during all aspects of Work. The recycling plan shall document DB Contractor's recycling initiatives, as well as methods and procedures for maximizing the use of recycled materials in all aspects of the Work. If recyclable materials shall be used in lieu of TxDOT approved construction and maintenance materials, DB Contractor shall follow the TxDOT Material Specification DMS 11000. The recycling plan shall be submitted as part of the CEPP in accordance with the requirements set forth in this Section 4.2.4.

#### **4.2.5 TxDOT-DB Contractor Communications Plan**

DB Contractor shall submit to TxDOT for approval a TxDOT-DB Contractor Communications Plan that is consistent with and expands upon the preliminary communications plan submitted by DB Contractor prior to the Effective Date. DB Contractor shall maintain and update the plan throughout the Term.

The TxDOT-DB Contractor Communications Plan shall describe the procedures for communication of Project information including notification of Incidents affecting the Project or the traveling public between DB Contractor's organization and TxDOT. The TxDOT-DB Contractor Communications Plan shall describe how DB Contractor's organization will respond to unexpected requests for information, communicate changes or revisions to necessary DB Contractor personnel, and notify affected stakeholders before and after changes are made to the Contract Documents.

#### **4.2.6 Other Affected Third Parties**

DB Contractor is responsible for coordinating the Work with all third parties potentially affected by the Work. DB Contractor shall prepare a plan, the Affected Third Parties Plan, which describes how

the DB Contractor will mitigate the impact of the Work upon potentially-impacted third parties. The plan shall include, at a minimum:

- Name of each third party along with primary contact(s) and contact information. Coordination with third parties may include, but is not limited to, impacts to ROW, utilities, drainage, parks, railroads, and ports.
- Description of Work interfaces, such as notices, meetings, permits, approvals, coordination, and inspections.
- Detailed schedule identifying anticipated date of receipt of all permits and approvals required for completion of Work. DB Contractor shall show schedule detail either within the Project Schedule or the detailed activities in a fragnet for each third party process and show as a summary bar in the Project Schedule. DB Contractor shall show separate activities for each party listed and a summary description of the actions required.
- As an attachment, a detailed list of all known or anticipated third party-required submittals, including number and type and requested action of third party upon receipt of each submittal.
- List of known and anticipated impacts and interfaces with third parties, along with a mitigation plan and name of the point person from DB Contractor assigned to manage each.

DB Contractor shall submit the Affected Third Parties Plan to TxDOT for TxDOT's review and approval prior to initiating discussions with potentially-impacted third parties. DB Contractor shall include the Affected Third Parties Plan as part of the PMP.

DB Contractor shall review the list of required submittals with each third party for concurrence regarding the number and types of submittals required for each specific type of Work. DB Contractor shall continually update this list, included as an attachment in the Plan, and submit at least monthly to TxDOT.

Notwithstanding any other provision in the Contract Documents, DB Contractor shall update and submit the Affected Third Parties Plan on a monthly basis as part of its Draw Request. DB Contractor shall, as part of the monthly Plan submittals, identify any variations to schedule as well as provide mitigation strategies to minimize or eliminate any perceived or actual impact to the Project Schedule.

#### 4.2.7

#### **Risk Management Plan**

The Risk Management Plan shall describe the approach to identification, management, mitigation, and allocation of Project-specific risks. The Risk Management Plan shall:

- Describe DB Contractor's management team's role and responsibilities in risk management listing and describing positions/roles;
- Describe how DB Contractor will engage with TxDOT and project stakeholders in managing risk;
- Include a detailed work plan and schedule for proposed meetings to discuss risk management;
- Describe strategies for controlling and managing Project risks;

- Describe whether risks will be quantified for potential cost and/or schedule impact and how that will be done;
- Identify and describe strategies to allocate risk to the parties best able to manage their impact; and
- Include a risk matrix which shall identify the following at a minimum:
  - (i) Significant risk categories during the design, construction and maintenance of the Project;
  - (ii) The prioritized potential consequences of the identified risks;
  - (iii) The probable likelihood of risks;
  - (iv) Proposed procedures and tools to conduct a risk sensitivity analysis;
  - (v) Risk-mitigation strategies to eliminate or reduce the likelihood and impact of specific risks; and
  - (vi) Contingency plans to cover the remaining and/or unknown risks.

The Risk Management Plan shall be updated throughout the Project as risks are retired or as additional risks are realized.

#### **4.2.8 Utility Management Plan**

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

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

#### **4.2.9 Right of Way Acquisition Management Plan**

DB Contractor shall prepare a ROW Acquisition Management Plan in accordance with the requirements of this Section 4.2.9. The ROW Acquisition Management Plan shall set forth:

- DB Contractor's main contractual arrangements;



- DB Contractor's organizational structure covering the activities to be performed in accordance with the Contract Documents;
- Arrangements for coordinating and managing staff interaction with TxDOT and its consultants, and description of approach to coordinating work of off-site personnel;
- DB Contractor's organization, including names, contact details, titles, job roles, and qualifications of Project ROW and Key Personnel and other Project ROW personnel;
- Integration of the Project ROW schedule into the Project Baseline Schedule; the Project ROW schedule shall contain logic linked ROW acquisition and relocation assistance activities on a parcel-by-parcel basis, including adequate time periods for TxDOT review and condemnation activities in accordance with Item 15 of the Design-Build Specifications;
- Interfacing between DB Contractor, Subcontractors and the IQF during Project ROW acquisition, including interface between design, Project ROW activities, and quality review processes;
- Responsibilities of Subcontractors and Affiliates, DB Contractor's overall control procedures for Subcontractors, including consultants and subconsultants, and steps taken to ensure Subcontractors and Suppliers meet the obligations imposed by their respective Subcontracts;
- Environmental controls including:
  - Control of the interface between environmental requirements (including Hazardous Materials and demolition) and Project ROW acquisition activities;
  - Applicable procedures for the Hazardous Materials Management Plan (HMMP) in accordance with Section 4.2.4.4;
  - Reference to relevant component parts of the Comprehensive Environmental Protection Plan (CEPP) into the ROW Acquisition Management Plan;
- Procedures describing how the principal activities will be performed during the Project ROW acquisition, whether directly undertaken or subcontracted;
- Documentation and reporting, including management procedures in compliance with Section 4.2.1.2;
- Quality control procedures and quality review standards to establish and encourage continuous improvement; and
- Audit procedures including name, title, roles, and responsibilities of supporting quality management staff reporting to the person with defined authority.

The ROW Acquisition Management Plan shall contain, at a minimum, the following:

- The name of TxDOT approved title company(ies) to be used for title services;
- The name and qualifications of the proposed ROW Acquisition Manager (ROW AM); and

- The resumes and qualifications for appraisers, appraisal reviewers, land planners, relocation agents, negotiators, real estate attorneys, eminent domain specialist and ROW personnel specified in Section 15.2.7 of the Design-Build Specifications (ROW Personnel Qualifications).

The ROW Acquisition Management Plan shall describe the specific means by which DB Contractor shall:

- Provide sufficient personnel to achieve, in accordance with the Project Schedule, the goals and milestones established for Project ROW acquisition, relocation assistance, appraisals and appraisal review, and clearance/demolition of the improvements from the Project ROW;
- Provide administrative support;
- Provide for language, visually impaired, or hearing impaired translation, as necessary;
- Provide documentation and reports and the manner in which records will be maintained in compliance with the Design-Build Specifications, including any systems DB Contractor will use;
- Produce and distribute acquisition and relocation brochures as approved by TxDOT;
- Establish, implement, and maintain quality control procedures and quality review standards for the acquisition for Project ROW to ensure accuracy, completion, and quality in Submittals to TxDOT and Governmental Entities;
- Prevent fraud, waste and mismanagement; and
- Perform all items in this Section 4.2.9.

DB Contractor shall update the ROW Acquisition Management Plan regularly, at least quarterly, in accordance with the Contract Documents and when any changes occur to the personnel required by Section 15.2.7 of the Design-Build Specifications (ROW Personnel Qualifications).

#### **4.2.10 Traffic Management Plan**

DB Contractor shall prepare and implement a Traffic Management Plan (TMP) that includes the following items:

- Descriptions of the qualifications and duties of the Lead Maintenance of Traffic Design Engineer, and other personnel with traffic control responsibilities;
- Procedures to identify and incorporate the needs of transit operators, Utility Owners, Governmental Entities, Emergency Services providers, school districts, business owners, and other related Users, Customer Groups or entities in the Project corridor and surrounding affected areas as it relates to the use of roadway networks;
- Procedures for developing Traffic Control Plans (TCPs), including implementing and maintaining detours, road and Lane Closures, and other traffic pattern modifications with detailed phasing and steps showing the different traffic control phasing;
- Procedures for obtaining approval of TCPs from TxDOT and applicable Governmental Entities including review of TCP submittal timeframes;

- Procedures for signing transitions from one phase to the next and from temporary to permanent signing;
- Procedures for maintenance and replacement of traffic control devices, including pavement markings and traffic barriers, and transitions from one phase to the next and from temporary to permanent placement;
- Procedures to regularly evaluate and modify traffic signal timings, in coordination with local Governmental Entities and TxDOT;
- Procedures for the development, implementation, testing, and maintenance of all affected signals in cooperation with local Governmental Entities and TxDOT;
- Procedures and process for the safe work zone ingress and egress;
- Provisions to provide continuous access to established truck routes and Hazardous Material routes, and to provide suitable detour routes, including obtaining any approvals required by TxDOT and the appropriate Governmental Entities for these uses;
- Procedures to modify TCPs as needed to adapt to current Project circumstances including a contingency plan to alleviate unreasonable construction-related delays that can be implemented immediately upon notification from TxDOT;
- Procedures to communicate TMP information to DB Contractor's and TxDOT's public information personnel and notify the public of maintenance of traffic issues in conjunction with the requirements of Item 11 of the Design-Build Specifications;
- Descriptions of contact methods, a list of TxDOT and DB Contractor personnel contacts, and anticipated response times for any deficiencies or Emergency conditions requiring attention during off-hours in compliance with the approved TxDOT- DB Contractor Communications Plan; and
- Procedures for night Work (thirty minutes after sunset to thirty minutes before sunrise) to include a work zone light system design in accordance with NCHRP Report 498.

DB Contractor shall coordinate with TxDOT and local Governmental Entities regarding the development of the TMP. DB Contractor shall participate in traffic management coordination meetings scheduled by TxDOT or its representatives.

DB Contractor shall submit the TMP as a part of the PMP as required in Section 4.2.

#### **4.2.11 Maintenance Management Plan**

The MMP is a guidance document that describes DB Contractor's managerial approach, strategy, and quality procedures for the Maintenance Work to achieve all requirements of the Contract Documents. The MMP during construction shall be included as a section of the PMP and may cross reference to appropriate sections of the PMP and shall be consistent with the general maintenance obligations described in Section 27.1.1 of the Design-Build Specifications. The recommended content for the MMP is set forth in Item 27 of the Design-Build Specifications. The MMP during construction is applicable to the Maintenance Work and shall come into effect upon issuance of NTP2 and shall remain in force until Final Acceptance.

DB Contractor shall submit the MMP for TxDOT's approval in its good faith discretion.

#### 4.2.12 Submittals

All Submittals described in this Section 4.2 shall be submitted to TxDOT in accordance with the schedule and for the purpose (approval, review and comment, concurrence, or for information) set forth in Table 4-2. Acceptable electronic formats are Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 4-2: PMP Submittals to TxDOT**

Submittals	Submittal Schedule	Department Action	Reference Section
PMP – Project Administration Component	After NTP1	Approval	4.2.1
PMP – Safety and Health Plan	Approval prior to NTP2	Concurrence	4.2.3
PMP – TxDOT – DB Contractor Communications Plan	Approval prior to NTP2	Approval	4.2.5

#### 4.3 Quality Management

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

DB Contractor shall contract for all PSQAF and IQF services through one or more independent firms.

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

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

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

DB Contractor shall prepare and submit a comprehensive Quality Management Plan (QMP) to TxDOT for approval. The QMP shall describe the authority and responsibility for the administration of the QMP and describe how all requirements of the Contract Documents will be met. The QMP

shall be consistent with and expand upon the quality approaches and commitments submitted by DB Contractor prior to the Effective Date. DB Contractor shall address any comments received from TxDOT regarding the relevant section of the initial Quality Management Plan submitted by DB Contractor prior to the Effective Date. The Quality Management Plan shall be conformed and updated annually. DB Contractor shall revise its QMP within 14 days of TxDOT or DB Contractor detection of a substantial or systemic problem related to the Work, or as directed by TxDOT. Submissions of the QMP and all updates to the QMP shall include both a clean copy and a copy tracking all changes since the previous approval.

The QMP shall consist of the Professional Services Quality Management Plan (PSQMP) and the Construction Quality Management Plan (CQMP). These distinct plans shall be coordinated with one another such that common quality management system requirements such as document control, process auditing, and corrective and preventive action can be addressed with a single approach. The QMP shall comply with the requirements of the version of the QAP for DB Projects in effect on the Effective Date. In the event of a conflict between the QMP and the QAP for DB Projects, the QAP for DB Projects in effect on the Effective Date will control.

#### **4.3.1 General Requirements**

DB Contractor shall develop, implement, and maintain the QMP for the Term. The QMP shall describe the system, policies, and procedures that ensure the Work meets the requirements of the Contract Documents and provide documented evidence of same. The QMP shall encompass all Work performed by DB Contractor and Subcontractors of all tiers.

The QMP shall contain detailed procedures for DB Contractor's QC, PSQAF, and IQF activities. DB Contractor's quality process shall incorporate planned and systematic verifications and audits undertaken by an independent party. DB Contractor shall conduct all QC, PSQAF, IQF, performance verification, and design overlay and coordination among design disciplines, all in accordance with the QMP and the requirements of the Contract Documents.

Inspections, reviews, and testing shall only be performed by personnel with appropriate training and qualifications, for each appropriate item of Work (items produced on and off the Project Site) using appropriate equipment that is accurately calibrated and maintained in good operating condition and accredited in compliance with TxDOT's QAP for DB Projects.

DB Contractor shall regularly maintain the QMP to contain current versions of the following information:

- The organizational chart that identifies all quality management personnel, their roles, authorities and line reporting relationships. Personnel relationships relating to quality shall comply with the requirements in this [Section 4.3](#);
- Names, contact details, titles, description of roles responsibilities, and specific experience of all quality management Key Personnel, other quality management personnel and those who have the authority to stop Work;
- Identification of testing agencies, including information on each agency's capability to provide the specific services required for the Work, certifications held, equipment used, and location of laboratories for products produced both on and off the Site; and

- Identification of what products or services are to be subcontracted, updated when new Subcontractor or Supplier contracts are implemented.

QMP procedures shall: (i) ensure DB Contractor personnel, including Subcontractor personnel, are familiar with all the provisions of the Contract Documents concerning their respective responsibilities; (ii) provide for the education, training and certification, as appropriate, of personnel performing activities affecting or assessing the quality of the Work to assure such personnel achieve and maintain the required proficiency; and (iii) ensure the Work is performed according to the QMP, Good Industry Practice, and the Contract Documents. DB Contractor shall plan the training required for each individual and maintain a register demonstrating the QMP training record of all personnel affecting quality.

DB Contractor shall make all quality records immediately available to TxDOT for review. DB Contractor shall provide TxDOT with a copy of any and all quality records when requested.

#### **4.3.2 DB Contractor's Senior Management Reviews**

DB Contractor's senior management shall conduct a management review of the quality program identified in the QMP at least quarterly, and more frequently if necessary or upon written request by TxDOT. As used in this Section, "senior management" means DB Contractor personnel who provide resources and delegate authority and who coordinate, direct, and control DB Contractor's Project Manager and DB Contractor's organization. TxDOT shall be invited to participate in the senior management reviews. Senior management reviews shall focus on ensuring continued suitability and effectiveness in satisfying the project requirements and DB Contractor's quality policy and objectives as stated in the QMP. DB Contractor shall provide TxDOT five days' notice prior to holding senior management review meetings.

Each senior management review shall document, in a report on the QMP effectiveness, and assess, at a minimum: the results of DB Contractor and TxDOT audits; corrective and preventive actions taken; trends in Nonconforming Work; stakeholder feedback; status of previous management review actions; timeliness of responses and resolutions; and quality management successes and failures. The output of senior management reviews shall include any decisions and actions related to: improvement of the effectiveness of the QMP and its processes; improvement of the Work; and resource needs.

As one of the inputs to measurement of the performance of the QMP, DB Contractor shall monitor, record, and act upon all communication from TxDOT and third parties regarding the performance of DB Contractor. The methods for obtaining and using this information shall be described in the QMP.

#### **4.3.3 Professional Services Quality Management Plan**

DB Contractor shall prepare a PSQMP that describes its policies, procedures, and staffing (including Subcontractors) to manage Professional Services quality in accordance with Attachment 4-1 to these General Conditions.

#### **4.3.4 Construction Quality Management Plan**

DB Contractor shall prepare a CQMP that describes its policies and procedures to manage Construction Work quality (including that of subcontractors) consisting of construction QC and IQF activities and materials acceptance procedures in accordance with Attachment 4-2 to these General Conditions and TxDOT's QAP for DB Projects.

### 4.3.5 Submittals

All Submittals described in this Section 4.3 shall be submitted to TxDOT in accordance with the schedule and for the purpose (approval, review and comment, concurrence or for information) set forth in Table 4-3. Acceptable electronic formats are Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 4-3: QMP Submittals to TxDOT**

Submittals	Submittal Schedule	Department Action	Reference Section
Revisions to the QMP	<ol style="list-style-type: none"> <li>1. Within 14 days of detection of a substantial or systemic problem; and</li> <li>2. As directed by TxDOT. Prior to implementation</li> </ol>	Approval	4.3
Quality records	When requested	For Information	4.3.2
Senior management review meeting minutes	Quarterly, within 14 days of meeting	For Information	4.3.2
Report on QMP effectiveness	Quarterly, within two weeks of senior management review	For Information	4.3.2
Results of Project quality audits	Within seven days of completion	For Information	Attachments 4-1 and 4-2
DB Contractor Nonconformance Reports	Within 48 hours of both issuance and resolution	For Information	Attachment 4-1
Responses to TxDOT Nonconformance Reports	Within 48 hours of receipt	Review and comment	Attachment 4-1
PMP – Professional Services Quality Management Plan	Prior to submitting design packages for TxDOT review	Approval	4.3.3
Copies of all Design Documents	Upon TxDOT request	For Information	Attachment 4-1
Design Submittal Packaging Plan	Prior to the first Professional Services Submittal	Approval	Attachment 4-1
Technical Working Group meeting minutes	Upon Request	For Information	Attachment 4-1
Pre-Submittal Workshop meeting invitations, supporting materials, and agendas	5 Business Days prior to the workshop	For Information	Attachment 4-1

Submittals	Submittal Schedule	Department Action	Reference Section
Pre-Submittal Workshop meeting minutes	Upon Request	For Information	Attachment 4-1
Preliminary Design package	Prior to development of the Final Design package	Review and comment	Attachment 4-1
Design Exceptions and design standards deviations	Prior to Final Design Submittal	Approval	4.1.2.2.4, Attachment 4-1
Design Manager's certification	With RFC Documents	Concurrence	Attachment 4-1
Final Design Submittal	As Agreed upon with TxDOT	Review and comment	Attachment 4-1
RFC Documents	As Agreed upon with TxDOT	Concurrence	Attachment 4-1
Requests for Information and copies of Engineer of Record's determination of NDC	As necessary, Access to TxDOT prior to implementation	For Information	Attachment 4-1
Early Start of Construction procedures	Prior to Work	Concurrence	Attachment 4-1
Record Documents	Prior to Final Acceptance	For Information	Attachment 4-1
Manufacturers' warranties, guarantees, instruction sheets, parts lists, and other product data	With the Record Documents	For Information	Attachment 4-1
PMP – Construction Quality Management Plan (CQMP)	Approval prior to NTP2	Approval	4.3.4, Attachment 4-2
IQFM's Monthly Quality Report	Monthly during Construction Period	Review and Comment	Attachment 4-2
Construction Look ahead schedule	Weekly	For information	Attachment 4-2

#### 4.4 Right of Way

##### 4.4.1 Acquisition of Project ROW

**4.4.1.1** All 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, 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. 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.

**4.4.1.2** DB Contractor may commence ROW acquisition services upon issuance by TxDOT of NTP1, subject to limitations and conditions determined by TxDOT. DB Contractor may also commence negotiating and entering into Utility Agreements with the Utility Owners upon issuance of NTP1.

**4.4.1.3** TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages and Condemnation Packages for Project ROW, (b) except as provided below, undertake eminent domain proceedings, if necessary, for Project ROW in accordance with the procedures and time frames established in Item 15 of the Design-Build Specifications and the approved Right of Way Acquisition Management Plan, and (c) provide review and approval for the following Submittals: payment Submittals, relocation Submittals, administrative settlement Submittals and closing Submittals for Project ROW in accordance with the procedures and time frames established in the Design-Build Specifications and the approved ROW Acquisition Management Plan. TxDOT shall also provide review and approval for final closeout procedures established in Section 15.2.12 of the Design-Build Specifications.

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

#### **4.4.2 Costs of Acquisition**

**4.4.2.1** 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, 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, 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.

#### 4.4.2.2

TxDOT shall be responsible (a) for the purchase price, market rental consideration for PUAs, any relocation assistance payments and title insurance premiums for any Additional Properties outside the Schematic ROW that must be acquired due to a TxDOT-Directed Change or a Necessary Basic Configuration Change or a Relief Event, subject to TxDOT's reasonable determination that the property is necessary and (b) for Additional Properties that must be acquired due to a TxDOT-Directed Change or a Relief Event, any other costs and expenses incurred by DB Contractor to acquire such real property, subject to the limitations in [Section 4.6](#). DB Contractor shall perform all right of way engineering, surveying, appraisals, administration, acquisition, relocation assistance, archaeological surveys, environmental and other permitting and related services for such property, including any services related to reevaluation or modification to any TxDOT-Provided Approval, if necessary. Except as required as a direct result of a TxDOT-Directed Change, Relief Event or a Necessary Basic Configuration Change, property outside of the Schematic ROW that is acquired for drainage easements hereunder shall be treated as DB Contractor-Designated ROW.

#### 4.4.2.3

DB Contractor shall be responsible for and directly pay all costs and expenses in connection with acquiring all DB Contractor-Designated ROW, including (a) the cost of acquisition services and document preparation; (b) the cost of condemnation proceedings required by the Office of the Attorney General, including private attorneys' fees and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, other than the Attorney General's direct fees; (c) the purchase prices, court awards or judgments, and Special Commissioners' awards for all DB Contractor-Designated ROW (to be paid by DB Contractor at the time of closing, Special Commissioners' award or final judgment, as applicable); (d) the cost of permitting; (e) closing costs associated with parcel purchases including title insurance, in accordance with the Uniform Act and TxDOT policies; (f) property outside of the Schematic ROW that is acquired for drainage easements; (g) relocation assistance payments and costs, in accordance with the Uniform Act; (h) the cost for separate property surveys in addition to the Schematic ROW surveys in accordance with Section 15.3.1 of the Design-Build Specifications; and (i) the market rental consideration for PUAs. If a jury trial or final judgment is expected to occur after Final Acceptance of the Project, then a payment by DB Contractor to TxDOT for the amount of the acquisition cost exposure, to be determined by TxDOT, shall be made prior to Final Acceptance of the Project. If

TxDOT incurs or pays any such costs and expenses on DB Contractor's behalf, DB Contractor shall reimburse TxDOT within 10 days of TxDOT's submittal to DB Contractor of an invoice for such TxDOT costs and expenses. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract.

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

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

**4.4.2.6** If a parcel acquired by TxDOT includes (a) property for which TxDOT is responsible for paying the price of acquisition (i.e., Schematic ROW) and (b) property for which DB Contractor is responsible for paying the price of acquisition (i.e., DB Contractor-Designated ROW), DB Contractor shall reimburse TxDOT a pro rata share of the parcel's total purchase price and related fees and costs based on the physical area of the property referenced in clause (b) of this Section 4.4.2.6 as a proportion of the combined physical area of the properties referenced in clauses (a) and (b) of this Section 4.4.2.6 that is acquired by TxDOT.

#### **4.4.3 Limiting Acquisition of Certain Additional Properties**

**4.4.3.1** DB Contractor shall use its best efforts to restrict and limit additional costs to the Project associated with acquisitions related to TxDOT-Directed Changes, Relief Events and Necessary Basic Configuration Changes. To the extent reasonably possible, consideration shall be given to using retaining walls or making other engineering adjustments as an alternative to such acquisition. If it would be possible to use a retaining wall or other engineering adjustment to accommodate a TxDOT-Directed Change, Relief Event or Necessary Basic Configuration Change, as an alternative to such acquisition, DB Contractor shall support its recommendation to acquire such Additional Properties in lieu of constructing a retaining wall or otherwise modifying the Schematic Design with an analysis demonstrating cost or time savings or other justification.

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

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

#### 4.4.4 Representations by DB Contractor

4.4.4.1 DB Contractor's designated Right of Way Acquisition Manager ("ROW Acquisition Manager") shall be entitled to undertake the right of way acquisition services described in Item 15 of the Design-Build Specifications on behalf of TxDOT as its agent for such limited purpose, subject to the conditions and limitations of Section 4.4.2.5 and this Section 4.4.4.

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

4.4.4.2.1 Except as provided in Section 4.4.4.2.2, any person or entity identified by DB Contractor to represent the State and who is to contact owners of real property interests, to make offers to or negotiate the purchase of such real property interests, or otherwise to perform services as agent for the State in the acquisition of real property interests, shall be licensed as a real estate broker by the Texas Real Estate Commission ("TREC") prior to and during all times such person or entity represents the State. The person or entity so identified by DB Contractor shall be the "Broker." Prior to any contact by the Broker with the owner of any real property interest, DB Contractor shall submit to TxDOT a copy of the current, active license of each person or entity that will perform these tasks, in accordance with Item 15 of the Design-Build Specifications.

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

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

4.4.4.2.3 DB Contractor shall not be entitled to a Change Order or Claim as a result of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval

by the ROW Acquisition Manager in connection with the ROW Acquisition Manager's activities in carrying out the limited agency provided herein.

#### **4.4.5 Negotiations and Condemnation Proceedings**

**4.4.5.1** Negotiations for any Project ROW shall be undertaken as set forth in the Contract Documents, including Section 15.4.1 of the Design-Build Specifications. DB Contractor shall obtain TxDOT's written approval of any offer to be extended to an owner of any interest in Project ROW prior to making such offer, in accordance with Section 15.3.6 of the Design-Build Specifications. DB Contractor shall notify TxDOT in writing, for its concurrence, of the failure of negotiations with respect to the acquisition of any parcel included in the Project ROW and shall submit to TxDOT for approval a Condemnation Package for the parcel as described in Section 15.4.4 of the Design-Build Specifications. TxDOT shall have 10 Business Days either to (a) approve the Condemnation Package or (b) provide its comments or request for additional information to DB Contractor if TxDOT determines that the Condemnation Package is incomplete or otherwise deficient. DB Contractor shall incorporate any suggested changes and provide any additional information requested by TxDOT and shall resubmit the Condemnation Package to TxDOT for review and approval. TxDOT shall have 10 Business Days to approve or provide comments to DB Contractor on any resubmittals.

**4.4.5.2** Condemnation proceedings 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. For Project ROW other than DB Contractor-Designated ROW, TxDOT will provide the payment for the parcel within 45 days from the date the Special Commissioners' award is filed with the court. For DB Contractor-Designated ROW, DB Contractor will provide the payment for the parcel after 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 Commissioners' hearing, jury trial, or other proceedings. Counsel engaged for settlement and condemnation proceedings shall be from the Office of the Attorney General representing TxDOT.

**4.4.5.3** 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 the 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 the number of days after approval of the Condemnation Package specified in Section 6.5 of the DBA, 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 period shall be subject to the risk sharing provisions set forth in Section 6.5 of the DBA. In the event DB Contractor is entitled to an extension of a Completion Deadline, DB Contractor shall also be entitled to Project Overhead to the extent permitted in Section 4.6.6.2. 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 action, up to and including the deposit of the award of Special Commissioners.

#### **4.4.6 Physical Possession and Transfer of Title**

TxDOT shall notify DB Contractor of the availability of Project ROW within 10 Business Days after TxDOT has received access to such Project ROW. DB Contractor shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Project ROW. Upon obtaining knowledge of any anticipated delay in the dates for acquisition of any Project ROW, the Party obtaining knowledge shall promptly notify the other party in writing. In such event, DB Contractor shall immediately determine whether the delay impacts the Critical Path and, if so, to what extent it might be possible to avoid such delay through resequencing, reallocation or other alternative construction methods or otherwise. DB Contractor shall promptly meet with TxDOT to determine the best course of action and prepare a written report setting forth its recommendations, which shall be subject to the written approval of TxDOT. DB Contractor shall accept such transfer of title and shall assume all responsibility associated with such improvements upon transfer to DB Contractor. Any value attributed to the transferred saleable improvements has been reflected in the Price, as set forth in Section 15.2.11 of the Design-Build Specifications.

#### **4.4.7 Access to Project ROW**

Except for delays caused by an event described in Section 4.4.5.3, DB Contractor shall not be entitled to any increase in the Price or time extension for delays caused by the failure or inability of TxDOT to provide Project ROW. Where DB Contractor makes a written request for access or rights of entry for any Project ROW for which access has not yet been acquired, DB Contractor may, with TxDOT's prior written consent, which may be withheld or withdrawn at any time, in TxDOT's good faith discretion, and subject to the provisions of Section 4.4.6 above and Item 15 of the Design-Build Specifications, negotiate with property owners or occupants for early access or temporary use of land, provided that any such negotiations shall comply in all respects with applicable Law, including the Uniform Act. DB Contractor's negotiations with property owners or occupants for early rights-of-entry shall occur only under such terms and conditions as are stipulated by TxDOT. TxDOT shall not be bound by the terms and conditions agreed upon by DB Contractor and any property owner or occupant until such time as TxDOT has expressly so indicated in writing (and then only to the extent expressly set forth therein).

#### **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.

#### **4.5.1 New Utilities and Unidentified Utilities**

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

#### **4.5.2 Utility Enhancements**

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

**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.

### **4.5.3 Utility Agreements**

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

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

**4.5.3.3** If a conflict occurs between the terms of a Utility Agreement 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.

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



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

#### **4.5.4 Failure of Utility Owners to Cooperate**

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

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

**4.5.4.3** If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1, based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(a) and (b), then DB Contractor shall take such action as is appropriate to satisfy the conditions and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 4.5.4.1 based on DB Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 4.5.4.2(c) and (d), then DB Contractor shall take such action as DB Contractor deems advisable

during the next 30 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until DB Contractor succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence DB Contractor presents, that the conditions to assistance have been satisfied. DB Contractor shall have the right to submit the question of the reasonableness of TxDOT's determination through the dispute resolution process described in Section 4.9, Section 4.10 and DBA Exhibit 20.

#### **4.5.5 Delays by Utility Owners**

**4.5.5.1** The term "Uncooperative Utility Delay" means a delay to a Critical Path that is directly attributable to a 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. If an Uncooperative Utility Delay occurs, then, subject to Section 4.6.9.11, DB Contractor shall be entitled to a Change Order to extend affected Completion Deadlines and for Project Overhead subject to the following risk sharing thresholds:

- (a) DB Contractor shall bear 100% of the risk of Uncooperative Utility Delays for the first 60 cumulative days and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;
- (b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Uncooperative Utility Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;
- (c) DB Contractor and TxDOT shall share equally in the risk of Uncooperative Utility Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Uncooperative Utility Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and
- (d) TxDOT shall bear 100% of the risk of Uncooperative Utility Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2 for Uncooperative Utility Delays that exceed 180 cumulative days.

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

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

Utility Owner's timely performance of the Utility Adjustment Work and (c) DB Contractor has notified TxDOT of the potential delay sufficiently in advance of any delay to the Critical Path to provide TxDOT with an opportunity to take steps to ensure the timely performance of the Utility Adjustment Work by the Utility Owner.

**4.5.5.2.1** The Utility Agreement shall include an anticipated start date for the Utility Adjustment Work to be performed by the Utility Owner to begin. If the Utility Owner is not provided with sufficient access to the work area on the anticipated start date set forth in the executed Utility Agreement, the time period for the Utility Owner's performance established in the Utility Agreement shall be extended with a new time period to be agreed upon by DB Contractor, Utility Owner, and TxDOT.

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

- (a) DB Contractor shall bear 100% of the risk of the first 60 cumulative days of Utility Owner Delays and shall not be entitled to an extension of Completion Deadlines or Project Overhead for these first 60 cumulative days;
- (b) DB Contractor shall be entitled to an extension of affected Completion Deadlines for Utility Owner Delays for any delays over 60 cumulative days and up to 120 cumulative days, but DB Contractor shall not be entitled to Project Overhead for these 60 cumulative days;
- (c) DB Contractor and TxDOT shall share equally the risk of Utility Owner Delays over 120 cumulative days and up to 180 cumulative days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Utility Owner Delays), and DB Contractor shall be entitled to Project Overhead for any days a Completion Deadline is extended to the extent permitted by Section 4.6.6.2.2 during these 60 cumulative days; and
- (d) TxDOT shall bear 100% of the risk of Utility Owner Delays that exceed 180 cumulative days, and DB Contractor shall be entitled to an extension of affected Completion Deadlines and Project Overhead to the extent permitted by Section 4.6.6.2.2 for Utility Owner Delays that exceed 180 cumulative days.

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

- (a) the general requirements and conditions for Change Orders set forth in Section 4.6 have been met;
- (b) DB Contractor has provided evidence reasonably satisfactory to TxDOT that (i) DB Contractor took advantage of Float time available early in the Project Schedule for coordination activities with respect to the affected Utility and (ii) DB Contractor has made diligent efforts to obtain the Utility Owner's cooperation but has been unable to obtain such cooperation;
- (c) if applicable, DB Contractor has provided a reasonable Utility Adjustment plan to the Utility Owner;
- (d) DB Contractor or the Utility Owner has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases,

licenses, permits, registrations, opinions and rulings required by or with any Person in order to design and construct such Utility Adjustment;

- (e) no other circumstance exists that would delay the affected Utility Adjustment even if the Utility Owner were cooperative; and
- (f) the delay is allowable under Section 4.6.6.3.

**4.5.5.4** Except as set forth in Section 4.5.5.1 and Section 4.5.5.2, DB Contractor shall not be entitled to an extension of any Completion Deadline on account of any delays caused by a Utility Owner. DB Contractor shall not be entitled to any increase of the Price or reimbursement of any additional costs (other than for Project Overhead) which it may incur as a result of any delays caused by a Utility Owner, regardless of whether DB Contractor is entitled to an extension of any Completion Deadlines on account of such delays pursuant to Section 4.5.5.1 or Section 4.5.5.2. Any action or inaction by TxDOT as described in Section 4.5.4.2 or Section 4.5.5.2 shall have no bearing on the restriction set forth in this Section 4.5.5.4.

## **4.5.6 Utility Adjustment Costs**

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

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

**4.5.6.3** For each Utility Adjustment, DB Contractor shall (a) compensate the Utility Owner for the market value of each Existing Utility Property Interest relinquished pursuant to Section 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. DB Contractor shall be responsible for all eligible costs of right of way engineering, surveying, appraisals, administration, acquisition, environmental permitting and related services for either compensating the Utility Owner for or replacing each Existing Utility Property Interest, including all costs and expenses associated with negotiation and condemnation action. DB Contractor shall also carry out the duties in Section 14.2.4.2 of the Design-Build Specifications.

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

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

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

#### **4.5.7 FHWA Utility Requirements**

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

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

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

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

**4.5.7.5** TxDOT will forward the approved list to DB Contractor.

#### **4.5.8 Applications for Utility Permits**

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

- 4.5.8.2** For all such utility permit applications pending as of or submitted after the Effective Date, DB Contractor shall furnish the most recent Project design information or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities.
- 4.5.8.3** DB Contractor shall assist TxDOT in deciding whether to approve a permit described in Section 4.5.8.1. Within a time period that will enable TxDOT to timely respond to the application, DB Contractor shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, DB Contractor shall furnish to TxDOT Utility No Conflict Sign-Off Forms, signed by both DB Contractor's Utility Design Coordinator (UDC) and DB Contractor's Utility Manager (UM), using the standard forms included in the Contract Documents. DB Contractor shall limit the grounds for its recommendation to the grounds on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval. However, TxDOT shall have the right to issue Utility permits in its sole discretion. Applications for Utility permits and associated coordination described in this Section 4.5.8 shall not be subject to a Change Order and are not considered a New Utility or Unidentified Utility as described in Section 4.5.1.
- 4.5.9** **Security for Utility Adjustment Costs; Insurance**
- 4.5.9.1** Upon request from a Utility Owner 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.
- 4.5.10** **Additional Restrictions on Change Orders for Utility Adjustments**
- 4.5.10.1** In addition to all of the other requirements and limitations contained in this Section 4.5 and in Section 4.6 the entitlement of DB Contractor to any Change Order under this Section 4.5 or Section 4.6.9.2 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 Sections 4.5.5.1 and 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 failure of a design furnished by any Utility Owner to comply with the requirements of Section 14.3 of the Design-Build Specifications or (b) any failure of construction performed by a Utility Owner to comply with the requirements of Section 14.4 of the Design-Build Specifications.
- 4.5.10.5** DB Contractor shall not be entitled to a Change Order for any costs or delays resulting from the performance of Incidental Utility Adjustment Work by DB Contractor.
- 4.5.10.6** Any Change Order increasing the Price pursuant to this Section 4.5 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.
- 4.5.10.7** DB Contractor shall not be entitled to any increase in the Price for any costs of coordinating with Utility Owners (including with respect to New Utilities for which DB Contractor is otherwise entitled to a Change Order under Section 4.6.9.2).
- 4.5.10.8** Except to the extent set forth in Section 4.6.9.2.3 with respect to Level A SUE, any information with respect to Utilities provided in the Reference Information Documents is for DB Contractor's reference only, has not been verified, and shall not be relied upon by DB Contractor. Without limiting the generality of the foregoing, DB Contractor acknowledges that such information does not identify most of the Service Lines that may be impacted by the Project and that there may be other facilities impacted by the Project that are not identified in such information. DB Contractor shall verify all information with respect to Utilities included in the Reference Information Documents and shall perform its own investigations as provided in Sections 14.3.1 and 14.4.2 of the Design-Build Specifications. Accordingly, there shall be no changes in the Price and no time extensions on account of any inaccuracies in the Reference Information Documents with respect to any Utilities. Except as provided in Section 4.9.6.2, DB Contractor shall not be entitled to any increase in the Price or time extension as a result of any of the following:
- (a) any increase in the extent or change in the character of the Utility Adjustment Work necessary to Adjust any Utility from that anticipated by DB Contractor;
  - (b) any difference in the cost to Adjust a Utility from that anticipated by DB Contractor;
  - (c) any inaccuracy in the information included in the Reference Information Documents as to the existence, location, ownership, type, or any other characteristic of any Utility;
  - (d) any inaccuracy in the Reference Information Documents as to whether any Utility is located within privately owned property or public right of way; or
  - (e) any inaccuracy in the Reference Information Documents as to the existence or nature of any rights or interest relating to the occupancy of any real property by any Utility.
- 4.5.10.9** Inasmuch as DB Contractor is both furnishing the design of and constructing the Project, DB Contractor may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work. In considering each such opportunity, DB Contractor shall consider the impact of design changes on Utility Adjustments to the extent practical. Accordingly, except as otherwise provided in Section 4.6 with respect to TxDOT-Directed Changes, the following provisions shall apply with respect to any increase or decrease in the cost of the Work and any delay associated with design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature or extent of anticipated Utility Adjustments:

- (a) DB Contractor shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes.
- (b) DB Contractor shall not be entitled to any increase in the Price for any such additional costs that DB Contractor incurs (including both additional costs of Utility Adjustment Work and the costs of any additional Work on other aspects of the Project undertaken in order to avoid or minimize Utility Adjustments).
- (c) If TxDOT incurs any such additional costs, then DB Contractor shall reimburse TxDOT for such costs within 10 days after receipt of TxDOT's invoice therefor, or in TxDOT's sole discretion, TxDOT may deduct the amount of reimbursement due from any payment due to DB Contractor under this Design-Build Contract.
- (d) TxDOT shall not be entitled to a credit on account of reductions in the cost of the Work due to any such avoided or minimized Utility Adjustments.

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

**4.5.10.11** Except as specified in this Section 4.5 or in Section 4.6, 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.

## **4.6 Changes**

This Section 4.6 sets forth the requirements for obtaining all Change Orders under this Design-Build Contract. DB Contractor hereby acknowledges and agrees that the Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 4.6 and DB Contractor's right to collect certain payments from Utility Owners for Betterments as specified in Section 4.5.2, and that TxDOT is subject to constraints limiting its ability to increase the Price or extend the Completion Deadlines. DB Contractor unconditionally and irrevocably waives the right to any Claim for a time extension or for any monetary compensation in addition to the Price and other compensation specified in this Design-Build Contract, except in accordance with this Section 4.6. To the extent that any other provision of this Design-Build Contract expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 4.6.

### **4.6.1 Circumstances Under Which Change Orders May Be Issued**

#### **4.6.1.1 Definition of and Requirements Relating to Change Orders**

The term "Change Order" means a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 4.6. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Work;
- (b) to modify the Design-Build Specifications;



- (c) to revise a Completion Deadline;
- (d) to revise the Price; and
- (e) to revise other terms and conditions of the Contract Documents.

The matters set forth in clause (e) above may be made pursuant to an amendment in accordance with the Design-Build Agreement unless TxDOT issues a Directive Letter, in which event the process set forth in Section 4.6.1.2 shall be followed.

Upon TxDOT's approval of the matters set forth in the Request for Change Order submitted by DB Contractor (whether it is initiated by TxDOT or requested by DB Contractor), TxDOT shall prepare a Change Order for execution by the Parties. A Request for Change Order is not required for Unilateral Change Orders. A Change Order may, in TxDOT's sole discretion, direct DB Contractor to proceed with the Work with the amount of any adjustment of any Completion Deadline or Price to be determined in the future. All additions, deductions or changes to the Work as directed by Change Orders shall be performed under the requirements and conditions of the Contract Documents, except to the extent they are expressly modified by the Change Order. A Change Order shall not be effective for any purpose unless executed by TxDOT.

#### **4.6.1.2** Issuance of Directive Letter

**4.6.1.2.1** TxDOT may at any time issue a Directive Letter to DB Contractor regarding any matter for which a Change Order can be issued or in the event of any Claim or Dispute regarding the scope of the Work or whether DB Contractor has performed in accordance with the requirements of the Contract Documents. The first Directive Letter shall be labeled "Directive Letter No. 1" and subsequent letters shall be numbered sequentially. The Directive Letter will describe the Work in question and may state the basis for determining compensation, if any. If the Directive Letter does not state the basis for determining compensation, compensation will be determined pursuant to Section 4.6.8. DB Contractor shall proceed immediately as directed in the Directive Letter. If the Directive Letter states that the Work is within DB Contractor's original scope of Work, DB Contractor shall proceed with the Work as directed but shall have the right pursuant to Section 4.6.3 to submit a PCO Notice requesting that TxDOT issue a Change Order except as set forth in the next sentence. If the Directive Letter states that the Work is within DB Contractor's original scope of Work and the directed work involves less than \$10,000 in additional Direct Costs incurred by DB Contractor, DB Contractor shall not be entitled to a Change Order or an increase in the Price.

**4.6.1.2.2** Receipt of a Directive Letter is a condition precedent to a claim that a TxDOT-Directed Change has occurred; however, the fact that a Directive Letter was issued by TxDOT shall not be considered evidence that a TxDOT-Directed Change occurred. The determination whether a TxDOT-Directed Change occurred or whether DB Contractor is otherwise entitled to a Change Order shall be based on an analysis of the requirements under the Contract Documents and a determination whether the Directive Letter in fact constituted a change in those requirements.

**4.6.1.2.3** DB Contractor shall not be entitled to additional compensation or time extension for any changed work or other work not included in the Price that is performed by DB Contractor as a TxDOT-Directed Change prior to receipt of a Directive Letter or Change Order.

**4.6.1.3 TxDOT Right to Issue Change Orders**

TxDOT may, at any time and from time to time, without notice to any Surety, authorize or require, pursuant to a Change Order, changes in the Work or in terms and conditions of the Design-Build Specifications (including changes in the standards applicable to the Work); except TxDOT has no right to require any change that:

- (a) Is not in compliance with applicable Laws;
- (b) Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;
- (c) Constitutes a fundamental change in the nature or scope of the Project;
- (d) Would cause an insured risk to become uninsurable;
- (e) Would materially adversely affect the health or safety of workers or users of the Project;
- (f) Is fundamentally incompatible with the Project design; or
- (g) Is not technically feasible to construct.

**4.6.2 TxDOT-Initiated Change Orders****4.6.2.1 Request for Change Proposal**

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

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

**4.6.2.1.3** After the second consultation and provision of any data described in Section 4.6.2.1.2, TxDOT shall notify DB Contractor of TxDOT's determination to: (a) issue a Change Order, (b) require DB Contractor to provide a Request for Change Order as discussed at the meeting, (c) require DB Contractor to prepare a modified work plan for the change and a Request for Change Order based on the modified plan, or (d) not issue a Change Order. TxDOT may at any time, in its sole discretion, require DB Contractor to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the non-extended Completion Deadlines, as well as any additional costs permitted hereunder.

**4.6.2.1.4** If so requested, DB Contractor shall, within ten Business Days after receipt of the notification described in Section 4.6.2.1.3, prepare and submit to TxDOT for review and approval by TxDOT a Request for Change Order for the requested change, in a format provided by TxDOT, complying with all applicable requirements of Section 4.6.4 and 4.6.5, and incorporating and fully addressing all requests made by TxDOT.

**4.6.2.1.5** DB Contractor shall bear the cost of developing the Request for Change Order in response to a Request for Change Proposal, including any modifications thereto requested by TxDOT, except that DB Contractor shall be entitled to costs (without markup for overhead and profit) in excess of \$10,000 incurred for design, estimating and scheduling work required to prepare the Request for Change Order. Such costs must be pre-authorized by TxDOT, to be reimbursable. If the Change Order is approved, such design, estimating and scheduling costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

**4.6.2.1.6** If DB Contractor and TxDOT are unable to reach agreement on a Change Order, TxDOT may, in its sole discretion, order DB Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at TxDOT's option, be in the form of a Unilateral Change Order or a Directive Letter. Upon receipt of a Unilateral Change Order or Directive Letter, as the case may be, pending final resolution of the relevant Change Order by the Parties or according to the procedures for resolving Disputes in this Design-Build Contract, (a) DB Contractor shall implement and perform the Work in question as directed by TxDOT and (b) TxDOT will make interim payment(s) to DB Contractor on a monthly basis for the reasonable documented costs of the Work in question, subject to meeting the record requirements in Section 4.6.10 and any subsequent adjustment through the procedures for resolving Disputes in this Design-Build Contract.

#### **4.6.2.2 Unilateral Change Orders**

**4.6.2.2.1** TxDOT may issue a Unilateral Change Order at any time, regardless of whether it has issued a Request for Change Proposal or received a Request for Change Order. If the Unilateral Change Order is not issued as a lump sum, DB Contractor shall be entitled to compensation in accordance with Section 4.6.8 for additional Work that is required to be performed as the result of the Unilateral Change Order. If TxDOT and DB Contractor are unable to agree upon the amount of any adjustment to the Price, then DB Contractor shall have the right to submit the issue of the Price adjustment to dispute resolution in accordance with Section 4.9, Section 4.10 and DBA Exhibit 20.

**4.6.2.2.2** If the Unilateral Change Order is not issued with the direction to accelerate the Work and DB Contractor believes that it is entitled to an adjustment of the Completion Deadlines, DB Contractor shall prepare and submit a Time Impact Analysis in accordance with Section 4.6.5.2.3. If TxDOT and DB Contractor cannot agree as to entitlement to compensation for Acceleration Costs or to any adjustment of the Completion Deadlines, then DB Contractor shall have the right to submit such matters to dispute resolution in accordance with Section 4.9, Section 4.10 and DBA Exhibit 20.

#### **4.6.3 DB Contractor-Requested Change Orders and Delay Deductible Determinations**

DB Contractor's entitlement to a Change Order for eligible changes or to a credit toward the Delay Deductible Aggregate Cap is subject to the restrictions and limitations contained in this Section 4.6 and elsewhere in the Contract Documents, and furthermore is subject to DB Contractor's compliance with all notification and other requirements identified herein. DB Contractor shall initiate the Change Order or Delay Deductible Determination process by delivery of a PCO Notice as described in Section 4.6.3.2, followed by submittal of a Request for Change Order and supporting documentation to TxDOT. Change Orders may be requested by DB Contractor only pursuant to this Section 4.6.3.

**4.6.3.1** Eligible Changes and Qualifying Delays for Delay Deductibles

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

- (a) Relief Events to the extent permitted by Section 4.6.9.3;
- (b) TxDOT-Caused Delays;
- (c) delays relating to Utilities, to the extent permitted by Sections 4.5.1, 4.5.5 and 4.6.9.2;
- (d) delays relating to discovery of Hazardous Materials, to the extent permitted by Section 4.6.9.4.2;
- (e) delays relating to access to ROW, to the extent permitted by Section 4.6.9.5;
- (f) delays relating to Differing Site Conditions to the extent provided in Section 4.6.9.1;
- (g) delays relating to supply chain disruptions to the extent permitted in Section 4.6.9.7;
- (h) Special Events Delays to the extent permitted in Section 4.6.9.8;
- (i) certain delays relating to railroads to the extent permitted by Section 4.6.9.9 and Section 6.10 of the Design-Build Agreement; or
- (j) delays relating to New Third Party Agreements to the extent permitted by Section 4.6.9.10.

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

- (a) additional costs directly attributable to additional Work resulting from TxDOT-Directed Changes and TxDOT-Caused Delays for which TxDOT has not submitted a Change Order or a Request for Change Proposal;
- (b) certain additional costs relating to Differing Site Conditions, Hazardous Materials, and Relief Events, to the extent provided in Section 4.6.9;
- (c) certain additional costs relating to Utility Adjustment Work, as described in Section 4.5 and Section 4.6.9.2, to the extent provided therein, and additional costs for Utility Adjustment Work directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 4.6.9;
- (d) additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.10.1.3.3;
- (e) certain additional costs relating to railroads, to the extent provided in Section 4.6.9.9 and Section 6.10 of the Design-Build Agreement;
- (f) certain additional costs for Project Overhead to the extent provided by Section 4.6.9.5; or

- (g) certain additional costs relating to New Third Party Agreements to the extent permitted by Section 4.6.9.10.

#### 4.6.3.1.3 Qualifying Delays

DB Contractor may request a credit toward the Delay Deductible Aggregate Cap only for Qualifying Delays.

#### 4.6.3.2 Procedures

The requirements set forth in this Section 4.6.3.2 and Section 4.6.4 constitute conditions precedent to DB Contractor's entitlement to request and receive a Change Order or credit toward the Delay Deductible Aggregate Cap except those involving a Price increase under the Design-Build Agreement for delays to NTP1. DB Contractor understands that it shall be forever barred from recovering against TxDOT or obtaining credit toward the Delay Deductible Aggregate Cap if it fails to give notice of any act, or omission, by TxDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, or fails to comply with the remaining requirements of this Section 4.6.3 and Section 4.6.4.

#### 4.6.3.2.1 Delivery of PCO Notices

DB Contractor acknowledges the importance of providing prompt notification to TxDOT upon occurrence of any event or thing entitling DB Contractor to a Change Order under Section 4.6.3.1 or a credit toward the Delay Deductible Aggregate Cap under Section 4.6.3.1.3. Among other things, such notification serves the purpose of allowing TxDOT to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through a PCO Notice as described in Section 4.6.3.2.2.

#### 4.6.3.2.2 PCO Notices

The term "PCO Notice" means a notice delivered by DB Contractor, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 4.6.3.1 and stating which subsection is applicable. The first notice shall be labeled "PCO Notice No. 1" and subsequent notices shall be numbered sequentially.

The PCO Notice shall: (a) state in detail the facts underlying the anticipated Request for Change Order or Request for Delay Deductible Determination and the reasons why DB Contractor believes additional compensation or time or a credit toward the Delay Deductible Aggregate Cap will or may be due and the date of occurrence, (b) state the name, title, and activity of each TxDOT representative knowledgeable of the facts underlying the anticipated Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order or Request for Delay Deductible Determination, (d) cite any and all provisions of the Contract Documents supporting the anticipated Request for Change Order or Request for Delay Deductible Determination, (e) state in detail the basis for necessary accelerated schedule performance, if applicable, (f) state in detail the basis that the work is not required by this Design-Build Contract, if applicable, (g) identify particular elements of performance for which additional compensation may be sought under this Section 4.6.3.2, (h) identify any potential Critical Path impacts as described in Section 8.5.5.1, (i) identify any insurance available to DB Contractor, any deductible or self-insured retention associated with such insurance, and any insurance deemed to be self-insured by DB Contractor under Section 3.5, with respect to the event

giving rise to the request for additional compensation, and (j) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

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

Written notification provided in accordance with Section 4.6.9.1.6 or 4.6.9.4.1 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

Any adjustments made to this Design-Build Contract shall not include increased costs or time extensions or credit towards the Delay Deductible Aggregate Cap for delay resulting from DB Contractor's failure to timely provide requested additional information under this Section 4.6.3.2.2.

#### 4.6.3.2.3

##### Importance of Notice; Waiver

- (a) Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after DB Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, DB Contractor shall be deemed to have waived: (i) the right to collect any costs incurred prior to the date of delivery of the PCO Notice, (ii) the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path that accrued prior to the date of delivery of the PCO Notice, and (iii) the right to any credit toward the Delay Deductible Aggregate Cap with respect to any delay in a Critical Path that accrued prior to the date of delivery of the PCO Notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 4.6.9.4.1, DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that TxDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.
- (b) In addition to the limitations set forth above in this Section 4.6.3.2.3, DB Contractor's failure to provide a PCO Notice within 60 days after DB Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude DB Contractor from any relief, unless DB Contractor can show, based on a preponderance of the evidence, that: (i) TxDOT was not materially prejudiced by the lack of notice, or (ii) TxDOT's Authorized Representative specified in accordance with the Design-Build Agreement had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that DB Contractor believed it was entitled to a Change Order or credit towards the Delay Deductible Aggregate Cap with respect thereto. In other words, if the requirements of clause (i) or clause (ii) above are satisfied, DB Contractor shall retain the right to receive a Change Order or credit towards the Delay Deductible Aggregate Cap, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice and shall be deemed to have waived the right to seek a time extension or credit towards the Delay Deductible Aggregate Cap with respect to any delay in any Critical Path that accrued prior to the date of delivery of the PCO Notice.
- (c) After delivery of a PCO Notice, DB Contractor must submit a Request for Change Order in accordance with Section 4.6.4 as a condition precedent to receipt of a Change Order or a

Request for Delay Deductible Determination in accordance with Section 4.6.3.2.4 as a condition precedent to receipt of credit towards the Delay Deductible Aggregate Cap without a Change Order.

#### **4.6.3.2.4** Requests for Delay Deductible Determinations

- (a) DB Contractor may seek a credit against the Delay Deductible Aggregate Cap through the Delay Deductible Determination process if certain conditions are met as specified in this Section 4.6.3.2.4. To initiate this process, DB Contractor must deliver a PCO Notice as described in this Section 4.6.3.2, followed by submittal of a Request for Delay Deductible Determination and supporting documentation to TxDOT. A Request for Delay Deductible Determination may only be submitted where DB Contractor has determined a delay to the Critical Path is entirely within a Delay Deductible, and the Request for Delay Deductible Determination shall include a representation by DB Contractor that it is not seeking a time extension or an increase in the Price resulting from the applicable Qualifying Delay. Any request by DB Contractor for a credit toward the Delay Deductible Aggregate Cap involving a delay to the Critical Path that may or will be the subject of a request for an extension of a Completion Deadline or for an increase in Price shall be through a Request for Change Order pursuant to Section 4.6.4.
- (b) The Request for Delay Deductible Determination shall (i) be prepared using the form set forth in Exhibit 14 to the DBA, (ii) meet the requirements and deadlines for Requests for Change Orders, including the requirement for submission of a TIA, but excluding requirements related to cost impacts or an increase in the Price; and (iii) be subject to the waivers and limitations on Requests for Change Orders set forth in Sections 4.6.4 and 4.6.5. The first Request for Delay Deductible Determination shall be labeled "Request for Delay Deductible Determination No. 1" and subsequent requests shall be numbered sequentially.
- (c) After receipt of a complete Request for Delay Deductible Determination and any supporting information requested by TxDOT, TxDOT will issue a Delay Deductible Determination setting forth the number of days, if any, that will be credited to the Delay Deductible Aggregate Cap. TxDOT's failure to respond to a Request for Delay Deductible Determination shall not be deemed acceptance of the Request for Delay Deductible Determination or entitlement to a credit to the Delay Deductible Aggregate Cap, and DB Contractor shall have the burden of following up with TxDOT on the status of any Request for Delay Deductible Determination submitted. DB Contractor's entitlement to a credit of a Delay Deductible toward the Delay Deductible Aggregate Cap is subject to the limitations and restrictions set forth in Section 4.6.6.3 with respect to time extensions.
- (d) DB Contractor shall have the right to submit any Delay Deductible Determination issued by TxDOT to dispute resolution pursuant to Section 4.9, Section 4.10 and DBA Exhibit 20.

#### **4.6.4** Requests for Change Orders

##### **4.6.4.1** Delivery of Request for Change Order

DB Contractor shall deliver a Request for Change Order under this Section 4.6.4.1 to TxDOT within 30 days after delivery of the PCO Notice or within 10 Business Days after receipt of TxDOT's determination to require a Request for Change Order in accordance with Section 4.6.2.1.3, whichever is applicable. TxDOT may require design and construction costs to be covered by separate Requests for Change Order. If DB Contractor requests a time extension, then TxDOT, in

its sole discretion, may require DB Contractor to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the non-extended Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the non-extended Completion Deadline or if DB Contractor believes that the costs associated with such a recovery are prohibitive, then DB Contractor shall recommend a date to be shown in the alternative Change Order form. If DB Contractor fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all of the requirements of Section 4.6.4.2 within the appropriate time period, DB Contractor shall be required to provide a new PCO Notice before it may submit a Request for Change Order.

#### **4.6.4.2** Incomplete Requests for Change Order

The first Request for Change Order shall be labeled "Request for Change Order No. 1" and subsequent RCOs shall be numbered sequentially. Each Request for Change Order shall meet all requirements set forth in this Section 4.6.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, DB Contractor shall provide an incomplete Request for Change Order that fills in all information capable of being ascertained. Each incomplete Request for Change Order shall: (a) include a list of those Change Order requirements that are not fulfilled together with an explanation satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a Critical Path as is requested by TxDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Price increase associated therewith, to the extent such amount is then ascertainable.

#### **4.6.4.3** Additional Information to TxDOT

DB Contractor shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. DB Contractor agrees that it shall give TxDOT or its designee access to any and all of DB Contractor's books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that TxDOT or its designee can investigate the basis for such proposed Change Order.

#### **4.6.4.4** Response and Follow-up

DB Contractor shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. TxDOT may reject the Request for Change Order at any point in the process. TxDOT's failure to respond to a complete Request for Change Order shall not be deemed an acceptance of the Request for Change Order, and DB Contractor shall have the burden of following up with TxDOT on the status of any Request for Change Order submitted.

#### **4.6.4.5** Importance of Timely Response

DB Contractor acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of PCO Notices and Requests for Change Orders and updates thereto are of vital importance to TxDOT. TxDOT is relying on DB Contractor to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Project Schedule or Price and, if so, whether DB Contractor believes a time extension or Price increase is required hereunder. If an event or situation occurs that may affect the Price or a Completion Deadline, TxDOT will evaluate the



situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within TxDOT's funding and time restraints. The following matters (among others) shall be considered in determining whether TxDOT has been prejudiced by DB Contractor's failure to provide timely notice: (a) the effect of the delay on alternatives available to TxDOT (that is, a comparison of alternatives that are available at the time notice was actually given and alternatives that would have been available had notice been given within ten days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence); and (b) the impact of the delay on TxDOT's ability to obtain and review objective information contemporaneously with the event.

#### **4.6.4.6** Review of Subcontractor Claims

Prior to submission by DB Contractor of any Request for Change Order which is based in whole or in part on a request by a Subcontractor to DB Contractor for a price increase or time extension under its Subcontract, DB Contractor shall have reviewed all claims by the Subcontractor that constitute the basis for the Request for Change Order and determined in good faith that each such claim is justified hereunder and that DB Contractor is justified in requesting an increase in the Price and change in Completion Deadlines in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of DB Contractor's analysis of all Subcontractor claims components and shall include a certification signed by DB Contractor's Project Manager stating that DB Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 5.13.1, and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Request for Change Order involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

#### **4.6.4.7** Performance of Disputed Work

If TxDOT refuses to issue a Change Order based on DB Contractor's request, DB Contractor shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 4.9, Section 4.10 and DBA Exhibit 20. DB Contractor shall maintain and deliver to TxDOT, upon request, contemporaneous records, meeting the requirements of Section 4.6.10, for all work performed that DB Contractor believes constitutes extra work (including non-construction work), until all Claims and Disputes regarding entitlement or cost of such work are resolved.

### **4.6.5** Contents of Change Orders

#### **4.6.5.1** Form of Change Order

Each Request for Change Order and Change Order shall be prepared using the forms set forth in Exhibit 14 to the DBA, and shall meet all applicable requirements of this Section 4.6.

#### **4.6.5.2** Scope of Work, Cost Estimate, Time Impact Analysis and Other Supporting Documentation

DB Contractor shall prepare a scope of work, cost estimate, time impact analysis and other information as required by this Section 4.6.5.2 for each Request for Change Order.

**4.6.5.2.1** Scope of Work

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

**4.6.5.2.2** Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment and markups for overhead and profit, unless TxDOT agrees otherwise. The estimate shall include costs allowable under Section 4.6.6.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, DB Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for DB Contractor's estimate. No markup shall be allowed in excess of the amounts allowed under Sections 4.6.6.2 and 4.6.8. DB Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

**4.6.5.2.3** Time Impact Analysis

If DB Contractor claims that such event, situation or change affects a Critical Path, it shall provide a time impact analysis indicating all activities represented or affected by the change, as required by and in compliance with Section 8.5.7.1, in form satisfactory to TxDOT, which compares the proposed new schedule to the current approved Project Schedule.

**4.6.5.2.4** Other Supporting Documentation

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

**4.6.5.3** Justification

All Requests for Change Orders shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 4.6 that permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 4.6.10) that establish the necessity and amount of such proposed change.

**4.6.5.4** Certification

Each Change Order shall be accompanied by a certification under penalty of perjury, in a form acceptable to TxDOT, executed by DB Contractor and stating that the following is true and correct: (a) the amount of time and compensation requested is justified as to entitlement and amount, (b) the amount of time and compensation requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate and current. Each Change Order involving Work by a Subcontractor for which pricing data is required to be provided under Section 5.13.3 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 5.13.3.

#### 4.6.5.5 Certificate of Interested Parties (Form 1295)

In connection with an amendment to this Design-Build Contract, including any Change Order or Deviation, DB Contractor shall either (i) provide a certification to TxDOT certifying that there has been no change to the Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.3) disclosed in the most recent Form 1295, Certificate of Interested Parties (“Form 1295”) filed by DB Contractor with the Texas Ethics Commission in connection with this Design-Build Contract, as required by Section 2252.908 of the Texas Government Code and Chapter 46 of Title 1 of the Texas Administrative Code (collectively, the “Form 1295 Laws”), or (ii) if there has been a change to the disclosure of Interested Parties or if the value of the amendment is \$1,000,000 or greater, file a new Form 1295 with the Texas Ethics Commission as required by the Form 1295 Laws. DB Contractor shall indicate the CSJ for this Design-Build Contract and the applicable Change Order, Deviation or amendment number in the fields provided on Form 1295.

If DB Contractor is required to file a Form 1295 pursuant to this Section 4.6.5.5 in connection with any amendment, including a Change Order or Deviation, DB Contractor must submit to TxDOT an executed Form 1295 complying with the requirements of the Form 1295 Laws at the same time it submits the executed amendment, including any Change Order or Deviation, for TxDOT’s execution. TxDOT will not execute any Change Order or other amendment to this Design-Build Contract until it has received either the certification or the Form 1295 as required by this Section 4.6.5.5; provided, that DB Contractor’s filing of such certification or Form 1295 does not obligate TxDOT to execute a Change Order or any other amendment to this Design-Build Contract. TxDOT will acknowledge receipt of each Form 1295 submitted by DB Contractor in relation to each amendment to the Contract Documents, including each Change Order and Deviation, executed by TxDOT; however, TxDOT’s receipt of a Form 1295 shall not be construed as TxDOT’s review, approval, consent or certification as to the contents of such Form 1295, for which DB Contractor is solely responsible.

Additional information regarding Form 1295 may be found at the Texas Ethics Commission website at <https://www.ethics.state.tx.us/file/>.

#### 4.6.6 Certain Limitations

##### 4.6.6.1 Limitation on Price Increases

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

##### 4.6.6.2 Limitation on Acceleration Costs, Project Overhead, Delay and Disruption Damages

###### 4.6.6.2.1 Acceleration Costs; Project Overhead; Delay and Disruption Damages

Acceleration Costs shall be compensable only as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 4.6.2.1.3 and 4.6.4.1. Project Overhead shall be compensable only in conjunction with an extension of Completion Deadline as contemplated by Section 4.6.6.2.2. Other delay and disruption damages shall be compensable only in the case of

delays that entitle DB Contractor to an extension of a Completion Deadline for a TxDOT-Caused Delay.

#### 4.6.6.2.2 Project Overhead

DB Contractor shall be entitled to Project Overhead calculated in accordance with this Section 4.6.6.2.2 for each day that one or more Completion Deadline(s) are extended pursuant to Section 4.5.5.1(c) or (d), 4.5.5.2 (c) or (d), 4.6.9.1, 4.6.9.2.1, 4.6.9.2.2, 4.6.9.3.1.1, 4.6.9.5, 4.6.9.10.2, or Section 6.10 of the Design-Build Agreement.

- (a) Project Overhead: Except as set forth below, Project Overhead shall be determined by TxDOT using the following formula:

Project Overhead is calculated as the number of days by which the Completion Deadline is extended in the Change Order multiplied by the Project Overhead Daily Rate. The Project Overhead Daily Rate is determined by the following formula:

Project Overhead Daily Rate = [Project Overhead Percentage x original Price as of the Effective Date] ÷ [number of days starting on NTP1 and ending on the original Substantial Completion Deadline as of the Effective Date]

DB Contractor shall be entitled to actual documented administrative and supervisory expenses incurred at the Project office and field offices during the period of the time extension that are directly attributable to such delays in the event DB Contractor is able to demonstrate that such actual costs are greater than the amount determined using the Project Overhead formula. DB Contractor shall submit any claimed costs to TxDOT for approval and shall provide any supplemental and supporting information requested by TxDOT.

- (b) Certain Limitations: DB Contractor shall not be entitled to Project Overhead for any days of delay to the Critical Path that are within a Delay Deductible or for which a time extension is not granted. DB Contractor is not entitled to compensation for home office overhead costs. Time extensions alone will not be justification for reimbursement for Project Overhead.

#### 4.6.6.2.3 Other Limitations

Delay and disruption damages shall be limited to (a) direct costs directly attributable to the delays described in Section 4.6.6.2.1, (b) markups thereon in accordance with Section 4.6.8.7 and (c) any additional field office and jobsite overhead costs directly attributable to such delays. DB Contractor is not entitled to compensation for home office overhead costs. In addition, before DB Contractor may obtain any increase in the Price to compensate for additional or extended field office and jobsite overhead, Acceleration Costs, Project Overhead or other damages relating to delay, DB Contractor shall have demonstrated to TxDOT's satisfaction that:

- (a) its schedule defining the affected Critical Path in fact sets forth a reasonable method for completion of the Work; and
- (b) the change in the Work or other event or situation 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 the applicable Completion Deadline); and

- (c) the delay or damage was not due to an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, and could not reasonably have been avoided or worked around by DB Contractor; and
- (d) the delay for which compensation is sought is not concurrent with any delay for which any DB Contractor-Related Entity is responsible hereunder; and
- (e) DB Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to TxDOT.

#### 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 Critical Path, (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 time extension is pursuant to Section 4.6.9.1 or 4.6.9.5, Section 6.10 of the Design-Build Agreement or for 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. If a delay for which DB Contractor is entitled to a time extension is concurrent with another delay for which DB Contractor is also entitled to a time extension (or which otherwise counts towards a cap on DB Contractor's responsibility for such delay), only one of the delays shall be considered for purposes of the Change Order provisions in the Design-Build Contract. If the concurrent delays provide for different relief (i.e. one day of relief for one day of delay versus one day of relief for two days of delay), the delay providing the greater relief to DB Contractor shall apply. In no event shall DB Contractor receive a time extension or credit towards a time extension for more than one delay on a particular day. 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 the applicable Completion Deadline).

#### 4.6.6.4 Work Performed Without Direction

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

## **4.6.7 Change Order Pricing for Lump Sum or Unit Price Change Orders**

The price of a Change Order under this Section 4.6.7 shall be a negotiated lump sum price or unit prices as provided below. If requested by TxDOT negotiation for lump sum or unit price Change Orders may be based on information contained in the EPDs or on an Open Book Basis.

### **4.6.7.1 Detailed Cost Proposal**

DB Contractor may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 4.6.8: (a) showing all impacts on the Contract Documents from Work additions, deletions and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made. When the Change Order adds or deletes Work to DB Contractor's scope, the detailed cost proposal shall be based on estimates or actual costs of labor, material and equipment in accordance with Section 4.6.7.4 or an estimate including a bill of any material and a breakdown of labor and equipment costs in accordance with Section 4.6.7.5, as applicable. Markup for profit and overhead consistent with Section 4.6.8 shall apply to Work added or deleted by Change Orders.

### **4.6.7.2 Identification of Conditions**

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

### **4.6.7.3 Contents**

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

### **4.6.7.4 Added Work**

When the Change Order adds Work to DB Contractor's scope, the increase in the Price shall be negotiated based on estimated costs of labor, material and equipment in accordance with Section 4.6.8. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 4.6.6.2 and 4.6.8.

### **4.6.7.5 Deleted Work**

When the Change Order deletes Work from DB Contractor's scope, the amount of the reduction in the Price shall be based upon a current estimate including a bill of material, a breakdown of labor, material and equipment costs. Credits for mark-up for profit and overhead shall be as provided in Section 4.6.8. The current estimated amount of risk associated with such Work shall be an additional factor in determining the amount of the Price reduction for deleted Work Change Orders. When a deletion of Work is involved, documented cancellation and Supplier restocking charges may be included in costs and subtracted from the Price reduction.

#### **4.6.7.6** Change Order Both Adding and Deleting Work

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

- (a) Net increase in cost, the change shall be treated as Work added and the provisions of Section 4.6.7.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Price.
- (b) Net decrease in cost, the change shall be treated as Work deleted and the provisions of Section 4.6.7.5 shall be used on the net decrease in cost in order to establish the amount deducted from the Price.

#### **4.6.7.7** Unit-Priced Change Orders

Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Price based on estimated quantities and a not-to-exceed (NTE) amount. If DB Contractor determines that the costs of the Work authorized pursuant to a Unit-priced Change Order will exceed the stated NTE amount, DB Contractor shall notify TxDOT of the additional costs required to complete such Work and TxDOT may approve an increase to the stated NTE amount. DB Contractor is not obligated to perform Work authorized pursuant to a Unit-priced Change Order once the approved NTE amount (as it may be adjusted) has been reached. Upon final determination of the quantities, TxDOT will issue a modified Change Order setting forth the final adjustment to the Price, which shall not exceed the stated NTE amount (as such amount may be adjusted as described herein).

#### **4.6.7.8** All-Inclusive Change Orders

All Change Orders executed by DB Contractor shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule, except as permitted for Force Account Change Orders.

#### **4.6.7.9** Insurance

Any increase to the Price under any Change Order shall not include: (i) the amount of any insurance available to DB Contractor, (ii) any deductible or self-insured retention associated with such insurance, or (iii) the amount of any insurance coverage required under this Design-Build Contract that is deemed to be self-insured by DB Contractor under Section 3.5. All of the foregoing shall be solely the responsibility of DB Contractor.

#### **4.6.8** Force Account Change Orders

TxDOT may at its sole discretion issue a Force Account Change Order whenever TxDOT determines that it is advisable. The Force Account Change Order shall instruct DB Contractor to perform the Work, indicate expressly the intention to treat the items as changes in the Work, set forth the kind, character, and limits of the Work as far as they can be ascertained, state the terms under which changes to the Price will be determined and state a not-to-exceed (NTE) total change in the Price. DB Contractor will maintain its records as required by Section 4.6.10 and submit daily records in

accordance with Section 4.6.10.2.1. If DB Contractor determines that the costs of the Work authorized pursuant to a Force Account Change Order will exceed the stated NTE, DB Contractor shall notify TxDOT of the additional costs required to complete such Work and TxDOT may approve an increase to the stated NTE. DB Contractor is not obligated to perform Work authorized pursuant to a Force Account Change Order once the approved NTE (as it may be adjusted) has been reached. Upon final determination of the allowable costs and subject to Section 4.6.10.2, TxDOT shall issue a modified Change Order setting forth the final adjustment to the Price, which shall not exceed the stated NTE amount (as such amount may be adjusted as described herein).

#### **4.6.8.1 Labor Costs**

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

- (a) For construction-related labor, the actual wages (i.e., the base wage paid to the employee exclusive of any fringe benefits) for each hour that the labor and foremen or others approved by TxDOT are actually engaged in the Work. An additional 25% of the actual wages will be paid as compensation for overhead, superintendence, profit, and small tools. An additional 45% of the actual wages (excluding the 25% compensation for overhead) will be paid as compensation for all insurance and taxes including the cost of premiums on public liability and workers' compensation insurance, Social Security, and unemployment insurance taxes. These markups shall constitute full compensation for all profit, overhead and all State and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.
- (b) For non-construction-related work (professional services), (1) the actual wages (i.e., the base wage paid to the employee exclusive of any fringe benefits); plus (2) a labor surcharge in the amount of 145% or the approved FAR rates, whichever is greater, which shall constitute full compensation for all profit, overhead and all State and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.

#### **4.6.8.2 Material Costs**

Material costs for Change Order work shall be the actual cost of all materials to be used in the performance of the Construction Work plus a 15% markup for profit and overhead. The material prices shall be supported by valid quotes and invoices from Suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts.

#### **4.6.8.3 Equipment**

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

- (a) The equipment rental rates shall be those tabulated in the most recent version of the Rental Rate Blue Book. The rental rates to be used shall be the published monthly rate divided by 176 times the age and regional adjustment factors plus the hourly operating costs; plus
- (b) 15% of the equipment rental rates for overhead and profit.



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

**4.6.8.3.2** Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be allowed in an amount equal to the direct rental rate for the equipment, plus a 15% markup for overhead and profit.

**4.6.8.3.3** The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Change Order work being performed. The time shall include the reasonable time required to move the equipment to the location of the Change Order work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Change Order work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. Payment for loading and transporting will be made only if the equipment is used for Change Order work and cannot be used to perform other Work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

**4.6.8.4** Subcontracted Work

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to: (a) the actual cost to DB Contractor of such work (which shall be charged by the Subcontractor on a Force Account basis in accordance with this Section 4.6.8, unless otherwise approved in writing by TxDOT), plus (b) 5% of such cost. The 5% markup for subcontracted work shall not apply to: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

**4.6.8.5** Work Performed by Utility Owners

To the extent that any Change Order is intended to compensate DB Contractor for the cost of work performed by Utility Owners entitled to receive reimbursement for their costs from DB Contractor, the Change Order shall provide for compensation to DB Contractor equal to: (a) the actual and reasonable amount paid by DB Contractor to the Utility Owner for such work (but not greater than the amount allowed pursuant to the applicable Utility Agreements), plus (b) 5% of such allowed actual amount, less any amounts that may be deducted pursuant to Section 4.5. Back-up documentation supporting each cost item for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

**4.6.8.6** Other Direct Costs

For any justified Direct Cost incurred for Change Order work not covered by the categories of costs contained in Sections 4.6.8.1 through 4.6.8.5, DB Contractor shall accept as full payment therefor an amount equal to the actual cost to DB Contractor for such Direct Cost item without additional markup. Back-up documentation supporting each cost item for this category shall be provided by DB Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

**4.6.8.7** Overhead Items

The markups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of \$1,000 or less, consumables (items that are consumed in the performance of the Work and are not a part of the finished product) and other indirect costs of the added or changed Work, as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Work. DB Contractor's markup percentages for construction Work and labor surcharge for non-construction Work shall be considered to include:

- (a) Supervisory expenses of all types, including salary and expenses of executive officers, supervising officers or supervising employees, excluding only direct supervision of force account work;
- (b) Any and all administrative, clerical or stenographic employees;
- (c) Any and all field, jobsite and general home office overhead and operating expenses whatsoever;
- (d) Subsistence and travel expenses for all personnel, other incidental job burdens, and bonuses not otherwise covered;
- (e) Quality assurance and quality control;
- (f) Bond and insurance premiums; and
- (g) accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

**4.6.8.8** Change Order Data**4.6.8.8.1**

DB Contractor shall maintain its records in such a manner as to provide a clear distinction between: (a) the Direct Cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Price and (b) the costs of other operations. DB Contractor shall furnish daily, on forms approved by TxDOT, reports of all costs described in the foregoing clause (a). The reports shall itemize all costs for labor, materials, and equipment rental and provide the total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate and actual working hours of operation. All such records and reports shall be made immediately available to TxDOT upon its request. The cost of furnishing such reports are deemed to be included in DB Contractor's overhead and fee percentages.

**4.6.8.8.2**

All reports shall be signed by DB Contractor. TxDOT will compare its records with DB Contractor's reports, make the necessary adjustments and compile the costs of Work completed under a Force Account Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

## **4.6.9 Change Orders for Differing Site Conditions, Utilities, Relief Events, Hazardous Materials, Access to ROW, Necessary Basic Configuration Changes, Supply Chain Disruption Delays, Third Party Agreements, and Railroads; DB Contractor Responsibility for Delay Deductibles**

### **4.6.9.1 Differing Site Conditions**

Subject to the restrictions and limitations set forth in this Section 4.6, DB Contractor shall be entitled to a Change Order for certain additional costs resulting from the existence of any Differing Site Conditions to the extent permitted in this Section 4.6.9.1. The amount of the Change Order shall be calculated as the Reimbursable Differing Site Conditions Costs for the work in question determined in accordance with Section 4.6.9.1.1 plus, if applicable, Project Overhead determined in accordance with Section 4.6.9.1.3, and shall be subject to the limitations set forth in this Section 4.6.9.1. DB Contractor shall be entitled to a time extension for delays to the Critical Path resulting from Differing Site Conditions to the extent permitted in Section 4.6.9.1.2.

#### **4.6.9.1.1** To the extent that additional Reimbursable Differing Site Conditions Costs are incurred due to changes in DB Contractor's obligations relating to the Work resulting from the existence of Differing Site Conditions, TxDOT and DB Contractor shall share the risk as follows:

- (a) DB Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to Reimbursable Differing Site Conditions Costs that are less than or equal 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 Deductible Cap. Project Overhead shall not apply toward the Differing Site Conditions Deductible for an occurrence of Differing Site Conditions or the Differing Site Conditions Deductible Cap.
- (b) TxDOT shall be fully responsible for any additional Reimbursable Differing Site Conditions Costs incurred in excess of (1) the Differing Site Condition Deductible incurred for changes in DB Contractor's obligations hereunder resulting from each separate occurrence of Differing Site Conditions, and (2) the Differing Site Conditions Deductible Cap, and a Change Order shall be issued to compensate DB Contractor for such additional Reimbursable Differing Site Conditions Costs.

#### **4.6.9.1.2** DB Contractor shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Differing Site Condition, or for any delays resulting from the discovery of a Differing Site Condition prior to submission of a PCO Notice (or of notice to TxDOT under Section 4.6.9.1 meeting the requirements for a PCO Notice) to TxDOT. If DB Contractor encounters Differing Site Conditions for which DB Contractor is entitled to compensation, and changes in the Work result in delays to the Critical Path ("Differing Site Conditions Delay"), then, subject to Section 4.6.9.1.1, (a) DB Contractor shall bear 100% of the risk of such Differing Site Conditions Delay up to an amount of 15 days per location; (b) DB Contractor and TxDOT shall share equally the risk of such Differing Site Conditions Delay over 15 days up to 30 days for each location (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Differing Site Conditions Delays); (c) TxDOT shall bear 100% of the risk of such Differing Site Conditions Delay over 30 days per location; and (d) TxDOT shall bear 100% of the risk of any Differing Site Conditions Delay in excess of the aggregate amount of 90 days of Differing Site Conditions Delay borne by DB Contractor for all locations on the Project. Notwithstanding anything to the contrary contained in this Section 4.6.9.1.2, 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.

**4.6.9.1.3** For Change Orders that include an extension of a Completion Deadline in accordance with Section 4.6.9.1.2, DB Contractor shall be entitled to Project Overhead in accordance with Section 4.6.6.2.2. Except to the extent that this Section 4.6.9.1.3 allows compensation for Project Overhead, Change Orders under this Section 4.6.9.1 shall not include compensation for delay or disruption damages.

**4.6.9.1.4** DB Contractor hereby acknowledges and agrees that it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions. DB Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. DB Contractor shall track the Differing Site Condition Deductible in accordance with the requirements and limitations in this Section 4.6.9.1 and shall track the Reimbursable Differing Site Conditions Costs incurred in excess of the Differing Site Condition Deductible in accordance with the requirements and limitations in Section 4.6.8.

**4.6.9.1.5** During progress of the Work, if Differing Site Conditions are encountered, DB Contractor shall immediately notify TxDOT thereof telephonically or in person, to be followed immediately by written notification. DB Contractor shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by TxDOT. In the event that any Governmental Approvals specify a procedure to be followed, DB Contractor shall follow the procedure set forth in the Governmental Approvals.

**4.6.9.1.6** Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by DB Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by DB Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any work stoppage in affected areas during the investigation period described above.

**4.6.9.2** Utilities

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

**4.6.9.2.1** New Utilities

DB Contractor shall be entitled to a Change Order (a) increasing the Price to compensate DB Contractor for any additional Direct Costs incurred by DB Contractor in performing the Utility Adjustment Work that is directly attributable to a New Utility (including reimbursements owed to Utility Owners but excluding delay and disruption damages) and (b) extending the applicable Completion Deadline as a result of any delay in the Critical Path directly attributable to performing the Utility

Adjustment Work directly attributable to a New Utility. For Change Orders that include an extension of a Completion Deadline in accordance with this Section 4.6.9.2.1, DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2. Subject to the foregoing, the amount of such Change Order shall be determined in accordance with the limitations set forth in this Section 4.6.

#### 4.6.9.2.2

##### Unidentified Utilities

- (a) DB Contractor shall be entitled to an increase in the Price in connection with certain increases in the cost of the Work due to Unidentified Utilities within the Schematic ROW. Such increase shall be determined on a facility-by-facility basis, and shall apply for a particular Unidentified Utility facility only if the Basic Costs for the Utility Adjustment for that facility are greater than the Unidentified Utilities Deductible. The amount of the Price increase in any Change Order issued under Section 4.6.9.2 for each such Unidentified Utility facility shall be equal to the Basic Costs for that facility, less the Unidentified Utilities Deductible (which deductible amount shall be DB Contractor's sole responsibility), plus if applicable, Project Overhead to the extent permitted by Section 4.6.9.2.2(d). Notwithstanding the foregoing, DB Contractor shall not be responsible for a total amount of Unidentified Utilities Deductibles in excess of the Unidentified Utilities Deductible Cap. In determining whether the Unidentified Utilities Deductible Cap has been reached, Utility Adjustments of Unidentified Utilities with Basic Costs of less than the Unidentified Utilities Deductible shall not be counted towards the Unidentified Utilities Deductible Cap and such amounts shall be DB Contractor's sole responsibility. If the Unidentified Utilities Deductible Cap is reached, the amount of the Price increase in any Change Order thereafter issued under Section 4.6.9.2 for a Utility Adjustment of any Unidentified Utility for which the Basic Costs are in excess of the Unidentified Utilities Deductible shall be equal to the Basic Costs for that facility. In no event shall DB Contractor be entitled to a Change Order for increased costs due to Utility Adjustments for Unidentified Utilities for which the Basic Costs are equal to or less than the Unidentified Utilities Deductible, regardless of whether the Unidentified Utilities Deductible Cap is reached. Except to the extent set forth in Section 4.6.9.2.2(d), DB Contractor's rights to recover additional costs as specified in this Section 4.6.9.2.2 shall not include delay and disruption damages.
- (b) All Basic Costs calculations submitted by DB Contractor shall be supported by detailed cost proposals and supporting documentation (for all estimates used in such calculations) meeting the requirements of Section 4.6.6. TxDOT shall have the right to require that any or all of the information submitted by DB Contractor in the EPDs be used in evaluating the cost proposals.
- (c) In the event the performance of necessary Utility Adjustment Work attributable to an Unidentified Utility results in delay to a Critical Path (an "Unidentified Utility Delay"), DB Contractor shall be entitled to a Change Order to extend affected Completion Deadlines, subject to the terms of Section 4.6, including Section 4.6.9.11 and the risk sharing thresholds herein. DB Contractor shall bear 100% of the risk of the first 60 cumulative days of Unidentified Utility Delays. After DB Contractor has borne the risk of 60 cumulative days of Unidentified Utility Delays, the risk of Unidentified Utility Delays for the next 60 cumulative days 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 Unidentified Utility Delays for the 61<sup>st</sup> through the 120<sup>th</sup> cumulative days of Unidentified Utility Delays). TxDOT shall bear 100% of the risk of eligible Unidentified Utility Delays in excess of 120 cumulative days of Unidentified Utility Delays. If an Unidentified Utility Delay is concurrent with another delay

that is DB Contractor's responsibility hereunder, then DB Contractor shall bear 100% of the risk of such Unidentified Utility Delay, and the delay to the Critical Path shall not be considered an Unidentified Utility Delay for purposes of calculating the risk sharing thresholds set forth in this Section 4.6.9.2.2(c). If an Unidentified Utility Delay at one location is concurrent with another Unidentified Utility Delay at one or more other locations, each such day of concurrent delay shall be deemed a single day of Unidentified Utility Delay.

- (d) For Change Orders that include an extension of a Completion Deadline in accordance with Section 4.6.9.2.2(c), DB Contractor shall be entitled to Project Overhead to the extent permitted in Section 4.6.6.2.2.

#### **4.6.9.2.3** Level A SUE

Any material differences between the actual location of a Utility and the location of the Utility shown on a level A SUE report identified in Exhibit 3 to the DBA that were unknown by DB Contractor prior to the Effective Date shall be treated as a TxDOT-Directed Change. Subject to the requirements and limitations set forth in this Section 4.6, DB Contractor shall be entitled to a Change Order increasing the Price for increases in the cost of the Work, including delay and disruption damages, and extending any affected Completion Deadlines for delays to the Critical Path directly attributable to such material differences in location.

#### **4.6.9.2.4** No Time Extension

Except as otherwise provided in Section 4.6.9.2.1 with regard to New Utilities and to the extent permitted in accordance with Section 4.6.9.2.2 for Unidentified Utilities and Section 4.6.9.2.3, no time extension will be allowed on account of any delays attributable to any inaccuracy in the Utility Strip Map.

#### **4.6.9.3** Relief Events

##### **4.6.9.3.1** Force Majeure Events

Force Majeure Events means any of the events listed in clauses (a) through (d) below (and no other events, including those listed in clauses (i) through (iii) 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 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:

- (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 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.

For the avoidance of doubt, Force Majeure Events shall be limited to the matters listed above and specifically excludes from its definition the following matters, which might otherwise be considered force majeure:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, or storm, except as specified in clauses (a) and (d) above;
- (ii) except as provided in clause (c) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft; and
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence.

**4.6.9.3.1.1** Subject to the limitations contained in, and upon DB Contractor's fulfillment of all applicable requirements of, this Section 4.6, TxDOT shall issue a Change Order (a) to compensate DB Contractor for additional Direct Costs incurred as a result of a Force Majeure Event under the terms, conditions and limitations set forth in this Section 4.6, and (b) subject to the risk sharing provisions in Section 4.6.9.3.1.2, (i) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event, to the extent that it is not possible to work around such event ("Force Majeure Event Delay") or (ii) to compensate DB Contractor for applicable Acceleration Costs in lieu of extending the Completion Deadlines, as determined by TxDOT pursuant to Section 4.6.4.1.

**4.6.9.3.1.2** Subject to Section 4.6.9.11, (a) DB Contractor shall bear 100% of the risk of the first 30 days of cumulative Force Majeure Event Delays during the Term; (b) DB Contractor and TxDOT shall share equally the risk of cumulative Force Majeure Event Delays over 30 days up to 90 days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Force Majeure Event Delays); and (c) TxDOT shall bear 100% of the risk of Force Majeure Event Delays over 90 days.

**4.6.9.3.1.3** For Change Orders that include an extension of a Completion Deadline in accordance with Section 4.6.9.3.1.1, DB Contractor shall be entitled to Project Overhead to the extent permitted in Section 4.6.6.2.2. Except to the extent that this Section 4.6.9.3.1.3 allows compensation for Project Overhead, Change Orders under this Section 4.6.9.3.1 shall not include compensation for delay or disruption damages.

**4.6.9.3.2** Other Relief Events

Other Relief Events means any of the events listed in clauses (a) through (j) below (and no other events, including those listed in clauses (i) through (v) 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;
- (h) Modifications made after the Proposal Due Date to draft Third Party Agreements included in the RIDs and referenced in Section 3.2.2 of the DBA; and



- (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 in accordance with Section 5.8.2.

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 (i) 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.

#### **4.6.9.4 Hazardous Materials Management**

If compensation is payable to DB Contractor pursuant to this Section 4.6.9 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or the Reimbursable Hazardous Materials Management Costs for the work in question, subject to the limitations set forth in this Section 4.6.9.4, including the cost sharing provisions set forth in Section 4.6.9.4.1.

#### 4.6.9.4.1 Determination of Reimbursable Amount

DB Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if TxDOT is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken that would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, DB Contractor may take such limited actions as are required by Law without advance notice to TxDOT, but shall provide such notice immediately thereafter (which in no event shall be more than 2 hours after the incident by phone and 24 hours after the incident by written notice).

In cases involving reimbursement for Hazardous Materials Management under this Section 4.6.9.4, allowable costs shall be 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 (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present) ("Reimbursable Hazardous Materials Management Costs"). The costs of investigating and characterizing, including Phase 1 and Phase 2 investigations, are included in the Price and DB Contractor shall not be entitled to additional compensation therefor.

Except as otherwise provided and subject to the limitations in this Section 4.6.9, TxDOT shall compensate DB Contractor for DB Contractor's Reimbursable Hazardous Materials Management Costs for Pre-existing Hazardous Materials encountered by DB Contractor to the extent relief is available in accordance with the cost sharing provisions set forth in Section 6.3 of the Design-Build Agreement.

Except as otherwise provided and subject to the limitations in this Section 4.6, DB Contractor shall be entitled to a Change Order in accordance with Section 4.6.9.3.2 to compensate DB Contractor for DB Contractor's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Hazardous Materials falling within the definition for Other Relief Event. Such costs shall be handled in accordance with Section 4.6.9.3.2.

DB Contractor shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that DB Contractor demonstrates to TxDOT's satisfaction that: (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) DB Contractor's plan for the Hazardous Materials Management represents the approach that is most beneficial to the Project and the public. DB Contractor shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for payment.

#### 4.6.9.4.2 Time Extensions

DB Contractor shall not be entitled to an extension of any Completion Deadline with regard to any need to investigate or characterize any Hazardous Materials, regardless of the total quantities, or for any delays resulting from the discovery of Hazardous Materials prior to submission of a PCO Notice (or of notice to TxDOT under Section 4.6.9.4.1 meeting the requirements for a PCO Notice) to TxDOT. If DB Contractor encounters Hazardous Materials for which DB Contractor is entitled to compensation, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path ("Hazardous Materials Delay") DB Contractor shall bear 100% of the risk of such Hazardous Materials Delay up to an amount of 30 days per location and up to an aggregate amount

of 120 days for all locations on the Project. If the Hazardous Materials Delay exceeds 30 days in any location, then the risk of such Hazardous Materials Delay in excess of 30 days for that location shall be borne by TxDOT. If aggregate Hazardous Materials Delays for which DB Contractor is 100% responsible exceed 120 days, then the risk of Hazardous Materials Delay in excess of 120 days shall be borne by TxDOT. If a Hazardous Materials Delay is concurrent with another delay that is DB Contractor's responsibility under the Design-Build Contract, then such Hazardous Materials Delay shall be borne 100% by DB Contractor. If a Hazardous Materials Delay at one location is concurrent with another Hazardous Materials Delay in another location, the 30-day period of DB Contractor's responsibility for the delays at the two locations shall run concurrently. The foregoing shall not preclude DB Contractor from obtaining a time extension with respect to any Hazardous Material that qualifies as an Other Relief Event. Notwithstanding anything to the contrary contained in this Section 4.6.9.4, if DB Contractor is prohibited from working at a particular location due to the discovery of Hazardous Materials for which DB Contractor is entitled to a Change Order during the last 12 months prior to 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 Hazardous Materials.

#### **4.6.9.4.3** Limitations on Change Orders for Hazardous Materials

Entitlement to compensation or a time extension shall be limited to work performed pursuant to DB Contractor's Hazardous Materials Management Plan, Investigative Work Plan and Site Investigative Report for such Hazardous Materials as approved by TxDOT, in writing. No compensation or time extension shall be allowed with respect to: (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) any costs that could have been avoided, (d) Hazardous Materials on any Additional Properties not expressly described in Section 4.8.1.3, (e) any Hazardous Materials encountered during or in connection with the demolition of buildings, structures, fixtures or other improvements on any parcels within the Site, (f) any Hazardous Materials that do not fall within the definition for Pre-existing Hazardous Materials or clause (d) of the definition for Other Relief Event, or (g) any Hazardous Materials that fall within the definition for DB Contractor Release(s) of Hazardous Materials. Utilities (other than Service Lines) shall not be considered "buildings, structures, fixtures or other improvements" for purposes of this Section 4.6.9.4.

#### **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, including Section 6.5 of the DBA and Section 4.6.9.11, DB Contractor shall be entitled to a Change Order to extend the applicable Completion Deadlines as a result of any Eminent Domain Delay. DB Contractor shall be entitled to a Change Order only to the extent the delay (i) materially adversely affects a Critical Path and (ii) 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. For Change Orders that include an extension of a Completion Deadline in accordance with this Section 4.6.9.5, DB Contractor shall be entitled to Project Overhead to the extent permitted in Section 4.6.6.2. Except to the extent that this Section 4.6.9.5 allows compensation for Project

Overhead, Change Orders under this Section 4.6.9.5 shall not include compensation for delay or disruption damages.

**4.6.9.6** Necessary Basic Configuration Changes

**4.6.9.6.1** Notwithstanding the fact that this Design-Build Contract generally obligates DB Contractor to undertake all work necessary to complete the Project without an increase in the Price, this Section 4.6.9.6 provides for an increase in the Price to be made in the amount of the increased Direct Costs for additional Utility Adjustment Work required on Additional Properties acquired as a result of a Necessary Basic Configuration Change.

**4.6.9.6.2** If DB Contractor commenced any Utility Adjustment Work affected by such modification prior to delivery of an appropriate PCO Notice, the Change Order shall allow TxDOT a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

**4.6.9.6.3** DB Contractor shall be responsible for any delays (including those that affect the duration of a Critical Path) and, except as set forth in this Section 4.6.9.6 and Section 4.6.9.5, any cost increases resulting from changes in requirements and obligations of DB Contractor relating to the Project due to Errors in the Schematic Design.

**4.6.9.7** Supply Chain Disruption Delays

**4.6.9.7.1** DB Contractor shall be entitled to a time extension extending the applicable Completion Deadlines for delays to the Critical Path due to the unavailability of materials that cannot be provided by alternate sources in the marketplace and that are required for incorporation into the Project resulting from the following events, provided 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 ("Supply Chain Disruption Delay"):

- (a) Any earthquake, tornado, hurricane or other natural disaster that (i) occurs in any of the states bordering the Gulf of Mexico and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the state in which the disaster occurs, 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.

- 4.6.9.7.2** Subject to this Section 4.6: (a) DB Contractor shall bear 100% of the risk of the first 30 days of cumulative Supply Chain Disruptions Delays during the Term; (b) DB Contractor and TxDOT shall share equally the risk of cumulative Supply Chain Disruptions Delays over 30 days and up to 90 days (i.e., any affected Completion Deadline shall be extended by one day for every two full days of Supply Chain Disruptions Delays); and (c) TxDOT shall bear 100% of the risk of cumulative Supply Chain Disruptions Delays over 90 days. If a Supply Chain Disruption Delay is concurrent with another delay that is DB Contractor's responsibility under the Design-Build Contract, then such Supply Chain Disruption Delay shall be borne 100% by DB Contractor.
- 4.6.9.7.3** For Change Orders that extend a Completion Deadline in accordance with Section 4.6.9.7.2, DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2.2. DB Contractor is fully responsible for, and thus shall not receive a Change Order with respect to, any other additional or unanticipated costs due to Supply Chain Disruption Delays.
- 4.6.9.8** Special Event Delays
- 4.6.9.8.1** DB Contractor shall be entitled to a Change Order extending affected Completion Deadlines for delays to the Critical Path due to changes in the date or times of a Special Event described in Section G of Exhibit 15 to the DBA or the addition of a new Special Event, provided the effects of such modifications 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 ("Special Event Delay").
- 4.6.9.8.2** DB Contractor shall not be entitled an increase in the Price for additional costs incurred by DB Contractor due to a Special Event Delay.
- 4.6.9.9** Railroads
- Subject to the limitations contained in, and upon DB Contractor's fulfillment of all applicable requirements of, this Section 4.6, DB Contractor shall be entitled to Change Orders for certain increased costs, including Project Overhead, and delays to the Critical Path relating to railroads to the extent set forth in Section 6.10 of the Design-Build Agreement.
- 4.6.9.10** Third Party Agreements
- 4.6.9.10.1** 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 due to material changes in DB Contractor's obligations resulting directly from TxDOT's execution of New Third Party Agreements and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by TxDOT's execution of New Third Party Agreements. DB Contractor shall not be entitled to any relief for New Third Party Agreements unless the delays and the effects of such delays are beyond the control of the DB Contractor-Related Entities and are not due to (1) changes in the DB Contractor's design from the Schematic Design, or (2) any other act, omission, negligence, recklessness or intentional misconduct of or (3) breach of contract or Law or violation of any Governmental Approval by, any of the DB Contractor-Related Entities.
- 4.6.9.10.2** For Change Orders that extend a Completion Deadline in accordance with Section 4.6.9.10.1, DB Contractor shall be entitled to Project Overhead to the extent permitted in Section 4.6.6.2.

#### 4.6.9.11 DB Contractor Responsibility for Delay Deductibles

Notwithstanding anything to the contrary in Sections 4.5.5 and 4.6.9, DB Contractor's responsibility for Delay Deductibles shall not exceed the Delay Deductible Aggregate Cap. Delay Deductibles shall only be credited toward the Delay Deductible Aggregate Cap through an approved Change Order or a Delay Deductible Determination issued in accordance with Section 4.6.3.2.4. Unless this Design-Build Contract is terminated in accordance with Section 8.9, once the Delay Deductible Aggregate Cap is reached, DB Contractor shall thereafter be entitled to an extension of the applicable Completion Deadline(s) for each day of delay to the Critical Path due to Qualifying Delays, subject to satisfaction of all other requirements and limitations of the Contract Documents applicable to time extensions, including this Section 4.6. For the avoidance of doubt, once the Delay Deductible Aggregate Cap is reached, except as set forth in Sections 4.5.5.1(b) and 4.5.5.2.2(b), DB Contractor shall thereafter be entitled to compensation for Project Overhead for each day that a Completion Deadline is extended for a Qualifying Delay to the extent permitted by Section 4.6.6.2.2, without regard to the Delay Deductible.

#### 4.6.10 Change Order Records

DB Contractor shall maintain its records in such a manner as to provide a clear distinction between the Direct Costs for which it is entitled (or for which it believes it is entitled) to an increase in the Price and the costs of other operations. DB Contractor shall contemporaneously collect, record in writing, segregate and preserve: (a) all data necessary to determine the costs of all Work that is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Adjustments, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work that is the subject of a Change Order or a proposed Change Order, if the impact on the Project Schedule is in dispute. Such data shall be provided to any dispute resolvers, TxDOT and its authorized representatives as directed by TxDOT, on forms approved by TxDOT. The cost of furnishing such reports is included in DB Contractor's predetermined overhead and profit markups.

##### 4.6.10.1 Waiver

DB Contractor hereby waives the right to obtain compensation for any Work for which cost data is required to be provided hereunder, if DB Contractor fails to maintain or timely provide to TxDOT cost data meeting the requirements of this Design-Build Contract.

##### 4.6.10.2 Additional Force Account Record Requirements

In addition to the requirements of this Section 4.6.10, for Force Account Change Orders, DB Contractor shall provide the following:

##### 4.6.10.2.1 Work Reports and Data Collection

DB Contractor shall furnish TxDOT completed daily work reports for each day's Work that is to be paid for on a Force Account basis. The daily Force Account Work reports shall be detailed as follows:

- (a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.

- (b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Quantities of materials, prices, and extensions.
- (d) Transportation of materials.

The reports shall also state the total costs to date for the Force Account Change Order Work.

#### **4.6.10.2.2** Supplier's Invoices

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily Force Account Work reports, or if not available, they shall be submitted with subsequent daily Force Account Work reports. Should said Supplier's invoices not be submitted within 60 days after the date of delivery of the materials, TxDOT shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of Work, less any discounts available.

#### **4.6.10.2.3** Execution of Reports

All Force Account Change Order reports shall be signed by DB Contractor's Project Manager.

#### **4.6.10.2.4** Adjustment

TxDOT will compare its records with the completed daily Force Account Work reports furnished by DB Contractor and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both Parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. DB Contractor's cost records pertaining to Work paid for on a Force Account basis shall be open, during all regular business hours, to inspection or audit by representatives of TxDOT during the life of this Design-Build Contract and for a period of not less than five years after the date of Final Acceptance, and DB Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than DB Contractor, DB Contractor shall make every reasonable effort to ensure that the cost records of each such other Person will be open to inspection and audit by representatives of TxDOT on the same terms and conditions as the cost records of DB Contractor. Payment for such costs may be deleted if the records of such third parties are not made available to TxDOT's representatives. If an audit is to be commenced more than 60 days after the date of Final Acceptance, DB Contractor will be given a reasonable notice of the time when such audit is to begin.

#### **4.6.11** Matters Not Eligible for Change Orders and Waiver

DB Contractor acknowledges and agrees that no increase in the Price or extension of a Completion Deadline is available except in circumstances expressly provided for herein, that such Price increase and time extension shall be available only as provided in this Section 4.6 and that DB Contractor shall bear full responsibility for the consequences of all other events and circumstances. Matters that are exclusively DB Contractor's responsibility include the following:

- (a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Schematic Design, subject only to the right to a Change Order to the extent permitted by Section 4.6.9);

- (b) any changes requested by TxDOT as part of the process of reviewing or approving Submittals for consistency with the requirements of the Contract Documents, the Governmental Approvals or applicable Laws;
- (c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes that otherwise give rise to a right to a Change Order);
- (d) action or inaction of any DB Contractor-Related Entity (unless arising from causes that otherwise give rise to a right to a Change Order);
- (e) action or inaction of adjoining property owners or TxDOT's other contractors (unless arising from causes that otherwise give rise to a right to a Change Order);
- (f) groundwater levels or subsurface moisture content;
- (g) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except as permitted by Section 4.6.9.7;
- (h) any costs covered by insurance available to DB Contractor, any deductible or self-insured retention associated with such insurance, or any costs that would have been covered by any insurance that is deemed to be self-insured by DB Contractor under Section 3.5;
- (i) correction of Nonconforming Work and review and acceptance thereof by TxDOT (including rejected Submittals);
- (j) failure by any DB Contractor-Related Entity to comply with the requirements of the Contract Documents, Governmental Approvals or Laws;
- (k) delays not on a Critical Path;
- (l) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by DB Contractor (except to the extent permitted by Section 4.6.9.3.2(g)), any failure to obtain such Governmental Approval, and compliance with the terms and conditions of all Governmental Approvals;
- (m) delays caused by untimely provision of access to Project ROW, except to the extent TxDOT has agreed in this Section 4.6 to be responsible for any such delays;
- (n) any increased costs or delays related to any Utility Adjustment Work or failure to timely obtain any approval, work or other action from a Utility Owner, except as allowed by Section 4.6.9.2;
- (o) any situations (other than Relief Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract Documents or arise out of the nature of the Work; and
- (p) all other events beyond the control of TxDOT for which TxDOT has not expressly agreed to assume liability hereunder.



DB Contractor hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by DB Contractor of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the circumstances of this Design-Build Contract and that contingencies included in the Price in DB Contractor's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

DB CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, DISRUPTION, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, DISRUPTION, SUSPENSION OR ACCELERATION) FOR WHICH DB CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION, DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT DB CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

#### **4.6.12 Disputes**

If TxDOT and DB Contractor agree that a request to increase the Price or extend any Completion Deadline by DB Contractor has merit, but are unable to agree as to the amount of such Price increase or time extension, as applicable, TxDOT agrees to mark up the Request for Change Order provided by DB Contractor to reduce the amount of the Price increase or time extension as deemed appropriate by TxDOT. In such event, TxDOT will execute and deliver the Unilateral Change Order based on the marked-up Request for Change Order to DB Contractor within a reasonable period after receipt of a request by DB Contractor to do so, and thereafter will make payment or grant a time extension based on such Unilateral Change Order. The failure of TxDOT and DB Contractor to agree to any Change Order under this Section 4.6 (including agreement as to the amount of compensation allowed under a Force Account Change Order and the disputed amount of the increase in the Price or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 4.9, Section 4.10 and DBA Exhibit 20. DB Contractor's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by DB Contractor with respect to the Dispute (crediting TxDOT for any corresponding reduction in DB Contractor's other costs) and shall in no event exceed the amounts allowed by Section 4.6.10 with respect thereto.

#### **4.6.13 Accord and Satisfaction**

Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all claims by DB Contractor of any nature arising from or relating to the Work covered by the Change Order.

#### **4.6.14 Changes Not Requiring Change Order**

Changes in the Work or requirements in the Contract Documents that have no net cost effect on the Price or impact to the Completion Deadlines may be approved in writing by TxDOT as a Deviation, and in such event shall not require a Change Order. Any other change in the requirements of the Contract Documents shall require either a Directive Letter, Design-Build Contract amendment or a Change Order.

#### **4.6.15 No Release or Waiver**

**4.6.15.1** No extension of time granted hereunder shall release DB Contractor's Surety from its obligations. Work shall continue and be carried out in accordance with all the provisions of the Contract Documents and this Design-Build Contract shall be and shall remain in full force and effect, unless formally suspended or terminated by TxDOT in accordance with the terms hereof. Permitting DB Contractor to finish the Work or any part thereof after a Completion Deadline, or the making of payments to DB Contractor after such date, shall not constitute a waiver on the part of TxDOT of any rights under this Design-Build Contract.

**4.6.15.2** Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by this Design-Build Contract after a Completion Deadline, shall be deemed to be a waiver by TxDOT of its right to terminate this Design-Build Contract for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

**4.6.15.3** No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Work, and no claim that TxDOT has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, DB Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. DB Contractor shall be deemed to have performed such work as a volunteer and at its sole risk and cost. In addition, TxDOT may require DB Contractor to remove or otherwise undo any such work, at DB Contractor's sole risk and cost.

#### **4.7 Environmental Compliance**

DB Contractor shall be responsible for performance of all environmental mitigation measures and compliance with all other conditions and requirements of the Contract Documents and Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals for the Project, other than the mitigation requirements which TxDOT has expressly agreed to perform pursuant to [Section 4.7.1](#). The Price includes compensation for DB Contractor's performance of all environmental requirements and conditions, including mitigation measures, except as otherwise described in this [Section 4.7](#).

##### **4.7.1 TxDOT's Responsibility for Approvals and Certain Mitigation**

All conditions and requirements of the TxDOT-Provided Approvals, including any TxDOT-Provided Approvals that are obtained after the Effective Date, shall automatically be deemed included in the scope of the Work. TxDOT will be responsible for additional mitigation requirements resulting from TxDOT-Directed Changes.

DB Contractor acknowledges that TxDOT makes no commitment to any alternative being evaluated in the NEPA process, and the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated and fairly considered. In the event the no-build alternative is selected, TxDOT will terminate the Design-Build Contract for convenience pursuant to [Section 8.9.1](#).

## **4.7.2 New Environmental Approvals to be Obtained by DB Contractor**

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

**4.7.2.2** If any New Environmental Approval is necessitated by a TxDOT-Directed Change or Relief Event, DB Contractor shall be responsible for obtaining such New Environmental Approval and performing any additional mitigation requirements of such New Environmental Approval only if directed to do so by a Directive Letter or a Change Order. TxDOT shall cooperate with DB Contractor and support its efforts to obtain any such New Environmental Approval. Any Change Order covering a TxDOT-Directed Change or Relief Event shall include compensation to DB Contractor for additional costs incurred by DB Contractor to obtain the New Environmental Approval and to implement any changes in the Work (including performance of additional mitigation measures which are DB Contractor's responsibility) resulting from such New Environmental Approvals, as well as any time extension necessitated by the TxDOT-Directed Change or Relief Event, subject to the conditions and limitations contained in [Section 4.6](#).

## **4.8 Hazardous Material Management**

### **4.8.1 Procedures and Compensation for Hazardous Materials Management**

**4.8.1.1** Subject to [Section 4.8.1.3](#), DB Contractor shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents. If during the course of the Work, DB Contractor encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the Contract Documents, DB Contractor shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify Governmental Entities under applicable Law and notify such Governmental Entities as required under applicable Law and (b) take reasonable steps, including design modifications or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If during the performance of the Work TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project ROW or Work, TxDOT shall promptly notify DB Contractor in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, DB Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Wherever feasible and consistent with the Contract Documents, applicable Law and Good Industry Practice, contaminated soil and groundwater shall not be disposed off-site.

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

**4.8.1.3** Subject to the limitations and exceptions set forth in this Section 4.8 and Section 4.6, DB Contractor shall be entitled to a Change Order as set forth in Section 4.6.9.4 with respect to additional costs and delays directly attributable to the discovery of (a) Pre-existing Hazardous Materials within the Schematic ROW, (b) Hazardous Materials other than DB Contractor Releases of Hazardous Materials on any parcels added to the Site by a TxDOT-Directed Change or required due to a Relief Event or Necessary Basic Configuration Change, and (c) Hazardous Materials falling within the definition of Other Relief Event.

## **4.8.2 Off-Site Disposal and Hazardous Material Generator**

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

- (a) As between DB Contractor and TxDOT, TxDOT shall be considered the generator and assume generator responsibility for Hazardous Materials other than DB Contractor Releases of Hazardous Materials.
- (b) TxDOT has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials other than DB Contractor Releases of Hazardous Materials will be transported. With regard to Hazardous Materials other than DB Contractor Releases of Hazardous Materials, TxDOT shall comply with the applicable standards for generators including those found at 40 CFR Part 262, including the responsibility to sign manifests for the transport of hazardous wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that TxDOT or DB Contractor may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project ROW.
- (c) To the extent permitted by applicable Law, TxDOT shall indemnify, save, protect and defend DB Contractor from Third Party Claims and Losses arising out of or related to generator liability for Hazardous Material for which DB Contractor is not considered the generator pursuant to this Section 4.8.2.1, specifically excluding generator liability for actual and threatened DB Contractor Releases of Hazardous Materials.

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

- (a) Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to such shall not be compensable to DB Contractor or entitle DB Contractor to an extension of the Completion Deadlines.
- (b) To the extent permitted by applicable Law, DB Contractor shall indemnify, save, protect and defend TxDOT from claims, causes of action and Losses arising out of or related to generator liability for such DB Contractor Releases of Hazardous Materials.

## **4.9 Disputes Escalation and Disputes Review Panel**

### **4.9.1 Disputes Review Panel**

**4.9.1.1 Purpose.** A disputes review panel (the "Panel") will be established to assist in the avoidance and informal resolution of Disputes arising out of the Work. This Section 4.9 describes the purpose,

procedure, function, and key features of the Panel. The execution of separate Disputes Review Panel Agreements with each of the three Panel members will formalize the creation of the Panel.

**4.9.1.2 Duties.** The Panel will assist in and facilitate the timely resolution of Disputes between TxDOT and DB Contractor, in an effort to avoid construction delay and litigation. It is not the intent of the Panel to serve as a means for TxDOT or DB Contractor to circumvent their responsibility to carefully review claims before submission or rejection and to determine responsibility under the Contract Documents for issues that arise concerning the Project by indiscriminately forwarding or assigning such matters to the Panel for resolution. It is intended that the Panel encourage TxDOT and DB Contractor to resolve potential Disputes without resorting to the Panel.

**4.9.1.3 Relationship to Dispute Resolution Procedures.** Compliance with the procedures in this Section 4.9 are a prerequisite and condition to resolution of Disputes under the Dispute Resolution Procedures set forth in Section 11.1 and Exhibit 20 of the DBA.

**4.9.1.4 Ineligible Matters.** The Panel is not authorized to hear or provide recommendations regarding Ineligible Matters. For the avoidance of doubt, in no event may DB Contractor submit to the Panel a decision with respect to the testing and adequacy of construction materials.

## **4.9.2 Panel Membership**

**4.9.2.1 General.** A Panel shall be established by TxDOT and DB Contractor and begin operation upon the Effective Date, and the Panel's authority and obligations shall terminate upon the later of (a) completion of all work required to be performed by DB Contractor under the DB Contract (including, unless the DB Contract is terminated earlier, work required pursuant to the Warranties) or (b) conclusion of any proceedings before the Panel.

**4.9.2.2 Panel Members.** The Panel shall initially consist of two members, one selected by TxDOT and approved by DB Contractor and the other selected by DB Contractor and approved by TxDOT. The first duty of the Panel shall be to select its third member ("Panel Chairperson") who shall be approved by both TxDOT and DB Contractor and will serve as the chairperson for all Panel activities. The goal in selecting the Panel Chairperson is to complement the dispute resolution experience of the first two and to provide leadership for the Panel's activities.

**4.9.2.3 Experience.** The Panel members shall (a) be experienced with highway design and construction under a design-build contract, (b) have (i) taken and completed the Dispute Resolution Board Foundation training course for alternative delivery projects or equivalent disputes review panel training course approved by the Parties, or (ii) commit to taking a disputes review panel training course approved by the Parties within six months of the Effective Date, and (c) be experienced in the resolution of disputes involving transportation design-build or design-bid-build contracts as a neutral third party mediator or dispute resolver. Either Party may waive the above requirements for the other Party's nominee at their sole discretion.

### **4.9.2.4 Selection Process**

**4.9.2.4.1** To the extent not previously selected and approved, each Party shall within 14 days after the Effective Date select its Panel member and provide a disclosure statement meeting the requirements of Section 4.9.2.6 regarding the selected individual to the other Party for approval. Each Party shall have 14 days after receipt of such information to approve or object to the other Party's selection. A Party may only object to the other Party's nomination on the grounds that there exists a conflict of interest in accordance with Section 4.9.2.5 or for failure of the candidate to meet minimum

qualifications requirements. In such event, the selecting Party shall within 7 days promptly select another candidate for Panel member and provide information regarding the replacement to the other Party for approval. This process shall be followed until two members are approved and also in the event a Party's Panel member is no longer able or eligible to serve on the Panel. Should a Dispute arise regarding whether a Party's Panel member candidate is eligible to serve on the Panel, the Panel member candidate in question, along with the other Party's approved Panel member, shall select the Panel Chairperson, and such matter shall be determined by the Panel Chairperson.

**4.9.2.4.2** Immediately upon approval of the first two members, the two members shall select the Panel Chairperson. The first two members shall ensure that the Panel Chairperson meets all of the criteria in Sections 4.9.2.3 and 4.9.2.5. The Panel Chairperson shall be selected within four weeks after the first two members are approved. In the event of an impasse in the selection of the Panel Chairperson, the matter shall be referred to JAMS for selection of the Panel Chairperson. In so doing, they may, but are not required to, consider the nominees offered by the first two members.

**4.9.2.5** Conflict of Interest

It is imperative that Panel members show no partiality to either the DB Contractor or TxDOT, or have any conflict of interest. Accordingly, the following rules are applicable:

**4.9.2.5.1** Members must not have an ownership interest in the DB Contractor, or a financial interest in this Design-Build Contract or the Project, or in the outcome of any Dispute decided on the Project, except for payment for serving on the Panel.

**4.9.2.5.2** No member shall have been employed (or have his/her employer or partner employed) within three years prior to the Effective Date by TxDOT, DB Contractor, DB Contractor's shareholders, partners, joint venturers or members, or any Subcontractor with a Subcontract price in excess of \$1 million or have had financial ties to any of the foregoing. The foregoing prohibition does not apply to a Panel member's (other than the Chairperson's) previous selection and retention by a Party on a disputes review board, disputes review panel or similar neutral alternative dispute resolution body which is disclosed to both Parties. The Chairperson shall not have served on a disputes review board, disputes review panel or similar neutral alternative dispute resolution body in the past three years that was for a matter involving TxDOT, DB Contractor, DB Contractor's shareholders, partners, joint venturers or members, or any Subcontractor with a Subcontract price in excess of \$1 million as a party.

**4.9.2.5.3** No member shall have had substantial prior involvement in the Project or relationship with any party or affiliate of a nature that would be grounds for disqualification of a judge pursuant to Texas Rule of Civil Procedure 18b or that could otherwise compromise his or her ability to impartially resolve Disputes.

**4.9.2.5.4** No member shall discuss or accept employment with TxDOT, DB Contractor or any DB Contractor-Related Entity during the term of the Project and for so long thereafter as any obligations remain outstanding under the Contract Documents, except that a Panel member other than the Chairperson may be selected by a Party as a member of a disputes review board or similar neutral alternative disputes resolution body on other projects.

**4.9.2.5.5** Each Panel member, in the performance of his or her duties on the Panel, is acting as an independent contractor and not as an employee of either TxDOT or DB Contractor.

#### **4.9.2.6** Submission of Disclosure Statements

Before a Panel member appointment is final, the Party-appointed prospective members shall submit complete disclosure statements for the approval of both TxDOT and DB Contractor. Each statement shall include a resume of experience, together with a declaration describing any potential conflicts of interest as described in Section 4.9.2.5 and all past and present relationships to the Project, the entities described in Section 4.9.2.5.2 and any employees of any such entity. The Panel Chairperson shall supply such a disclosure statement to the Party-appointed Panel members and to TxDOT and the DB Contractor before his or her appointment is final. Each Panel member shall provide an updated disclosure statement to the Parties and the other Panel members no less frequently than annually and any time the Panel member becomes aware of a potential conflict of interest as described in Section 4.9.2.5.

#### **4.9.2.7** Execution of Disputes Review Panel Agreements

Promptly upon approval of the Panel members, TxDOT and DB Contractor shall enter into a separate three-party Disputes Review Panel Agreement with each Panel member that sets forth the terms and conditions that apply to the services to be provided by the member. All three Panel Agreements shall be fully executed within 14 days after the selection of the Panel Chairperson.

#### **4.9.2.8** Withdrawal; Termination; Replacements

Panel members may withdraw from the Panel upon delivery of written notice of withdrawal to TxDOT, DB Contractor, and the other Panel members. The notice shall specify the effective date of the withdrawal, which shall be no earlier than 28 days following the date of delivery of the notice. 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. In addition, any Panel member may be terminated by TxDOT or DB Contractor if at any time there exists a conflict of interest in accordance with Section 4.9.2.5 or the member otherwise fails to meet the qualifications set forth in this Section 4.9. Should the need arise to appoint a replacement Panel member, the replacement member shall be appointed in the same manner as provided in this Section 4.9 for appointment of the original member. The selection of a replacement Panel member shall begin promptly upon notification of the necessity for a replacement, and shall be completed within 28 days thereafter. The change in Panel membership shall be evidenced by a fully executed Disputes Review Panel Agreement with the new Panel member.

### **4.9.3** Panel Operations

The Panel shall formulate its own rules of operation in accordance with the Disputes Review Panel Agreement and consistent with the Operating Procedures and this Design-Build Contract.

#### **4.9.3.1** Project Schedule Update

In order to keep abreast of design and construction development and progress, DB Contractor shall provide the members with the monthly Project Schedule Update narrative and any other relevant data necessary to resolve Disputes mutually agreed upon by TxDOT and DB Contractor or requested by the Panel.

#### 4.9.3.2 Regular Meetings

The Panel shall visit the Project and meet with representatives of TxDOT and DB Contractor on a quarterly basis and at such other times as may be requested by the Parties. The regular meetings shall be held at the Project site. Each meeting shall consist of an informal round table discussion followed by a field inspection of the Project. The round table discussion shall be attended by selected personnel from TxDOT and DB Contractor. The agenda shall generally include the following or other matters requested by the Panel:

- (a) Meeting convened by the chairman of the Panel;
- (b) Opening remarks by TxDOT's representative;
- (c) A description by DB Contractor of the Work accomplished since the last meeting, current status of the Project Schedule, schedule for future Work, potential Disputes and proposed solutions for any problems;
- (d) Discussion by TxDOT's representative of the Project Schedule as TxDOT views it, potential Disputes, and status of past Disputes; and
- (e) Set tentative date for next meeting.

The Parties may request the Panel Chairperson to prepare a summary of regular meetings, and if no request is made, the Panel Chairperson at his or her sole discretion may prepare a summary of regular meetings and circulate them for comments, revisions, and/or approval of all concerned.

The field inspection shall cover all active segments of the Work. Representatives of both TxDOT and DB Contractor shall accompany the Panel on field inspections.

#### 4.9.3.3 Ex Parte Communications

The Parties are prohibited from discussing any substantive aspect of an existing or potential Dispute with any member of the Panel except during a regular Panel meeting or hearing which is attended by both Parties. A Panel member who has ex parte contact with a Party or Party representative shall be subject to disqualification from the Panel. The party having the ex parte communications will bear the cost of replacing the Panel member.

### 4.9.4 Schedule for Dispute Resolution

#### 4.9.4.1 Time Periods Generally

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed in writing by both Parties or in the sole discretion of the Panel and the time periods stated herein may be shortened in order to hasten resolution.

#### 4.9.4.2 Importance of Timeliness; Waiver

DB Contractor waives the right to collect any and all costs incurred and to seek any extension of the Completion Deadlines for delays to the Critical Path due to any decision, action or order of TxDOT in the event DB Contractor fails to file a protest with TxDOT or appeal a TxDOT Decision regarding



such matter within the time periods set forth in this Section 4.9. This waiver shall occur whether or not there is any showing of prejudice to TxDOT resulting from the delay in filing the protest.

#### 4.9.5 Panel Submittals

Before DB Contractor shall have the right to submit a Dispute to the Panel, it must first comply with the following procedures.

- 4.9.5.1** Written Protest Procedure and Dispute Escalation Tiers: In addition to any other notice requirements under this Design-Build Contract, if DB Contractor objects to any written decision, action or order of TxDOT (including any rejection or modification of a proposed Change Order by TxDOT), DB Contractor may file a written protest with TxDOT, stating clearly, and in detail with supporting documentation, the basis for the objection and proposed resolution, within seven days after the date of the decision, action or order. Within seven days of DB Contractor's submission of a written protest to TxDOT, or written notice of a potential Dispute to DB Contractor, or the date of an advisory opinion provided by the Panel in accordance with Section 4.9.6, as applicable, the Parties shall begin discussions between the personnel of each organization at the tier levels and for the time periods described in the table below.

<b>Dispute Escalation Tiers</b>			
Level of Authority and Responsibility			
Tier	DB Contractor	TxDOT	Time Limit*
1	Project Manager	Project Manager	2 Business Days
2	Project Manager	Deputy District Engineer	5 Business Days
3	Managing Director of Ferrovial Construction Texas, LLC	District Engineer	10 Business Days

*\* Time in which Dispute must be resolved or passed on to the next tier.*

In the event the Parties are unable to resolve the issue within 10 Business Days after referral of the protest to the tier 3 personnel, either Party may seek resolution of the issue with Panel.

- 4.9.5.2 Issuance of TxDOT Decision.** TxDOT will consider the written protest and make its decision (the "TxDOT Decision") on the basis of the pertinent Contract Document requirements, together with the facts and circumstances involved in the Dispute. The decision will be furnished in writing to DB Contractor within 14 days after expiration of the tier 3 discussion period, provided that if no written decision is issued, TxDOT shall be deemed to have denied DB Contractor's written protest and a TxDOT Decision to that effect shall be deemed received by DB Contractor at the end of such 14-day period. The TxDOT Decision shall be final and conclusive on the subject, unless a written appeal to the Panel is filed within 21 days after receipt of the TxDOT Decision.

- 4.9.5.3 Submission of Dispute to Panel.** If the TxDOT Decision does not resolve the Dispute, then either Party may submit the Dispute to the Panel. The Dispute shall be submitted to the Panel by DB Contractor's written notice of appeal of the TxDOT Decision or TxDOT's written notice of Dispute, delivered to the Panel and simultaneously served upon the other party. The written notice shall be

filed by the submitting Party and served within 21 days following the date on which the TxDOT Decision is issued or is deemed to have been issued in accordance with [Section 4.9.5.2](#), and shall state clearly and in full detail, with supporting documentation, the specific issues of the Dispute to be considered, including the pertinent facts and the relevant provisions of the Contract Documents, as well as the claiming Party's proposed resolution of the Dispute. If no notice of appeal or written notice of Dispute is filed within 21 days following the date upon which the TxDOT Decision is final, the TxDOT Decision shall be final, conclusive and binding upon the Parties. Within 21 days of receipt of a written notice of appeal or written notice of Dispute, the Party receiving the written notice shall submit a response with supporting documentation to the other Party and the Panel setting forth in full detail the Party's response to the facts and relevant Contract Document terms asserted in the written notice.

**4.9.5.4 Continuation of Work during Dispute.** At all times during the course of the dispute resolution process, DB Contractor shall continue with the Work, in a diligent manner and without delay, and in accordance with the Contract Documents, including any Directive Letters.

#### **4.9.6 Advisory Opinions**

At any time after a written protest is filed by the DB Contractor in accordance with [Section 4.9.5.1](#), the Parties may agree to seek an advisory opinion from the Panel in accordance with this [Section 4.9.6](#). At request of the Parties, the Panel shall issue an advisory opinion after concurrent submission by each Party of a brief written summary of the issue(s) in Dispute, pertinent facts and circumstances, and relevant provisions of the Contract Documents. Each Party's written summary shall not exceed three pages and shall be submitted to the other Party and the Panel on the date agreed upon by the Parties, which shall be no less than three days prior to a scheduled meeting of the Panel. Each Party shall have the opportunity to present its position to the Panel at the next regular meeting, or at such other time set by the Panel at the request of the Parties, prior to the deliberations of the Panel. The Panel shall verbally provide its advisory opinion to the Parties at the meeting. In the event the Parties are unable to resolve the Dispute after the advisory opinion is given, either Party may submit the Dispute to the Panel in accordance with [Section 4.9.5](#). The deadline for commencing discussions between the Parties in accordance with the dispute escalation tiers in [Section 4.9.5.1](#) shall be tolled until 7 days after receipt of the advisory opinion.

#### **4.9.7 Date of Hearing**

When a Dispute is submitted to the Panel, the Panel, with input from DB Contractor and TxDOT, shall first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regular Panel meeting. For an urgent matter, the Panel shall meet at its earliest convenience.

#### **4.9.8 Evidence**

Evidence, including any written statements, shall be exchanged by the Parties seven days prior to the hearing and any rebuttal evidence shall be exchanged three days prior to the hearing. During the hearing, DB Contractor and TxDOT shall each have ample opportunity to be heard and to offer documentary evidence. Testimony of witnesses shall be in the form of written statements unless otherwise requested by the Panel, and shall not be offered to change the terms of the Contract Documents. Discovery shall only be permitted at the sole discretion of the Panel.

## **4.9.9 Hearing**

### **4.9.9.1 Location of Hearings**

Normally the hearing will be conducted at the Project site. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. Private sessions of the Panel may be held by telephone or at any convenient location.

### **4.9.9.2 Record of Hearing**

Each member shall keep his or her own notes. A formal transcript is not prepared, except in accordance with the Operating Procedures.

### **4.9.9.3 Hearing Procedures**

TxDOT and DB Contractor shall have representatives at all hearings. Each may be represented by counsel. DB Contractor will first discuss the Dispute, followed by TxDOT. Each party will then be allowed successive rebuttals until all aspects are fully 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.

## **4.9.10 Impartiality of Panel**

The Panel shall fairly and impartially consider Disputes referred to it, solely on the basis of the facts and the terms of the Contract Documents, and shall provide written recommendations ("Panel Recommendations") to TxDOT and DB Contractor to assist in the resolution of Disputes submitted to the Panel.

## **4.9.11 Panel Recommendations**

After any hearings are concluded, the Panel shall meet to formulate its recommendations. All Panel deliberations shall be conducted in private, with all individual views kept strictly confidential. The Panel Recommendations, including an explanation of its reasoning, shall be submitted as a written report to both parties within 21 days of completion of the hearings. In exceptionally difficult cases, this time may be extended by the Panel. The Panel Recommendations shall be based on the pertinent requirements of the Contract Documents and the facts and circumstances involved in the Dispute. The Panel shall make every effort to reach a unanimous recommendation. If this proves impossible, the dissenting member may prepare a minority report, but all three members of the Panel will sign the report without identification of the dissenter. Following delivery of the Panel Recommendations, if requested by either Party, the Panel shall either provide additional written clarification or meet (in person or by telephone) with TxDOT and DB Contractor to provide additional clarification of its recommendations.

## **4.9.12 Commencement of Informal Resolution Procedures**

Within 7 days of receiving the Panel Recommendations, or such other time specified by the Panel, both TxDOT and DB Contractor shall respond to the other and to the Panel in writing, signifying either acceptance or rejection of the Panel Recommendations. If either Party rejects the Panel Recommendations and the Dispute is not otherwise resolved, either Party may commence Informal Resolution Procedures in accordance with [Section 4.10](#) within 14 days after the date of the Panel

Recommendations, as such time may be extended upon agreement of the Parties. DB Contractor's failure to timely commence Informal Resolution Procedures shall constitute a waiver of any and all claims that were the subject of the Panel Recommendations.

#### **4.9.13 Panel Recommendations Not Admissible**

Panel Recommendations shall not be admissible for any purpose in any subsequent dispute resolution proceeding. For the avoidance of doubt, the Parties may refer to Panel Recommendations when conducting Informal Resolution Procedures.

#### **4.9.14 Compensation**

Fees and expenses of each Panel member shall be payable in accordance with the applicable Disputes Panel Review Agreement. The cost of Panel member services shall be shared equally by TxDOT and DB Contractor. If the Panel desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed. DB Contractor shall pay the invoices of all Panel members after approval by both Parties. DB Contractor may submit invoices to TxDOT for TxDOT's share of the fees and expenses paid by DB Contractor in a format approved by TxDOT. DB Contractor shall submit such invoices for payment by TxDOT no more frequently than monthly.

No Panel member will be entitled to any employee benefits.

#### **4.9.15 Records**

Each Panel member shall keep available for inspection, for a period of four years after final payment, the cost records and accounts pertaining to the Disputes Review Panel Agreement between TxDOT, DB Contractor and the Panel member.

#### **4.9.16 Cooperation**

The Parties shall diligently cooperate with one another and the Panel, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the Dispute.

#### **4.10 Informal Resolution Procedures**

As a condition precedent to the right to have any Dispute resolved pursuant to the formal Dispute resolution process set forth in Exhibit 20 to the DBA or by a district court, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the informal resolution procedures described in this [Section 4.10](#) (collectively, the "Informal Resolution Procedures"). Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for the Informal Resolution Procedures applicable to any subsequently arising Disputes.

##### **4.10.1 Notice of Dispute to Designated Agent**

- (a) A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a written notice on the responding Party's designated agent. Unless otherwise indicated by written notice from one Party to the other Party, each

Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing:

- (i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute;
  - (ii) The date of the act, inaction or omission giving rise to the Dispute;
  - (iii) An explanation of the Dispute, including a description of its nature, circumstances and cause;
  - (iv) A reference to any pertinent provision(s) from the Contract Documents;
  - (v) If applicable and then known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);
  - (vi) If applicable, an analysis of the Project Schedule and Completion Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Completion Deadlines);
  - (vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;
  - (viii) The claiming Party's proposed resolution of the Dispute; and
  - (ix) Any other information the claiming Party considers relevant.
- (b) The notice shall be signed by the designated representative of the Party asserting the Dispute, and shall constitute a certification by the Party asserting the Dispute that:
- (i) The notice of Dispute is served in good faith;
  - (ii) To the then current knowledge of such Party, except as to matters stated in the notice of Dispute as being unknown or subject to discovery, (A) all supporting information is reasonably believed by the Party asserting the Dispute to be accurate and complete and (B) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the Party asserting the Dispute reasonably believes it is entitled; and
  - (iii) The designated representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.
- (c) If the responding Party agrees with the claiming Party's position and proposed resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing as appropriate, including execution of Change Orders or other documentation as needed, and

thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

- (d) The Party asserting the Dispute shall not be prejudiced by its initial statement of the Dispute and shall have the ability at any time during the Informal Resolution Procedures and formal Dispute resolution process to modify its statement of the Dispute and/or the amount of money or other right, remedy or relief sought.

#### **4.10.2 Fast-Track Disputes**

With respect to any Dispute that the Parties mutually designate as a Fast-Track Dispute, the Informal Resolution Procedures shall be abbreviated in that the procedure contemplated in Section 4.10.3 shall not be required.

#### **4.10.3 CEO / Executive Director Meetings**

Commencing within 10 Business Days after the notice of Dispute is served and concluding 10 Business Days thereafter, the Chief Executive Officer of DB Contractor and the Executive Director or the assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, DB Contractor and TxDOT shall memorialize the resolution in writing, including execution of Change Orders or other documentation as appropriate, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

#### **4.10.4 Failure to Resolve Dispute with Informal Resolution Procedures**

If a Dispute is not timely resolved under the Informal Resolution Procedures, then within 15 days (seven days for Fast-Track Disputes) after the conclusion of the time periods for Informal Resolution Procedures, if such Dispute was not resolved to the Parties' satisfaction: (a) the Parties may mutually agree to initiate mediation; or (b) either Party may commence the formal Disputes resolution process pursuant to Exhibit 20 to the DBA.

#### **4.11 Partnering**

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Work.

##### **4.11.1 Schedule; Participation**

As soon as possible after execution of this Design-Build Contract, TxDOT and DB Contractor shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and DB Contractor. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

##### **4.11.2 Confidentiality**

Subject to the requirements of the Public Information Act, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute

resolution proceeding, unless such statements or materials are admissible or discoverable under applicable Law.

## ATTACHMENT 4-1

### PROFESSIONAL SERVICES QUALITY MANAGEMENT PLAN

DB Contractor shall prepare a PSQMP that describes the policies, procedures and staffing to manage and ensure the quality of the Professional Services Work (including that of Subcontractors).

The PSQMP shall include all necessary forms, schedules, and requirements checklists, which may be documented in appendices.

The Professional Services Quality Control Manager (PSQCM) shall oversee the implementation of the PSQMP, and the Professional Services Quality Assurance Firm (PSQAF) shall perform independent quality reviews and certify that the Professional Services work products are prepared in accordance with the PSQMP.

DB Contractor's obligations for quality control (QC) and independent quality (IQ) assurance activities including audits by the PSQAF shall comply with the PSQMP requirements in this Attachment 4-1.

The PSQMP shall include, at a minimum, a procedure for each of the quality processes required to deliver the Professional Services. The procedures shall describe DB Contractor's quality management approach for performing both quality control and IQ assurance activities in Section 2 and Section 3, respectively, as described below.

The PSQMP shall consist of the following sections in the order listed below, unless otherwise directed by TxDOT:

- Section 1: Introduction
- Section 2: Quality Control (QC) Program
- Section 3: Independent Quality (IQ) Program
- Appendices including all necessary forms, schedules, and checklists.

DB Contractor shall use the templates in Exhibit 1 of this Attachment 4-1 for preparing the Title Page, Approvals Page and Record of Revisions in that order at the beginning of the plan, unless otherwise directed by TxDOT.

DB Contractor shall ensure that the PSQMP is consistent with the initial PSQMP submitted prior to the Effective Date for TxDOT review and comment. Incorporation of TxDOT's comments on the initial PSQMP shall be a condition precedent for submittal of the PSQMP for TxDOT's approval in its good faith discretion.

TxDOT approval, in its good faith discretion, of the PSQMP shall be a condition of the commencement of Design Work.

If changes to the PSQMP are required after commencement of Design Work, DB Contractor shall update the Record of Revisions table at the front of the PSQMP with the revision number, date of the revision and a description of the revision if changes to the PSQMP are required. Only the revised portions of the PSQMP are required to be submitted for review and approval in TxDOT's good faith discretion.

#### **1.0 Introduction**

The introduction to the PSQMP shall include the following components in the order listed below in Table 1. The contents and associated requirements are the minimum requirements for Section 1 of the PSQMP. DB Contractor shall include any additional information for the introduction at the end of Section 1.

TxDOT shall not approve the PSQMP if the DB Contractor does not satisfactorily address the requirements for preparing Section 1 of the PSQMP described below in Table 1.



**Table 1 – Introduction Components and Requirements**

<b>Subsection</b>	<b>Requirements</b>
<b>General</b>	Provide an overview of the quality management system for the Project and the applicable quality policies.
	Include a description of the quality objectives for the Project.
	State how the PSQMP establishes procedures and policies for implementing IQ/QC during the design of the Project.
	Describe the disciplines covered within the PSQMP, which shall include but not be limited to Roadway Design, Drainage, Structures, Geotechnical, Surveying and Mapping, ROW, Utility, ITS/Illumination, etc.
<b>Organization – Personnel and Staffing</b>	Include an organizational chart and staffing plan for both quality control and IQ staff including the period of time that the staff members will be engaged in Project activities and the experience / knowledge / skill levels of staff.
	Describe the role and responsibilities of the Project Manager to ensure quality of the Professional Services Work. Include minimum experience and certifications. The Project Manager shall meet the requirements as more fully described in the Contract Documents.
	Describe the role and responsibilities of the Design Manager to oversee the design production of the Professional Services Work and ensure quality of the design work products. Include minimum experience and certifications. The Design Manager shall meet the requirements as more fully described in the Contract Documents.
	<p data-bbox="472 1092 1354 1184">Describe the role and responsibilities of the Professional Services Quality Control Manager (PSQCM) managing the DB Contractor's QC program for the Professional Services.</p> <p data-bbox="472 1276 1354 1333">The PSQCM shall meet the following requirements in the performance of the Professional Services Work:</p> <p data-bbox="472 1430 667 1457">The PSQCM shall:</p> <ul data-bbox="532 1497 1354 1682" style="list-style-type: none"> <li>• not be involved with direct scheduling or delivery production activities and report directly to the PM;</li> <li>• ensure that the methods and procedures contained in the approved PSQMP are implemented and followed in the performance of the Work; and</li> <li>• certify that the design Submittal packages meet the requirements of the PSQMP and Contract Documents.</li> </ul> <p data-bbox="472 1745 695 1772">The PSQCM shall be:</p> <ul data-bbox="532 1808 1227 1871" style="list-style-type: none"> <li>• a Registered PE and shall have relevant Professional Services QC management experience on projects of similar type and scope; and</li> </ul>

	<ul style="list-style-type: none"> <li>employed by either: (a) an Equity Member, Lead Engineering Firm or Lead Contractor; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm or Lead Contractor; or (c) a parent company of an Equity Member.</li> </ul> <p>The PSQCM shall have authority to stop Work.</p>
	<p>Describe the role and responsibilities of each Engineer of Record (EOR) directly supervising the production of the Professional Services Work.</p> <p>All EORs will meet the following requirements:</p> <p>The EOR(s) in responsible charge of each item, element, or phase of the Work shall possess the necessary licenses and registrations in the State of Texas and shall be personally responsible for directly supervising the Work.</p> <p>The EOR(s) shall sign and seal the Professional Services product for a given item, element, or phase of the Work as applicable.</p>
	<p>Describe the role and responsibilities of the Professional Services Quality Assurance Manager (PSQAM) managing and overseeing the independent IQ program of the project.</p> <p>The PSQAM will meet the following requirements:</p> <p>DB Contractor shall assign a PSQAM who shall be responsible for performing independent quality assurance reviews of the DB Contractor's Professional Services work products, and audits of the DB Contractor's PSQMP and professional services IQ/QC program.</p> <p>The PSQAM shall:</p> <ul style="list-style-type: none"> <li>oversee implementation of the PSQMP;</li> <li>irrespective of his or her other responsibilities, have defined authority for ensuring the establishment and maintenance of the Professional Services elements of the PSQMP; and</li> <li>report jointly to TxDOT's and to DB Contractor's executive management teams on the performance of the PSQMP with respect to those elements.</li> </ul>

	<p>The PSQAM shall be:</p> <ul style="list-style-type: none"><li>• a Professional Engineer with relevant Professional Services quality assurance management experience on projects of similar type and scope; and</li><li>• employed by an independent Professional Services Quality Assurance Firm.</li></ul> <p>The PSQAM shall have authority to stop Work.</p> <p>Provide a description of the credentials of the PSQAM and the name of the independent firm of the PSQAM.</p> <p>The PSQAM shall remain an independent third party throughout the development of the Professional Services production Work.</p> <p>The PSQAM shall oversee of the Professional Services Quality Assurance Staff (PSQAF)</p>
	<p>The PSQAF staff shall be provided under the direction of the PSQAM to perform oversight and review of all Professional Services Work.</p> <p>The PSQAF staff shall meet the following requirements:</p> <ul style="list-style-type: none"><li>• The PSQAF staff shall be experienced in the respective aspects of Professional Services undertaken by DB Contractor.</li><li>• The training and experience of the PSQAF staff shall be commensurate with the scope, complexity, and nature of the Work to be reviewed.</li><li>• Qualifications of the PSQAF staff shall include appropriate experience, certifications, training, and licensure.</li><li>• PSQAF staff shall report to the PSQAM.</li></ul>

	<ul style="list-style-type: none"> <li>• The size of the PSQAF staff shall reflect the volume of PSQAF activities necessary for the Work in progress and shall be maintained in accordance with the Design Submittal Packaging Plan and Submittal Schedule as described below in QCP-02 of the approved PSQMP.</li> <li>• PSQAF staff is available and that the audit functions described in the PSQMP are undertaken in a manner consistent with the Project Schedule and in a manner that will enable DB Contractor to achieve the Completion Deadlines.</li> </ul> <p>Include that PSQAF staffing requirements will be updated as necessary throughout the Term to reflect changes in the actual design schedule.</p>
<b>Communication</b>	Describe the internal and external communication and coordination roles and responsibilities of the project quality team staff as they relate to technical working group meetings, intradisciplinary and interdisciplinary communication, design-construction interfaces, DB Contractor and TxDOT communication, DB Contractor and third party communication, Designer-Design IQ/QC interfaces.
<b>Proposal Commitments</b>	<p>Include a list of the proposal commitments with respect to the Professional Services QC program and the IA program, as described in Appendix 1 of Exhibit 2 to the DBA.</p> <p>Identify relevant Proposal commitments and specify where they are addressed in the PSQMP.</p> <p>Describe how they will be incorporated into the Professional Services Work and the verification process to ensure the Proposal commitment has been fulfilled.</p>

## 2.0 Quality Control Program

The professional services quality control (QC) program includes reviewing, checking, and documenting all design and other Professional Services Work to ensure the quality of the work products complies with the requirements of the Contract Documents.

The PSQMP shall include QC procedures in Section 2 describing the management approach, stages of design, responsibilities, QC/QA procedures (described separately), reviews, timing, procedure or reference standard, and resulting records for all Professional Services Submittals.

The QC program is intended to ensure that TxDOT is in agreement with the quality of the Work performed by DB Contractor.

Prepare, at a minimum, the QC procedures listed in Table 2. Include any additional QC procedures at the end of Section 2.

TxDOT approval of the PSQMP shall be conditioned upon the DB Contractor satisfactorily addressing the requirements for preparing the QC procedures described below in Table 2. The QC procedures shall include at a minimum a description of the responsible parties performing the actions, detailed description of the procedural steps, and a list of documents referenced in the procedure in accordance with the template for preparing the QC procedures in Exhibit 2 to this Attachment 4-1. The procedures should be clear, detailed and follow the general template outline contained in Exhibit 2.

Table 2 – Quality Control Procedures

Number	Name	Description	Requirements
QCP-01	QC Work Documents	Prepare QC Work documents, including procedures and forms to ensure the Professional Services Work is performed in accordance with the Contract Documents.	<b>QC Work Documents Requirements</b>
			<b>Preparation and Use</b>
			DB Contractor shall prepare and use documented instructions to control the receipt and issuance of the control of Work documents.
			Use qualitative and quantitative criteria with such instructions to determine compliance.
			Define the method, format and layout requirements.
			QC staff should use and follow the Work documents.
			<b>Review, Approval and Release</b>
			Perform quality reviews of the Work documents for adequacy.
			Define the approval process for release of the documents.
			Authorized personnel of the DB Contractor shall approve the release of the Work documents.
QCP-02	Design Submittal Packaging Plan and Submittal Schedule	Develop a procedure describing the preparation of the Design Submittal Packaging Plan and Submittal Schedule	<b>Design Submittal Packaging Plan and Submittal Schedule Requirements</b>
			<b>Packaging Plan and Schedule Preparation</b>
			DB Contractor shall prepare a Design Submittal Packaging Plan and Submittal Schedule for all items, elements or portions of the Work.
			<b>Packaging Plan and Schedule Workshop</b>
			DB Contractor shall host a workshop with TxDOT in order to present its Design Submittal Packaging Plan containing: (i) a list of proposed sections (i.e., Station x+xx to Station y+yy) for the Work; (ii) Professional Services packaging and content (i.e. drainage, individual structures, roadway, traffic sequencing, and others); (iii) a list of mandatory Submittals; and (iv) a proposed Submittal schedule.
<b>Packaging Plan Contents</b>			
DB Contractor shall ensure that all permanent Work items, elements, or portions of the Work, and any Temporary Work items, for each			

Number	Name	Description	Requirements
			<p>buildable unit, pass through all stages of design development, in the order specified below.</p> <ul style="list-style-type: none"> <li>• Preliminary Design</li> <li>• Final Design</li> <li>• Released for Construction</li> <li>• Record Documents</li> </ul> <p>The following additional Submittal packages shall be included in the Design Submittal Packaging Plan and Submittal Schedule as agreed upon by TxDOT and DB Contractor:</p> <ul style="list-style-type: none"> <li>• Early Start of Construction (ESOC)</li> <li>• Third Party Submittal Packages</li> </ul> <p>All design Submittal packages shall be included in the Design Submittal Packaging Plan and Submittal Schedule.</p> <p>The Professional Services reviews shall be evenly scheduled in a logical manner over the duration of the design phase of the Work.</p> <p>Sections and packages shall be logically organized into buildable units and shall contain sufficient information and details to confirm DB Contractor intent and to validate conditions.</p> <p><b>Packaging Plan and Schedule Approval</b></p> <p>DB Contractor shall obtain TxDOT's written approval of the sections, packages and contents, the Submittal Schedule, and the methodology prior to making the first Submittal.</p> <p><b>Design Submittal Preparation Manual</b></p> <p>DB Contractor shall prepare as part of the PSQMP a project specific Design Submittal Preparation Manual to document the formatting and CADD requirements of all Plans, specifications, reports, calculations, and Record Documents. The manual shall follow the TxDOT <i>PS&amp;E Preparation Manual</i>, modified as necessary to suit the needs of DB Contractor and the Project.</p>
QCP-03	Professional Services Review Plan	Prepare procedures for establishing Professional Services review workflow processes, scheduling and performing QC review activities	<p><b><u>Professional Services Review Plan Requirements</u></b></p> <p><b>QC Review Process</b></p> <p><i>[Include a detailed description of the design review process including but not limited to the actions of reviewing, checking, correcting, and verifying, and the identification of responsible parties for performing the actions.]</i></p>

Number	Name	Description	Requirements
			<i>[Include a process flow chart with the steps and timeframes for the QC process from receipt of design Submittal package to completion of QC review.]</i>
			<i>[Develop a comment resolution matrix to compile comments and responses during the review of the Submittals. Obtain reviews to ensure prevention of errors, conflicts, or omissions.]</i>
			<i>[Describe the process for transmitting the QC documents to the PSQAM and TxDOT for quality assurance check and audit.]</i>
			<b>QC Reviewers</b>
			DB Contractor personnel performing the QC check of the Professional Services shall not be directly involved with the original development of the item, element, or phase being checked.
			<i>[Ensure that qualified discipline-specific staff are available to perform the reviews.]</i>
			<i>[Describe the qualifications of the personnel who will be involved in the QC review of the Professional Services.]</i>
			<i>[Describe the process for distributing the PSQMP and other applicable documents to the QC reviewers.]</i>
			<b>Project Meetings</b>
			The Design Manager shall conduct a series of working meetings with its Professional Services staff, the internal DB Contractor QC staff, the PSQAM, and TxDOT to establish workflow processes and procedures to be utilized during the design review process that are consistent with the Contract Documents.
			DB Contractor shall conduct weekly technical working group meetings with its design staff, its QC staff, its IQ staff, and TxDOT to discuss general design concepts, approaches, and application of design standards. DB Contractor shall develop, distribute, and maintain records of these meetings.
			<i>[Describe the number and schedule of coordination and working group meetings and proposed attendees for the design review process consistent with the Contract Documents.]</i>
			<b>Conformance Reviews</b>
			DB Contractor shall perform conformance checks to ensure the correct requirements are being utilized.
			<i>[Include a process for ensuring the Professional Services Work conforms to requirements of the Contract Documents.]</i>



Number	Name	Description	Requirements
			<i>[Describe the process for ensuring the work products utilize the correct requirements.]</i>
			<i>[Identify conformance criteria set forth in the Contract Documents for each aspect of work in the Professional Services phase of the Work to ensure compliance with requirements of the Contract Documents.]</i>
			<b>Scope Checking</b>
			DB Contractor shall perform scope of Work checks to verify the completeness of Submittals.
			<i>[Include a process for verifying the Submittal is complete and conforms to the Project scope of Work requirements detailed in the Contract Documents.]</i>
			<b>Contract Deviations</b>
			DB Contractor shall ensure that contract deviations and variances from Contract Documents occur only with TxDOT's approval as Deviations or through the Change Order process.
			<i>[Describe the process for obtaining TxDOT approval of Deviations.]</i>
			<i>[Describe the process for preparing and submitting a request for Deviation (RFD) and incorporating an approved Deviation into the Work.]</i>
			<b>Accuracy Checks</b>
			DB Contractor shall perform accuracy checks to ensure Professional Services output is correct.
			<i>[Describe how accuracy checks of each document will be performed to ensure Professional Services output is correct.]</i>
			<i>[Include a description of how the output information is consistent with the input information such as criteria or calculations.]</i>
			<b>Format Checking</b>
			DB Contractor shall perform format checks to ensure conformance with appearance requirements, such as CADD, calculations, and specification language.
			<i>[Describe how each submittal will be formatted (i.e., reports, plan drawings, comments resolution matrices, etc.) and the process for ensuring verification with formatting requirements.]</i>

Number	Name	Description	Requirements
			<b>Computer Program and 3-D Computer Modeling Review</b>
			DB Contractor shall validate the applicable use of computer programs and checking of inputs.
			<i>[Describe the process for checking and verifying that the use of computer programs, CADD requirements and 3-D modeling software used in Submittal production are in accordance with the Contract Documents.]</i>
			<i>[Explain how calculations performed within a computer program will be checked for correct inputs and outputs.]</i>
			<i>[Include steps for reviewing 3-D designs and ensuring that they are prepared in accordance with required 3-D modeling software and design requirements in the Contract Documents.]</i>
			<i>[Ensure 3-D models of the Project submitted as required in Section 10.2.3 of the Design-Build Specifications accurately depict the Work constructed in accordance with the RFC Documents.]</i>
			<b>Design Calculations Check</b>
			The Lead Engineering Firm shall ensure, either through itself or subconsultants, independent calculations are performed, without reference to the designer's calculations, to establish the structural adequacy and integrity of critical items, elements or portions of the Work. The PSQMP shall identify items, elements, or portions of the Work to receive an independent calculation check and the resulting records, as well as an outline of the process for resolving differences between the independent calculations and the designer's calculations.
			<i>[Describe the methodology for checking the designer's calculations, detailing how calculation checks will be made to ensure accuracy of the output.]</i>
			<i>[Describe how any formulas used for calculations will be independently verified. If a computer is used to perform calculations and/or formulas, include steps for verifying all inputs and outputs to ensure formulas properly work.]</i>
			<i>[Describe how the resulting records of the checks will be used.]</i>
			<i>[Identify items, elements, or portions of the Work to receive an independent calculation check.]</i>
			<b>Constructability Reviews</b>
			DB Contractor shall perform constructability reviews to ensure the safety, feasibility and accessibility of all items, elements or portions of the Work.

Number	Name	Description	Requirements
			<i>[Describe the process for the checking and commenting on Submittals by construction personnel.]</i>
			<i>[Identify the professional services and construction personnel responsible for coordinating the constructability reviews.]</i>
			<i>[Describe when the review will take place within the Professional Services Submittal review process.]</i>
			<i>[Describe the scope of a discipline-specific constructability review.]</i>
			<i>[Describe the process for ensuring that constructability review comments are incorporated into the Submittal.]</i>
			<b>Interface and Interdisciplinary Reviews</b>
			DB Contractor shall perform interface and interdisciplinary reviews to ensure consistency and prevention of coordination errors, conflicts, omissions, or misalignments between individuals, agencies, Utility Owners, disciplines, firms, other projects, existing facilities, project stages, segments, systems, etc. This shall include or reference the coordination of the review, approval, release, distribution, and revision of documents affecting such parties.
			<i>[Describe the process for performing interface and interdisciplinary reviews of a Submittal across engineering disciplines.]</i>
			<i>[Identify the individual(s) responsible for coordinating the interdisciplinary reviews. Interdisciplinary reviews should include, but not be limited to, maintenance of traffic, Utilities, environmental compliance, and safety.]</i>
			<i>[Describe the scope of interface and interdisciplinary reviews and resolving identified conflicts.]</i>
			<i>[Identify the disciplines that will perform reviews of the Submittal.]</i>
			<b>External Reviews</b>
			DB Contractor shall coordinate external (TxDOT and third party) reviews to obtain input and expedite close-out of comments.
			<i>[Describe the process for performing external reviews and addressing any potential scope conflicts with the design plans, reports, or other portions of Work identified during the review.]</i>
			<i>[Describe the steps for coordinating the review, approval, release, distribution, and revision of documents affecting such third parties. Third parties may include local governments, utility owners and any other project stakeholders.]</i>

Number	Name	Description	Requirements
			<p><b>Shop Drawing Reviews</b></p> <p>DB Contractor shall review shop drawings.</p> <p>The PSQMP shall outline the process for the EOR to review and approve shop drawings.</p> <p><i>[Describe the process for performing QC reviews of shop drawings provided by vendors verifying manufacturing of materials in accordance with Engineer's designs and specifications.]</i></p>
<b>QCP-04</b>	<b>Pre-Submittal Workshop and Q&amp;A</b>	Prepare a procedure for conducting pre-Submittal workshops with TxDOT	<p><b><u>Pre-Submittal Workshop and Q&amp;A Requirements</u></b></p> <p><b>Pre-Submittal Workshop</b></p> <p>At TxDOT's direction, DB Contractor shall conduct a pre-Submittal workshop, at a location and for a duration acceptable to TxDOT, no later than five days before the scheduled date for each Final Design Submittal.</p> <p>Workshops may be conducted during standard weekly meetings.</p> <p><b>Workshop Materials</b></p> <p>In the event a pre-Submittal workshop is requested, DB Contractor shall prepare supporting materials which shall include, at a minimum, a description of the content and scope of the Submittal and the technical disciplines and items that are the subject of the Submittal.</p> <p><i>[Deliver the materials for the meeting at least 3 days prior to the meeting.]</i></p> <p>Supporting information shall also include a list of items that will need to be integrated into the design but are not yet advanced to the same stage as the subject Submittal, an explanation of the design status, and a plan detailing how integration will be assured.</p> <p><b>Additional Workshops</b></p> <p>DB Contractor shall conduct an additional pre-Submittal workshop repeating the process with respect to all or part of a previous Submittal if, in TxDOT's opinion, the original presentation did not provide sufficient detail to conduct a review of the Submittal.</p> <p>TxDOT shall have the right to conduct a pre-Submittal workshop for any Submittal.</p>

Number	Name	Description	Requirements
QCP-05	Preliminary Design Submittal	Prepare a procedure that describes the processes and methods used to prepare the preliminary Submittal packages	<b>Preliminary Design Submittal Requirements</b>
			<b>Package Submittal</b>
			DB Contractor shall provide its Preliminary Design Submittal package to TxDOT for review and comment prior to beginning development of the Final Design Submittal package.
			<b>PSQCM Certification and Submittal of Quality Record</b>
			The PSQCM shall certify that the Preliminary Design package meets the requirements of the PSQMP.
			The PSQCM shall provide TxDOT and the PSQAM with all the applicable quality records in order to perform their IQ reviews, including redlined and clean copies of the Preliminary Design package working documents, checklists, and the comments and responses log.
			The PSQCM shall provide TxDOT and the PSQAM quality records documenting the QC review of the 3-D design model of the Preliminary Design.
			<b>Package Contents</b>
<p>DB Contractor, as part of its Preliminary Design package, shall include all plans, specifications, and reports which capture all major items, elements or portions of the Work such that DB Contractor can demonstrate a comprehensive understanding of the Project, including:</p> <ul style="list-style-type: none"> <li>• Verification of Project ROW requirements;</li> <li>• Substantiation of design concepts including thorough site investigation and analysis of Site conditions;</li> <li>• Identification of applicable standards and validation of design concept constructability;</li> <li>• Identification of design and construction interfaces including materials and equipment used; and</li> <li>• Other items agreed upon with TxDOT and the PSQAM.</li> </ul>			
QCP-06	Final Design Submittal	Prepare a procedure that describes the processes and methods used to prepare the Final Design Submittal package and deliver the package to TxDOT.	<b>Final Design Submittal Requirements</b>
			<b>Package Submittal</b>
			After DB Contractor has incorporated all Preliminary Design Submittal review comments into its design and all concerns and questions have been resolved to the satisfaction of TxDOT, DB Contractor shall provide its Final Design package to TxDOT.

Number	Name	Description	Requirements
			<p><b>PSQCM Certification and Submittal of Quality Records</b></p>
			<p>The PSQCM shall certify that the Final Design package meets the requirements of the PSQMP.</p>
			<p>The PSQCM shall provide TxDOT and the PSQAM with all the applicable quality records in order to perform their IQ reviews, including redlined and clean copies of the Final Design package working documents, checklists, and the comments and responses log.</p>
			<p>The PSQCM shall provide TxDOT and the PSQAM quality records documenting the QC review of the 3-D design model of the Final Design.</p>
			<p><b>Package Contents</b></p>
			<p>DB Contractor, as part of its Final Design package, shall include all:</p> <ul style="list-style-type: none"> <li>• Design drawings;</li> <li>• Design calculations;</li> <li>• Design reports;</li> <li>• Standards and Specifications including General Notes;</li> <li>• Copies of TxDOT's approval of deviations for design standards and/or Design Exceptions;</li> <li>• Design Manager certification that the Final Design package meets all applicable requirements of the Contract Documents, applicable Law and Governmental Approvals and that all required Governmental Approvals, Utility Owner approvals and ROW has been acquired that are required for design have been obtained; and</li> <li>• PSQAM certification that the Final Design package has been checked in accordance with the approved PSQMP and that all Final Design Submittal review comments have been addressed.</li> </ul>
			<p><b>PSQAM Certification</b></p>
			<p>The PSQAM shall provide written certification with the Final Design Submittal that the Final Design package has been checked in accordance with the approved PSQMP and that all Preliminary Design Submittal review comments have been addressed.</p>
			<p><b>DB Contractor Responsibilities</b></p>
			<p>Irrespective of whether TxDOT provides DB Contractor with the authority to begin construction on items, elements, or phases of the Work prior to completion of the design for the entire Project, DB Contractor shall bear the responsibility of assuring that construction meets the requirements of the Contract Documents, applicable Law, and Governmental Approvals.</p>

Number	Name	Description	Requirements
QCP-07	Design Resubmittal Process	Prepare a procedure for the resubmittal of design Submittals	<b>Design Resubmittal Process Requirements</b>
			<b>Notification</b>
			Resubmittals of any design Submittal may be required if deemed necessary by TxDOT or any Governmental Entities with jurisdiction over the Project.
			TxDOT will notify the DB Contractor of the requirement to resubmit, in accordance with <u>Section 5.2</u> of these General Conditions.
			<b>Responses to Comments</b>
			Each resubmittal must address all comments received from a prior Submittal in a manner satisfactory to the commenting party.
			Submittals shall be resubmitted as many times as necessary to address comments from TxDOT or any Governmental Entity with jurisdiction over the Project.
			<b>Correspondence</b>
A copy of all correspondence relating to each Submittal made to any Governmental Entity with jurisdiction over the Project shall be concurrently provided to TxDOT.			
QCP-08	Released for Construction Documents	Prepare a procedure describing the steps for preparing and issuing Release for Construction (RFC) Documents packages and delivering RFC Documents packages to TxDOT,	<b>Released for Construction Requirements</b>
			<b>Package Submittal</b>
			After DB Contractor has addressed all Final Design Submittal review comments to the satisfaction of TxDOT, DB Contractor shall submit to TxDOT signed and sealed RFC plans in accordance with the Submittal requirements of the PSQMP.
			<b>PSQCM Certification and Submittal of Quality Records</b>
			The PSQCM shall certify that the RFC Submittal package meets the QC requirements of the PSQMP.
The PSQCM shall provide TxDOT and the PSQAM with all the applicable quality records in order to perform their final IQ reviews of the RFC Submittal, including redlined and clean copies of the RFC package working documents, checklists, and the comments and responses log.			

Number	Name	Description	Requirements
			The PSQCM shall provide TxDOT and the PSQAM quality records documenting the QC review of the 3-D design model of the RFC Submittal.
			<b>TxDOT Concurrence / Approval of RFC Packages</b>
			DB Contractor shall obtain TxDOT review and written concurrence of the RFC Submittal and TxDOT approval of TCP submittals. After receiving either TxDOT written concurrence or approval, as applicable, DB Contractor's PM, or designee approved by TxDOT, may then release the RFC package to field staff for construction.
			TxDOT's concurrence or approval with the RFC Submittal shall not constitute approval of the design or subsequent construction, nor will it relieve DB Contractor of its responsibility to meet the requirements hereof.
			<b>Package Contents</b>
			<p>Released for Construction Documents shall include the required certifications, and shall be signed and sealed by an Engineer of Record.</p> <ul style="list-style-type: none"> <li>• The Design Manager shall certify that the RFC Submittal package meets all applicable requirements of the Contract Documents, applicable Law and Governmental Approvals and that all required Governmental Approvals, Utility Owner approvals and ROW that are required for design have been obtained; and</li> <li>• The PSQAM shall certify that the RFC Submittal package has been checked in accordance with the approved PSQMP and that all Final Design Submittal review comments have been addressed.</li> </ul>
			The RFC Documents package delivered to TxDOT shall include documentation that all review comments have been addressed to TxDOT's satisfaction.
			The RFC Documents package shall include a certification by the PSQAM that the 3-D design model is an accurate representation of the RFC design in the RFC Submittal.
			<b>Content Requirements</b>
			DB Contractor's Released for Construction Documents shall comply with the requirements of the Contract Documents, shall be detailed, complete, constructible, and shall allow verification of the design criteria and compliance with the Contract Documents.
			Released for Construction Documents are required for all Construction Work that will be permanently incorporated into the Project and shall also be required for temporary structural items,



Number	Name	Description	Requirements
			<p>elements, or portions of Work to be identified by DB Contractor in the Design Submittal Packaging Plan.</p> <p><b>Changes to RFC Documents</b></p> <p>If TxDOT or the PSQAM determines that the Released for Construction Documents do not meet the requirements of the Contract Documents, applicable Law and/or the Governmental Approvals, TxDOT or the PSQAM will notify DB Contractor in writing of any specific deficiencies in the Released for Construction Documents. DB Contractor shall correct all identified deficiencies; modify the Released for Construction Documents; and, if necessary, modify construction such that the Work is in compliance with the Contract Documents.</p> <p>Any changes to items, elements, or phases of design, after issuance of the Released for Construction Documents shall be checked and certified by the Design Manager and by the PSQAM in the same manner indicated above.</p> <p><i>[Check and provide compliance certifications for any changes to the RFC Documents prior to submitting for TxDOT and PSQAM review.]</i></p>
QCP-09	Request for Clarification Process	Prepare a procedure describing the process for requesting clarifications from TxDOT	<p><b>Request for Clarification Process Requirements</b></p> <p>DB Contractor shall develop a defined process for requesting clarifications of language and requirements in the Contract Documents from TxDOT.</p> <p><i>[Describe the process for incorporating the responses to the requests for clarification into the Work.]</i></p> <p><b>Document Management Workflow</b></p> <p><i>[Describe the document management workflow associated with the process.]</i></p>
QCP-10	Design Changes during Construction	Prepare a procedure describing how design changes to previously submitted Released for Construction Documents will be processed.	<p><b>Design Changes during Construction Requirements</b></p> <p>Design changes to previously submitted Released for Construction Documents are allowed in accordance with the requirements for this procedure.</p> <p><b>Requests for Information</b></p> <p>In every instance in which DB Contractor intends to construct the Work or has constructed the Work that deviates from the Released for Construction Documents, DB Contractor shall submit to the Engineer</p>

Number	Name	Description	Requirements
			<p>of Record a Request for Information (RFI) and include, at a minimum, the plan set and sheet number containing the proposed design change, a brief description of the requested or required design change, and the reason why the item of concern cannot be or was not constructed in accordance with the Released for Construction Documents.</p>
			<p><i>[Describe the RFI process describing how an RFI will be used to initiate a notice of design change (NDC)]</i></p>
			<p>DB Contractor cannot resolve Nonconforming Work solely through the use of an RFI.</p>
			<p>DB Contractor shall provide TxDOT a copy of the Engineer of Record's responses to all RFIs prior to implementation.</p>
			<p>The PSQAM shall review RFIs to ensure that they comply with the QMP.</p>
			<p><b>Field Design Change</b></p>
			<p>RFIs that constitute minor changes to the Work and need not initiate a design change or modified calculations shall be used to transfer that information to the as-built drawings. The Design Manager, or designee approved by TxDOT, and EOR shall evaluate the RFI and if the RFI constitutes a minor change, then the EOR shall transfer the information from the RFI to an FDC log of minor changes and transfer the minor change to the Record Drawings. The Design Manager, or designee approved by TxDOT, shall be responsible for maintaining the FDC log of minor changes for the purpose of verifying completeness of the Record Drawings. Minor design changes shall be those not needing specialized expertise, not in nonconformance with the Project requirements and not materially affecting design intent.</p>
			<p>Minor changes to the RFC plans identified during construction shall be documented by construction and inspection personnel and reported to the Design Manager, or designee approved by TxDOT, and EOR using the RFI process.</p>
			<p><b>Notice of Design Change</b></p>
			<p>Those design changes that require redesign or modified calculations shall be progressed by issuing a notice of design change (NDC).</p>
			<p><i>[Enter the design change in either an NDC or an FDC log, as appropriate.]</i></p>
			<p>The Engineer of Record, in accordance with the PSQMP, shall determine if an NDC is necessary.</p>
			<p><i>[If a design change is to be progressed by issuing an NDC, then submit the NDC to TxDOT and the PSQAM.]</i></p>

Number	Name	Description	Requirements
			<p><i>[Include the same information in the NDC as provided with the RFI that DB Contractor submitted to the Engineer of Record.]</i></p>
			<p>DB Contractor shall also include updated calculations, specifications and reports for all changes, as applicable in the NDC.</p>
			<p><i>[Identify the entity or party initiating and impacted by the design change.]</i></p>
			<p><i>[Describe process for ensuring that the design change package is prepared in compliance with the Contract Documents.]</i></p>
			<p>The PSQCM shall certify that the design change has been checked in accordance with the Contract Documents and the PSQMP, and is consistent with all other elements of the design, prior to review and IQ review by TxDOT and the PSQAF.</p>
			<p>TxDOT and the PSQAM shall have the opportunity to hold a formal review meeting of the design change package to review responses to comments. When all comments are closed to TxDOT and the PSQAM's satisfaction, TxDOT and PSQAM provide their written certification.</p>
			<p>All drawings and documents shall be uniquely identified from the original design.</p>
			<p><b>Design-initiated Design Changes</b></p>
			<p>DB Contractor may, in an effort to add clarity or address concerns with previously submitted Released for Construction Documents, issue an NDC. A design change initiated by an NDC shall undergo the same PSQMP processes as the original design including submittal to TxDOT for review and concurrence.</p>
			<p><b>Responsibilities of Engineer of Record</b></p>
			<p>All plans, specifications, calculations, and reports for design changes shall be signed, and sealed by a Registered Professional Engineer in accordance with applicable Law.</p>
			<p>Every design change shall be:</p> <ul style="list-style-type: none"> <li>• Designed in accordance with the requirements of the Contract Documents, applicable Law and the Governmental Approvals;</li> <li>• Checked in accordance with the approved PSQMP; and</li> <li>• Prepared consistently with other elements of the original design.</li> </ul>

Number	Name	Description	Requirements
			<p><b>Design Change Processes</b></p> <p>DB Contractor shall define in its CQMP and PSQMP its design change process for:</p> <ul style="list-style-type: none"> <li>• Communication between its construction and design teams regarding inquiries and design changes consistent with the provisions in this item.</li> <li>• Notifications and submittal to TxDOT of RFIs and NDCs;</li> <li>• Determination by the Engineer of Record of whether a design change shall follow the NDC process or shall only be captured in as-built drawings; and</li> <li>• Identification of third parties impacted by a design change.</li> </ul> <p>The design changes during construction process workflow is shown in Figure 1.</p>
<p><b>QCP-11</b></p>	<p><b>Early Start of Construction</b></p>	<p>Prepare procedures for processing of Early Start of Construction (ESOC) submittal packages</p>	<p><b>Early Start of Construction Requirements</b></p> <p>The requirements below set forth the circumstances under which certain items, elements, or phases of the Work may be packaged by DB Contractor to initiate an Early Start of Construction prior to obtaining TxDOT's concurrence of the Final Design for the item, element or phase.</p> <p>The Early Start of Construction requirements shall apply to any Work consisting of either permanent or non-permanent items, elements or portions of the Work that is performed by DB Contractor prior to receiving TxDOT's written concurrence with the Design Manager's certification of compliance of the Final Design Submittal for such items, elements or portions of the Work. All permanent and non-permanent items, elements or portions of the Work must pass through the four stages of design development if that Work is intended to be permanently incorporated into the Project as described in QCP-02.</p> <p>TxDOT does not consider any items, elements or portions of the Work as satisfying the PSQMP requirements until the Design Manager and PSQAM have issued a certification of compliance and TxDOT has issued a written concurrence therewith.</p> <p>DB Contractor shall provide TxDOT a list and description of the proposed ESOC Submittal packages for TxDOT approval.</p> <p>DB Contractor shall include the approved ESOC Submittal packages in the Design Submittal Packaging Plan and proposed Submittal schedule, which shall be submitted for TxDOT approval, as described in QCP-02.</p>

Number	Name	Description	Requirements
			<p><b>Procedures</b></p> <p>TxDOT and DB Contractor shall agree on procedures for Early Start of Construction procedures which shall, among other things, include a process for distributing Construction Documents, signed and sealed by a Registered PE, to TxDOT and DB Contractor's field staff.</p> <p><i>[Prepare and include procedures in the PSQMP for approval by TxDOT in its good faith discretion.]</i></p> <p><i>[Coordinate with TxDOT in advance of the ESOC Submittal and confirm the ESOC procedures are consistent with the procedures described in the PSQMP. Update the PSQMP with any amendments to the procedures.]</i></p> <p><i>[Prepare preliminary and final ESOC packages for TxDOT review and comment.]</i></p> <p>DB Contractor shall include a description of the process for addressing review comments from TxDOT. Comments shall be identified as Priority 1, 2 and 3. Priority 1 shall be defined as an item of Work that is not in conformance with the Contract Documents and is a hazard to public health and safety.</p> <p>DB Contractor shall address all Priority 1 comments prior to release of the ESOC Submittal for construction.</p> <p>TxDOT, in its sole discretion, may defer Early Start of Construction for any portions of the Work as requested by DB Contractor.</p> <p><b>Submittal of Quality Records</b></p> <p>DB Contractor shall provide for TxDOT review and comment quality records documenting the QC and IQ reviews of the ESOC Submittal package and the 3-D design model representing the ESOC Work.</p> <p><b>Design Changes</b></p> <p>DB Contractor shall describe the process for implementing design changes to ESOC packages.</p> <p><b>Package Contents</b></p> <p>Early Start of Construction may be rough grading of a specific portion of the Project, for which specific pertinent items of the design may include:</p> <ul style="list-style-type: none"> <li>• Standards and Specifications including General Notes;</li> <li>• Horizontal and vertical drainage system;</li> <li>• Typical sections;</li> <li>• Related elements of the drainage system;</li> </ul>

Number	Name	Description	Requirements
			<ul style="list-style-type: none"> <li>• Related elements of the traffic control plan (TCP) specifically applicable during the term of the Early Start of Construction scope;</li> <li>• Subsurface geotechnical investigations and recommendations;</li> <li>• Slope stability analysis and recommendations;</li> <li>• Preliminary structure general plans (if a structure is within the element or portion of the nonstructural Work);</li> <li>• Settlement monitoring program; and</li> <li>• Construction specifications.</li> </ul> <p><i>[Include all items in an ESOC package required to construct the work (i.e., SW3P, traffic control, etc.)]</i></p> <p>ESOC plan sheets shall be clearly identifiable as ESOC throughout the submittal process.</p> <p><b>Sole Risk of the DB Contractor</b></p> <p>An Early Start of Construction package issued for construction shall be at the sole and complete risk of DB Contractor, and does not relieve DB Contractor from any of the PSQMP requirements.</p> <p>Any Work constructed by DB Contractor prior to receiving TxDOT's concurrence of the Design Manager's certification of the Final Design Submittal for the Work, and later determined to be unacceptable by TxDOT as described in Section 5.2.1.8 of these General Conditions, shall be revised, removed, or otherwise reconfigured to the satisfaction of TxDOT at DB Contractor's sole cost and expense and without any consideration given to an extension of any Completion Deadlines.</p> <p>If, as a result of the review process, construction modification or changes to already completed Work elements performed under the Early Start of Construction are required, DB Contractor shall make any and all construction modifications to already completed construction activities at its sole cost and expense without any entitlement to time extensions or adjustments in the Price.</p>
<b>QCP-12</b>	<b>Record Documents</b>	Prepare procedures for maintaining Record Drawings and submittal of the final Record Documents package to TxDOT	<p><b>Record Documents Requirements</b></p> <p>DB Contractor shall submit to TxDOT a complete set of Record Documents in hard copy and native electronic format for the portion of the Project actually opened to traffic.</p> <p>TxDOT will not issue a Certificate of Final Acceptance until TxDOT is in receipt of a complete set of Record Documents.</p> <p>DB Contractor shall ensure that the Record Documents reflect the actual condition of the constructed Work prepared from the Released</p>

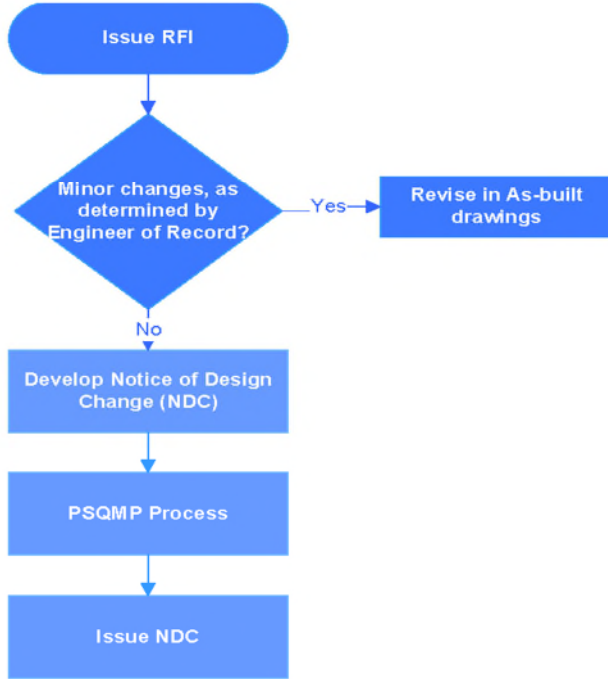
Number	Name	Description	Requirements
			<p>for Construction Documents including any modifications resulting from approved design changes.</p> <p>The IQFM shall include, on the title sheet of the final plans, a statement signed and sealed by the IQFM that the Record Drawings accurately depict the Work constructed in accordance with the RFC Documents.</p> <p>Record Drawings shall include a complete 3-D design model of the final constructed Project that is representative of the Released for Construction Documents and any approved changes.</p> <p><i>[Update Record Drawings with as-built conditions upon completion of construction of the applicable portion of the Work as defined in the Design Submittal Packaging Plan.]</i></p> <p><b>Contents</b></p> <p>The Record Documents shall be an organized, complete record of Plans and supporting calculations and details that accurately represent what DB Contractor constructed.</p> <p><i>[Describe the contents of the Record Documents and how they will be organized, including Record Drawings, supporting calculations, and details.]</i></p> <p>Record Drawings shall show the location of all Abandoned Utilities and shall show and label all other Utilities including Utility Adjustments that are located within the Project ROW or impacted by the Project in accordance with Section 14.4.9 of the Design-Build Specifications.</p> <p>DB Contractor shall produce reports documenting the location of the as-built alignments, profiles, structure locations, utilities, and survey control monuments as described in Section 17.4.5 of the Design-Build Specifications.</p>
QCP-13	<b>Document Management</b>	Prepare procedures that clearly address how Design Documents will be maintained, organized and indexed.	<p><b>Document Management Requirements</b></p> <p>DB Contractor shall maintain accurate, timely and current documentation of design and design changes from initial release through to Record Documents. A current set of plans and specifications, inclusive of all changes shall be available at all points of use.</p> <p>DB Contractor shall use systems for meeting the documentation requirements for design criteria, reports and notes, calculations, Plans, specifications, schematic design, and all supporting materials needed during the Final Design.</p> <p>DB Contractor shall maintain, organize, and index all Design Documents. Copies shall be made available to TxDOT upon request.</p>

Number	Name	Description	Requirements
			<p><i>[Describe the systems that will be implemented for meeting the documentation requirements.]</i></p> <p><b>Staffing Responsibilities</b></p> <p>Include the specific responsibilities of personnel to satisfy these document management requirements.</p>
<p><b>QCP-14</b></p>	<p><b>Updates to Quality Control Work Documents</b></p>	<p>Prepare procedures for updating the QC work documents including changes to QC procedures and forms.</p>	<p><b>Updates to QC Work Documents Requirements</b></p> <p><b>Preparation and Use</b></p> <p>DB Contractor shall prepare and use documented instructions to control the receipt and issuance of updates to the control of work documents</p> <p>Define the method, format, and layout requirements related to the revision of the documents.</p> <p>Include measures to control the receipt and issuance of the revised documents.</p> <p><b>Review, Approval and Release</b></p> <p>Perform quality reviews of the revised work documents for adequacy.</p> <p>Define the approval process for implementing changes to the revised work documents.</p> <p>Authorized personnel of the DB Contractor shall approve the release of the revised work documents.</p> <p>Distribute and use the revised work documents at the location where the prescribed activity is performed.</p> <p>The same organizations shall review and approve changes to the documents that performed the original review and approval.</p>

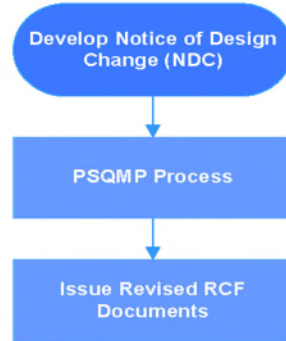


Figure 1: Design Changes During Construction Process Workflow

Design Change During Construction



Design-Initiated Design Change



### **3.0 Independent Quality Program**

The professional services independent quality (IQ) program includes verification and certification that the Professional Services Submittals have been reviewed and checked for conformance in accordance with the quality control procedures and all documents incorporate review comments.

The PSQMP shall include IQ procedures in Section 3 describing the IQ assurance reviews and audits performed by the PSQAF and staff for the Professional Services Work.

The objective of the program is to ensure that TxDOT is in agreement with the quality of the Professional Services Work performed by DB Contractor by verifying/validating the quality assurance activities performed the PSQAF. The PSQAF shall remain an independent and impartial third party throughout the quality assurance process.

Prepare, at a minimum, the IQ procedures listed in Table 3, in the order listed in Table 3, in Section 3 of the PSQMP. Include any additional IQ procedures at the end of Section 3.

TxDOT approval of the PSQMP is in TxDOT's good faith discretion. TxDOT shall not approve the PSQMP if DB Contractor does not satisfactorily address the requirements for preparing the IQ procedures described below in Table 3. The IQ procedures shall include, at a minimum, a description of the responsible parties performing the actions, detailed description of the procedural steps, and a list of documents referenced in the procedure in accordance with the template for preparing the IQ procedures in Exhibit 2 to this Attachment 4-1. The procedures shall be clear, detailed and follow the general template outline contained in Exhibit 2.

Table 3 – Independent Quality Assurance Procedures

Number	Name	Description	Requirements
IQP-01	IQ Work Documents	Prepare the IQ work documents including procedures and forms to ensure the Professional Services Work is performed in accordance with the Contract Documents.	<b>IQ Work Document Requirements</b>
			<b>Preparation and Use</b>
			DB Contractor shall prepare and use documented instructions to control the receipt and issuance of the IQ work documents.
			Use documented instructions to control the receipt and issuance of documents pertaining to the independent quality reviews and audits undertaken by the PSQAM.
			Include qualitative and quantitative criteria with such instructions to determine compliance.
			PSQAF staff shall use and follow the IQ work document instructions.
			Define the method, format and layout of the work documents.
			Describe the requirements, responsibilities and processes to assess the ongoing effectiveness of the IQ program including subcontractor programs to ensure the Professional Services Work meets project quality standards.
			<b>Review, Approval and Release</b>
			Perform independent quality reviews of the work documents.
			Define the approval process for release of the documents.
			Authorized personnel of the DB Contractor and PSQAF shall approve the release of the work documents.
			Distribute and use the work documents at the location where the prescribed activity is performed.
IQP-02	Independent Quality Reviews	Prepare a procedure for IQ reviews of the DB Contractor's Professional Services Work products.	<b>Independent Quality Review Requirements</b>
			DB Contractor shall assign a PSQAM who shall be responsible for the management of the IQ program for the Professional Services, and for carrying out independent quality assurance reviews as described in this procedure.

Number	Name	Description	Requirements
			<b>IQ Review Process</b>
			<i>[Include a defined approach to performing the IQ review of Submittals including spot checking Submittals using prepared contract compliance checklists.]</i>
			<i>[Prior to beginning any independent review of Professional Services Work products, verify that the PSQCM has provided all the applicable quality records to perform the IQ review.]</i>
			<b>Staffing</b>
			<i>[Ensure that responsible and qualified staff are available to perform IQ reviews of all Professional Services Submittals]</i>
			<i>[Include a description of the qualifications of the staff performing the reviews.]</i>
			<b>Hold Points</b>
			The PSQAM shall establish IQ hold points for release of the Submittals, including verification of conformance with QC procedures for every Submittal, and defined approach to spot checking Submittals.
			Identification of any instance of Nonconforming Work during the review process shall be an IQ hold point. List all nonconformance items in a Nonconformance Report for each submittal. The nonresolution of review comments and absence of any initials and dates will be justification for a Nonconformance Report.
			<b>PSQAM Certification</b>
			<p>The PSQAM shall certify that:</p> <ul style="list-style-type: none"> <li>• the Final Design package has been checked in accordance with the approved PSQMP including contract compliance checklists;</li> <li>• the Submittal has been checked and certified by the PSQCM that the Work has been performed in accordance with the approved PSQMP;</li> <li>• and that responses to all Final Design Submittal review comments have been addressed and incorporated into the Submittal package.</li> </ul>
			The PSQAM shall be responsible for ensuring DB Contractor complies with and performs all Professional Services Work in accordance with the PSQMP.
			<i>[Include a process for resolution of IQ review comments and PSQAM certification.]</i>
			<i>[Include a process for verification by the PSQAM that prior comments have been resolved and incorporated.]</i>

Number	Name	Description	Requirements
			<p><i>[Upon resolution of all review comments and prior to PSQAM certification, make available to the PSQCM and TxDOT the compliance documentation confirming that all comments have been addressed to TxDOT's satisfaction and that the Submittal has been prepared in accordance with the Contract Documents.]</i></p> <p>The PSQAM shall provide a monthly written certification that the Professional Services Work is in compliance with the PSQMP.</p>
IQP-03	Independent Quality Audits	Prepare a procedure detailing the process for performing independent audits of PSQMP and the DB Contractor's QC process	<p><b>Independent Quality Audits Requirements</b></p> <p>The PSQAM shall be responsible for performing independent quality audits.</p> <p>PSQAM shall audit, including audit scheduling, of the Design Firm's QA/QC processes and procedures under the PSQMP.</p> <p>The PSQAM shall ensure that the PSQMP contains quality processes incorporating a comprehensive system of planned and periodic verifications and audits of DB Contractor's PSQMP to determine adherence to and the effectiveness of PSQMP requirements.</p> <p>The procedure for conducting audits shall describe the use of checklists of requirements, objective evidence, competent auditors independent of the scope of work being audited, and the audit result workflow through to re-audit and close-out of findings.</p> <p><b>Staffing Responsibilities</b></p> <p>The PSQMP shall define the responsibilities and requirements for planning audits, conducting audits, establishing records, and reporting results for the Professional Services Work.</p> <p><i>[Describe the process and individuals involved in planning audits, conducting audits, establishing records, and reporting results.]</i></p> <p><i>[Audit records, documentation, procedures, and processes to verify compliance with the Contract Documents and approved PSQMP.]</i></p> <p><i>[Ensure that personnel perform the audits in accordance with the written procedures or checklists.]</i></p> <p><b>Audit Planning</b></p> <p>Audit planning shall take into consideration the risk to quality of the processes and areas to be audited, as well as the results of previous audits.</p> <p>Audit planning shall define the audit scope, frequency, and status, and be documented in a rolling 12 month schedule.</p>

Number	Name	Description	Requirements
			<p>Planned and periodic audits shall be undertaken to determine adherence to and the effectiveness of the QMP and other management plans (e.g. Safety and Health Plan, Traffic Management Plan, etc.).</p> <p><b>Audit Results and Actions</b></p> <p>Audit results shall be documented, reviewed, and acted upon by DB Contractor.</p> <p><i>[Describe the process for implementing changes to the quality system to address nonconformance items as a result of an audit.]</i></p> <p><i>[Transmit and verify that audit results are received and addressed by DB Contractor.]</i></p> <p><i>[Re-audit deficient areas following corrective action to verify whether deficiencies are addressed.]</i></p> <p>DB Contractor shall submit to TxDOT the results of all Project quality audits within seven days of their completion.</p>
IQP-04	Document Management	Prepare a procedure describing the requirements and methods for controlling IQ documents.	<p><b>Document Management Requirements</b></p> <p>DB Contractor shall maintain accurate, timely and current documentation of the IQ review documents.</p> <p>DB Contractor shall maintain, organize, and index all IQ documents. Copies shall be made available to TxDOT upon request.</p> <p><i>[Describe the systems that will be implemented for meeting the documentation requirements.]</i></p> <p><b>Staffing Responsibilities</b></p> <p>Include the specific responsibilities of personnel to satisfy these document management requirements.</p>
IQP-05	Updates to the IQ Work Documents	Prepare a procedure with guidelines for updating the IQ Work documents including changes to quality assurance procedures and forms.	<p><b>Updates to IQ Work Documents</b></p> <p><b>Preparation and Use</b></p> <p>DB Contractor shall prepare and use documented instructions to control the receipt and issuance of updates to the IQ Work documents</p> <p>Define the method, format and layout requirements related to the revision of the documents.</p>

Number	Name	Description	Requirements
			<p>Include measures to control the receipt and issuance of the revised documents.</p> <p><b>Review, Approval and Release</b></p> <p>Perform quality reviews of the revised work documents for adequacy.</p> <p>Define the approval process for implementing changes to the revised IQ work documents.</p> <p>Authorized personnel of the DB Contractor shall approve the release of the revised work documents.</p> <p>Distribute and use the revised work documents at the location where the prescribed activity is performed.</p> <p>The same organizations shall review and approve changes to the revised documents that performed the original review and approval.</p> <p>Describe the requirements, responsibilities and processes for reviewing and updating the IQ program and subcontractors' work documents as necessary to continue meeting project quality standards.</p>

**EXHIBIT 1 TO ATTACHMENT 4-1**

- I. Title Page
- II. Approvals Page
- III. Record of Revisions



# Professional Services Quality Management Plan

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[NAME OF PROJECT  
Contract #XXXXXX]

[Day Month Year]

**Prepared By: [DB Contractor's Name**

**Street Address**

**Suite XXX**

**City Name, Texas XXXX]**

# PROFESSIONAL SERVICES QUALITY MANAGEMENT PLAN

For the

[NAME OF PROJECT]

Approved By:

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Design Manager (DM)

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Date

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**Professional Services Quality**

**Control Manager (PSQCM)**

---

**Date**

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**Professional Services Quality**

**Assurance Manager (PSQAM)**

---

**Date**

---

**TxDOT's Authorized Representative**

---

**Date**

## Record of Revisions

<b>Rev.</b>	<b>Date Issued</b>	<b>Pages Affected</b>	<b>Description of Revision / Comments</b>

**EXHIBIT 2 TO ATTACHMENT 4-1****IQ/QC PROCEDURES TEMPLATE**

<b>IQ/QC Procedure Number</b>	<b>IQ/QC Procedure Name</b>	<b>Revision</b>	<b>Date</b>
<i>[Insert the IQ/QC Procedure Number]</i>	<i>[Insert IQ/QC Procedure Name]</i>	<i>[#]</i>	<i>XX/XX/XX</i>

**1.0 Purpose**

*[Define the purpose of the procedure. Include all aspects that are encompassed with this procedure.]*

**2.0 Scope**

*[Detail when the procedure is applicable and will be used. Define the limits of the procedure.]*

**3.0 Definitions**

*[Definitions of terms used within the description of the process of executing the procedure. Each procedure should stand alone and therefore if a term was defined in a previous procedure shall still be defined.]*

**4.0 Responsibilities**

*[Define individuals and/or workgroups to whom the procedure applies. Detail their role and responsibility within the procedure.]*

**5.0 Process**

*[Describe the procedure, in detail. List all steps involved. Include tables, flowcharts, and figures as applicable.]*

**6.0 Records**

*[List the documents developed by which the procedure will be tracked and archived. Define the locations at which the procedure's records will be filed.]*

**7.0 Attachments**

*[List any attachments to be included with the procedure, if applicable.]*

**EXHIBIT 3 TO ATTACHMENT 4-1**

**FORM TEMPLATES**

Form Number	Form Name	Revision	Date
<i>[Insert Form No.]</i>	Certification of Compliance	#]	XX/XX/XX
	PSQCM Verification Form		
	QC Sign-Off Stamp		
	<p><i>[Add additional forms as required, including but not limited to the following:</i></p> <ul style="list-style-type: none"> <li>• <i>RFI Form</i></li> <li>• <i>NDC Form</i></li> <li>• <i>Early Start of Construction Form</i></li> <li>• <i>Comment Resolution Log]</i></li> </ul>		

## ATTACHMENT 4-2

### CONSTRUCTION QUALITY MANAGEMENT PLAN

DB Contractor shall prepare a CQMP that describes the policies and procedures to manage and ensure the quality of the Construction Work (including that of subcontractors) consisting of construction QC and IQF activities and materials acceptance procedures in accordance with TxDOT's QAP for DB Projects.

The Independent Quality Firm (IQF) shall oversee the implementation of the CQMP.

DB Contractor's obligations for construction quality control (QC) and independent quality (IQ) activities shall comply with the CQMP requirements in this Attachment 4-2, supplemented by Sections 2.2.2 and 3.4.5 of the QAP for DB Projects.

The CQMP shall consist of the following sections in the order listed below:

- Section 1: Introduction
- Section 2: Quality Control (QC) Program
- Section 3: Independent Quality (IQ) Program
- Appendices including all necessary forms, schedules, and checklists.

DB Contractor shall use the templates in Exhibit 1 for this Attachment 4-2 for preparing the Title Page, Approvals Page and Record of Revisions in that order at the beginning of the plan.

DB Contractor shall ensure that the CQMP is consistent with the initial CQMP submitted prior to contract execution for TxDOT review and acceptance. Acceptance of the initial CQMP shall be a condition precedent for submittal of the CQMP.

TxDOT approval of the CQMP shall be a condition of the commencement of Construction Work (prior to NTP 2).

If changes to the CQMP are required after commencement of Construction Work, update the Record of Revisions at the front of the CQMP with the revision number, date of the revision and a description of the revision if changes to the CQMP are required. Only the revised section(s) of the CQMP and applicable procedure(s) are required to be submitted for review and approval.

#### **1.0 Introduction**

The introduction to the CQMP shall include the following components in the order listed below in Table 1. The contents and associated requirements are the minimum requirements for Section 1 of the CQMP. Include any additional information for the introduction at the end of Section 1.

TxDOT approval of the CQMP shall be conditioned upon the DB Contractor satisfactorily addressing the requirements for preparing Section 1 of the CQMP described below in Table 1.

**Table 1 – Introduction Components and Requirements**

Subsection	Requirements
<b>General</b>	DB Contractor shall prepare a CQMP that describes its policies and procedures to manage Construction Work quality (including that of subcontractors) consisting of construction QC and Independent Quality Firm (IQF) activities and materials acceptance procedures in accordance with TxDOT's QAP for DB Projects.
	DB Contractor's obligations for construction QC and IQF activities, and the requirements for the CQMP, shall comply with this <u>Attachment 4-2</u> .
	Include a description of the project's quality goals and objectives



	<p>Include measures for ensuring that all Construction Work will be constructed in accordance with the Released for Construction Documents, or as modified by approved design changes.</p>
	<p>Provide an overview of the proposed quality control program for the DB Contractor's performance of its QC responsibilities with respect to the Construction Work.</p>
	<p>Provide an overview of the proposed quality assurance program for the independent quality firm's (IQF) performance of its independent quality assurance reviews and audits and material acceptance responsibilities with respect to the Construction Work.</p>
	<p>The IQF shall oversee the implementation of the CQMP.</p>
	<p>DB Contractor shall cause the IQF to prepare and deliver to TxDOT a written monthly certification with each payment request in compliance with Section 3.5.3.5 of the QAP for DB Projects.</p>
	<p>Provide a description of the quality management system for the project and the applicable quality policies. Describe the quality planning goals for the project to ensure the work is performed in accordance with the contract documents and is ISO 9001:2015 compliant for quality systems, quality plans and quality audits in accordance with Section 3.4.5 of the QAP.</p>
	<p>The CQMP shall be consistent with the applicable procedures contained in the current TxDOT Contract Administration Handbook for Construction and establish a clear distinction between QC and IQF activities and persons performing them.</p>
	<p>Describe the measures for ensuring that all Construction Work will be constructed in accordance with the Released for Construction Documents, or as modified by approved design changes.</p>
<b>Staffing and Organization</b>	<p>Provide a description of the quality management team organizational structure and the key quality management staff roles and responsibilities in accordance with TxDOT QAP, Section 2.2.1, 2.2.2 (A), 3.4, 3.4.1, and 3.4.2</p>
	<p>Include an organizational chart and staffing plan for both quality control and independent quality (IQ) assurance staff including the period of time that the staff members will be present on the site and the experience / knowledge / skill levels of staff in accordance with QAP, Section 2.2.2 (A), 3.4.2, 3.4.3</p>
	<p>Establish clear distinction between DB Contractor's QC and IQF activities. The persons performing each function will not be the same as described in QAP, Section 1.4 and 2.2.1.</p>
	<p>Describe the roles and responsibilities of the Construction Quality Control Manager (CQCM). The CQCM shall be responsible for management of the QC program for the Construction Work.</p> <p>The CQCM shall:</p> <ul style="list-style-type: none"> <li>• not be involved with scheduling or production delivery activities, and shall report directly to DB Contractor's Project Manager;</li> <li>• ensure the methods and procedures contained in the approved CQMP are implemented and followed in the performance of the Work;</li> </ul>

	<ul style="list-style-type: none"> <li>• have relevant construction quality control management experience on projects of similar type and scope;</li> <li>• be co-located and on-Site during periods of construction; and</li> <li>• have a minimum of 10 years of experience on projects of similar complexity.</li> </ul> <p>The CQCM shall have authority to stop Work.</p> <p>The CQCM shall be employed by either: (a) an Equity Member, Lead Engineering Firm or Lead Contractor; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm or Lead Contractor; or (c) a parent company of an Equity Member.</p>
	<p>Describe the roles and responsibilities of the DB Contractor's and Subcontractors' construction quality control work force.</p> <p>All members of the workforce shall be considered members of DB Contractor's QC staff as each and every one is responsible for the quality of the Work.</p> <p>Personnel performing QC inspections shall ensure quality of workmanship and QC sampling/testing shall ensure that materials meet the required specifications prior to IQF testing.</p> <p>Personnel responsible for performing QC inspection shall be knowledgeable and receive training to perform their QC duties.</p> <p>Personnel performing QC sampling/testing shall be knowledgeable in the testing methods and procedures and do not need to be certified or direct employees of DB Contractor, but cannot be employees of the IQF.</p>
	<p>Describe the roles and responsibilities of the IQFM. The IQFM shall be responsible for management of the IQF program for the Construction Work.</p> <p>The IQFM shall</p> <ul style="list-style-type: none"> <li>• be employed by an independent firm and report jointly to the TxDOT Project Manager and DB Contractor's senior management team;</li> <li>• carry out assurance and audit functions as described in the CQMP;</li> <li>• perform the duties of the Engineer as outlined in <u>Section 2.2.9.2</u> of these General Conditions;</li> <li>• be a Registered PE. and shall have relevant construction quality experience on projects of similar type and scope;</li> <li>• be co-located and on-site beginning at NTP2 until Final Acceptance.</li> </ul> <p>The IQFM shall have the authority to stop Work.</p> <p>The IQFM shall, irrespective of his or her other responsibilities, have defined authority for ensuring the establishment and maintenance of the Construction Work elements of the Quality Management Plan and reporting to TxDOT on the performance of the Quality Management Plan with respect to those elements.</p>
	<p>Describe the roles and responsibilities of the IQF inspection and material sampling/testing staff, who shall, under the direction of the IQFM, perform inspection and material sampling/testing of all aspects of the Work performed and materials incorporated into the Project by any member of DB Contractor's staff.</p>

	<p>The IQF inspection and testing staff shall:</p> <ul style="list-style-type: none"> <li>• be employees of the IQF;</li> <li>• have been trained in the applicable inspection and material sampling and testing procedures; and</li> <li>• be qualified and experienced relevant to the inspection or test they perform.</li> </ul> <p>The training and experience of the IQF staff shall be commensurate with the scope, complexity, and nature of the activity to be controlled and tested.</p> <p>Qualifications shall include appropriate TxDOT or State Highway Agency certification for testing and inspection as well as nationally recognized certifications such as American Concrete Institute certification in applicable inspection or testing activities.</p> <p>Construction IQF staff shall report to the IQFM.</p> <p>The IQF inspection staff shall check compliance of all material, equipment, construction, installations, and operations.</p> <p>Construction activities requiring continuous field inspection or sampling and testing, in the good faith discretion of TxDOT, shall proceed only in the presence of assigned IQF personnel.</p>
	<p>The size of the IQF staff shall reflect the volume of IQF activities necessary for the Work in progress and shall be maintained in accordance with the approved CQMP.</p> <p>Ensure that IQF staffing requirements are updated as necessary throughout the Term to reflect changes in the actual construction schedule.</p> <p>DB Contractor shall ensure that adequate construction IQF staff is available and that CQMP activities are undertaken in a manner consistent with the Project Schedule and in a manner that will enable DB Contractor to achieve the Completion Deadlines.</p>
	<p>Describe the responsibility and authority of IQF staff.</p> <p>IQF personnel assigned to perform inspection, testing, or monitoring of characteristics for assurance shall not be those personnel performing or directly supervising the Work being accepted.</p> <p>DB Contractor's IQFM and IQF staff shall remain independent of the production Work and of the QC staff.</p> <p>The IQFM shall prepare a monthly report of the quality inspections and tests performed, results of such inspections and tests, and occurrences and resolution of non-conformance discoveries. IQFM shall submit the monthly reports jointly to TxDOT and DB Contractor for review.</p>
<p><b>TxDOT Construction Look-Aheads</b></p>	<p>On a weekly basis, DB Contractor shall update and provide the IQF and TxDOT with a rolling three-week look-ahead schedule consistent with the current PBS and showing the anticipated start and finish of Work activities.</p> <p>The look-ahead schedule shall include fabrication activities and planned construction activities.</p>

	<p>Anticipated inspection activities, review by third parties, and all associated hold points will be shown in the look-ahead schedules for each of the Work activities.</p> <p>DB Contractor shall also, on a daily basis, communicate changes to the scheduled work, for each current day to the IQF and TxDOT, and shall notify the IQF and TxDOT when materials are ready for sampling and testing.</p>
<b>Facilities and Equipment</b>	<p>Include a description of the offices and office equipment required during construction including DB Contractor, IQF and TxDOT Facilities in accordance with Section 3.4.4 of the TxDOT QAP for DB Projects. IQF's laboratory will be located on site or within 10 miles of the project unless otherwise approved by TxDOT.</p>
	<p>IQF laboratory equipment in all laboratories shall be certified according to the requirements of Section 4.4 of the TxDOT QAP for DB Projects prior to commencing any construction activities and shall retain the certification for the duration of the Work.</p>
<b>Internal and External Communication</b>	<p>Describe the internal and external communication and coordination responsibilities of the project quality team staff.</p>
<b>Proposal Commitments</b>	<p>Include a list of the proposal commitments with respect to the DB Contractor's quality control program and the IQF's quality assurance program, as described in Appendix 1 of Exhibit 2 to the DBA.</p>
	<p>Specify where the relevant proposal commitments are addressed in the CQMP. Describe how they will be incorporated into the Construction Work and the independent quality process to ensure the proposal commitment has been fulfilled.</p>

## 2.0 Quality Control Program

The construction quality control (QC) program involves inspecting, checking, and documenting the Construction Work to ensure a resulting quality product that complies with the contract requirements. The CQMP shall include the DB Contractor's QC procedures in Section 2 describing the various inspections, examinations, measurements for quality control of the Construction Work performed by the DB Contractor's QC staff.

The program is intended to ensure that TxDOT is in agreement with the quality of the work performed by the DB Contractor.

Prepare the QC procedures listed in Table 2. Include the procedures in Section 2 of the CQMP in the order listed in Table 2. The list of procedures and associated requirements are the minimum quality control requirements for Section 2 of the CQMP. Include any additional quality control procedures at the end of Section 2.

TxDOT approval of the CQMP shall be conditioned upon the DB Contractor satisfactorily addressing the requirements for preparing the QC procedures described below in Table 2. The procedure numbers below in Table 2 shall be modified by an alpha-numeric designation if more than one procedure is required to address the requirements.

The template for preparing the QC procedures is in Exhibit 2 to Attachment 4-2. The procedures should be clear, detailed and follow the general template outline contained in Exhibit 2 to Attachment 4-2.

Table 2 – Quality Control Procedures

Number	Name	Description	Requirements	Reference
QCP-01	QC Work Documents	Prepare QC work documents including procedures and forms to ensure the Construction Work is performed in accordance with the Contract Documents.	<b>QC Work Documents Requirements</b>	QAP, Section 2.2.2 Items D and R
			DB Contractor shall incorporate the following into the preparation of the QC work documents: <ul style="list-style-type: none"> <li>documented instructions to control the receipt and issuance of the control of work documents;</li> <li>use of qualitative and quantitative criteria to determine compliance; and</li> <li>define the method, format, layout and approval requirements.</li> </ul>	
			Quality control staff shall use and follow the work documents.	
			DB Contractor shall perform quality reviews of the approved work documents.	
			Authorized personnel of the DB Contractor shall approve the release of the work documents.	
The work documents shall be distributed and used at the location where the prescribed activity is performed.				
QCP-02	Training and Certifications	Prepare procedures for the education, training and achievement of qualifications including appropriate certifications of personnel performing QC.	<b>Training and Certifications Requirements</b>	QAP, Section 2.2.2 Item B
			Provide a list of the required QC qualifications for various staffing levels.	
			Certifications shall be achieved and maintained	
QCP-03	Material Approval Process	Prepare procedures requesting and obtaining approval for procurement and use of all permanent materials for the Project	<b>Material Approval Process Requirements</b>	
			All permanent materials shall meet the requirements of the Contract Documents.	

Number	Name	Description	Requirements	Reference
QCP-04	<b>Material Handling, Inspection and Storage</b>	Prepare procedures to control the handling, storage, shipping, cleaning, and preservation of materials and equipment to prevent damage or deterioration.	<b>Material Handling, Inspection and Storage Requirements</b>	QAP, Section 2.2.2 Item P
			Describe how the packaging, handling, receiving, inspection, storage, and preventative maintenance will be controlled for the items that are delivered and stored at the project site.	
QCP-05	<b>Control of Materials</b>	Prepare procedures for identification and control of materials, equipment, and elements of the Construction Work.	<b>Control of Materials Requirements</b>	QAP, Section 2.2.2 Item G
			Items shall be identified, either on the item or on records traceable to the item, as necessary, throughout fabrication, erection, installation, and use of the item	
QCP-06	<b>Sampling and Testing</b>	Prepare written test procedures for the sampling and testing of materials during the production or manufacturing processes to ensure that only materials meeting the specifications are supplied for incorporation into the Construction Work	<b>Sampling and Testing Requirements</b>	QAP, Section 2.2.2 Items J, L, M and O
			Include reviews for adequacy of control testing, and to verify that test results confirm compliance with the contract documents and approved submittals	
			Include measures that ensure quality standards are being met and that all materials, equipment, and elements of the Construction Work will perform satisfactorily for the purpose intended.	
			Include measures that ensure adequate test instrumentation is available and used.	
			Include measures that ensure tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly maintained, controlled, calibrated, certified, and adjusted at specified periods to maintain accuracy within industry standards	
			Use markings such as stamps, tags, labels, routing cards, or other suitable means to indicate the status of inspections and tests performed upon individual items of the construction work.	

Number	Name	Description	Requirements	Reference
			The IQFM shall document and evaluate the test results to ensure that test requirements have been satisfied.	
<b>QCP-07</b>	<b>Inspections</b>	Prepare procedures for the performance of DB Contractor QC inspections, examinations, and measurements for each operation of the Construction Work.	<p><b>Inspections Requirements</b></p> <p>Include a process for coordinating QC testing and inspections with the IQF and applicable third parties.</p> <p>The MOT Implementation Manager shall be responsible for the QC inspection of all elements of a TCP.</p>	QAP, Section 2.2.2, Items F and K
<b>QCP-08</b>	<b>Mix Design Reviews</b>	Prepare procedures for the review of mix designs.	<p><b>Mix Design Reviews Requirements</b></p> <p>Describe the process for preparing Portland cement concrete, soil-lime treatment (stabilization or modification), soil-cement treatment, and hot mix asphaltic concrete mix designs by personnel who hold the required certifications as specified in the Contract Documents.</p> <p>The mix designs shall be reviewed and sealed by a licensed professional engineer in the state of Texas attesting that the design meets TxDOT requirements for the specified class or grade for which it was prepared.</p>	QAP, Section 2.2.2 Item N
<b>QCP-09</b>	<b>Hold Points and IQF Coordination</b>	Prepare procedures for the identification and inspection of hold points in the Construction Work to allow the IQF to perform compliance inspections and confirm that the Construction Work is progressing in accordance with contract requirements.	<p><b>Hold Points and IQF Coordination Requirements</b></p> <p>DB Contractor shall allow inspection of each hold point in accordance with the TxDOT QAP for DB Projects.</p> <p>Include, at a minimum, the hold points described in Appendix J of the TxDOT QAP for DB Projects and those identified at the Risk Assessment Workshop conducted by TxDOT/OVF to meet the needs of the project.</p> <p>Upon identification, communicate hold points to the CQCM, IQFM, and TxDOT.</p> <p>Include measures that ensure no portions or elements of the Construction Work are begun or continued beyond identified hold points without formal communication with the IQFM.</p>	QAP, Section 2.2.2 Item E  QAP, Appendix J



Number	Name	Description	Requirements	Reference
			<p>Provide TxDOT a minimum 24-hour notice in advance of all hold point inspections.</p> <p>Failure on the part of TxDOT to conduct any tests or inspections at a hold point does not relieve the DB Contractor of its responsibility to meet all the requirements of the Contract Documents.</p> <p>Develop the procedure to include activities that progress beyond the hold points.</p> <p>Establish milestones at convenient opportunities to inspect the Construction Work and to prevent significant cost of correction.</p> <p>Ensure that Construction Work is not covered until it has been subject to a hold point acceptance by IQF personnel.</p> <p>Allow the IQFM and TxDOT to modify established hold points to meet the needs of the project.</p>	
<b>QCP-10</b>	<b>Construction Deficiencies and Nonconforming Work</b>	Prepare procedures describing the approach to ensure that Nonconforming Work is identified and controlled to prevent its unintended use or delivery.	<p><b>Construction Deficiencies and Nonconforming Work Requirements</b></p> <p>Include the process for resolution of all instances of Nonconforming Work in accordance with the Nonconformance Report (NCR) process as described in Section 3.5.3.4 of the QAP for DB Projects.</p> <p>Any resolutions to Nonconforming Work, other than replacement of the Nonconforming Work, require the approval of TxDOT in its sole discretion. Resolutions to Nonconforming Work and closeout of NCRs shall be in accordance with the QAP for DB Projects and <u>Section 4.1.2.2.4</u> of these General Conditions.</p> <p>The QMP shall describe the process that the DB Contractor will undertake in order to obtain TxDOT approval in its sole discretion of DB Contractor's proposed resolution to Nonconforming Work, in accordance with <u>Section 5.3.2</u> of these General Conditions</p> <p>Describe the process for identifying, tracking, analyzing, and resolving all instances of Nonconforming Work in accordance with the Nonconformance Report (NCR) process as described in Section 3.5.3.4 of the QAP for DB Projects, using construction deficiency reports (CDR) and Nonconformance Reports (NCR)</p>	<p>QAP, Section 2.2.2 Item H and Q.</p> <p>QAP Section 3.5.3.4</p> <p>QAP Section 3.1.2.3</p>

Number	Name	Description	Requirements	Reference
			<p>DB Contractor shall notify TxDOT, and, if appropriate, governmental entities and other affected third parties upon identification of Nonconforming Work.</p> <p>Regardless of TxDOT or third party involvement in the resolution to Nonconforming Work and the NCR resolution process, DB Contractor shall be solely responsible for the resolution to Nonconforming Work and closing out all NCRs, including obtaining the required approvals.</p> <p>If DB Contractor proceeds with Work without closing out any NCRs, DB Contractor shall be responsible for all costs and delays associated with uncovering, repairing, replacing, and/or recovering the Work.</p>	
<b>QCP-11</b>	<b>Corrective and Preventative Action</b>	Prepare procedures describing the approach to eliminating the causes of actual and potential Nonconforming Work in order to prevent occurrence or recurrence	<p><b>Corrective and Preventative Action Requirements</b></p> <p>DB Contractor shall include processes to identify and correct the conditions adverse to quality —such as failures, malfunctions, deficiencies, defective material and equipment, deviations, and other Nonconforming Work and construction deficiencies. The processes shall include:</p> <ul style="list-style-type: none"> <li>• Reviewing Nonconforming Work and TxDOT written notices;</li> <li>• Determining the causes of actual and potential Nonconforming Work, and TxDOT written notices;</li> <li>• Evaluating the need for action to ensure Nonconforming Work and written notices do not recur or occur. Actions should be appropriate to the effects of the actual or potential Nonconforming Work;</li> <li>• Determining and implementing action needed;</li> <li>• Recording the results of the action taken; and</li> <li>• Reviewing the effectiveness of the action taken</li> </ul> <p>DB Contractor shall report conditions adverse to quality to TxDOT and to appropriate levels of the DB Contractor's management to ensure corrective action is promptly taken.</p>	QAP, Section 2.2.2 Item Q.
<b>QCP-12</b>	<b>Survey Control</b>	Prepare procedures for checking and verifying the accuracy of construction stakes, lines, and grades established by the DB Contractor.	<p><b>Survey Control Requirements</b></p> <p>Include measures to ensure construction alignments and grades are in accordance with the requirements contained in the current TxDOT Survey Guide.</p>	QAP, Section 2.2.2 Item T and U

Number	Name	Description	Requirements	Reference
QCP-13	RFI Process	Prepare procedures for processing a request for information (RFI) during construction to resolve discrepancies and/or questions in the RFC plans and specifications so that all changes are documented and approved by the Engineer of Record.	<b>RFI Process Requirements</b>	QAP, Section 2.2.2 Item I
			Include a description of the RFI process and associated document management workflows,	
			<i>[If a design change is required, close the RFI and issue an NDC Notice in accordance with PSQMP Procedure QCP-10, Design Changes during Construction to process the design change.]</i>	
			<i>[If the change constitutes a minor design change, close the RFI and process the change as a field design change (FDC) in accordance with PSQMP Procedure QCP-10, Design Changes during Construction.]</i>	
			TxDOT and the IQFM shall receive a copy of the RFI.	
			Describe the process for incorporating RFI responses into the Work.	
			The PSQCM, or designee, shall be responsible for incorporating all changes made through the RFI process in the Record Drawings.	
			The PSQAM, or designee, shall ensure all changes made through the RFI process are documented in the Record Drawings.	
QCP-14	Design Changes during Construction	Prepare a procedure for processing design changes as either an NDC or FDC.	<b>Design Changes during Construction Requirements</b>	
			Describe the steps for processing a design change during construction as either an NDC or FDC in accordance with PSQMP Procedure QCP-10, Design Changes during Construction.	
			FDCs shall be used to address minor design changes in the field. Minor design changes shall be those not needing specialized expertise to resolve, that are not in nonconformance with project requirements, and not materially affecting design intent.	
			<i>[If the change requires a design change, then describe the process for implementing the change as an NDC in accordance with PSQMP Procedure QCP-10, Notice of Design Change.]</i>	

Number	Name	Description	Requirements	Reference
			<p><i>[If the change constitutes a minor design change, then describe the process for implementing the change as a FDC in accordance with PSQMP Procedure QCP-10, Notice of Design Change.]</i></p> <p><i>[If a design change is progressed as an FDC, then attach a modified plan sheet(s) to the FDC and provide to the PSQCM to transfer the information to the Record Drawings.]</i></p>	
<p><b>QCP-15</b></p>	<p><b>Maintenance of Traffic</b></p>	<p>Prepare a procedure describing the QC functions of the construction staff to ensure the TCPs are implemented in the field and are adhered to during their implementation.</p>	<p><b>Maintenance of Traffic Requirements</b></p> <p>DB Contractor shall designate an individual (MOT Implementation Manager) to be responsible for the QC of the TCPs.</p> <p>The MOT Implementation Manager (MOT IM) shall work with the Lead MOT Design Engineer and coordinate with TxDOT, Design-Build Contractor, and appropriate Governmental Entities.</p> <p>The MOT IM shall have relevant experience overseeing the implementation of TCPs during the construction phase of highway projects similar in size and scope as the Project.</p> <p>The MOT IM shall perform QC inspections according to a prescribed checklist including but not limited to:</p> <ul style="list-style-type: none"> <li>• warning and regulatory signs;</li> <li>• tapers;</li> <li>• lane transitions;</li> <li>• barrier type and placement;</li> <li>• clear zone, safe construction zones;</li> <li>• edge drop off protection;</li> <li>• lane width;</li> <li>• sight distance;</li> <li>• temporary side slopes;</li> <li>• temporary retaining walls;</li> <li>• trench excavation protection;</li> <li>• temporary signals;</li> <li>• temporary drainage;</li> <li>• horizontal traffic movements; and</li> <li>• temporary driveways.</li> </ul> <p>The MOT IM shall be responsible for documenting changes to the MOT plans that:</p> <ul style="list-style-type: none"> <li>• alter the original MOT; or</li> <li>• result in deviations to design traffic control requirements.</li> </ul>	

Number	Name	Description	Requirements	Reference
			<p><b>Minor Design Changes</b></p> <p>The MOT IM shall coordinate with the Lead MOT Design Engineer to determine if a change to the MOT plans qualifies as a minor design change. Minor design changes shall be those not requiring redesign or modified calculations, not needing specialized expertise, not in nonconformance with the Project requirements and not materially affecting design intent.</p> <p>If the change qualifies as a minor design change, the MOT IM shall document the change to the MOT plans as a field design change (FDC) either prior to, or immediately after, implementing the change.</p> <p><b>Design Changes</b></p> <p>Describe the process for implementing design changes that do not qualify as a minor design change.</p> <p>The MOT IM shall initiate the design change process by issuing an NDC to the EOR with a copy to the Lead MOT Design Engineer and TxDOT.</p> <p>The MOT IM shall be responsible for coordinating the design change with the Lead MOT Design Engineer and TxDOT.</p> <p>The MOT IM shall determine an appropriate schedule for processing and implementing the change, subject to TxDOT approval.</p> <p>The prior traffic control shall remain in place or be immediately reinstated until the design change has been processed and is ready to be implemented.</p> <p>The PSQCM shall certify that the design change has been checked in accordance with the Contract Documents and the PSQMP, and is consistent with all other elements.</p> <p>All drawings and documents associated with the change shall be uniquely identified from the original design.</p>	
<p><b>QCP-16</b></p>	<p><b>Daily Inspections and Reporting</b></p>	<p>Prepare a procedure for preparing the daily QC reports by field inspectors performing daily field inspections to document inspections performed.</p>	<p><b>Daily Inspections and Reporting Requirements</b></p> <p>DB Contractor, suppliers, and subcontractors shall designate individuals on each crew responsible for performing daily field inspections of their own work and for preparing the daily QC reports.</p> <p>DB Contractor shall maintain construction workmanship and materials quality records of all inspections and tests performed per the approved CQMP.</p>	<p>QAP, Section 2.2.2 Item C</p> <p>QAP, Section 2.2.3</p>

Number	Name	Description	Requirements	Reference
			<p>Include a description of the format and content of the records in accordance with Section 2.2.3 of the QAP.</p> <p>DB Contractor shall maintain electronically and transmit to TxDOT daily inspection reports within 48 hours after the work shift in a format acceptable to TxDOT.</p> <p>QC inspection reports, process control material sampling/testing results, and control charts shall be updated within 48 hours following the inspection or test and be readily available for IQF and TxDOT review or audit.</p>	
<b>QCP-17</b>	<b>Document Management</b>	Prepare a procedure describing the requirements and methods for controlling documents and the process for maintaining quality control records.	<p><b>Document Management Requirements</b></p> <p>The document control system shall be compatible with TxDOT's.</p> <p>The DB Contractor shall establish an electronic system for recording all QC testing and inspections.</p>	QAP, Section 2.2.2 Item S
<b>QCP-18</b>	<b>Warranty Work</b>	Prepare a procedure that clearly addresses and includes measures to control the identification and resolution of warranty issues.	<p><b>Warranty Work Requirements</b></p> <p>Describe the process and individuals assigned to identify and resolve warranty issues.</p>	
<b>QCP-19</b>	<b>Updates to the QC Work Documents</b>	Prepare procedures for updating the QC work documents including changes to QC procedures and forms.	<p><b>QC Work Documents Update Requirements</b></p> <p>Define the method, format, layout and approval requirements related to the revision of the documents.</p> <p>Include measures to control the receipt and issuance of the revised documents.</p> <p>Require that review control measures are followed and that reviews of revised work documents are performed for adequacy.</p>	QAP, Section 2.2.2 Item R

Number	Name	Description	Requirements	Reference
			<p>Define the approval process for implementing changes to the work documents.</p> <p>The same organizations must review and approve changes to the revised documents that performed the original review and approval, unless TxDOT consents in writing to another responsible organization.</p> <p>Require authorized personnel of the DB Contractor to approve the release of the revised work documents.</p> <p>Ensure the revised work documents are distributed and used at the location where the prescribed activity is performed.</p>	

### 3.0 Independent Quality Program

The construction independent quality (IQ) program involves inspecting, checking, and documenting the Construction Work for compliance with the Contract Documents. The CQMP shall include IQ procedures in Section 3 describing the various inspections, examinations, measurements and acceptance testing of materials to be performed by the IQF for each operation of the Construction Work.

The program is intended to ensure that TxDOT is in agreement with the quality of the work performed by the DB Contractor by verifying/validating the quality assurance activities and acceptance testing results of the IQF. The IQF shall remain an independent and impartial third party throughout the quality acceptance process.

Prepare the IQ procedures listed in Table 3. Include the procedures in Section 3 of the CQMP in the order listed in Table 3. The list of procedures and associated requirements are the minimum quality assurance requirements for Section 3 of the CQMP. Include any additional quality control procedures at the end of Section 3.

TxDOT approval of the CQMP shall be conditioned upon the IQ procedures satisfactorily incorporating the requirements described below in Table 3. The procedure numbers below in Table 3 shall be modified by an alpha-numeric designation if more than one procedure is required to address the requirements.

The template for preparing the IQ procedures is in Exhibit 2 to Attachment 4-2. The procedures should be clear, detailed and follow the general template outline contained in Exhibit 2 to Attachment 4-2.



Table 3 – Independent Quality Procedures

Number	Name	Description	Requirements	References
IQP-01	IQ Work Documents	Prepare work documents pertaining to the independent quality (IQ) activities undertaken by the IQF including procedures and forms to ensure the Construction Work is performed in accordance with the Contract Documents.	<b>IQ Work Documents Requirements</b>	QAP, Section 3.1
			The IQF shall incorporate the following into the preparation of the IQ work documents: <ul style="list-style-type: none"> <li>documented instructions to control the receipt and issuance of the control of work documents;</li> <li>use of qualitative and quantitative criteria to determine compliance; and</li> <li>define the method, format, layout and approval requirements.</li> </ul>	
			IQF staff shall use and follow the work documents.	
			The IQF shall perform quality reviews of the approved work documents.	
			Authorized personnel of the IQF shall approve the release of the work documents.	
			The IQ work documents shall be distributed and used at the location where the prescribed activity is performed.	
Describe the requirements, responsibilities and processes to assess the ongoing effectiveness by the IQF of the quality control program including subcontractor/suppliers' programs to ensure the Construction Work meets project quality standards.				
IQP-02	Training and Certifications	Prepare a procedure for the education, training, and achievement of qualifications, including appropriate certifications of personnel performing IQ activities.	<b>Training and Certifications Requirements</b>	QAP, Section 3.4.3
			Provide a list of the required IQ qualifications for various staffing levels.	
			IQF staff shall receive the necessary training and certifications to ensure all Construction Work is performed in accordance with the approved designs, plans, and specifications. Require that all training is completed and remains current.	QAP, Section 3.4.5 Item C
			IQF inspection and materials sampling/testing staff shall be trained in the applicable inspection and material sampling and testing procedures.	
The training and experience of the IQF staff shall be commensurate with the scope, complexity, and nature of the activity to be inspected and tested.				

Number	Name	Description	Requirements	References
			<p>IQF staff shall be experienced in highway inspection and materials testing.</p> <p>IQF personnel qualifications shall include appropriate TxDOT or State Highway Agency certification for testing and inspection as well as appropriate nationally recognized certifications applicable to inspection or testing activities.</p> <p>All certifications of the IQF staff shall be achieved and maintained.</p> <p>IQF materials sampling/testing personnel shall be qualified under the IA program as described in Section 4 – Independent Assurance Program of the TxDOT QAP.</p> <p>The IQF shall maintain documentation of the training, certification, and experience and shall make such documentation available for review and audit.</p>	
<b>IQP-03</b>	<b>Laboratory Requirements</b>	Prepare procedures describing the qualification requirements of the independent testing laboratories that are responsible for performing the IQ tests.	<p><b>Laboratory Requirements</b></p> <p>The IQF shall use laboratories meeting the requirements described in Section 4 – Independent Assurance Program of the QAP for quality testing.</p> <p>Unless otherwise approved by TxDOT, the laboratory or field laboratory shall be located on site or within 10 miles of the project.</p> <p>The IQF shall be responsible for obtaining AAP accreditation of its laboratories that will be used for quality acceptance and maintaining AAP accreditation annually thereafter.</p> <p>The IQF's laboratories shall comply with the requirements of the AASHTO Accreditation Program (AAP) and other appropriate certifications acceptable to TxDOT.</p> <p>The IQF's laboratories shall be certified for the test procedures that are applicable to the project.</p> <p>The quality acceptance tests shall consist of the project tests established for the project based on the Guide Schedule of Sampling and Testing in the QAP.</p>	QAP, Section 3.4.4

Number	Name	Description	Requirements	References
IQP-04	<b>Calibration of Tools, Gauges, Instruments and Devices</b>	Prepare procedures to ensure all tools, gauges, instruments and devices used in the performance of the Construction Work perform as intended.	<b>Calibration of Tools, Gauges, Instruments and Devices Requirements</b>	QAP, Section 3.4.5 Item F
			Include measures to ensure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly maintained, controlled, calibrated, certified, and adjusted at specified periods to maintain accuracy within industry standards.	
IQP-05	<b>Inspection of Sources of Supply and Quality of Materials</b>	Prepare procedures that include measures for material source evaluation and selection.	<b>Inspection of Sources of Supply and Quality of Materials Requirements</b>	QAP, Section 3.1
			Include processes to ensure that purchased materials, equipment, and services conform to the Contract Documents, the governmental approvals, applicable laws, rules, and the design documents	QAP, Section 3.4.5 Item E
			The IQF shall review and assess objective evidence of quality such as quality reports furnished by suppliers and subcontractors.	
			The IQF shall inspect materials at the manufacture or vendor source and examine products upon delivery.	
			The quality of all materials shall conform to requirements contained in the Contract Documents and to any requirements of affected Utility Owners.	
			The IQF shall provide plant inspection and aggregate sampling and testing at concrete and asphalt plants.	
			Manufacturers' test reports may supplement, but not replace, the IQF inspections, sampling, testing and certification provisions.	
IQP-06	<b>Sampling and Testing</b>	Prepare procedures describing how materials sampling and testing will be performed by the IQF.	<b>Sampling and Testing Requirements</b>	QAP, Section 3.4.5 Items J, K, L, O, S and Q
			Describe the processes for random sampling, tracking materials samples, processing materials samples, review and approval of test records, and tracking compliance with materials testing frequency.	
			The IQF shall review the test results for compliance with mutually agreed-upon processes and naming conventions to ensure data integrity for accurate statistical analyses.	QAP, Section 3.2

Number	Name	Description	Requirements	References
			<p>Prepare procedures for addressing IQF failing test results.</p> <p>For a failed random independent test, the IQF shall perform a fixed test at the original failing test location and a new random independent test at a new location in the same lot.</p> <p>For a failed fixed test, the IQF shall perform a new fixed test at the original failing test location.</p> <p>The IQF shall perform testing at the frequency stipulated in the DB Guide Schedule for Testing in the TxDOT QAP for DB Projects.</p> <p>Include measures to address OV failing test results and non-validation of IQF test results.</p> <p>The IQF shall work with the OVF to resolve the differences in materials test results.</p> <p>Pre-approved materials used on the project must maintain their approved status on the MPL.</p> <p>Materials that do not maintain MPL approval must be sampled and tested on a project-level basis, as defined by the DB Guide Schedule for Testing.</p>	<p>QAP, Section 3.6</p>
<b>IQP-07</b>	<b>Inspections</b>	<p>Prepare procedures for the performance of IQ inspections, examinations, and measurements for each operation of the Construction Work.</p>	<p><b>Inspections Requirements</b></p> <p>The IQF shall perform inspections, examinations, and measurements for each operation of the Construction Work to assure quality by verifying and documenting that the Work has been constructed in conformance with the Released for Construction Documents, specifications, and approved working and shop drawings.</p> <p>Provide a list of inspections and develop procedures for performing such inspections, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Earthwork</li> <li>• Subgrade and Base including Flexible Base</li> <li>• Pavement and Surface Courses</li> <li>• Asphalt Concrete Pavement Field Operations</li> <li>• Hot Mix Asphalt Concrete Plant</li> <li>• Concrete Pavement</li> <li>• Portland Cement Concrete Plant</li> <li>• Structures</li> <li>• Drilled Shaft Foundations</li> <li>• Bridge Deck</li> <li>• Retaining Walls</li> <li>• Lighting, Signing, Markings and Signals</li> <li>• Traffic Control Devices</li> </ul>	<p>QAP, Section 3.3</p> <p>QAP, Section 3.4.5 Items B and I</p> <p>QAP, Appendix J</p>

Number	Name	Description	Requirements	References
			<p>Include a process for coordinating IQ testing and inspections with QC inspections and third parties.</p> <p>Include the list of inspection hold points at which IQ inspections and / or materials sampling and testing will be necessary.</p>	
<b>IQP-08</b>	<b>Approval of Mix Designs</b>	Prepare procedures for the IQ review and verification of mix designs.	<p><b>Approval of Mix Designs Requirements</b></p> <p>Prepare procedures for the IQ review and verification of all Portland cement concrete, soil-lime treatment (stabilization or modification), soil-cement treatment, and hot mix asphaltic concrete mix designs.</p> <p>The mix designs shall be reviewed and verified by a licensed professional engineer in the state of Texas.</p>	QAP, Section 3.4.5 Item N
<b>IQP-09</b>	<b>Construction Deficiencies and Nonconforming Work</b>	Prepare procedures to document and track the disposition of any identified nonconformance with the plans and specifications.	<p><b>Construction Deficiencies and Nonconforming Work Requirements</b></p> <p>Include a clearly defined process for communicating identified construction deficiencies and nonconformances to TxDOT and the DB Contractor using nonconformance and construction deficiency logs.</p> <p>Describe the IQF's role in closing out construction deficiency reports (CDRs) and Nonconformance Reports (NCRs) for resolving all instances of Nonconforming Work</p> <p>Describe TxDOT's role in the NCR close-out review and approval process.</p>	<p>QAP, Section 3.4.5 Item D</p> <p>QAP, Section 3.5.3.4</p>
<b>IQP-10</b>	<b>Coordination of Inspection and Testing with Third Parties</b>	Prepare procedures for inspection of on and off-site prefabricated product fabrication plants.	<p><b>Coordination of Inspection and Testing with Third Parties Requirements</b></p> <p>Prepare procedures for when the IQF and not CST/M&amp;P Structural Branch performs the inspection of product fabrication plants.</p> <p>Follow the procedures as outlined in the material's quality program in the QAP, which include the applicable DMS requirements, product and quality related specifications, and other applicable documents required by the contract.</p>	<p>QAP, Section 3.4.5 Item R</p> <p>QAP Sections 3.1.2.1 and 3.1.2.2</p>

Number	Name	Description	Requirements	References
IQP-11	<b>Design Changes during Construction</b>	Prepare a procedure for ensuring compliance with the implementation of the design change process.	<p data-bbox="737 321 1286 352"><b>Design Changes during Construction Requirements</b></p> <p data-bbox="737 384 1286 474">Describe the process for ensuring that design changes during construction are progressed by DB Contractor in accordance with the QMP.</p>	
IQP-12	<b>Maintenance of Traffic</b>	Prepare a procedure describing the activities of the IQF to ensure that all MOT activities are performed in accordance with these CQMP requirements and the Contract Documents.	<p data-bbox="737 642 1127 674"><b>Maintenance of Traffic Requirements</b></p> <p data-bbox="737 705 1295 947">The IQFM shall designate a qualified individual to be responsible for observation, inspecting, documenting and reporting on the placement, maintenance, and application of traffic control devices. The individual must have relevant experience overseeing IQ inspections or implementation of MOT plans during the construction phase of highway projects similar in size and scope as the Project.</p> <p data-bbox="737 978 1289 1104">The IQF shall oversee IQ inspections of the DB contractor's MOT activities to confirm the Work has been performed in accordance with the Contract Documents, specifically, that DB Contractor:</p> <ul data-bbox="789 1136 1295 1841" style="list-style-type: none"> <li>• follows the CQMP and PSQMP;</li> <li>• provides appropriate QC and staff to perform activities per CQMP;</li> <li>• erects warning signs and regulatory signs called for in the plans;</li> <li>• erects regulatory speed limit signs in the construction zone designating the limits of the roadway section where speed reduction is necessary for the safe operation of traffic and protection of construction personnel. Even though the entire length of the project may have reduced maximum speed limit authorized by Commission Minute Order or City/County Ordinances, reduced speed limits are in effect only within the limits between the erected speed limit signs. Regulatory speed zone signs must have an applicable Commission Minute Order or City Ordinance;</li> <li>• uses signs only when necessary;</li> <li>• covers signs placed prior to their need and does not leave in place longer than necessary;</li> <li>• removes or covers signs that restrict the speed limit in a construction or maintenance work</li> </ul>	

Number	Name	Description	Requirements	References
			<p>zone during any period for which restricted speed limit does not apply;</p> <ul style="list-style-type: none"> <li>• properly maintain all traffic control devices and ensure they are legible at all times and in conformance with the plans, contract, the Texas Manual on Uniform Traffic Control Devices for Streets and Highways (TMUTCD), and the Traffic Signals Manual volume of the Traffic Operations manual collection;</li> <li>• addresses and implements temporary drainage per contract documents;</li> <li>• provides safe ingress and egress provisions for construction and inspection vehicles;</li> <li>• complies with lane closure requirements;</li> <li>• follows all applicable standards called for in the plans;</li> <li>• follows all applicable notes and MOT narrative; and</li> <li>• Implements all SW3P elements applicable to construction zone.</li> </ul> <p>The IQF shall document changes to the MOT plans that:</p> <ul style="list-style-type: none"> <li>• alter the original MOT; or</li> <li>• result in deviations to design traffic control requirements.</li> </ul> <p>The IQF shall ensure that DB Contractor documents the changes to the MOT plans prior to, or immediately after, implementing the changes, for minor design changes, as field design changes (FDC), or that the DB Contractor issues a notice of design change for all other design modifications to the MOT plans.</p> <p>The IQF shall prepare MOT documentation for:</p> <ul style="list-style-type: none"> <li>• detailed inspections of MOT's in the field immediately after traffic alignment changes. Documentation of these detailed inspections may be made by photograph, video, use of Form 599, memorandum or other media; and</li> <li>• MOT activities in the diaries and on Form 599, Traffic Control Devices Inspection Checklist (as described below)</li> </ul> <p>The IQF shall notify DB Contractor of discrepancies in the provided documentation at the time of the inspection, by the end of the next Business Day, or in accordance with the CQMP.</p>	

Number	Name	Description	Requirements	References
			<p>The IQF shall document MOT activities in the diaries and performs at least two inspections per month (1 day time and 1 night time at approximately 2 week intervals) as reported on Form 599. If accidents occur, the IQF shall limit the documentation to the incident, date and time.</p> <p>The IQF shall perform the Form 599 inspections and send the form to TxDOT to file.</p>	
IQP-13	Daily Inspections and Reporting	Prepare procedures for performing daily field inspections and for preparing a daily report by IQF staff to document the inspections performed.	<b>Daily Inspections and Reporting Requirements</b>	QAP, Section 3.4.5 Item B
			The IQF shall designate individuals for performing daily field inspections and for preparing the daily IQ reports.	
			The IQF shall maintain electronically and transmit to TxDOT daily inspection reports within 48 hours after the work shift in a format acceptable to TxDOT.	QAP, Section 3.4.6
			The DB Contractor will document and maintain documentation showing how the IQF has complied with the CQMP requirements in Section 3.4.5 of the QAP.	
IQP-14	Document Management	Prepare a procedure describing the documentation requirements and methods for controlling and maintaining IQ documents	<b>Document Management Requirements</b>	QAP, Section 3.4.5 Item H
			The document control system shall be compatible with TxDOT's.	
			DB Contractor shall establish an electronic system for recording all IQF inspections and materials test results.	
IQP-15	Independent Quality Audits	Prepare procedures describing a comprehensive system of planned and periodic audits of DB Contractor's CQMP and QC inspection processes to determine adherence to and the effectiveness of the CQMP.	<b>Independent Quality Audits Requirements</b>	QAP, Section 3.4.5 Items G, M and P
			Include the requirements, responsibilities and processes to assess the ongoing effectiveness of the DB Contractor's quality control inspection and materials sampling/testing operations and subcontractor/suppliers' quality control programs to ensure the Construction Work complies with the Project's quality standards.	
			Describe the process for implementing changes to the quality system to address nonconformances as a result of an audit or management review.	
			IQF personnel shall perform the audits in accordance with the written procedures or checklists.	



Number	Name	Description	Requirements	References
			<p>The IQFM shall ensure that the CQMP defines the responsibilities and requirements for planning audits, conducting audits, establishing records, and reporting results.</p> <p>Audit planning shall take into consideration the risk to quality of the processes and areas to be audited, as well as the results of previous audits.</p> <p>Audit planning shall define the audit scope, frequency, and status, and be documented in a rolling 12 month schedule.</p> <p>The procedure for conducting audits shall describe the use of checklists of requirements, objective evidence, competent auditors independent of the scope of work being audited, and the audit result workflow through to re-audit and close-out of findings.</p> <p>Include requirements for audits of QC and IQF records, documentation, procedures, and processes to verify compliance with the contract documents and the approved CQMP.</p> <p>IQF staff shall document, review and transmit audit results to TxDOT.</p> <p>DB Contractor shall submit to TxDOT the results of all Project quality audits within seven days of their completion.</p> <p>Include measures to ensure that audit results are received and addressed by DB Contractor.</p> <p>IQF personnel shall re-audit deficient areas following corrective action to verify deficiencies are addressed.</p>	
<b>IQP-16</b>	<b>Updates to the IQ Work Documents</b>	Prepare procedures for updating the IQ work documents including changes to quality acceptance procedures and forms.	<p><b>IQ Work Documents Update Requirements</b></p> <p>Define the review and approval process for implementing changes to the IQ work documents. The same organizations must review and approve changes to the revised documents that performed the original review and approval, unless TxDOT consents in writing to another responsible organization.</p> <p>Define the method, format, layout and approval requirements related to the revision of the IQ work documents.</p>	QAP, Section 2.2.2 Item R

Number	Name	Description	Requirements	References
			<p>Include measures to control the receipt and issuance of the revised documents.</p> <p>Review control measures shall be followed and reviews of revised work documents shall be performed for adequacy.</p> <p>Authorized personnel of the IQF shall approve the release of the revised work documents.</p> <p>The revised work documents shall be distributed and used at the location where the prescribed activity is performed.</p> <p>Describe the requirements, responsibilities and processes for reviewing and updating subcontractor/suppliers' work documents as necessary to continue meeting project quality standards.</p>	

**EXHIBIT 1 TO ATTACHMENT 4-2**

- I. Title Page
- II. Approvals Page
- III. Record of Revisions

# Construction Quality Management Plan

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[NAME OF PROJECT

Contract #XXXXXX]

[Day Month Year]

**Prepared By: [DB Contractor's Name**

**Street Address**

**Suite XXX**

**City Name, Texas XXXX]**

# CONSTRUCTION QUALITY MANAGEMENT PLAN

For the

**[NAME OF PROJECT]**

Approved By:

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**Construction Manager (CM)**

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**Date**

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**Construction Quality Control Manager (CQCM)**

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**Date**

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**Independent Quality Firm Manager (IQFM)**

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**Date**

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**TxDOT's Authorized Representative**

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**Date**

## Record of Revisions

<b>Rev.</b>	<b>Date Issued</b>	<b>Pages Affected</b>	<b>Description of Revision / Comments</b>



**EXHIBIT 2 TO ATTACHMENT 4-2****IQ/QC PROCEDURES TEMPLATE**

<b>IQ/QC Procedure Number</b>	<b>IQ/QC Procedure Name</b>	<b>Revision</b>	<b>Date</b>
<i>[Insert the QC Procedure Number]</i>	<i>[Insert QC Procedure Name]</i>	<i>[#]</i>	<i>XX/XX/XX</i>

**1.0 Purpose**

*[Define the purpose of the procedure. Include all aspects that are encompassed with this procedure.]*

**2.0 Scope**

*[Detail when the procedure is applicable and will be used. Define the limits of the procedure.]*

**3.0 Definitions**

*[Definitions of terms used within the description of the process of executing the procedure. Each procedure should stand alone and therefore if a term was defined in a previous procedure shall still be defined.]*

**4.0 Responsibilities**

*[Define individuals and/or workgroups to whom the procedure applies. Detail their role and responsibility within the procedure.]*

**5.0 Process**

*[Describe the procedure, in detail. List all steps involved. Include tables, flowcharts, and figures as applicable.]*

**6.0 Records**

*[List the documents developed by which the procedure will be tracked and archived. Define the locations at which the procedure's records will be filed.]*

**7.0 Attachments**

*[List any attachments to be included with the procedure, if applicable.]*

**EXHIBIT 3 TO ATTACHMENT 4-2**

Form Number	Form Name	Revision	Date
<i>[Insert Form No.]</i>	Certification of Compliance	<i>##</i>	<i>XX/XX/XX</i>
	Daily Inspection Form		
	Request for Information Form		
	<i>[Add additional forms as required, including but not limited to the following:</i> <ul style="list-style-type: none"> <li>• <i>Material Haul Summary</i></li> <li>• <i>Construction Audit</i></li> <li>• <i>Construction Inspection forms]</i></li> </ul>		

**FORM TEMPLATES**

## CERTIFICATION OF COMPLIANCE FORM - SAMPLE

Design Manager:	Date:
IQFM:	Revision:
	Revision Date:

To: *[DB Contractor]*

Attn: *[Insert DB Contractor / Project Director / Project Manager's Name]*

*[Title]*

Subject: Certificate of Compliance

I hereby certify that the items furnished under your Purchase Order No. \_\_\_\_\_ and any component part thereof are in all respects new and free from faulty workmanship or material, and meets the requirements of Contract No. \_\_\_\_\_ Released for Construction Document No. \_\_\_\_\_ Paragraph \_\_\_\_\_ as provided by *[DB Contractor]*.

Sincerely,

\_\_\_\_\_ / /

*[Supplier's Management Representative]*

Date

*[Title]*

*[Company Name]*



Discussions with visitors, Contractor, others:

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Delivered Materials:

Delivered Material Description	Rec'd		Reference #	Sample ID Number	Samples Taken		
	Yes	No			Yes	No	N/A
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Field Tests Performed:

Test ID #	Length Location			Width Location			Results		
	Random #	Length (ft)	Distance (ft)	Random #	Length (ft)	Distance (ft)	P	F	N/A
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Test ID #	Length Location			Width Location			Results		
	Random #	Length (ft)	Distance (ft)	Random #	Length (ft)	Distance (ft)	P	F	N/A
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

P = Pass; F = Fail

IQF Inspector Signature: \_\_\_\_\_ Date: \_\_\_\_\_

IQF Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## REQUEST FOR INFORMATION FORM - SAMPLE

<b>PROJECT NAME:</b>	<b>RFI No.:</b>
<b>PROJECT NUMBER:</b>	<b>DATE:</b>
<b>INITIATED BY:</b>	<b>DATE:</b>
<b>SPECIFICATION NO.:</b>	<b>RESPONSE DUE DATE:</b>
<b>DRAWING REF NO.:</b>	
<b>AREA OF WORK:</b>	
<b>QUESTION:</b>	
<b>RESPONSE:</b>	
<b>ATTACHMENTS:</b>	
_____ RESPONDER (Sign & Print)	_____ DATE:
<b>DISTRIBUTION:</b>	

**ITEM 5            CONTROL OF THE WORK****5.1                Control of the Work****5.1.1             Control and Coordination of Work**

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

**5.1.2             Safety**

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

**5.1.3             Obligations to Minimize Impacts**

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

**5.2                Submittals and Approvals****5.2.1             Submittal, Review and Approval Terms and Procedures****5.2.1.1          General**

This Section 5.2.1 sets forth uniform terms and procedures that shall govern all Submittals to TxDOT pursuant to the Contract Documents or the Project Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 5.2.1.1 and any other provisions of the Contract Documents or the Project Management Plan and component plans thereunder, concerning submission, review and approval procedures, this Section 5.2.1.1 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 5.2.1.1.

**5.2.1.2          Time Periods****5.2.1.2.1        Whenever TxDOT is entitled to review and comment on, or to affirmatively approve, a Submittal, TxDOT shall have a period of 10 Business Days to act after the date it receives an accurate and complete Submittal and all necessary information and documentation concerning the subject matter, except as otherwise provided below.**



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

**5.2.1.2.3** If at any given time TxDOT is in receipt of more than (a) 10 concurrent Submittals in the aggregate (other than Submittals governed by provisions in the Contract Documents that expressly specify a different maximum concurrent number) that are subject to TxDOT's review and comment or approval or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the Contract Documents, TxDOT may extend the applicable period for it to act to that period in which TxDOT can reasonably accommodate the Submittals under the circumstances or such other period of extension set forth in any other provision of the Contract Documents, and no such extension shall entitle DB Contractor to an adjustment to the Price or Completion Deadlines or form the basis of any other Claim. However, if at any time TxDOT is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether TxDOT may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to TxDOT under this Section 5.2.1.2 regarding such Submittals overlap. Whenever TxDOT is in receipt of excess concurrent Submittals, DB Contractor may establish by written notice to TxDOT an order of priority for processing such Submittals; and TxDOT shall comply with such order of priority. Refer to Sections 14.5.1, 15.2.4 and 15.3.1 of the Design-Build Specifications for maximum concurrent Utility Adjustment Submittals, Submittals of Acquisition Packages and Submittals of Project ROW maps, and extensions of time in the case of Utility Adjustment Submittals, Acquisition Packages and Project ROW maps in excess of the maximum.

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

**5.2.1.2.5** TxDOT shall endeavor to reasonably accommodate a written request from DB Contractor for expedited action on a specific Submittal within the practical limitations and based on availability of TxDOT personnel appropriate for acting on the type of Submittal in question; provided, however, that DB Contractor sets forth in its request specific, abnormal circumstances demonstrating the need for expedited action by TxDOT. This provision shall not apply, however, during any time described in Section 5.2.1.2.4.

**5.2.1.3** TxDOT Discretionary Approvals

If the Submittal is one where the Contract Documents indicate approval or consent or acceptance is required from TxDOT in its sole discretion or good faith discretion, then TxDOT's lack of approval, determination, decision, or other action within the applicable time period under Section 5.2.1.2 shall be deemed disapproval. If approval is subject to the sole discretion of TxDOT, then its decision shall be final, binding and not subject to dispute resolution and such decision shall not entitle DB Contractor to an adjustment to the Price or Completion Deadlines or form the basis of any other Claim. If the approval is subject to the good faith discretion of TxDOT, then its decision shall be binding unless it is finally determined by clear and convincing evidence under the Dispute Resolution Procedures of this Design-Build Contract that such decision was arbitrary or capricious. For avoidance of doubt, if the approval is subject to the good faith discretion of TxDOT and the decision is determined to be arbitrary and capricious and causes delay, the delay will constitute and be treated as a TxDOT-Caused Delay, and DB Contractor shall be entitled to submit a Claim in accordance with Section 4.6.

#### 5.2.1.4 Other TxDOT Approvals

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

5.2.1.4.2 If the reasonableness standard applies to TxDOT's right of approval of or consent to a Submittal, and TxDOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 5.2.1.2, then DB Contractor may deliver to TxDOT a written notice stating the date within which TxDOT was to have decided or acted and that if TxDOT does not decide or act within five Business Days after receipt of the notice, delay thereafter may constitute a TxDOT-Caused Delay for which DB Contractor may be entitled to submit a Claim in accordance with Section 4.6.3.

#### 5.2.1.5 TxDOT Review and Comment

Whenever the Contract Documents indicate that a Submittal or other matter is subject to TxDOT's review, comment, review and comment, or similar action not requiring TxDOT's prior approval before DB Contractor may act or proceed and TxDOT delivers no comments, exceptions, objections, rejections, or disapprovals (referred to in this Section 5.2.1 as "comments and objections") within the applicable time period under Section 5.2.1.2, then DB Contractor may proceed thereafter at its election and risk, without prejudice to TxDOT's rights to later object in accordance with Section 5.2.1.7.1. No such failure or delay by TxDOT in delivering comments and objections within the applicable time period under Section 5.2.1.2 shall constitute a TxDOT-Caused Delay, entitle DB Contractor to an adjustment to the Price or Completion Deadlines, or form the basis of any other Claim. When used in the Contract Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) TxDOT has reviewed and provided comments and objections, and all the same have been resolved or (b) the applicable time period has passed without TxDOT providing any comments and objections.

#### 5.2.1.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract Documents indicate that DB Contractor is to deliver a Submittal to TxDOT but express no requirement for TxDOT review, comment, disapproval, prior approval or other TxDOT action, then DB Contractor is under no obligation to provide TxDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and TxDOT shall have the right, but is not obligated, to at any time make comments and objections with respect to the Submittal in accordance with Section 5.2.1.7.1. No failure or delay by TxDOT in delivering comments and objections with respect to the Submittal shall constitute a TxDOT-Caused Delay, entitle DB Contractor to an adjustment to the Price or Completion Deadlines, or form the basis of any other Claim.

#### 5.2.1.7 Resolution of TxDOT Comments and Objections

5.2.1.7.1 If the Submittal is one not governed by Section 5.2.1.3, TxDOT's comments and objections shall be deemed reasonable, valid and binding if and only if based on any of the following grounds:

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

- (b) The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;
- (c) DB Contractor has not provided all content or information required with respect to the Submittal or subject provisions thereof, provided that TxDOT assumes no duty, obligation, or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to another Governmental Entity as a proposed Governmental Approval or in order to obtain, modify, amend, supplement, renew, extend, waive, or carry out a Governmental Approval;
- (d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or
- (e) In the case of a Submittal that is to be delivered to another Governmental Entity as a proposed Governmental Approval or, in order to obtain, modify, amend, supplement, renew, extend, waive, or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not usual and customary arrangements that TxDOT offers or accepts for addressing similar circumstances affecting its own projects.

**5.2.1.7.2** DB Contractor shall respond to all of TxDOT's comments and objections to a Submittal and make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this Section 5.2.1. DB Contractor acknowledges that TxDOT may provide comments and objections that reflect concerns regarding interpretation or preferences of the commenter or that otherwise do not directly relate to grounds set forth in Section 5.2.1.7.1. DB Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Section 5.2.1. However, if the Submittal is not governed by Section 5.2.1.3, the foregoing shall in no way be deemed to obligate DB Contractor to incorporate any comments or resolve objections that are not based on any of the grounds set forth in Section 5.2.1.7.1 and would result in a delay to a critical path on the Project Schedule or in an increase in DB Contractor's costs, except pursuant to a TxDOT-Directed Change. If, however, DB Contractor does not accommodate or otherwise resolve any comment or objection, DB Contractor shall deliver to TxDOT within a reasonable time period, not to exceed 30 days after receipt of TxDOT's comments or objections, a written explanation of why modifications based on such comment or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

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

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

**5.2.1.7.5** After TxDOT receives DB Contractor's explanation as to why the modifications are not required as provided in Sections 5.2.1.7.2, 5.2.1.7.3 and 5.2.1.7.4, the Parties shall attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, it shall be resolved according to the procedures for resolving Disputes in this Design-Build Contract, except (a) as provided otherwise in this Section 5.2.1.7 and (b) if TxDOT elects to issue a Directive Letter pursuant to Section 4.6.1.2 with respect to the disputed matter, DB Contractor shall proceed in accordance with TxDOT's directive while retaining any Claim as to the disputed amount.

**5.2.1.8** Limitations on DB Contractor's Right to Rely

**5.2.1.8.1** No review, comment on, objection, rejection, approval, disapproval, acceptance, certification (including any certificates of Substantial Completion and Final Acceptance), concurrence monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of TxDOT, and no lack thereof by TxDOT, shall constitute either (i) acceptance of materials or Work that fails to comply with the Contract Documents, or (ii) waiver of any legal or equitable right under the Contract Documents, at law, or in equity. TxDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work that must be done to bring the Work and Project into compliance with requirements of the Contract Documents, regardless of whether previous review, comment on, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by TxDOT. In the event TxDOT expressly accepts Nonconforming Work in accordance with Section 5.3.2, the Warranties shall continue to apply to such Work, however, DB Contractor shall not be required to correct the specific defect or nonconformity that is expressly accepted. Regardless of any such activity or failure to conduct any such activity by TxDOT, DB Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. DB Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by TxDOT:

- (a) Is solely for the benefit and protection of TxDOT;
- (b) Does not relieve DB Contractor of its responsibility for the selection and the competent performance of all DB Contractor-Related Entities;
- (c) Does not create or impose upon TxDOT any duty or obligation toward DB Contractor to cause it to fulfill the requirements of the Contract Documents;
- (d) Shall not be deemed or construed as any kind of warranty, express or implied, by TxDOT;
- (e) May not be relied upon by DB Contractor or used as evidence in determining whether DB Contractor has fulfilled the requirements of the Contract Documents; and
- (f) May not be asserted by DB Contractor against TxDOT as a defense, legal or equitable, to, or as a waiver of or relief from, DB Contractor's obligation to fulfill the requirements of the Contract Documents.

**5.2.1.8.2** Unless expressly permitted under Section 5.3.2, DB Contractor shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the Contract Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 5.2.1.8.1 or failure to conduct any such activity by TxDOT. Such activity by TxDOT shall not relieve DB Contractor from liability for, and the responsibility to cure and correct,

any unapproved Deviations, Nonconforming Work that is not expressly accepted in accordance with Section 5.3.2 or DB Contractor defaults.

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

**5.2.1.8.4** Notwithstanding the provisions of Sections 5.2.1.8.1, 5.2.1.8.2 and 5.2.1.8.3:

- (a) DB Contractor shall be entitled to rely on written approvals and acceptances from TxDOT (i) including approvals in TxDOT's good faith discretion, for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within its sole discretion, but only to the extent that DB Contractor is prejudiced by a subsequent decision of TxDOT to rescind such approval or acceptance;
- (b) DB Contractor shall be entitled to rely on specific written Deviations TxDOT approves under Section 4.1.2.2.4;
- (c) DB Contractor shall be entitled to rely on the certificates of Substantial Completion and Final Acceptance from TxDOT for the limited purpose of establishing that Substantial Completion and Final Acceptance, as applicable, have occurred, and the respective dates thereof;
- (d) TxDOT is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement TxDOT delivers to DB Contractor; and
- (e) TxDOT is not relieved from performance of its express responsibilities under the Contract Documents in accordance with all standards applicable thereto.

## **5.2.2 Responsibility for Design**

### **5.2.2.1 DB Contractor Responsibility**

DB Contractor agrees that it has full responsibility for the design of the Project and that DB Contractor will furnish the design of the Project, regardless of the fact that aspects of the Schematic Design have been provided to DB Contractor as a preliminary basis for DB Contractor's design. DB Contractor specifically acknowledges and agrees that:

- (a) DB Contractor is not entitled to rely on (i) the Schematic Design except as specified in Section 5.2.2.2.2, (ii) the Reference Information Documents, or (iii) any other documents or information provided by TxDOT, except to the extent specifically permitted in the Contract Documents.
- (b) DB Contractor is responsible for causing the Released for Construction Documents to address and correct any Errors in the Schematic Design through the design and construction process without any increase in the Price or extension of a Completion Deadline, subject only to the right to a Change Order with respect to Necessary Basic Configuration Changes to the extent permitted by Section 4.6.9.6.
- (c) TxDOT's liability for Errors in the Schematic Design is limited to its obligations relating to Necessary Basic Configuration Changes as set forth in Section 4.1.2.3.2 and is subject to the requirements and limitations of Section 4.6.

- (d) DB Contractor's warranties and indemnities hereunder cover Errors in the Project even though they may arise from or be related to Errors in the Schematic Design.
- (e) DB Contractor is responsible for verifying all calculations and quantity takeoffs contained in the RFP Documents or otherwise provided by TxDOT.

## 5.2.2.2 Schematic Design

**5.2.2.2.1** DB Contractor acknowledges and agrees that if DB Contractor wishes to deviate from the Schematic ROW, it must specifically identify such modifications in writing to TxDOT in accordance with Section 4.1.2.3, provide justification for the modification and obtain specific written approval from TxDOT, in its sole discretion, prior to use of such modifications. Subject to Section 4.1.2.3, DB Contractor must obtain TxDOT's prior written approval to deviate from the Schematic Design unless the proposed modification meets all of the following: (a) is within the Schematic ROW and requires no additional right of way; (b) meets the requirements of the Design-Build Specifications; (c) requires no New Environmental Approval; (d) does not constitute a Design Exception or Design Waiver; (e) is consistent with the design concepts included in the Proposal; and (f) does not deviate from TxDOT's design intent as embodied in the Schematic Design. DB Contractor acknowledges and agrees that the requirements and constraints set forth in the Contract Documents and in the Governmental Approvals, as well as Site conditions, will impact DB Contractor's ability to revise the concepts contained in the Schematic Design, in addition to the requirement to obtain approval.

**5.2.2.2.2** DB Contractor may rely on the Schematic ROW limits as shown on the Schematic Design, acknowledges that it is feasible to design and develop the Project within the Schematic ROW limits identified in the Schematic Design, and shall have the right to obtain a Change Order for certain increased costs incurred due to Necessary Basic Configuration Changes to the extent provided in Section 4.6.9.6; provided, however, that DB Contractor acknowledges that "feasible to design and develop the Project" is not intended to mean or be limited to DB Contractor's design approach set forth in its Proposal or DB Contractor's preferred design approach.

**5.2.2.2.3** DB Contractor acknowledges that the Schematic Design is preliminary and subject to refinement through the design development process and that DB Contractor is not entitled to any time extensions in connection with any changes from the Schematic Design, and DB Contractor's entitlement to an increase in the Price in connection with any changes from the Schematic Design is limited to certain increased costs incurred as a result of Necessary Basic Configuration Changes to the extent allowed under Section 4.6.9.6.

## 5.2.3 Disclaimer

**5.2.3.1** DB Contractor understands and agrees that TxDOT shall not be responsible or liable in any respect for any Losses whatsoever suffered by any DB Contractor-Related Entity by reason of any use of any information contained in the Schematic Design or Reference Information Documents, or any action or forbearance in reliance thereon, except to the extent that TxDOT has specifically agreed in Section 4.6 that DB Contractor shall be entitled to an increase in the Price or extension of a Completion Deadline with respect to such matter. DB Contractor further acknowledges and agrees that (a) if and to the extent DB Contractor or anyone on DB Contractor's behalf uses any of said information in any way, such use is made on the basis that DB Contractor, not TxDOT, is responsible for said information and (b) DB Contractor is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at DB Contractor's own risk and at its sole discretion.

**5.2.3.2** TxDOT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE SCHEMATIC DESIGN OR REFERENCE INFORMATION DOCUMENTS IS EITHER COMPLETE OR ACCURATE (INCLUDING WITH RESPECT TO (i) THE EXISTENCE OR NEED FOR BRIDGES; (ii) BRIDGE LENGTHS, LOCATIONS, TYPES AND VERTICAL PROFILES DEPICTED IN THE SCHEMATIC DESIGN, (iii) THE EXISTENCE, NEED FOR, OR LOCATIONS OF CULVERTS; (iv) THE EXISTENCE OR NEED FOR RETAINING WALLS, (v) RETAINING WALL HEIGHTS, LENGTHS OR SIZES DEPICTED IN THE SCHEMATIC DESIGN OR (vi) ANY FAILURE OR OMISSION TO DEPICT ANY OF THE FOREGOING IN THE SCHEMATIC DESIGN) OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF TxDOT-PROVIDED APPROVALS, OTHER CONTRACT DOCUMENTS, GOVERNMENTAL APPROVALS OR LAW. TxDOT DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE DESIGN-BUILD SPECIFICATIONS. THE FOREGOING SHALL IN NO WAY AFFECT TxDOT'S LIABILITY FOR NECESSARY BASIC CONFIGURATION CHANGES AS SPECIFIED HEREIN OR TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 4.6.

**5.2.4 Role of TxDOT Consultants**

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

**5.2.5 Role of and Cooperation with FHWA**

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

**5.2.6 Governmental Approvals and Third Party Agreements**

**5.2.6.1** TxDOT retains responsibility for processing all TxDOT-Provided Approvals (based on the Schematic Design) that TxDOT has not obtained as of the Effective Date. DB Contractor shall obtain all other Governmental Approvals, including any modifications, renewals and extensions of the TxDOT-Provided Approvals, and, except to the extent the Contract Documents expressly provide TxDOT is responsible therefor, all third-party approvals and agreements required in connection with the Project, the Project Right of Way or the Work. Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), DB Contractor shall submit the same, together with any supporting environmental studies and analyses, to TxDOT (a) for approval or (b) for review and comment, as specified in the Design-Build Specifications.

**5.2.6.2** In the event DB Contractor either intends to modify an existing Interstate Access Justification Report (IAJR), or prepare and submit an IAJR for FHWA approval as a result of a TxDOT-Directed Change or other design Deviation approved by TxDOT, DB Contractor shall follow the procedures in the Project Development Process Manual (PDPM). DB Contractor shall submit a copy of the required documentation specified in the PDPM to TxDOT's Authorized Representative for review and comment prior to DB Contractor submitting the required documentation to the TxDOT Design Division Field Section.

**5.2.6.3**

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

- (a) **Memorandum of Understanding** between Office of the Governor, Economic Development and Tourism Division and Texas Department of Transportation, Texas Parks and Wildlife Department, Texas Commission on the Arts, and Texas Historical Commission (April 2004 – current, to promote tourism in Texas);
- (b) **Memorandum of Understanding** between TxDOT and Texas Parks and Wildlife Department (September 1, 2013);
- (c) **Memorandum of Understanding** between the Texas Department of Transportation and the General Land Office (June 30, 2006);
- (d) **Memorandum of Understanding** between the Texas Department of Transportation and the Texas Commission on Environmental Quality (March 20, 2019);
- (e) **First Amended Programmatic Agreement** among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings (December 28, 2005, renewed in September 2010 and on December 7, 2015); and,
- (f) **Memorandum of Understanding** between the Federal Highway Administration and the Texas Department of Transportation concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327, (December 16, 2014).

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

**5.2.6.4**

At DB Contractor's request, TxDOT shall reasonably assist and cooperate with DB Contractor in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by DB Contractor under the Contract Documents. TxDOT and DB Contractor shall work jointly to establish a scope of work and budget for TxDOT's Recoverable Costs related to the assistance and cooperation TxDOT will provide. Subject to any agreed scope of work and budget and to any rights of DB Contractor under Section 4.6, DB Contractor shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, TxDOT incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies.

**5.2.6.5**

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



**5.2.6.6** In the event that any Governmental Approvals required to be obtained by DB Contractor must formally be issued in TxDOT's name, DB Contractor shall undertake the necessary efforts to obtain such approvals subject to TxDOT's reasonable cooperation with DB Contractor, at DB Contractor's expense (except in connection with Governmental Approvals required due to a TxDOT-Directed Change), in accordance with this Section 5.2.6, including execution and delivery of appropriate applications and other documentation in form approved by TxDOT.

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

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

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

## **5.2.7 Software Compatibility**

**5.2.7.1** Unless otherwise specifically stated in the Contract Documents, DB Contractor is responsible for assuring that all software it uses for any aspect of the Project is the latest version of the 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 use of the software and any training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by DB Contractor.

**5.2.7.2** In addition to all other requirements set forth in the Contract Documents, DB Contractor shall submit all documents, correspondence and Submittals to TxDOT through TxDOT's dedicated SharePoint site for the Project unless otherwise directed by TxDOT. Nothing in this Section 5.2.7.2 overrides or otherwise alters or amends in any way any other provision regarding requirements for notice, correspondences, Submittals or other communications to TxDOT as set forth in the Contract Documents, including the requirements set forth in Section 9.1 of the Design-Build Agreement.

## **5.3 Nonconforming Work**

### **5.3.1 Rejection, Removal and Replacement of Nonconforming Work**

Nonconforming Work rejected by TxDOT shall be removed and replaced so as to conform to the requirements of the Contract Documents, at DB Contractor's cost and without any adjustment to the Price or any Completion Deadline or any other relief, and DB Contractor shall promptly take all action necessary to prevent similar Nonconforming Work from occurring in the future. The fact that TxDOT

may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If DB Contractor fails to correct any Nonconforming Work within 10 days of receipt of notice from TxDOT requesting correction, or if such Nonconforming Work cannot be corrected within 10 days, and DB Contractor fails to (a) provide to TxDOT a schedule acceptable to TxDOT for correcting any such Nonconforming Work within such 10-day period, (b) commence such corrective Work within such 10-day period, and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then TxDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due DB Contractor or obtain reimbursement from DB Contractor for such cost.

### **5.3.2 Agreement to Accept Nonconforming Work**

If TxDOT agrees to accept Nonconforming Work without requiring it to be fully corrected, TxDOT shall be entitled to reimbursement of a portion of the Price in an amount equal to the greatest of (a) the amount deemed appropriate by TxDOT to provide compensation for known impacts to all affected Persons (including TxDOT) such as future maintenance and other costs relating to the Nonconforming Work, (b) the amount of the Price allocated to such Work, or (c) 100% of DB Contractor's cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents. Such reimbursement shall be payable to TxDOT within 10 days after DB Contractor's receipt of an invoice therefor. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to DB Contractor pursuant to this Design-Build Contract. DB Contractor acknowledges and agrees that, subject to DB Contractor's right to correct Nonconforming Work in accordance with Section 5.3.1, including the timelines therein, TxDOT shall have sole discretion regarding acceptance or rejection of Nonconforming Work and shall have sole discretion with regard to the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to TxDOT under this Section 5.3.2 shall be a condition precedent to the acceptance of the applicable Nonconforming Work.

### **5.4 Cooperation with Representatives**

DB Contractor shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

### **5.5 Cooperation with Contractor**

DB Contractor acknowledges that TxDOT has awarded or plans to award contracts for construction and other work at or near the Site, and that other projects (including other TxDOT projects and projects of Governmental Entities) at or near the Site may be in various stages of design and construction. DB Contractor and any DB Contractor-Related Entity shall fully cooperate and be solely responsible for coordinating with such other contractors, Governmental Entities and projects, and shall schedule and sequence the Work as reasonably necessary to accommodate the work of such other contractors and projects. Further, DB Contractor shall conduct its Work and perform its obligations under the Contract Documents without interfering with or hindering the progress or completion of the work being performed by other contractors or of the work relating to such other projects.

### **5.6 Coordination with Utility Owners**

DB Contractor shall coordinate with Utility Owners and with their respective contractors, as more particularly described in the Contract Documents.

## 5.7 Interference by Other Contractors

If DB Contractor asserts that any of TxDOT's other contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then, DB Contractor's sole remedy shall be to seek recourse against such other contractors.

## 5.8 Coordination with Adjacent Property Owners; Drainage Permits

5.8.1 DB Contractor shall coordinate with owners of property adjoining the Project and with their respective contractors, as more particularly described in the Contract Documents.

5.8.2 It is anticipated that during the Work, third parties will apply for drainage permits to install drainage infrastructure that would cross or longitudinally occupy the Project ROW, or to modify, upgrade, relocate or expand existing drainage improvements within the Project ROW for reasons other than accommodation of the Project. The provisions of this Section 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.

5.8.2.1 For all such drainage 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 drainage infrastructure and Utilities.

5.8.2.2 DB Contractor shall assist TxDOT in deciding whether to approve a permit described in this Section 5.8.2. Within 10 Business Days of receipt by DB Contractor of the permit 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 Drainage No Conflict Sign-Off Form, signed by DB Contractor's Design Manager, using the form included in Attachment 5-2. 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 drainage permits in its sole discretion. DB Contractor at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain drainage improvements allowed under their drainage permits. Review of applications for drainage permits and associated coordination described in this Section 5.8 shall not be subject to a Change Order, including for New Drainage Permits as described in Section 4.6.9.3.2.

## 5.9 Construction Surveying

Construction surveying requirements are set forth in Section 17.4 of the Design-Build Specifications.

## 5.10 Oversight and Inspection

### 5.10.1 Oversight, Inspection and Testing; Meetings

5.10.1.1 DB Contractor Inspection and Testing

5.10.1.1.1 DB Contractor shall perform the inspection, sampling, testing, quality control and quality assurance necessary for DB Contractor to comply with its obligations under the Contract Documents. All such testing and quality assurance activities shall be in accordance with both the approved Quality Management Plan and the QAP for DB Projects. In the event of a conflict between the QAP for DB

Projects and the QMP, the QAP for DB Projects shall govern and control. Without in any way diminishing its obligations under the Contract Documents, if the IQF is not Atlas Technical Consultants LLC, DB Contractor may utilize information developed by TxDOT related to acceptance testing for off-site fabricated materials, as more particularly described in Attachment 5-1. In the event that DB Contractor elects to utilize such information, TxDOT may recover as TxDOT's Recoverable Costs its reasonable expenses related to the performance of such services and the development of such information in accordance with the procedures described in Attachment 5-1.

**5.10.1.1.2** NOTWITHSTANDING ANY OTHER PROVISION OF THIS DESIGN-BUILD CONTRACT, DB CONTRACTOR ACKNOWLEDGES AND AGREES THAT TxDOT, TO THE EXTENT PERMITTED BY LAW, WILL NOT BE RESPONSIBLE OR BEAR ANY LIABILITY FOR, AND HEREBY RELEASES TxDOT FROM, ANY DAMAGES, INCREASED COSTS, REVENUE LOSSES, DELAYS, OR OTHER IMPACTS TO DB CONTRACTOR OR TO ANY DB CONTRACTOR-RELATED ENTITY, ARISING AS A RESULT OF THE SERVICES PERFORMED BY TxDOT PURSUANT TO ATTACHMENT 5-1, INCLUDING THOSE ARISING FROM ANY NEGLIGENT ACT OR OMISSION OF TxDOT IN PERFORMING THE SERVICES PURSUANT TO ATTACHMENT 5-1, OR FAILURE OF OR DEFECT IN ANY MATERIAL OR PRODUCT INSPECTED OR TESTED BY TxDOT IN PERFORMING THE SERVICES PURSUANT TO ATTACHMENT 5-1, REGARDLESS OF WHEN SUCH FAILURE OR DEFECT MAY OCCUR OR BE DISCOVERED.

**5.10.1.2** Oversight by TxDOT and Others

**5.10.1.2.1** TxDOT and its Authorized Representative shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable to (a) comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements and (b) verify DB Contractor's compliance with the Contract Documents and the Project Management Plan as provided in Section 5.13.4. TxDOT shall conduct such activity in accordance with DB Contractor's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

**5.10.1.2.2** TxDOT shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Design-Build Specifications and the Project Management Plan. DB Contractor shall provide to TxDOT all test results and reports, which may be provided in electronic format, in accordance with the Design-Build Specifications.

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

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

- 5.10.1.2.5** Without limiting the foregoing, DB Contractor shall afford TxDOT and its Authorized Representative (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to DB Contractor's Project offices and operations buildings, and (c) unrestricted access to data related to the Work, subject to Section 5.13.1. Without limiting the foregoing, DB Contractor shall deliver to TxDOT upon request accurate and complete books, records, data and information regarding Work, the Project and the Utility Adjustment Work, in the format required by the Design-Build Specifications.
- 5.10.1.2.6** Nothing in the Contract Documents shall preclude, and DB Contractor shall not interfere with, any review or oversight of Submittals or of Work that the FHWA may desire to conduct.
- 5.10.1.3** Obligation to Uncover Finished Work
- 5.10.1.3.1** DB Contractor shall inform TxDOT in writing of any part of the Work that is about to be covered and offer a full and adequate opportunity to TxDOT to examine by inspection, testing, or other means such part of the Work before it is covered. At all times before Final Acceptance, DB Contractor shall permit examination by TxDOT, including by removing or uncovering any part of the finished Work as directed by TxDOT. After examination by TxDOT and any other Persons designated by TxDOT, DB Contractor shall restore the Work to the standard required by the Contract Documents.
- 5.10.1.3.2** If any Work examined by TxDOT is found not to be in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring all Work at TxDOT's direction and recovery of any delay to any Critical Path occasioned thereby shall be at DB Contractor's cost and DB Contractor shall not be entitled to any adjustment to the Price or any Completion Deadline or any other relief. Furthermore, if DB Contractor performs any Work or uses any materials without adequate notice to and opportunity for prior inspection by TxDOT (if applicable) or without inspection in accordance with the Contract Documents and the Project Management Plan, TxDOT may direct the Work to be uncovered, removed or restored at DB Contractor's cost and without an adjustment to the Price or any Completion Deadline or any other relief, even if TxDOT determines that all of the Work is in conformance with the requirements of the Contract Documents and the Project Management Plan.
- 5.10.1.3.3** Except with respect to Work done or materials used as described in the foregoing sentence, if TxDOT determines that all Work examined by TxDOT under this Section 5.10.1.3.3 is in conformance with the requirements of the Contract Documents and the Project Management Plan, then any delay in any Critical Path from uncovering, removing and restoring Work at TxDOT's direction shall be considered a TxDOT-Caused Delay, and DB Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.
- 5.10.1.4** Meetings
- DB Contractor shall conduct regular progress meetings with TxDOT at least once a month during the course of the Work. In addition, TxDOT and DB Contractor, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Work or Project. DB Contractor shall schedule all meetings with TxDOT at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide TxDOT with written notice and a meeting agenda at least three Business Days in advance of each meeting.

**5.10.1.4.1** Materials on Hand Meeting

DB Contractor shall conduct a meeting with TxDOT in advance of NTP2 to discuss Materials on Hand that the DB Contractor anticipates incorporating into the Work. DB Contractor shall conduct additional meetings with TxDOT to discuss changes to the anticipated Materials on Hand that will be incorporated into the Work as necessary.

**5.10.2** **Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals****5.10.2.1** Oversight and Acceptance

The oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances and approvals conducted by TxDOT and other Persons do not constitute acceptance of Nonconforming Work (except in limited circumstances as expressly provided in Section 5.3.2) or waiver of any warranty or legal or equitable right with respect thereto. TxDOT may request remedies for Nonconforming Work or identify additional Work that must be done to bring the Work into compliance with the requirements of the Contract Documents at any time prior to Final Acceptance, whether or not previous oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances or approvals were conducted or waived by TxDOT or any such Persons.

**5.10.2.2** No Estoppel

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

**5.11** **Substantial Completion****5.11.1** **Requirements**

**5.11.1.1** TxDOT will issue a written Certificate of Substantial Completion at such time as Substantial Completion occurs.

**5.11.1.2** In determining whether Substantial Completion has occurred, TxDOT may consider and require satisfaction of the following criteria:

- (a) Whether all major safety features are installed and functional, including guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;
- (b) Whether required illumination is installed and functional;

- (c) Whether required signs and signals are installed and functional;
- (d) Whether the need for temporary traffic controls or for Lane Closures at any time has ceased (except for any then required for maintenance activities, and except for temporary Lane Closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);
- (e) Whether all lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and access roads) set forth in the Released for Construction Documents are in their final configuration and available for public use;
- (f) Whether DB Contractor has otherwise completed the Work in accordance with the Contract Documents and Released for Construction Documents, including the construction of noise/sound walls and establishment of vegetative ground cover for erosion control, such that the Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public; and
- (g) Any additional conditions set forth in the DBA are fulfilled.

**5.11.1.3** The Parties shall disregard the status of the landscaping (except the establishment of vegetative ground cover for erosion control) and aesthetic features (except noise/sound walls) included in the Released for Construction Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 5.11.1.2(f).

**5.11.2 Notification of Substantial Completion**

**5.11.2.1** DB Contractor shall provide TxDOT with not less than 20 days' prior written notification of the date DB Contractor determines it will achieve Substantial Completion. During any such 20-day period, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's orderly, timely inspection and review of the Project and the applicable Construction Documents, and TxDOT's issuance of the Certificate of Substantial Completion.

**5.11.2.2** During such 20-day period, TxDOT shall conduct an inspection of the Project and its components, a review of the applicable Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved.

**5.11.2.3** DB Contractor shall provide TxDOT a second written notification when DB Contractor determines it has achieved Substantial Completion. Within five days after expiration of the 20-day period and TxDOT's receipt of the second notification, TxDOT shall either (a) issue the Certificate of Substantial Completion or (b) notify DB Contractor in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If TxDOT and DB Contractor cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the procedures for resolving Disputes set forth in this Design-Build Contract.

### **5.11.3 Punch List**

**5.11.3.1** The Project Management Plan shall establish procedures and schedules for preparing a Punch List and completing Punch List work. Such procedures and schedules shall conform to the following provisions.

**5.11.3.2** The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

**5.11.3.3** DB Contractor shall prepare and maintain the Punch List. DB Contractor shall deliver to TxDOT not less than five days' prior written notice stating the date when DB Contractor will commence Punch List field inspections and Punch List preparation. TxDOT may, but is not obligated to, participate in the development of the Punch List. Each Party shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If DB Contractor objects to the addition of an item by TxDOT, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the procedures for resolving Disputes set forth in this Design-Build Contract. DB Contractor shall deliver to TxDOT a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

**5.11.3.4** DB Contractor shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the Contract Documents, within the time periods to be set forth in the Project Management Plan and in any case by the applicable Final Acceptance Deadline.

### **5.12 Final Acceptance**

#### **5.12.1 Final Acceptance**

**5.12.1.1** Promptly after achieving Substantial Completion, DB Contractor shall perform all remaining Work, including (a) completion of all Punch List items, (b) all landscaping, and (c) aesthetic features. DB Contractor shall prepare and adhere to a timetable for planting and establishing the landscaping, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for landscaping to be planted prior to Final Acceptance.

**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 8.5.7.4;
- (e) TxDOT has received a complete set of the Record Documents in form and content required by Table 2 in Attachment 4-1;



- (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, Qualifying Delay Late Fees, Key Personnel Change Fees 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, Qualifying Delay Late Fees, 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;
- (n) No uncured DB Contractor Defaults exist; and
- (o) 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.

**5.12.1.3** DB Contractor shall provide TxDOT with written notification when DB Contractor determines it has achieved Final Acceptance. During the 15-day period following receipt of such notification, DB Contractor and TxDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's orderly, timely inspection and review of the Project and the Record Documents, and TxDOT's issuance of a Certificate of Final Acceptance.

**5.12.1.4** During such 15-day period, TxDOT shall conduct an inspection of the Punch List items, a review of the Record Documents and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied.

**5.12.1.5** Within five days after expiration of such 15-day period, TxDOT shall either (a) issue a Certificate of Final Acceptance or (b) notify DB Contractor in writing setting forth why Final Acceptance has not been achieved. If TxDOT and DB Contractor cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the procedures for resolving Disputes set forth in this Design-Build Contract.

**5.12.2 Early Opening**

Prior to Substantial Completion, TxDOT shall have 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. No early openings shall constitute Substantial Completion or Final Acceptance of the Project or waive the requirements thereof.

**5.12.3 Clayton Act Assignment**

DB Contractor shall assign to TxDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to the Contract Documents or any Subcontract. This assignment shall be made and become effective at the time TxDOT tenders Final Payment to DB Contractor, without further acknowledgment by the Parties.

**5.13 Documents, Records and Audits**

**5.13.1 Escrowed Proposal Documents**

Prior to execution of this Design-Build Contract, DB Contractor delivered to TxDOT one copy of all cost, unit pricing, price quote and other documentary information used in preparation of the Price (the "EPDs"). Upon execution of this Design-Build Contract, the EPDs shall be held in locked fireproof cabinets supplied by DB Contractor and located in TxDOT's project office with the key held only by DB Contractor. Concurrently with approval of each Change Order or amendment to any Contract Document, one copy of all documentary information used in preparation of the Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) 180 days have elapsed from the later of Final Acceptance or termination of this Design-Build Contract, as applicable; (b) all Claims or Disputes regarding the Work have been settled; (c) all Warranty Terms have expired pursuant to this Design-Build Contract; and (d) Final Payment has been made and accepted.

#### 5.13.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by DB Contractor, TxDOT and TxDOT's consultants, and any dispute resolver in accordance with Section 4.9, in connection with approval of the Project Schedule, negotiation of Change Orders and resolution of Claims or Disputes under the Contract Documents, and also as described in Section 5.13.1.6. TxDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

#### 5.13.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of DB Contractor and shall be considered to be in DB Contractor's possession, subject to TxDOT's and TxDOT consultants' right to review the EPDs as provided in this Section 5.13.1. DB Contractor will have and control the keys to the filing cabinet containing the EPDs. TxDOT acknowledges that DB Contractor may consider that the EPDs constitute trade secrets or proprietary information. TxDOT shall have the right to copy the EPDs for the purposes set forth in this Section 5.13.1, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to EPDs that constitute trade secrets or proprietary information, which confidentiality agreement shall explicitly acknowledge that it is subject to applicable Law (including the Public Information Act).

#### 5.13.1.3 Representation

DB Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Price. DB Contractor agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. DB Contractor further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

#### 5.13.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been determined and shall show cost or price elements in sufficient detail as is adequate to enable TxDOT to understand how DB Contractor calculated the Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total cost or price and individual components of that cost or price were determined. The EPDs shall itemize the estimated costs or price of performing the required work separated into 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. 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.

#### 5.13.1.5 Form of EPDs

Except as otherwise provided in the RFP, DB Contractor shall submit the EPDs in such format as is used by DB Contractor in connection with its Proposal. DB Contractor represents and warrants that

the EPDs provided with the Proposal were personally examined by an authorized officer of DB Contractor prior to delivery, and that the EPDs meet the requirements of Section 5.13.1.4, DB Contractor further represents and warrants that all EPDs provided were or will be personally examined prior to delivery by an authorized officer of DB Contractor, and that they shall meet the requirements of Section 5.13.1.4.

**5.13.1.6** Review by TxDOT to Confirm Completeness

TxDOT may at any time conduct a review of the EPDs to determine whether they are complete. If TxDOT determines that any data is missing from an EPD, DB Contractor shall provide such data within three Business Days after delivery of TxDOT's request for such data. At that time of its submission to TxDOT, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. DB Contractor shall have no right to add documents to the EPDs except upon TxDOT's request. The EPDs associated with any Change Order or Price adjustment under this Design-Build Contract shall be reviewed, organized and indexed in the same manner described in Section 5.12.3 of the ITP.

**5.13.2** **Financial Reporting Requirements**

**5.13.2.1** DB Contractor shall deliver to TxDOT financial and narrative reports, statements, certifications, budgets and information as and when required under the Contract Documents.

**5.13.2.2** DB Contractor shall furnish, or cause to be furnished, to TxDOT such information and statements as TxDOT may reasonably request from time to time for any purpose related to the Project, the Work or the Contract Documents. In addition, DB Contractor shall deliver to TxDOT the following financial statements for each Guarantor, at the times specified below:

**5.13.2.2.1** Within 60 days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

**5.13.2.2.2** Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP is required; and

**5.13.2.2.3** Upon request of TxDOT for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to TxDOT as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

**5.13.2.3** DB Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by TxDOT in connection with any Project financing. Without limiting the generality of the foregoing, DB Contractor shall provide such information deemed necessary or desirable by TxDOT for inclusion in TxDOT's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. DB Contractor shall provide customary representations and warranties to TxDOT and the capital markets as to the correctness, completeness and accuracy of any information furnished.

**5.13.2.4** DB Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by TxDOT to assist or facilitate the submission by TxDOT of any documentation, reports or analysis required by the State, FHWA or any other Governmental Entity with jurisdiction over the Project.

**5.13.2.5** All reports and information delivered by DB Contractor under Sections 5.13.2.3 and 5.13.2.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

**5.13.3 Subcontract Pricing Documents**

DB Contractor shall require each Major Subcontractor to submit to DB Contractor a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract work included in any Change Order), immediately prior to executing the Subcontract and each Subcontract change order, to be held in the same manner as the EPDs and which shall be accessible by TxDOT, DB Contractor and Dispute resolvers, on terms substantially similar to those contained herein. Each Major Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of DB Contractor and TxDOT, stating that its submission in the EPDs, constitutes all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of DB Contractor and TxDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to DB Contractor and TxDOT in connection with any claim made by such Subcontractor.

**5.13.4 Maintenance and Inspection of Records**

**5.13.4.1** Except for EPDs (which shall be maintained as set forth in Section 5.13.1), DB Contractor shall keep and maintain in the county in which the Project is located, or in another location TxDOT approves in writing, all of DB Contractor's books, records and documents relating to the Project, Project Right of Way, Utility Adjustments, Proposal, procurement for the DB Contract, or Work, including copies of all original documents delivered to TxDOT. DB Contractor shall keep and maintain such books, records, and documents in accordance with the Texas State Records Retention Schedule and TxDOT's file plan, applicable provisions of the Contract Documents, and review of the Project

Management Plan, and in accordance with Good Industry Practice. DB Contractor shall notify TxDOT where such records and documents are kept.

**5.13.4.2** DB Contractor shall make all its books, records, and documents available for inspection by TxDOT and its authorized representatives and legal counsel at DB Contractor's principal offices in Texas or at TxDOT's project office for EPDs, at all times during normal business hours, without charge. DB Contractor shall provide copies thereof to TxDOT, or make available for review to TxDOT (a) as and when expressly required by the Contract Documents, including as required by Section 5.13.6 or (b) for those not expressly required, upon request and at no expense to DB Contractor; provided, however, that any costs associated with such copies shall be reasonable. TxDOT may conduct any such inspection upon 48 hours' prior written notice or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 5.13.4.2 are subject to the following:

**5.13.4.2.1** DB Contractor shall preserve and retain records and documents for the respective time periods applicable to TxDOT as set forth in Texas State Records Retention Schedule or, if not addressed therein, for a minimum of the later of the date of completion of the Design-Build Contract or five years after the date the record or document is generated; provided that if the Contract Documents specify any different time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the procedures for resolving Disputes shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved.

**5.13.4.2.2** Upon the completion of this Design-Build Contract, DB Contractor shall, at TxDOT's election, either (a) submit to TxDOT at DB Contractor's cost and expense all Contracting Information related to this Design-Build Contract in the custody or possession of DB Contractor, or (b) preserve such Contracting Information for the respective time periods applicable to TxDOT as set forth in the Texas State Records Retention Schedule.

**5.13.5 Audits**

**5.13.5.1** In addition to all of TxDOT's other rights set forth herein, including under Section 5.10.1.2, TxDOT shall have such rights to review and audit DB Contractor, its Subcontractors and their respective books and records as and when TxDOT deems necessary in connection with Claims or Disputes or for purposes of verifying compliance with the Contract Documents and applicable Law. Without limiting the foregoing, TxDOT shall have the right to audit the Project Management Plan and compliance therewith, including the right to inspect Work and activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. TxDOT may conduct any such audit of books and records upon 48 hours' prior written notice or unannounced and without prior notice where there is good faith suspicion of fraud.

**5.13.5.2** All Claims or Disputes filed against TxDOT shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit within (i) 60 days after Final Acceptance or (ii) 60 days after termination of this Design-Build Contract. Thereafter, TxDOT shall provide 20 days' notice to DB Contractor, any Subcontractors or their respective agents before commencing an audit. DB Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. DB Contractor, Subcontractors or their agents shall cooperate with the auditors. Failure of DB Contractor, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the books and records of

DB Contractor, Subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder. At a minimum, DB Contractor shall make the following documents available to the auditors:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;
- (d) Payroll registers;
- (e) Earnings records;
- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution work sheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks (payroll, Subcontractors and Suppliers);
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) Project Schedules;
- (r) All documents that relate to each and every Claim or Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and
- (s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

**5.13.5.3** Full compliance by DB Contractor with the provisions of this Section 5.13.5 is a contractual condition precedent to DB Contractor's right to seek relief under Section 4.9.

**5.13.5.4** Any rights of the FHWA to review and audit DB Contractor, its Subcontractors and their respective books and records are set forth in Attachment 3-1.

- 5.13.5.5** TxDOT's rights of audit include the right to observe the business operations of DB Contractor and its Subcontractors to confirm the accuracy of books and records.
- 5.13.5.6** DB Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with TxDOT audits, and shall cause all Subcontractors other than TxDOT and Governmental Entities acting as Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provide in connection with TxDOT audits.
- 5.13.5.7** DB Contractor's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in this Section 5.13.5.
- 5.13.5.8** Nothing in the Contract Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. DB Contractor understands and acknowledges that (a) the State auditor may conduct an audit or investigation of any Person receiving funds from the State directly under this Design-Build Contract or indirectly through a Subcontract, (b) acceptance of funds directly under this Design-Build Contract or indirectly through a Subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds, and (c) a Person that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit.

**5.13.6 Public Information Act**

- 5.13.6.1** DB Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials relating to the Project, the Work or this Design-Build Contract, including materials submitted by DB Contractor, are subject to the provisions of the Public Information Act. To the extent that this Design-Build Contract involves the exchange or creation of "public information" (as such term is defined by the Texas Public Information Act) that TxDOT collects, assembles or maintains or has the right of access to, and is not otherwise excepted from disclosure under the Public Information Act, DB Contractor is required, at no additional charge to the State, to make any such information available in PDF format, which is accessible by the public. If DB Contractor believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is excepted from disclosure under the Public Information Act, DB Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 5.13.6 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. DB Contractor is advised to contact legal counsel concerning such Law and its application to DB Contractor.
- 5.13.6.2** In addition to the foregoing, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Design-Build Contract and the DB Contractor agrees that the Design-Build Contract can be terminated if the DB Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.



**5.13.6.3** If TxDOT receives a request for public disclosure of materials relating to this Design-Build Contract, TxDOT will use reasonable efforts to notify DB Contractor of the request. Within five Business Days after receipt from TxDOT of a request for information that may include Contracting Information, DB Contractor shall submit to TxDOT at its expense all responsive materials and information maintained by or in the custody or possession of DB Contractor, regardless of whether such information was received from or previously submitted to TxDOT. Except for information that may be disclosed by TxDOT pursuant to Section 2.6 of the ITP or information described by Section 552.0222(b) of the Public Information Act, TxDOT will forward all responsive materials and information to the Office of the Attorney General and request an opinion prior to disclosing any such materials. DB Contractor shall have an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable Law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to DB Contractor or any other Person for the disclosure of any such materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

**5.13.6.4** In the event of any proceeding or litigation concerning the disclosure of any material submitted by DB Contractor to TxDOT, TxDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and DB Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of TxDOT's voluntary intervention or participation in litigation, DB Contractor shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, TxDOT incurs in connection with any litigation, proceeding or request for disclosure.

**5.13.7 Ownership of Documents**

Subject to this Section 5.13.7, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents shall be considered "works made for hire" for which TxDOT owns the copyright. Design Documents shall become TxDOT's property upon preparation; Construction Documents shall become TxDOT's property upon delivery to TxDOT; and other documents prepared or obtained by DB Contractor in connection with the performance of its obligations under the Contract Documents, including studies, manuals, Record Documents, technical and other reports and the like, shall become the property of TxDOT upon DB Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to TxDOT upon preparation or receipt thereof by DB Contractor. DB Contractor shall maintain all other documents described in this Section 5.13.7 in accordance with the requirements of Section 5.13.4 and shall deliver copies to TxDOT as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to TxDOT as a condition to Final Acceptance.

**5.13.8 Intellectual Property**

**5.13.8.1** All Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, shall remain exclusively the property of DB Contractor or its Affiliates or Subcontractors that supply the same, notwithstanding any delivery of copies thereof to TxDOT.

**5.13.8.2** TxDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce,

modify, adapt and disclose, the Proprietary Intellectual Property of DB Contractor, including with respect to Source Code and Source Code Documentation, solely in connection with the Project and any State Highway, owned and operated by TxDOT or a State or regional Governmental Entity; provided that TxDOT shall have the right to exercise such license only at the following times:

- (a) From and after the expiration or earlier termination of this Design-Build Contract for any reason whatsoever; and
- (b) During any time that a receiver is appointed for DB Contractor, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which DB Contractor is the debtor, in which case TxDOT may exercise such license only in connection with the Project.

**5.13.8.3** Subject to the license and rights granted to TxDOT pursuant to Section 5.13.8.2, TxDOT shall not at any time sell any Proprietary Intellectual Property of DB Contractor or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

**5.13.8.4** The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of TxDOT generally or with respect to the Project.

**5.13.8.5** The right to sublicense is limited to State or regional Governmental Entities that own or operate a State Highway or other road, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of TxDOT or any such State or regional Governmental Entity in connection with the Project or another State Highway or other road. All such sublicenses shall be subject to Section 5.13.8.6.

**5.13.8.6** Subject to Section 5.13.5, TxDOT shall:

- (a) Not disclose any Proprietary Intellectual Property of DB Contractor to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of TxDOT relating thereto;
- (b) Enter into a commercially reasonable confidentiality agreement if requested by DB Contractor with respect to the licensed Proprietary Intellectual Property; and
- (c) Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of DB Contractor and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

**5.13.8.7** Notwithstanding any contrary provision of this Design-Build Contract, in no event shall TxDOT or any of its directors, officers, employees, consultants or agents be liable to DB Contractor, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 5.13.8.6 if such breach is not the result of gross negligence or intentional misconduct. DB Contractor hereby irrevocably waives all claims to any such damages.

**5.13.8.8** DB Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

**5.13.8.9** With respect to any Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, owned by a Person other than DB Contractor, including any Affiliate, and other than TxDOT or a Governmental Entity acting as a Subcontractor, DB Contractor shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for DB Contractor and TxDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any State Highway, owned and operated by TxDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 5.13.8.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as “shrink wrap software”) owned by such a Person where such a license cannot be extended to TxDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by TxDOT set forth in Sections 5.13.8.3 through 5.13.8.6 shall also apply to TxDOT’s licenses in such Proprietary Intellectual Property.

## ATTACHMENT 5-1

### TERMS OF TXDOT MATERIAL INSPECTION AND TESTING SERVICES

TxDOT agrees to perform certain material inspection and testing services as requested by DB Contractor, and subject to the terms set forth below. Material inspection and testing to be performed by TxDOT consists of the following:

- Various inspected materials fabricated off-site (structural steel bridge components, pre-cast concrete stressed/non-stressed products, and miscellaneous fabricated products).
- Selected roadway monitored materials (as described in page 2) from approved/monitored sources (i.e. Quality Monitored Materials and Material Producer List qualified materials)
- Other materials inspection and testing as agreed upon in writing by TxDOT and DB Contractor

Inspections will be performed in reasonable compliance with the specifications and instructions supplied by DB Contractor in its Work Request, utilizing the form attached as Appendix 2 hereto, and subject to the terms and conditions described below. Inspections will be performed only at locations in Texas where TxDOT routinely provides resident inspection services for its own highway materials. Out-of-state inspections for DB Contractor may be performed as requested by DB Contractor. DB Contractor will reimburse TxDOT for all associated travel costs including airfare, per diem, vehicle rentals, and other directly related costs. TxDOT will only perform tests listed in the TxDOT Inspection & Testing Rates Table attached to this Attachment 5-1, as amended from time to time. Out-of-state inspections for DB Contractor will be performed only when TxDOT has employees scheduled to conduct inspections for TxDOT projects at the requested locations.

As inspection and testing services are performed by TxDOT, written inspection/test reports will be provided to DB Contractor in accordance with TxDOT's existing policies for providing such reports. Reports will include the date, time, locations and nature of services performed. Monitored Materials will not be furnished with inspection/test reports.

Prior to the commencement of the Construction Work, the DB Contractor shall provide TxDOT with a single point of contact for this scope of services. TxDOT will direct all invoices, test reports, questions and other issues to this point of contact. DB Contractor shall provide written notification of a change to the point of contact.

#### INSPECTED MATERIALS:

Unless agreed upon otherwise by TxDOT and DB Contractor, TxDOT will only perform inspection services for DB Contractor at structural steel fabrication plants, commercial precast prestressed and non-stressed concrete products plants, and other miscellaneous fabrication plants where TxDOT routinely provides such inspection and testing services for its own highway materials or for others. TxDOT reserves the right to prioritize or reschedule any inspection and testing services according to the following:

- Inspection and testing services may be cancelled or deferred due to unavailability of TxDOT personnel to perform the necessary inspection
- Inspections for DB Contractor will be given lower priority than inspections performed by TxDOT for TxDOT projects
- Inspections for DB Contractor may be rescheduled to coincide with the inspection of products for TxDOT projects.

TxDOT may perform additional technical materials acceptance services for DB Contractor to be agreed upon by both parties. These services are defined as additional inspection, testing, or technical materials acceptance services beyond what is performed during the routine in-plant inspection process. DB Contractor will compensate TxDOT for all direct costs or expenses associated with the performance of these additional services, based upon actual costs of salaries and travel expenses incurred.

DB Contractor and its fabricators will abide by the Nonconformance Report (NCR) process utilized by TxDOT for disposition of products that do not meet the requirements of the DB Contractor's specifications provided in the Work Request. The current TxDOT NCR process for handling various NCR conditions is described in Appendix 1. TxDOT, in its sole discretion, may revise the TxDOT NCR process.

A minimum of two (2) weeks prior to TxDOT performing any inspections, DB Contractor will submit Work Requests to TxDOT. Each Work Request will be for a single Fabricator, and will include the following:

- Project information (i.e. contract number, CSJ, etc.)
- Work description
- Type and estimated quantity of material(s) to be inspected
- Fabricator information (Name, contact person, physical location)
- Desired date of inspection
- Signature/name and telephone number of DB Contractor's authorized representative.
- TxDOT 2014 Specification Item or Special Specification to be used for inspection
- List of DB Contractor's amendments to TxDOT 2014 Specification Item
- DB Contractor's Special Specifications
- Complete set of necessary design drawings, material specifications, and shop drawing files in Adobe .pdf format to perform inspection of the material

#### MONITORED MATERIALS:

TxDOT maintains certain materials for TxDOT use. Additionally, certain products or Manufacturers/Suppliers are monitored as being TxDOT compliant. These materials are described in one of the following categories:

- **QM** - Quality Monitoring Program. Materials in Program sent directly to projects. Materials supplied with documentation of program compliance.
- **MPL** - Material maintained on approved list (Material Producer List). No additional testing necessary unless directed by Engineer
- **WA** - Warehouse Agreements to stock Pre-Tested materials
- **PJT** - Approve on the basis of project samples

The DB Contractor will not receive a test report for these above listed Monitored Materials.

TEST REPORTS AND INVOICES

TxDOT will send a monthly invoice to the DB Contractor for services performed pursuant to this Attachment 5-1. The test reports will be sent to the DB Contractor's point of contact.

PAYMENTS:

DB Contractor will pay TxDOT's fees for performance of the materials testing and inspection services as shown in the TxDOT Inspection & Testing Rates Table in effect at the time the service is performed. Information regarding TxDOT's Inspection & Testing Rates Table is attached as Appendix 3. Payments must be remitted by DB Contractor, within 30 days after receipt of TxDOT's invoice, to:

Construction Division/ Texas Department of Transportation  
Attn: Construction Division/BMS (RA/200-2nd fl.)  
125 E. 11th Street  
Austin, TX 78701-2483

## Appendix 1 to Attachment 5-1

### **NCR Process Nonconformance Report (NCR) Process for Structural Steel Bridge Products**

The NCR process for handling various NCR conditions in the Structural Steel Fabrication Branch includes,

**NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide nonconformance information to the DB Contractor's point of contact. Upon review of the information regarding the nonconformance, the DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.**

- Misplaced components beyond specification tolerances.
- Extreme cases of additional, missing, elongated, etc. holes due to poor workmanship.
- Material/design substitutions/changes after shop drawings have been approved.

#### **NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters**

- Sweep, camber, and twist beyond specification limits.
- Welding procedures, processes, and defects.
- Misdrilled holes (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Additional splices in flanges and webs (may need to contact Designer if non-traditional member).
- Base metal defects.
- Assembly of members.

#### **NCRs handled by TxDOT plant inspectors (In-House Repair)**

- Weld pick-ups.
- Minor heat corrections for sweep/camber.
- Weld defects (up to two times per location – generally).
- Painting issues.

### **Nonconformance Report (NCR) Process for Steel Non-Bridge Structures**

The NCR process handling various NCR conditions in the Miscellaneous Products Fabrication Branch for steel non-bridge structures includes,

**NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide nonconformance information to the DB Contractor's point of contact. Upon review of the information regarding the nonconformance, the DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.**

- Fabrication discrepancies beyond specification tolerances. (mislocated and/or oversized holes for structural fasteners and/or anchor bolts, etc.)
- Proposed material substitutions for steel components.

#### **NCRs handled by CSTM&P, Structural Steel Fabrication Branch, Austin Headquarters**

- Welding procedures, welding repair procedures, procedure qualification records.
- Misdrilled holes, bent surfaces (minor deviations).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Proposed paint system substitutions.
- Base metal defects.

#### **NCRs handled by TxDOT plant inspectors (In-House Repair)**

- Galvanized weldment tests.
- Minor heat corrections.
- Weld defect repairs permitted by the AWS D1.1 Structural Welding Code.
- Painting and galvanizing issues.



### **Nonconformance Report (NCR) Process for Commercially Produced Precast Concrete Products**

The NCR process for handling various NCR conditions in the Precast Concrete Fabrication Branch includes,

**NCRs requiring DB Contractor's Engineer of Record input (structural analysis, clarifications, etc.): CSTM&P will provide nonconformance information to the DB Contractor's point of contact. Upon review of the information regarding the nonconformance, the DB Contractor will provide in writing to TxDOT a corrective action. The corrective action shall be submitted via email to TxDOT in Adobe .pdf format.**

- Major honeycombed and/or spalled concrete exposing prestressing strand.
- Modification to prestressed concrete bridge beams (cutting 6-12 inches off beam ends).
- Thin top slab on prestressed concrete box beams (internal void floating).
- Thick bottom slabs on prestressed concrete U-beams and box beams (excessive dead load).
- Low strength concrete

#### **NCRs handled by CSTM&P, Precast Concrete Fabrication Branch, Austin Headquarters**

- Horizontal misalignment – Coordinate with prime contractor and District personnel.
- Minor honeycombed/spalled concrete with exposed reinforcing and prestressing steel.
- Damage over traffic lanes requiring concrete repair material (not allowed).
- Dimensional problems – length, vertical batter, horizontal skew, overall depth, etc.
- Minor beam modification – drilling anchor holes, cutting up to 6 inches off beam ends. (Coordinated with prime contractor and District personnel)
- Concrete damage in the bearing area of beams - shifting bearing pad away from beam end to reduce amount of bearing area affected by damage. (Coordinated with prime contractor and District personnel)
- Concrete temperature and/or curing violations.

#### **NCRs handled by TxDOT plant inspectors (In-House Repair)**

- Honeycombed/spalled concrete not extending beyond the first plane of reinforcing steel and not over traffic lanes.
- Damage to prestressed bridge deck panels.
- Damage to non-prestressed products.

**Appendix 2 to Attachment 5-1**

**Work Request**

Ms. Miranda Unruh

TxDOT - Construction Division

Materials & Pavements Section

125 East 11<sup>th</sup> Street

Austin, Texas 78701-2483

Re: Project: \_\_\_\_\_

Project Limits: \_\_\_\_\_

County: \_\_\_\_\_

CSJ No. \_\_\_\_\_

**WORK REQUEST**

Dear Ms. Unruh,

We are requesting fabrication inspection of the following materials:

DB Contractor provided specification number

Railing PR1 (150 LF)

Bid Item XXX

The fabricator:

Company Name

Company Address

Company Contact Person:

The date of the inspection:

DB Contractor insert requested inspection date

Additional inspection information or request:

If you have any questions concerning this matter, please feel free to call me at (DB Contractor insert office phone number).

Sincerely,

DB Contractor Quality Manager

cc: DB Contractor to provide pdf of necessary design file

**Appendix 3 to Attachment 5-1**

**TxDOT Inspection & Testing Rates**

Charges will be based on rates in effect at the time inspection and testing services are performed.

TxDOT's current Inspection and Testing Rates are published at:

[http://ftp.dot.state.tx.us/pub/txdot-info/cst/inspection\\_testing.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/cst/inspection_testing.pdf)

**ATTACHMENT 5-2**

**DRAINAGE NO CONFLICT SIGN-OFF FORM**

Design Manager: \_\_\_\_\_

Permit application number: \_\_\_\_\_

Date permit application received: \_\_\_\_\_

Permit applicant: \_\_\_\_\_

---

I, \_\_\_\_\_, the Design Manager working on behalf of the DB Contractor (\_\_\_\_\_) certify that a review of the above referenced drainage permit application concerning proposed improvements on \_\_\_\_\_ has been completed and there are no conflicts between the drainage permit applicant's proposed improvements and the design features for the [insert Project name] Project. The certification is being provided pursuant to Section 5.8 of the General Conditions.

Design features include, but are not limited to, pavement structures, drainage facilities, bridges, retaining walls, traffic signals, illumination, utilities, signs, bicycle and pedestrian facilities, foundations, duct/conduit, ground boxes, erosion control facilities, water quality facilities and other Elements of the Work.

**Design Manager:** \_\_\_\_\_

(Signature)

\_\_\_\_\_

Date

\_\_\_\_\_

(Print Name)

**ITEM 6**

**CONTROL OF MATERIALS**

Reserved.

**ITEM 7                    LEGAL RELATIONS AND RESPONSIBILITIES****7.1                    Title**

DB Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for TxDOT for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies delivered to the Site shall pass to TxDOT, free and clear of all Liens, upon the sooner of (a) incorporation into the Project or (b) payment by TxDOT to DB Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, DB Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Final Acceptance or until DB Contractor is terminated from the Project pursuant to Section 8.9 or Section 8.8.

**7.2                    Safety**

Reserved.

**7.3                    Compliance with Laws**

DB Contractor shall comply with all Laws that affect the performance of the Work.

**7.4                    Permits, Licenses and Taxes****7.4.1                Professional Services Licensing Requirements**

TxDOT does not intend to contract for, pay for, or receive any Professional Services that are in violation of any professional licensing or registration laws, and by execution of this Design-Build Contract, DB Contractor acknowledges that TxDOT has no such intent. It is the intent of the Parties that DB Contractor is fully responsible for furnishing the Professional Services through itself or subcontracts with licensed/registered Professional Service firms as provided herein. Any references in the Contract Documents to DB Contractor's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that DB Contractor shall "furnish" the Professional Services for the Project. The terms and provisions of this Section 7.4 shall control and supersede every other provision of all Contract Documents.

**7.5                    Site Security**

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

**7.6                    Risk of Loss or Damage; Maintenance and Repair of Work****7.6.1                Risk of Loss or Damage****7.6.1.1** DB Contractor shall be responsible for maintenance of the Work and the Site in accordance with Item 27 of the Design-Build Specifications. Upon Final Acceptance, TxDOT shall assume the maintenance obligations for the Project. DB Contractor shall be relieved from responsibility for maintenance of the Project except that DB Contractor shall be responsible for (a) maintenance of

improvements owned by third parties until control of and maintenance responsibility for such improvements has been formally transferred to the third parties; (b) maintenance of mitigation sites in accordance with the Environmental Compliance and Mitigation Plan required by Section 4.2.4.2 and any other extended maintenance responsibilities set forth in the Design-Build Specifications; and (c) maintenance within any work zones that DB Contractor implements during the performance of corrective Work in accordance with the Warranty under Section 3.8.

## **7.6.2 Maintenance and Repair of Work**

**7.6.2.1** DB Contractor shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project that is injured or damaged prior to the date that DB Contractor's maintenance responsibility ends as set forth in this Section 7.6, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to TxDOT, except to the extent that TxDOT is responsible for such costs in accordance with the express terms of this Design-Build Contract. DB Contractor, at its cost, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the Project ROW whether owned by DB Contractor, TxDOT or any other Person; provided, however, that DB Contractor shall not be responsible for rebuilding, repairing and restoring Project-related property that the Contract Documents provide will be maintained by third parties, unless such property is damaged due to negligent or willful acts of a DB Contractor-Related Entity.

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

## **7.7 Independent Contractor**

**7.7.1** DB Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as creating any relationship between TxDOT and DB Contractor other than that of Project owner and independent contractor.

**7.7.2** Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and DB Contractor and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture, or similar relationship exists. While the term "Design-Build" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture, or similar relationship to share net profits or net losses, or to give TxDOT control or joint control over DB Contractor's financial decisions or discretionary actions concerning the Project and the Work.

**7.7.3** In no event shall the relationship between TxDOT and DB Contractor be construed as creating any relationship whatsoever between TxDOT and DB Contractor's employees. None of DB Contractor, any Subcontractor, nor any of their respective employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the Contract Documents, DB Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has



complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that DB Contractor or any Subcontractor hires to perform or assist in performing the Work.

## **7.8 Successors and Assigns; Change of Control**

### **7.8.1 Successors and Assigns**

**7.8.1.1** The Contract Documents shall be binding upon and inure to the benefit of TxDOT and DB Contractor and their permitted successors, assigns and legal representatives.

**7.8.1.2** TxDOT may transfer and assign all or any portion of its rights, title and interests in and to the Contract Documents, including rights with respect to the Payment and Performance Bonds, Guarantees, letters of credit and other security for payment or performance:

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

**7.8.1.3** In the event of TxDOT's assignment of all of its rights, title and interests in the Contract Documents as permitted hereunder, DB Contractor shall have no further recourse to TxDOT under the Contract Documents or otherwise except as specifically provided by other contractual agreement or by statute.

### **7.8.2 Change in Control**

**7.8.2.1** DB Contractor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber DB Contractor's interest in this Design-Build Contract or any portion thereof without TxDOT's prior written approval, except to any entity that is under the same ultimate management control as DB Contractor. DB Contractor shall not sublease or grant any other special occupancy or use of the Project to any other Person that is not in the ordinary course of DB Contractor performing the Work, without TxDOT's prior written approval. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null and void ab initio and TxDOT, at its option, may declare any such attempted action to be a material DB Contractor Default.

**7.8.2.2** DB Contractor shall not voluntarily or involuntarily cause, permit or suffer any Change of Control prior to Final Acceptance without TxDOT's prior written approval. If there occurs any voluntary or involuntary Change of Control without TxDOT's prior written approval, TxDOT, at its option, may declare it to be a material DB Contractor Default.

**7.8.2.3** Where TxDOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control prior to Final Acceptance, TxDOT may withhold or condition its approval in its sole discretion. Any such decision of TxDOT to withhold consent shall be final, binding and not subject to the procedures for resolving Disputes, including the Disputes Review Panel Process, Informal Resolution Procedures and Dispute Resolution Procedures, set forth in this Design-Build Contract.

**7.8.2.4** Assignments and transfers of DB Contractor's interest permitted under this Section 7.8.2 or otherwise approved in writing by TxDOT shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to TxDOT, in which the transferee, without condition or reservation, assumes all of DB Contractor's obligations, duties and liabilities under this Design-Build Contract and the other Contract Documents then in effect and agrees to perform and observe all provisions thereof applicable to DB Contractor. Each transferee shall take DB Contractor's interest subject to, and shall be bound by, the Project Management Plan, the Major Subcontracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by TxDOT in writing in its good faith discretion.

## **7.9 Change of Organization or Name**

**7.9.1** DB Contractor shall not change the legal form of its organization in a manner that adversely affects TxDOT's rights, protections and remedies under the Contract Documents without the prior written approval of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion.

**7.9.2** In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

## **7.10 Limitation on Third Party Beneficiaries**

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 7.10, the duties, obligations and responsibilities of the Parties to the Contract Documents with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Subcontractor or any Person other than DB Contractor.

## **7.11 No Personal Liability of TxDOT Employees; Limitation on State's Liability**

### **7.11.1 No Personal Liability of TxDOT Employees**

**7.11.1.1** TxDOT's Authorized Representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They shall not be liable to any DB Contractor-Related Entity either personally or as employees of TxDOT for actions in their ordinary course of employment.

**7.11.1.2** The Parties agree to provide to each other's Authorized Representative written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in the Contract Documents, and shall otherwise provide notice in such form and within such period as is required by Law.

### **7.11.2 Limitation on State's Liability**

In no event shall TxDOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Site during the period DB Contractor has operation and control of the

Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any DB Contractor-Related Entity. DB Contractor expressly acknowledges and agrees that TxDOT's rights in this Design-Build Contract to take any action with respect to the Project, including the right to review, comment on, disapprove or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward DB Contractor or any other Person, all of which are hereby expressly disclaimed.

## **7.12 INDEMNIFICATION**

### **7.12.1 Indemnity by DB Contractor**

**7.12.1.1** SUBJECT TO SECTION 7.12.1.2, DB CONTRACTOR SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS, AND LOSSES, IN EACH CASE IF ASSERTED OR INCURRED BY OR AWARDED TO ANY THIRD PARTY, ARISING OUT OF, RELATING TO OR RESULTING FROM:

- (a) THE BREACH OR ALLEGED BREACH OF ANY OF THE CONTRACT DOCUMENTS BY ANY DB CONTRACTOR-RELATED ENTITY;
- (b) THE FAILURE OR ALLEGED FAILURE BY ANY DB CONTRACTOR-RELATED ENTITY TO COMPLY WITH THE GOVERNMENTAL APPROVALS, ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER LAWS (INCLUDING LAWS REGARDING HAZARDOUS MATERIALS MANAGEMENT);
- (c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE WORK, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO TxDOT OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS DESIGN-BUILD CONTRACT; PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM TxDOT'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO TxDOT BY DB CONTRACTOR;
- (d) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, OR MISCONDUCT OF ANY DB CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK;
- (e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY DB CONTRACTOR-RELATED ENTITY WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY ANY DB CONTRACTOR-RELATED ENTITY;

- (f) ANY AND ALL STOP NOTICES AND LIENS FILED IN CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS', AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, AND ANY OTHER LIABILITY TO SUBCONTRACTORS FOR FAILURE TO PAY SUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT TxDOT HAS PAID ALL UNDISPUTED AMOUNTS OWING TO DB CONTRACTOR WITH RESPECT TO SUCH WORK;
- (g) ANY ACTUAL OR THREATENED DB CONTRACTOR RELEASE OF HAZARDOUS MATERIALS;
- (h) THE CLAIM OR ASSERTION BY ANY OTHER (i) CONTRACTOR THAT ANY DB CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, EXCEPT WHERE THE DB CONTRACTOR-RELATED ENTITY WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (ii) CONTRACTOR THAT ANY DB CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, OR MISCONDUCT OF ANY DB CONTRACTOR-RELATED ENTITY;
- (i) DB CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN DB CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;
- (j) ANY DB CONTRACTOR-RELATED ENTITY'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT TxDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN TxDOT AND A THIRD PERSON, WHERE TxDOT HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO DB CONTRACTOR UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF ANY DB CONTRACTOR-RELATED ENTITY THAT RENDER TxDOT UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT TxDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN TxDOT AND A THIRD PERSON WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO DB CONTRACTOR;
- (k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY ANY DB CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH THE PERFORMANCE OF THE WORK;
- (l) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF (i) THE FAILURE OF ANY DB CONTRACTOR-RELATED ENTITY TO COMPLY WITH GOOD INDUSTRY PRACTICES, REQUIREMENTS OF THE CONTRACT DOCUMENTS, THE PROJECT MANAGEMENT PLAN, OR GOVERNMENTAL APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE

INTENTIONAL MISCONDUCT OR NEGLIGENCE OF ANY DB CONTRACTOR-RELATED ENTITY, OR (iii) THE ACTUAL PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER'S PROPERTY BY ANY DB CONTRACTOR-RELATED ENTITY;

- (m) ERRORS, INCONSISTENCIES, OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROJECT OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK; AND
- (n) ANY CLAIM BY A DB CONTRACTOR-RELATED ENTITY ARISING OUT OF, RELATING TO, OR RESULTING FROM THE PERFORMANCE BY TxDOT OF MATERIAL INSPECTION AND TESTING SERVICES PURSUANT TO SECTION 5.10.1.1 AND ATTACHMENT 5-1.

**7.12.1.2** Subject to the releases and disclaimers herein, including all the provisions set forth in Section 5.2.1.8, DB Contractor's indemnity obligation shall not extend to any third-party Loss to the extent caused by:

- (a) The negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party,
- (b) TxDOT's material breach of any of its obligations under the Contract Documents;
- (c) An Indemnified Party's material violation of any Laws or Governmental Approvals; or
- (d) An unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Design-Build Specifications, but only where prior to occurrence of the third-party Loss (i) DB Contractor complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement created a potentially unsafe condition or (ii) DB Contractor knew of and reported to TxDOT the potentially unsafe requirement.

**7.12.1.3** In claims by an employee of DB Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 7.12 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for DB Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

**7.12.1.4** For purposes of this Section 7.12, "third party" means any person or entity other than an Indemnified Party and DB Contractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party that is within the scope of the indemnities and that is not covered by the Indemnified Party's worker's compensation program.

## **7.12.2 Defense and Indemnification Procedures**

**7.12.2.1** Subject to Section 7.12.2.6, if any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 7.12.1, TxDOT shall by writing as soon as practicable after receipt of the claim (a) inform DB Contractor of the claim, (b) send to DB Contractor a copy of all written materials TxDOT has received asserting such claim, and (c) notify DB Contractor that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless DB Contractor accepts the tender of the claim in accordance with Section 7.12.2.3. As soon as practicable after DB Contractor receives

notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies. TxDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

**7.12.2.2** If the insurer under any applicable insurance policy accepts the tender of defense, TxDOT and DB Contractor shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 7.12.2.3 shall apply.

**7.12.2.3** If the defense is tendered to DB Contractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that DB Contractor:

- (a) Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;
- (b) Accepts the tender of defense but with a "reservation of rights" in whole or in part; or
- (c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Design-Build Contract.

**7.12.2.4** If DB Contractor accepts the tender of defense under Section 7.12.2.3(a), DB Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and DB Contractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

- (a) DB Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and
- (b) The Indemnified Party shall fully cooperate in said defense, provide to DB Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and DB Contractor concerning such defense.

**7.12.2.5** If DB Contractor responds to the tender of defense as specified in Section 7.12.2.3(a) or 7.12.2.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

**7.12.2.6** The Indemnified Party may assume its own defense by delivering to DB Contractor written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

- (a) A conflict exists between it and DB Contractor that prevents or potentially prevents DB Contractor from presenting a full and effective defense;
- (b) DB Contractor is otherwise not providing an effective defense in connection with the claim; or

- (c) DB Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

#### 7.12.2.7

If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, DB Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending, except to the extent the Indemnified Party conducts its own defense as a result of DB Contractor's denial of such defense pursuant to Section 7.12.2.3(c). In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

- (a) In the case of a defense conducted under Section 7.12.2.3(a), it shall have the right to settle or compromise the claim with DB Contractor's prior written consent, which shall not be unreasonably withheld or delayed;
- (b) In the case of a defense conducted under Section 7.12.2.3(b), it shall have the right to settle or compromise the claim with DB Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to DB Contractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by DB Contractor; and
- (c) In the case of a defense conducted under Section 7.12.2.3(c), it shall have the right to settle or compromise the claim without DB Contractor's prior written consent and without prejudice to its rights to be indemnified by DB Contractor. If a dispute resolver determines that DB Contractor wrongfully denied the defense of the Indemnified Party, the Indemnified Party shall be entitled to reimbursement of the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, and indemnification of the amount paid to settle or compromise the claim, in addition to interest at the rate calculated in accordance with Section 7.14 payable on such defense and settlement amounts from the date such costs and expenses are incurred by the Indemnified Party.

#### 7.12.2.8

The Parties acknowledge that while Section 7.12.1 contemplates that DB Contractor will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of this Section 7.12.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third-party claim.

#### 7.12.2.9

In determining responsibilities and obligations for defending suits pursuant to this Section 7.12.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

**7.13 Joint and Several Liability**

See the DBA for special joint and several liability provisions applicable to joint ventures and partnerships.

**7.14 Interest on Amounts Due and Owing**

Unless expressly provided otherwise in this Design-Build Contract or in the case of TxDOT's Recoverable Costs, all amounts to which a Party is entitled to assess, collect, demand or recover under this Design-Build Contract shall earn interest from the date on which such amount is due and owing at the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law.

**7.15 TxDOT Monetary Obligations**

All TxDOT monetary obligations under the Contract Documents are subject to appropriation by the Texas Legislature. This Section 7.15 applies to all monetary obligations of TxDOT set forth in the Contract Documents, notwithstanding any contrary provisions of the Contract Documents. The Contract Documents do not create a debt under the Texas Constitution.

**7.16 Israel Boycott Certification and Prohibition**

- (a) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- (b) DB Contractor hereby certifies that neither DB Contractor nor any wholly owned subsidiaries, majority owned subsidiaries, parent companies, or for-profit affiliates Boycott Israel.
- (c) DB Contractor represents and warrants that DB Contractor and its wholly owned subsidiaries, majority owned subsidiaries, parent companies, and for-profit affiliates shall not Boycott Israel during the term of this Design-Build Contract.



**ITEM 8                    PROSECUTION AND PROGRESS****8.1                    Notice to Proceed and Commencement of Construction****8.1.1                Notices to Proceed**

**8.1.1.1**            As a material consideration for entering into this Design-Build 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 this Design-Build Contract. Except where this Design-Build Contract expressly provides for an extension of time, the time limitations set forth in the Contract Documents for DB Contractor's performance of its covenants, conditions and obligations are of the essence, and DB Contractor waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance.

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

**8.1.1.3**            TxDOT anticipates issuing NTP1 concurrently with execution and delivery of this Design-Build Contract. Issuance of NTP1 authorizes DB Contractor to perform only the Work described in this Section 8.1.1.3 or otherwise expressly authorized upon issuance of NTP1 in the Contract Documents. Issuance of NTP1 authorizes DB Contractor to perform the portion of the Work necessary to obtain TxDOT's approval of the component parts, plans and documentation of the Project Management Plan set forth in Section 4.2 and Quality Management Plan set forth in Section 4.3. It also authorizes DB Contractor to enter the Project Right of Way that TxDOT owns in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, to commence ROW acquisition services and to commence negotiating and entering into Utility Agreements with Utility Owners. Refer to the Design-Build Agreement regarding a Price adjustment for delays to NTPs.

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

**8.1.1.5**            DB Contractor may request that TxDOT grant DB Contractor approval to begin design, engineering or architecture Work prior to issuance of NTP2 if DB Contractor meets all of the conditions described in Section 8.1.1.4 relating to the design, engineering or architecture Work to be performed, including approval of the PSQMP, submittal of insurance certificates, obtaining the bonds described in Section 8.1.2.1(d), and approval of that portion of the Schedule of Values identifying the design, engineering or architecture Work to be performed. Notwithstanding the foregoing, DB Contractor is

not entitled to payment for any Work prior to issuance of NTP2 in excess of the NTP1 Maximum Payment Amount.

**8.1.1.6** Notwithstanding Section 8.1.1.4, DB Contractor may request that TxDOT issue NTP2 prior to approval of all of the component parts, plans and documentation of the Project Management Plan and the PBS2. In such event, TxDOT may elect to issue NTP2 prior to satisfaction by DB Contractor of any particular conditions to NTP2. TxDOT may condition such early issuance of NTP2 upon payment by DB Contractor to TxDOT the amount set forth in the DBA for each day during the period that NTP2 has been issued and any condition to NTP2 remains unsatisfied. Notwithstanding any early issuance of NTP2, DB Contractor shall not be permitted to commence Construction Work on any portion of the Project until all the conditions to the commencement of Construction Work described in Section 8.1.2 have been satisfied.

## **8.1.2 Conditions to Commencement of Construction**

### **8.1.2.1 Construction Work Generally**

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

- (a) All Governmental Approvals necessary to begin Construction Work in the applicable portion of the Project have been obtained, and DB Contractor has furnished to TxDOT fully executed copies of such Governmental Approvals.
- (b) Fee simple title or other property rights acceptable to TxDOT in its sole discretion for the Project ROW necessary for commencement of construction of the applicable portion of the Project and Utility Adjustments included in the Construction Work have been identified, conveyed to and recorded in favor of TxDOT, TxDOT has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement or right of entry therefor on terms acceptable to TxDOT with the exception of Quitclaim Deeds used for Utility Adjustments, which shall comply with the requirements of Section 14.2.4.4 of the Design-Build Specifications.
- (c) DB Contractor has satisfied for the applicable portion of the Project all applicable pre-construction requirements contained in the Environmental Approvals and other Governmental Approvals.
- (d) Each Performance Bond and Payment Bond (including any required riders), in form and from a surety approved by TxDOT, has been obtained and is in full force and effect.
- (e) The Guarantees, if any, required under the Design-Build Agreement have been obtained and delivered to TxDOT.
- (f) All insurance policies required under Section 3.5 have been obtained and are in full force and effect, and DB Contractor has delivered to TxDOT written binding verifications of coverage from the relevant issuers of such insurance policies.

- (g) DB Contractor has caused to be developed and delivered to TxDOT and TxDOT has approved, in accordance with Sections 4.1.2.2.4 and 4.2, the component parts, plans and documentation of the Project Management Plan.
- (h) DB Contractor has delivered to TxDOT all Submittals relating to the Construction Work required by the Project Management Plan or Contract Documents, in the form and content required by the Project Management Plan or Contract Documents, including the Phase II and Phase III Environmental Site Assessments if required pursuant to Section 15.3.5.1 of the Design-Build Specifications.
- (i) All representations and warranties of DB Contractor set forth in Section 10.1 of the Design-Build Agreement shall be and remain true and correct in all material respects.
- (j) DB Contractor has adopted written policies establishing ethical standards of conduct for all DB Contractor-Related Entities, including DB Contractor's supervisory and management personnel, in dealing with (a) TxDOT and TxDOT's consultants and (b) employment relations, in accordance with Section 8.2.5.
- (k) There exists no uncured DB Contractor Default for which DB Contractor has received written notice from TxDOT.
- (l) DB Contractor has provided to TxDOT at least 10 days advance written notice of the date DB Contractor determines that it will satisfy all of the conditions set forth in this Section 8.1.2.1.

#### **8.1.2.2 Utility Adjustments**

DB Contractor shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until TxDOT issues NTP2, all of the conditions set forth in Section 8.1.2.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the requirements provided in Section 14.4.4 of the Design-Build Specifications have been satisfied.

### **8.1.3 Completion Deadlines**

#### **8.1.3.1 Substantial Completion Deadlines**

DB Contractor shall achieve Substantial Completion of the Project on or before the Substantial Completion Deadline.

#### **8.1.3.2 Final Acceptance Deadline**

DB Contractor shall achieve Final Acceptance on or before 120 days after Substantial Completion.

#### **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 achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines for any reason.

## 8.2 Subcontracting

### 8.2.1 Subcontracts

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

**8.2.1.2** DB Contractor shall comply with the following Subcontractor requirements.

- (a) DB Contractor shall provide TxDOT, as part of each monthly Draw Request, a listing of (a) all Subcontracts in effect to which DB Contractor is a party and (b) where DB Contractor is a party to a Subcontract with an Affiliate, all Subcontracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Subcontract with DB Contractor are delegated to the Subcontractor. DB Contractor also shall provide, as part of the monthly Draw Request the Subcontractors under such Subcontracts, guarantees of Subcontracts in effect and the guarantors thereunder. Subject to Section 5.13.1, DB Contractor shall allow TxDOT ready access to all Subcontracts and records regarding Subcontracts, including amendments and supplements to Subcontracts and guarantees thereof.
- (b) DB Contractor shall provide TxDOT the information and certifications required pursuant to Article A, Section 6 of the DBE Special Provisions for Non-Traditional Contracts in Attachment 3-2.

**8.2.1.3** The retention of Subcontractors by DB Contractor will not relieve DB Contractor of its responsibility hereunder or for the quality of the Work or materials provided by it. DB Contractor shall at all times be held fully responsible to the Indemnified Parties for the acts and omissions of Subcontractors and persons employed by them, and no Subcontract entered into by DB Contractor will impose any obligation or liability upon TxDOT to any such Subcontractor or any of its employees. Nothing in this Design-Build Contract will create any contractual relationship between TxDOT and any Subcontractor of DB Contractor.

**8.2.1.4** The following requirements shall apply to Subcontracts:

- (a) DB Contractor shall, prior to soliciting any bids for performance of work or labor or rendering of services relating to the design or construction of the Project or for special fabrication and installation of a portion of the Work, submit to TxDOT for its review and approval a procedure for the conduct of the bidding and approval process applicable to Major Subcontracts. DB Contractor may use procedures set forth in the TxDOT Standard Specifications or may submit alternative procedures to TxDOT for approval. DB Contractor shall not enter into any Major Subcontracts except in accordance with the foregoing procedure; provided, however, that this Section 8.2.1.4(a) shall not apply to Major Subcontracts entered between DB Contractor and a Subcontractor identified in DB Contractor's Proposal.
- (b) DB Contractor shall not terminate any Major Subcontract, or permit or suffer any substitution or replacement of a Major Subcontractor, except that (i) for Major Subcontracts that are not with Identified Subcontractors, DB Contractor may terminate the Major Subcontract in the case of material default by a Major Subcontractor, termination of this Design-Build Contract

for convenience or with TxDOT's prior written approval and (ii) for Major Subcontracts that are with Identified Subcontractors, DB Contractor may terminate the Major Subcontract only in accordance with Section 8.2.1.5.

- (c) As soon as DB Contractor identifies a potential Subcontractor for a potential Subcontract described in the first sentence of Section 8.2.1.2, but in no event later than five days after Subcontract execution, DB Contractor shall notify TxDOT in writing of the name, address, phone number and authorized representative of such Subcontractor.

#### 8.2.1.5

The following additional requirements shall apply to Identified Subcontractors:

- (a) DB Contractor shall not permit or suffer any substitution or replacement of an Identified Subcontractor, unless the Identified Subcontractor:
- (i) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement or Subcontract with DB Contractor;
  - (ii) voluntarily removes itself from DB Contractor's team;
  - (iii) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the Proposal stage; or
  - (iv) fails to negotiate in good faith the terms of a Subcontract in a timely manner in accordance with the provisions established in the teaming agreement for the Project.
- (b) If DB Contractor makes changes to an Identified Subcontractor in violation of Section 8.2.1.5(a), DB Contractor shall pay to TxDOT 100% of any cost savings resulting from the change.

#### 8.2.1.6

Each Subcontract shall:

- (a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents and Good Industry Practice for work of similar scope and scale and shall set forth effective procedures for claims and change orders.
- (b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.
- (c) Without cost to DB Contractor or TxDOT, expressly permit assignment to TxDOT or its successor, assign or designee of all DB Contractor's rights under the Subcontract, contingent only upon delivery of written request from TxDOT following termination of this Design-Build Contract, allowing TxDOT or its successor, assign or designee to assume the benefit of DB Contractor's rights with liability only for those remaining obligations of DB Contractor accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility.

- (d) Expressly state that any acceptance of assignment of the Subcontract to TxDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Subcontract by DB Contractor or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to DB Contractor's breach).
- (e) Expressly include a covenant to recognize and attorn to TxDOT upon receipt of written notice from TxDOT that it has exercised its rights under this Design-Build Contract, without necessity for consent or approval from DB Contractor or to determine whether TxDOT validly exercised its rights, and DB Contractor's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such written notice.
- (f) Not be assignable by the Subcontractor to any Person other than TxDOT (or its assignee) without DB Contractor's prior written consent.
- (g) Expressly include requirements that the Subcontractor will (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider); (ii) permit audit thereof with respect to the Project or Work by each of DB Contractor and TxDOT pursuant to Section 5.13.5; and (iii) provide progress reports to DB Contractor appropriate for the type of work it is performing sufficient to enable DB Contractor to provide the reports it is required to furnish TxDOT under this Design-Build Contract.
- (h) Include the right of DB Contractor to terminate the Subcontract in whole or in part upon any Termination for Convenience of this Design-Build Contract without liability of DB Contractor or TxDOT for the Subcontractor's lost profits or business opportunity.
- (i) Expressly require the Subcontractor to participate in meetings between DB Contractor and TxDOT, upon TxDOT's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by DB Contractor, and provided further that nothing in this clause (i) shall limit the authority of TxDOT to give such direction or take such action that, in its sole discretion, is necessary to remove an immediate and present threat to the safety of life or property.
- (j) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Section 4.9, if such participation is requested by either TxDOT or DB Contractor.
- (k) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of TxDOT in the Project or the Project ROW.
- (l) With respect to Major Subcontracts, expressly include a covenant, expressly stated to survive termination of the Major Subcontract, to promptly execute and deliver to TxDOT a new contract between the Major Subcontractor and TxDOT on the same terms and conditions as the Major Subcontract, in the event (i) the Major Subcontract is rejected by DB Contractor in bankruptcy or otherwise wrongfully terminated by DB Contractor and (ii) TxDOT delivers written request for such new contract following termination or expiration of this Design-Build Contract.

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

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

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

## **8.2.2 Responsibility for DB Contractor-Related Entities**

DB Contractor shall supervise and be responsible to the Indemnified Parties for the acts and omissions of DB Contractor's employees, agents, officers and Subcontractors and other Persons performing portions of the Work, as though all such Persons were directly employed by DB Contractor.

## **8.2.3 Subcontracts with Affiliates**

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

- (a) DB Contractor shall execute a written Subcontract with the Affiliate;
- (b) The Subcontract shall comply with all applicable provisions of this Item 8, be consistent with Good Industry Practice, and be in form and substance substantially similar to Subcontracts then being used by DB Contractor or Affiliates for similar Work or services with unaffiliated Subcontractors;
- (c) The Subcontract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;
- (d) The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to DB Contractor than those that DB Contractor could reasonably obtain in an arm's length, competitive transaction with an unaffiliated Subcontractor. DB Contractor shall bear the burden of proving that the same are no less favorable to DB Contractor; and
- (e) No Affiliate shall be engaged to perform any Work or services which any Contract Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

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

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

## 8.2.4 Labor Standards

8.2.4.1 In the performance of its obligations under the Contract Documents, DB Contractor at all times shall comply, and require by Subcontract that all Subcontractors (including Suppliers) comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders, including Attachment 8-2.

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

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

## 8.2.5 Ethical Standards

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

- (a) Restrictions on gifts and contributions to, and lobbying of, TxDOT, the Texas Transportation Commission, TxDOT consultants and any of their respective commissioners, directors, officers and employees;
- (b) Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;
- (c) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any DB Contractor-Related Entity;
- (d) Restrictions on directors, members, officers or supervisory or management personnel of any DB Contractor-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;
- (e) Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of DB Contractor



or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

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

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

## **8.2.6 Job Training Plan**

**8.2.6.1** DB Contractor's Job Training Plan applicable to the Project is set forth in Exhibit 5 to the Design-Build Agreement. The purpose of the Job Training Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. DB Contractor shall perform and comply with all requirements set forth in the Job Training Plan.

**8.2.6.2** DB Contractor shall include provisions to effectuate the Job Training Plan in every Subcontract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Subcontracts (including purchase orders and task orders for Work), except for Subcontracts with TxDOT or Governmental Entities, so that such provisions will be binding upon each Subcontractor. The foregoing shall not apply to any Subcontracts with TxDOT or Governmental Entities.

## **8.2.7 Prevailing Wages**

**8.2.7.1** DB Contractor shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 7 to the Design-Build Agreement. DB Contractor shall comply and cause its Subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to any Subcontracts with TxDOT or Governmental Entities.

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

**8.2.7.3** Any issue between DB Contractor or a Subcontractor, and any affected worker relating to any alleged violation of Section 2258.023 of the Texas Government Code that is not resolved before the 15th

day after the date TxDOT makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code.

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

**8.2.8 E-Verify**

Pursuant to Executive Order RP-80, DB Contractor certifies and ensures that for all contracts for services, DB Contractor shall, to the extent permitted by law, utilize and cause its Subcontractors to utilize the United States Department of Homeland Security's E-Verify system during the Term and Warranty Term of this Design-Build Contract to determine the eligibility of:

- (a) All persons hired by DB Contractor during the Term and Warranty Term of this Design-Build Contract to perform duties within the State of Texas; and
- (b) All persons, including subcontractors, hired during the Term and Warranty Term and assigned by DB Contractor during the Term and Warranty Term to perform work pursuant to this Design-Build Contract.

Violation of this provision constitutes a material breach of this Design-Build Contract.

**8.2.9 Uniforms**

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

**8.3 Key Personnel**

**8.3.1 Key Personnel and Qualifications of Employees**

**8.3.1.1** The Contract Documents identify certain job categories of Key Personnel for the Project. Key Personnel must be English-speaking and capable of reading and understanding the Contract Documents. Except as permitted in Section 8.3.1.6, DB Contractor shall not change, or permit any change in, any Key Personnel. Any replacement Key Personnel during the Term shall have equal or better qualifications and experience as the individual being replaced and shall be subject to prior approval by TxDOT.

**8.3.1.2** DB Contractor shall designate an Authorized Representative who shall have onsite field and office authority to represent and act for DB Contractor. An Authorized Representative shall be present at the job site at all times while Work is actually in progress. Other Key Personnel shall be on site as and when required by TxDOT. DB Contractor shall provide phone, e-mail addresses and mobile telephone numbers for all Key Personnel. TxDOT requires the ability to contact the following Key Personnel and other personnel 24 hours per day, seven days per week: (a) Project Manager and (b) Safety Manager.

- 8.3.1.3** DB Contractor acknowledges and agrees that the award of this Design-Build Contract by TxDOT to DB Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and DB Contractor's commitment that such individuals would be available to undertake and perform the Work. DB Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In addition to the foregoing, TxDOT reserves the right to require a 100% time commitment per position from any Key Personnel if TxDOT, in its good faith discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.
- 8.3.1.4** If an individual filling one or more Key Personnel roles is not available for the Work and does not maintain active involvement in the prosecution and performance of the Work because such individual has been replaced, DB Contractor acknowledges that TxDOT, the Work, and the Project will suffer significant and substantial Losses due to the unavailability of the individual identified in the Proposal and that it is impracticable and extremely difficult to ascertain and determine the actual Losses that would accrue to TxDOT in such event. Therefore, if an individual filling a Key Personnel role is not available or not actively involved in the prosecution and performance of the Work sufficient for satisfactory performance of the Work to be performed by such Key Personnel, as determined by TxDOT in its good faith discretion, regardless of whether such individual has been replaced by an individual approved by TxDOT, DB Contractor agrees to pay TxDOT a Key Personnel Change Fee for each position held by such individual, as deemed compensation to TxDOT for such Losses in the amount set forth in Section 7.4.1 of the Design Build Agreement.
- 8.3.1.5** If an individual filling one or more Key Personnel roles is not available for the Work and does not maintain active involvement in the prosecution and performance of the Work and such individual has not been replaced by an individual approved by TxDOT, DB Contractor acknowledges that TxDOT, the Work and the Project will suffer significant and substantial additional Losses due to the unavailability of an approved individual to fill a Key Personnel role and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, for each day that a Key Personnel role is not filled by an approved individual, DB Contractor agrees to pay TxDOT Key Personnel Unavailability Liquidated Damages in the amount set forth in Section 7.4.2 of the Design-Build Agreement, for each position not filled, as deemed compensation to TxDOT for such Losses.
- 8.3.1.6** DB Contractor understands and agrees that any Key Personnel Change Fees and Key Personnel Unavailability Liquidated Damages payable in accordance with this Section 8.3 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. TxDOT shall have the right to deduct any amount owed by DB Contractor to TxDOT hereunder from any amounts owed by TxDOT to DB Contractor, or to collect from any bond or Guaranty furnished under this Design-Build Contract for such Key Personnel Change Fees and Key Personnel Unavailability Liquidated Damages. Notwithstanding the foregoing, DB Contractor shall not be liable for Key Personnel Change Fees under Section 8.3.1.4 or Key Personnel Unavailability Liquidated Damages under Section 8.3.1.5 if (a) DB Contractor removes or replaces such personnel at the direction of TxDOT, except pursuant to Section 8.2.4.3; (b) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable DB Contractor-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding Key Personnel Change Fees or Key Personnel Unavailability Liquidated Damages); or (c) such individual is unavailable due to TxDOT's failure to issue NTP1 within 180 days of the Proposal Due Date for a reason other than the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB

Contractor-Related Entity; provided, however, in each such case, DB Contractor shall promptly propose to TxDOT a replacement for such personnel, which individual shall be subject to TxDOT's review and written approval. If NTP1 has not been issued within 180 days after the Proposal Due Date through no act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any DB Contractor-Related Entity, DB Contractor shall have 30 days after issuance of NTP1 to identify any change in Key Personnel without incurring any Key Personnel Change Fees or Key Personnel Unavailability Liquidated Damages. Following any TxDOT-approved substitution or replacement of a Key Personnel pursuant to the terms hereof, the new individual shall be considered a Key Personnel for all purposes under the Contract Documents, including the provisions of this Section 8.3 relative to Key Personnel Unavailability Liquidated Damages.

**8.3.1.7** DB Contractor acknowledges and agrees that the Key Personnel positions are of critical importance to TxDOT and the Project. In addition to the approval rights of TxDOT set forth in Section 8.3.1.1, the Key Personnel Change Fees set forth in Section 8.3.1.4 and the Key Personnel Unavailability Liquidated Damages set forth in Section 8.3.1.5, if an individual in a Key Personnel position leaves that position, TxDOT shall have the right to terminate this Design-Build Contract for default under Section 8.8, unless DB Contractor provides TxDOT a replacement acceptable to TxDOT within 90 days after the earlier of (a) the date on which such individual has left his/her position or (b) DB Contractor or TxDOT becomes aware that such individual intends to leave his/her position.

## **8.4 Suspension**

### **8.4.1 Suspensions for Convenience**

**8.4.1.1** TxDOT may, at any time and for any reason, by written notice, order DB Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that TxDOT deems appropriate for the convenience of TxDOT. DB Contractor shall promptly comply with any such written suspension order. DB Contractor shall promptly recommence the Work upon receipt of written notice from TxDOT directing DB Contractor to resume the Work. Any such suspension for convenience shall be considered a TxDOT-Directed Change, provided that TxDOT shall have the right to direct suspensions for convenience not exceeding 48 hours each up to a total of 96 hours, which shall not be considered a TxDOT-Directed Change. Adjustments of the Price and the Completion Deadlines shall be available for any such TxDOT-Directed Change, subject to DB Contractor's compliance with the terms and conditions set forth in Section 4.6.

### **8.4.2 Suspensions for Cause**

**8.4.2.1** Upon TxDOT's delivery of notice of a DB Contractor Default for any of the following breaches or failures to perform and DB Contractor's failure to fully cure and correct within the applicable cure period, if any, TxDOT shall have the right and authority to suspend for cause any affected portion of the Work by written order to DB Contractor:

- (a) The existence of conditions unsafe for workers, other Project personnel or the general public;
- (b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

- (c) Performance of Nonconforming Work;
- (d) Failure to carry out and comply with Directive Letters;
- (e) Certain failures to remove and replace personnel as set forth in Section 8.2.4.3;
- (f) Failure to provide proof of required insurance coverage as set forth in Section 3.5;
- (g) Failure to deliver or maintain the Payment Bond, Performance Bond, and any other bonds or security required hereunder; or
- (h) Failure to comply with any quality control plan or safety plan required under the Contract Documents.

**8.4.2.2** DB Contractor shall promptly comply with any such written suspension order, even if DB Contractor disputes the grounds for suspension. DB Contractor shall promptly recommence the Work upon receipt of written notice from TxDOT directing DB Contractor to resume the Work. TxDOT shall have no liability to DB Contractor, and DB Contractor shall have no right to any adjustment in the Price or Completion Deadlines in connection with any suspension of Work properly founded on any of the grounds set forth in Section 8.4.2. If TxDOT orders suspension of the Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures of this Design-Build Contract that such grounds did not exist, it shall be treated as a suspension for TxDOT's convenience under Section 8.4.1.

### **8.4.3 Responsibilities of DB Contractor During Suspension Periods**

During periods that the Work is suspended, DB Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the Project. During any suspension period, DB Contractor shall maintain in a growing condition all newly established plantings, seedings and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during the suspension period. Additionally, DB Contractor shall continue other Work that has been or can be performed at the Site or offsite during the period that the Work is suspended.

## **8.5 Project Schedule**

### **8.5.1 General Requirements**

The Work shall be undertaken and completed in accordance with the Project Schedule prepared in conformance with this Section 8.5.

DB Contractor shall create a complete and logical Project Schedule that represents DB Contractor's plan for managing and executing the Work. The Project Schedule shall be used by the Parties to: plan and monitor progress of the Work; define the timeframe for completion of the Project; provide milestones of major Submittals; form the basis for determining the amount of monthly progress payments eligible for payment to the DB Contractor; and to measure the impact of changes that occur during design and construction.

The scheduling software employed by DB Contractor shall be compatible with the current scheduling software employed by TxDOT as of the Effective Date. DB Contractor shall provide an electronic file

version of the schedule capable of being directly imported by TxDOT using TxDOT's scheduling software.

If separate short-term look-ahead schedules are prepared using a different tool, DB Contractor shall submit these short-term look-ahead schedules to TxDOT and assure they align accurately with the overall Project Schedule.

## 8.5.2 Project Schedule Requirements

The Project Schedule shall include all major activities of Work required by the Contract Documents. It shall also include Submittal activities and Submittal review activities for TxDOT's and all third party reviews, including reviews by railroads, Governmental Entities and Utility Owners, which require an approval, acceptance, or concurrence.

The Submittal activities and Submittal review activities along with the associated timeframes included in the Project Schedule shall be based on the activities and timeframes defined in the proposed Submittal schedule prepared by the DB Contractor and submitted as part of the Design Submittal Packaging Plan in accordance with Table 2 of Attachment 4-1 (QCP-02, Design Submittal Packaging Plan and Submittal Schedule).

The Project Schedule shall indicate the sequence of performing each major activity and the logical dependencies and inter-relationships among the activities, and shall provide a sufficient number of activities to assure adequate planning to allow monitoring and evaluation of progress and, if applicable, payments.

### (a) WBS and Activity Coding

DB Contractor shall organize the schedule in accordance with the WBS presented in Attachment 8-1. Additional WBS elements and/or levels may be added with TxDOT's approval.

DB Contractor shall supplement the WBS organization with Project level activity codes that allow Project activities to be sorted by type of work, phase, location of work, and responsibility or as mutually agreed to by DB Contractor and TxDOT. Only Project level activity codes shall be utilized unless otherwise approved by TxDOT. If required, specific Project level activity codes shall be assigned as presented in Attachment 8-1 along with the required WBS.

### (b) Activities

(i) For each activity in the Project Schedule, DB Contractor shall:

- Assign a unique identification number;
- Provide a logical activity description so that the scope of Work is identifiable and progress on each activity can be measured. The scope and location of the Work shall be included in the activity description, and a list of abbreviations used in activity descriptions shall be provided by DB Contractor if requested;
- Assign quantities of Work to construction activities;

- For the Payment Activities identified on Attachment 8-1 assign values as further described in Section 8.5.2(h);
- Provide a duration based on the quantity divided by a reasonable anticipated production rate and a list of anticipated production rates for major Work elements. Inclement weather days shall not be accounted for in the activity durations;
- Include separate activities for cure time and assign to a cure calendar, unless otherwise approved by TxDOT;
- Use the activity “Percent Complete Type” setting in P6 of “Physical Percent Complete”, unless otherwise approved by TxDOT; TxDOT approval time should be set to calendar days and set to “Duration % Complete”, as this is a set time of review; and
- Assign a predecessor and successor relationship for each activity, except for NTP1 and Substantial Completion milestone(s).

(ii) DB Contractor shall include a monthly contract administration activity in the schedule following NTP1 in accordance with this Section 8.5.2(b). The Payment Activity for contract administration shall not exceed the total Price allocable to contract administration multiplied by the percentage of Work (excluding contract administration, mobilization, bond premiums and Insurance premiums) to be completed in each month.

(iii) Under the monthly contract administration activity, include a monthly schedule monitoring activity in the amount of \$20,000.

(c) Calendars

Through the use of calendars, DB Contractor shall incorporate seasonal weather conditions into the schedule, using a 10- to 100-year average from the closest station provided by the National Oceanic and Atmospheric Administration, for Work that may be influenced by adverse weather conditions. A seven day/week cure calendar for curing activities shall be included. DB Contractor shall adequately represent non-work days for activities with limitations such as Utility shutdown, work seasons, and landscape seasons. Non-work periods shall also be incorporated.

DB Contractor shall set up all calendars as Project specific. Global calendars shall not be used unless otherwise approved by TxDOT.

(d) Constraints and Milestones

DB Contractor shall identify each Completion Deadline with a milestone and assign a “Finish On or Before” constraint date. No other constraints are allowed without TxDOT approval.

DB Contractor shall include additional milestones in the schedule to define significant events such as notices to proceed (NTPs), start and finish of major segments/areas/regions of work, major traffic changes, and coordination points with outside entities.

## (e) Schedule Calculation Settings

The default schedule calculation settings in Primavera shall be used, except that critical activities shall be defined as the “Longest Path”.

## (f) Float

All Float contained in the Project Schedule shall be considered a Project resource available to either Party or both Parties as needed to absorb delays caused by any event, or to achieve schedule milestones, interim completion dates or Completion Deadlines.

All Float shall be shown as such in the Project Schedule on each affected schedule path. TxDOT shall have the right to examine the identification of (or failure to identify) Float on the schedule in determining whether to accept the Project Schedule. Once identified, DB Contractor shall monitor, account for and maintain Float in accordance with critical path methodology.

DB Contractor shall not sequester Float through the use of excessive lags, extended durations, calendar manipulation, intangible relationships, or any other such methodology.

## (g) Resource Loading and Leveling

For all construction activities, resources shall be incorporated at a crew level into the schedule when required. DB Contractor shall provide a list of crews separate from the schedule, and shall identify the composition of and production rate for each crew type. The crews shall be defined as a labor resource type and shall be assigned to appropriate activities.

The schedule option of leveling resources shall only be used with prior notification and concurrence of TxDOT.

## (h) Cost Loading, Payment Activities and Schedule of Values

DB Contractor shall submit the Schedule of Values to TxDOT for review and acceptance with PBS2 as described in Section 8.5.3.2(b). Once reviewed and accepted by TxDOT, DB Contractor shall not change the Schedule of Values without written approval from TxDOT.

Upon the execution of a Change Order, DB Contractor shall revise the Schedule of Values and submit to TxDOT for approval with the next Project Schedule Revision.

The Schedule of Values shall comply with the following requirements:

- No individual value for a Payment Activity in the Schedule of Values shall exceed \$1.0 million unless otherwise approved by TxDOT;
- Values shall be allocated only to task-dependent Payment Activities for which completion progress can be measured and tracked;
- Values shall not be allocated to TxDOT activities;
- Price should be capable of reporting by CSJ at WBS Level 3; and



- Values shall not be artificially inflated, imbalanced, or front loaded when allocated to the Payment Activities.
- DB Contractor shall submit procedures for addressing cost loading modifications for TxDOT's review and approval.

### 8.5.3 Project Baseline Schedule (PBS)

#### 8.5.3.1 Staged Schedule Development

As the design is developed, it is intended that the Project Schedule shall represent the most accurate information known. Accordingly, a three staged schedule development process shall be used as follows:

- Preliminary Project Baseline Schedule - PBS1: Submitted with Proposal.
- Project Baseline Schedule - PBS2: DB Contractor shall use PBS1 as a foundation to prepare PBS2. The schedule shall be fully developed to at least the most detailed work breakdown structure (WBS) levels shown in Attachment 8-1 for the entire Project, and shall be cost loaded in accordance with Section 8.5.2 (h). For the Project administration, ROW acquisition, design and Utility coordination WBS levels, the maximum activity durations will be 20 days unless approved by TxDOT. No resource loading will be required for these WBS levels. For the Utility relocation and construction WBS levels, the maximum activity duration will be 40 days unless approved by TxDOT. No resource loading will be required for these WBS levels until PBS3. Upon acceptance, DB Contractor shall update PBS2 monthly in accordance with Section 8.5.4 until PBS3 is reviewed and accepted.
- PBS3: DB Contractor shall use PBS2 as a foundation to prepare PBS3. DB Contractor shall not commence Construction Work until PBS3 is accepted by TxDOT. The minimum level of detail to develop the schedule for the construction and Utility relocations WBS levels are shown in Attachment 8-1. For the construction and Utility relocation WBS levels, the maximum activity duration is 20 days unless accepted by TxDOT. The construction and Utility relocation activities shall be resource loaded in accordance with Section 8.5.2(g).

#### 8.5.3.2 Narrative and Submittal Requirements

DB Contractor shall prepare and submit a narrative report for the initial PBS2 and PBS3 submittals in accordance with the following requirements. Updates and revisions to these schedules have separate narrative requirements.

##### (a) PBS2 Narrative Requirements

DB Contractor shall provide a schedule narrative that addresses the following in the order listed. The narrative shall:

- Describe the plan and approach to each of the major elements of work: ROW acquisition, design, Utilities, additional third party coordination, and construction. A discussion of the schedule uncertainty shall be included in each of the major elements;
- Describe the Critical Path;

- Describe the activity identification naming convention and provide a guide to acronyms and abbreviations used in activity descriptions;
- Provide a list of activities with durations exceeding the limits required in Section 8.5.3.1, as well as an explanation for using a longer duration. Activities exceeding the limits must have written approval from TxDOT;
- Describe the approach to setting up the calendars used in the schedule, including adverse weather assumptions, and nighttime and shift work. The source of historical inclement weather data used in defining weather dependent work calendars shall also be provided;
- Describe the milestones and constraints used and the completion dates as they relate to the Completion Deadlines in the Design-Build Contract;
- Describe the use of leads and lags in the schedule;
- Describe activity coding methodology;
- Describe how resources were addressed in the schedule, as well as resource limitations. A comprehensive list of planned resources including number of crews, crew composition, and expected crew production rates shall be provided for all construction activities; and
- Describe how the Price was allocated to the Payment Activities. A graph showing three cumulative cash flow curves shall be provided: one based on the early dates; one based on the late dates; and one based on the Maximum Payment Schedule.

As an attachment to the schedule narrative, DB Contractor shall provide the following for verifying the electronic copy of the schedule is the same as the schedule presented in the narrative:

- (1) 11 inches x 17 inches longest path plot in a Portable Document Format (PDF); and
- (2) Copy of the schedule calculation log in a PDF.

All schedule plots shall include: the Project title, the schedule file name, the data date, a page number, and a legend indicating the various symbols used and their meanings.

(b) PBS2 Submittal Requirements

DB Contractor shall submit PBS2 within the timeframe stated in Table 8-1. DB Contractor shall submit the following with the PBS2 schedule:

- One copy of the Schedule of Values with the Price allocated to the Payment Activities as described in Section 8.5.2(h). In order to facilitate the schedule cost loading, this may be submitted prior to the schedule submission;
- One electronic copy of the narrative report in a PDF; and
- One electronic copy of the schedule in the Primavera .xer format.

## (c) PBS3 Narrative Requirements

DB Contractor shall provide a schedule narrative that describes, in addition to any update or amendment to the PBS2 narrative, the following in the order listed:

- How resources were addressed in the schedule and any resource limitations, including a list of planned resources with number of crews, crew composition, and expected crew production rates;
- The plan and approach to the construction of the Project and Utility relocations; and
- The longest/Critical Path.
- As an attachment to the schedule narrative, provide the following for verifying the electronic copy of the schedule is the same as the schedule presented in the narrative:
  - (1) 11 inches x 17 inches longest path plot in a PDF; and
  - (2) Copy of the schedule calculation log in a PDF.

Include on all schedule plots the Project title, the schedule file name, the data date, and a legend indicating the various symbols used and their meanings.

## (d) PBS3 Submittal Requirements

Prior to the commencement of Construction Work, DB Contractor shall obtain TxDOT review and approval of PBS3. DB Contractor shall submit the following with the PBS3 schedule:

- The narrative report in PDF;
- The narrative report without attachments in Word format; and
- The schedule in Primavera .xer format.

**8.5.3.3** TxDOT Review and Acceptance

TxDOT will review each PBS submittal and return it to DB Contractor within 21 calendar days of submission as accepted, accepted with comments to be addressed in the following monthly Project Schedule Update, or returned for resubmission within 14 days from the date of receipt by DB Contractor. DB Contractor shall repeat the Submittal process until receiving TxDOT's acceptance of the PBS.

TxDOT's review and acceptance of the PBS does not relieve DB Contractor of any responsibility for meeting any Completion Deadlines. Review and acceptance does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the PBS. If DB Contractor fails to define any element of work, activity, or logic and TxDOT's review does not detect this omission or error, DB Contractor is responsible for correcting the error or omission.

DB Contractor is solely responsible for planning and executing the Work and for providing sufficient materials, equipment, and labor to guarantee completion of the Project in accordance with the Contract Documents and Completion Deadlines.

#### **8.5.4 Project Schedule Update**

DB Contractor shall submit a monthly Project Schedule Update reporting the monthly progress of schedule activities. DB Contractor shall update the Project Schedule with actual start and finish dates for completed activities, and physical percent complete and remaining durations for activities in progress.

The data date for the Project Schedule Update shall be the day after the progress period for payments closes. DB Contractor shall save this schedule in Primavera .xer format and submit by the fifth of the month.

No proposed Project Schedule Revisions shall be made to the Project Schedule Update.

#### **8.5.5 Project Schedule Revisions**

If revisions to the Project Schedule are required, DB Contractor shall submit by saving this schedule in Primavera .xer format the necessary schedule revisions in the form of a Project Schedule Revision meeting the requirements of this Section 8.5.5. The Project Schedule Revision shall be submitted by DB Contractor within 7 days of the data date of the Project Schedule Update. DB Contractor shall prepare the Project Schedule Revision utilizing a copy of the most recent Project Schedule Update submitted.

DB Contractor shall not revise descriptions to represent a different scope than originally intended. No changes in activity cost loading at the WBS level of Payment Activities or higher, calendar assignments, logic ties, or constraints will be allowed without TxDOT's written concurrence. These are considered Project Schedule Revisions. An activity identification number can only be used once. DB Contractor shall not delete an activity and then create a new activity at a later date utilizing the same activity identification number.

##### **8.5.5.1 Narrative and Submittal Requirements**

DB Contractor shall provide with each Project Schedule Revision a narrative report in PDF format that includes:

- A comparison between last month's Critical Path and current month's Critical Path, with an explanation for any slippage or gains in Completion Deadlines;
- A description of the Work performed during the progress period with an explanation of differences between the Work planned or scheduled and the Work performed for the period, and an explanation of any adjustments made to correct actual dates that were prior to the current Project Schedule Revision period;
- A table of Completion Deadlines, as well as any other required contract milestones set forth in the Contract Documents, reflecting current completion dates compared to the completion dates shown in the Project Baseline Schedule;

- A description of changes made to the Project Schedule and the effect the changes had on the Critical or near Critical Paths;
- A look-ahead at Work to be accomplished during the next month, with a focus on Critical Path items; and
- A description of potential Project issues that may impact the schedule. A discussion of the following shall be included for each issue: how critical each issue is and how much float it has; and DB Contractor's plans on how to mitigate, avoid or resolve the issue.

A discussion of problems or delay in the narrative shall not substitute for or relieve DB Contractor of its obligations to comply with the notice, documentation and other requirements set forth in Section 4.6 hereof and any other complying with contractual requirements set forth in the Contract Documents regarding notification and documentation of events, including those that could lead to claims. A discussion of problems or delay in the Project Schedule Revision narrative shall not relieve DB Contractor of complying with contractual requirements regarding notification and documentation of claims.

DB Contractor shall include the following as attachments to the narrative in PDF format:

- Longest path schedule plot organized by WBS and sorted by early start in a PDF;
- A 30-day look-ahead schedule layout in a PDF; and
- Other layouts or reports as agreed upon or requested by TxDOT.

DB Contractor shall also submit a copy of the narrative report without attachments in Word format.

#### **8.5.5.2** TxDOT Review and Acceptance

TxDOT will review the Project Schedule Revision within 14 days of submission, return it to DB Contractor as accepted, accepted with comments to be addressed in the following Project Schedule Revision, or returned for resubmission within 14 days from the date of TxDOT's response. DB Contractor shall repeat the submittal process until receiving TxDOT acceptance of the Project Schedule Revision. If DB Contractor fails to address TxDOT's comments regarding a delay to the Critical Path to the satisfaction of TxDOT for three consecutive months, TxDOT may reject the Project Schedule Revision. In such event, DB Contractor shall submit a Recovery Schedule in accordance with Section 8.5.6.

TxDOT's review and acceptance of the Project Schedule Revision does not relieve DB Contractor of its responsibility for meeting any Completion Deadlines, including achieving Substantial Completion by the Substantial Completion Deadline and achieving Final Acceptance by the Final Acceptance Deadline. Review and acceptance by TxDOT does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the Project Schedule, which may be disputed or rejected by TxDOT at any time. If DB Contractor fails to define any element of work, activity, or logic and TxDOT's review does not detect this omission or error, DB Contractor is responsible for correcting the error or omission.

## **8.5.6 Recovery Schedule**

### **8.5.6.1 Submission of Recovery Schedule**

**8.5.6.1.1** DB Contractor shall prepare and submit to TxDOT for review and acceptance a Recovery Schedule, demonstrating DB Contractor's proposed plan to regain lost schedule progress and to achieve the Completion Deadlines in accordance with this Design-Build Contract, including achieving Substantial Completion and Final Acceptance by the applicable Completion Deadline, if:

- (a) the Project Schedule shows a delay in achieving a Completion Deadline for a period that exceeds the greater of either 30 days in the aggregate or that number of days in the aggregate equal to 5% of the days remaining until the Completion Deadline (including delays to which DB Contractor may be entitled to a time extension under Section 4.6); and
- (b) the delay in achieving a Completion Deadline identified in (a) has not been remedied by DB Contractor to the satisfaction of TxDOT in a Project Schedule Revision for three consecutive months.

**8.5.6.1.2** DB Contractor shall submit and obtain TxDOT's acceptance of the Recovery Schedule within 30 days after TxDOT's rejection of the Project Schedule Revision in accordance with Section 8.5.5.2.

**8.5.6.1.3** All costs incurred by DB Contractor in preparing, implementing and achieving the Recovery Schedule shall be borne by DB Contractor and shall not result in a change to the Price, except to the extent that the Recovery Schedule is in lieu of a time extension and a change in the Price is permitted for Acceleration Costs in accordance with Section 4.6.6.2.1.

**8.5.6.1.4** If a Recovery Schedule accepted by TxDOT is not in place within 30 days from DB Contractor's submission of a Recovery Schedule in accordance with this Section 8.5.6 or if DB Contractor fails to submit to TxDOT a Recovery Schedule meeting the requirements of this Section 8.5.6 within the required timeframe, in addition to any other rights and remedies TxDOT may have at law or in equity arising out of such failure, TxDOT shall have such remedies therefor as are set forth in the Contract Documents.

**8.5.6.1.5** Any failure or delay in the submittal or acceptance of a Recovery Schedule shall not result in any time extension under the Contract Documents.

### **8.5.6.2 Narrative and Submittal Requirements**

DB Contractor shall submit the following with the proposed revision to the Project Recovery Schedule:

- A narrative describing the recovery plan including a written revision analysis report providing the reason for the Recovery Schedule, the proposed scope of changes made to the Project Schedule, and a description of how the change will result in achieving the Completion Deadlines;
- Schedule plots and/or comparison analysis of the Project Schedule before and after the change showing the changes that were made in a PDF; and
- The revised schedule in Primavera .xer format.

### 8.5.6.3 TxDOT Review and Acceptance

Within 14 days after receipt of a Recovery Schedule, TxDOT will review the Recovery Schedule and provide DB Contractor with one of the following responses: accepted, or returned with comments to be addressed in a resubmission within ten days from the date of receipt of TxDOT's response by DB Contractor. DB Contractor shall repeat the Submittal process until receiving TxDOT acceptance of the Recovery Schedule.

When TxDOT accepts DB Contractor's Recovery Schedule, DB Contractor shall proceed in accordance with the accepted Recovery Schedule, which shall form the basis for the next Project Schedule Update.

### 8.5.7 Change Order Revisions

DB Contractor shall allocate agreed Change Order amounts into the Schedule of Values and the Project Schedule immediately following the execution date of the Change Order. The amount of each Change Order shall be assigned to unique "Change Modification" activities in the Schedule of Values.

#### 8.5.7.1 TxDOT-Initiated Change Orders

Upon receipt of a Request for Change Proposal, DB Contractor shall incorporate the proposed change into a copy of the latest accepted monthly Project Schedule using Steps 1 and 2 of the Time Impact Analysis (TIA) process, provided in Section 8.5.7.2. The potential time impact which may result from the change shall be assessed by DB Contractor.

#### 8.5.7.2 Time Impact Analysis

DB Contractor shall submit to TxDOT a TIA as part of a Request for Change Order for an impact that may potentially cause Project delay as set forth in the Contract Documents and when requested by TxDOT for evaluating the potential time impact of Change Orders under consideration.

If TxDOT requests a TIA, it shall be submitted by DB Contractor within 15 days of receiving the request from TxDOT. Submission of a TIA does not relieve DB Contractor of complying with all contractual requirements regarding notification and documentation of PCO Notices and actual Change Orders.

Time extensions will only be considered when the Float is absorbed and the Completion Deadline(s) is delayed.

Each TIA shall consist of the following steps:

Step 1: Establishing the status of the Project before the impact by using the latest accepted Project Schedule with the closest data date prior to the impact, or as adjusted by mutual agreement to the date the impact began;

Step 2: Estimating the duration of the impact, determining appropriate logic, and insertion of the impact activity or activities into the Project Schedule Update used in Step 1, and predicting the effect of the impact on the schedule;

Step 3: Tracking the effects of the impact on the schedule during its occurrence. Identifying and measuring the effect of mitigation efforts taken by either DB Contractor or TxDOT; and

Step 4: DB Contractor shall establish the status of the Project after the impact is complete and identify any ongoing mitigation efforts being taken.

Steps 1 and 2 shall be submitted to TxDOT with each Request for Change Order. Step 3 shall be incorporated into Project Schedule Updates until the impact is complete. Step 4 shall be submitted to TxDOT no later than 30 days after the completion of an impact. If Step 4 is not submitted within 30 days, the issue will be considered as having no time impact.

A TIA shall consist of a report with accompanying schedules used in the analysis in Primavera .xer format. The report shall:

- Identify the scope and timeline for the impact(s) being analyzed;
- Identify the schedules used in the analysis;
- Identify the schedule approach to modeling the time impact including the addition of activities, relationships, modifications to calendars, or application of constraints, and include a plot of the portion of the schedule showing the model;
- Describe the impact or potential impact by comparing Step 1 to Step 2;
- Describe the results of mitigation efforts taken through Step 3;
- Describe any other potential mitigation efforts that may be taken to avoid impact;
- Describe the status of the Project after the impact is over; and
- Include schedule plots illustrating the analysis and documentation supporting dates, timelines, and entitlement.

#### **8.5.7.3** TxDOT Review and Acceptance

In the event TxDOT requests a TIA, TxDOT will review the TIA submittal within 14 days and provide DB Contractor with one of the following responses: accepted, returned with comments to be addressed in a subsequent resubmission, or returned for resubmission as incomplete. DB Contractor shall submit each TIA resubmission within ten days from the date of receipt of TxDOT's response. DB Contractor shall repeat the submittal process until receiving TxDOT acceptance of the TIA submittal. For the avoidance of doubt, the review process in this [Section 8.5.7.3](#) does not apply to TIAs submitted with a Request for Change Order in accordance with [Section 4.6.5.2](#).

In the event the time impact of a Change Order cannot be agreed upon, DB Contractor shall continue tracking the change in accordance with Steps 3 and 4 of the TIA process and report findings.

#### **8.5.7.4** As-Built Schedule

Upon completion of the Punch List, DB Contractor shall submit to TxDOT a final update to the Project Schedule which will be considered the as-built schedule. The as-built schedule shall not be considered the Project Schedule.



## **8.6 Performance Evaluations**

TxDOT will conduct performance evaluations of DB Contractor's major team members, consultants, and Subcontractors. These evaluations will be conducted annually at twelve-month intervals during the term of this Design-Build Contract, upon termination of this Design-Build Contract, and when TxDOT determines that work is materially behind schedule or not being performed according to the requirements of the Contract Documents. DB Contractor agrees to cooperate in the conducting of these evaluations. DB Contractor shall respond to TxDOT requests regarding performance evaluations within two weeks. DB Contractor shall provide each performance evaluation received to all team members, including Subcontractors, that are identified in the performance evaluation.

## **8.7 Liquidated Damages, Charges, Fees and Limitation of Liability**

### **8.7.1 Liquidated Damages and Fees Respecting Delays**

**8.7.1.1** Except for any delays to completion of the Project resulting directly from a Qualifying Delay and for which Qualifying Delay Late Fees are paid, DB Contractor shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this Design-Build Contract ("Liquidated Damages for Delay"). The Liquidated Damages for Delay shall be in the amounts set forth in Section 7.2.1 of the Design-Build Agreement.

**8.7.1.2** DB Contractor shall be liable for and pay to TxDOT, a Qualifying Delay Late Fee for each day of delay to the achievement of Substantial Completion or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this Design-Build Contract, if such day of delay is within the Delay Deductible for a Qualifying Delay as determined through an approved Change Order or a Delay Deductible Determination issued in accordance with Section 4.6.3.2.4. The Qualifying Delay Late Fees shall be in the amounts set forth in Section 7.2.2 of the Design-Build Agreement.

**8.7.1.3** DB Contractor acknowledges that the liquidated damages and fees 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 Completion Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities, and (c) additional costs of administering this 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.

### **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 failure to meet Lane Closure 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 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.

**8.7.3 Additional Acknowledgements Regarding Liquidated Damages, Charges and Fees**

DB Contractor further agrees and acknowledges that:

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

**8.7.3.2** Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Section 8.7.1.3, Section 8.7.2 and Section 8.3.1, as applicable.

**8.7.3.3** As of the Effective Date, the amounts of Liquidated Damages, Qualifying Delay Late Fees, charges and fees represent good faith estimates and evaluations by the Parties as to the actual potential damages that TxDOT would incur as a result of late Substantial Completion, late Final Acceptance or impermissible Lane Closures or Key Personnel changes, and do not constitute a penalty.

**8.7.3.4** The Parties have agreed to such Liquidated Damages, Qualifying Delay Late Fees, charges and fees 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.

**8.7.3.5** Such sums are reasonable in light of the anticipated or actual harm caused by delayed Substantial Completion, delayed Final Acceptance or impermissible Lane Closures or Key Personnel changes, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

**8.7.3.6** Such Liquidated Damages, Qualifying Delay Late Fees, charges and fees are not intended to, and do not, liquidate DB Contractor's liability under the indemnification provisions of Section 7.12, even though Third Party Claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to the Liquidated Damages, charges or fees.

**8.7.4 Payment; Satisfaction; Waiver; Non-Exclusive Remedy**

**8.7.4.1** DB Contractor shall pay any Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges owing under this Section 8.7 within 20 days after TxDOT delivers to DB Contractor TxDOT's invoice or demand therefor, such invoice or demand to be issued not more often than monthly. For clarification, this provision does not excuse DB Contractor from including all amounts of Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change

Fees and Lane Rental Charges owed to TxDOT within its Draw Request in accordance with Section 9.3.2, regardless of whether DB Contractor has received TxDOT's invoice.

- 8.7.4.2** TxDOT shall have the right to deduct and offset Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges from any amounts owing to DB Contractor. TxDOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by DB Contractor pursuant to this Design-Build Contract to satisfy Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges not paid when due.
- 8.7.4.3** Permitting or requiring DB Contractor to continue and finish the Work or any part thereof after a Completion Deadline as applicable, shall not act as a waiver of TxDOT's right to receive Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees or Lane Rental Charges hereunder or any rights or remedies otherwise available to TxDOT.
- 8.7.4.4** Subject to Section 8.8.3, TxDOT's right to, and imposition of, Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges are in addition, and without prejudice, to any other rights and remedies available to TxDOT under this Design-Build Contract, at law or in equity respecting the breach, failure to perform or DB Contractor Default that is the basis for the Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges, or any other breach, failure to perform or DB Contractor Default, except for recovery of the monetary damage that the Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges are intended to compensate.

**8.7.5 Limitation of DB Contractor's Liability**

Notwithstanding any other provision of the Contract Documents, to the extent permitted by applicable Law, TxDOT will not seek indemnification and defense under Section 7.12 or to recover damages from DB Contractor resulting from breach of this Design-Build Contract (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of (a) all those costs reasonably incurred by TxDOT or any Person acting on TxDOT's behalf in completing or correcting the Work or having the Work completed or corrected by another Person, including the cost of the work required or arising under the Warranties; (b) an amount equal to 100% of the Price up to \$100,000,000 (which amount shall specifically include any Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees or Lane Rental Charges paid pursuant to this Section 8.7); (c) any amounts paid by or on behalf of DB Contractor that are covered by insurance proceeds from insurance policies required under the Contract Documents; and (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or intentional misconduct on the part of any DB Contractor-Related Entity.

**8.7.6 Limitation on Consequential Damages**

- 8.7.6.1** Notwithstanding any other provision of the Contract Documents and except as set forth in this Section 8.7.6.1 and in Section 8.7.6.2, to the extent permitted by applicable Law, neither party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Design-Build Contract, tort (including negligence) or any other theory of liability, and each party hereby releases the other party from any such liability.
- 8.7.6.2** The foregoing limitations on DB Contractor's liability for punitive, indirect, incidental or consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following:

- (a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 3.5, (ii) covered by the proceeds of insurance actually carried by or insuring DB Contractor under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 3.5, or (iii) DB Contractor is deemed to have self-insured the Loss pursuant to Section 3.5.2.3;
- (b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness, bad faith or gross negligence on the part of any DB Contractor-Related Entity;
- (c) DB Contractor's indemnities set forth in Section 7.12.1 or elsewhere in the Contract Documents;
- (d) DB Contractor's obligation to pay Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges in accordance with the Contract Documents; and
- (e) Losses arising out of DB Contractor Releases of Hazardous Materials.

## **8.8 Default and Remedies**

### **8.8.1 Default of DB Contractor**

#### **8.8.1.1 Events and Conditions Constituting Default**

DB Contractor shall be in breach under this Design-Build Contract upon the occurrence of any one or more of the following events or conditions (each a "DB Contractor Default"):

- (a) DB Contractor: (i) fails to begin Work within 30 days following issuance of NTP1 or NTP2, or (ii) fails to satisfy all conditions to commencement of the Construction Work, and commence the Construction Work with diligence and continuity;
- (b) DB Contractor fails to complete the required Work by the applicable Completion Deadline, as the same may be extended pursuant to this Design-Build Contract;
- (c) DB Contractor fails to perform the Work in accordance with the Contract Documents, including (i) conforming to applicable standards set forth therein with respect to the Work, or (ii) refusing to comply with any of the requirements of Section 5.10.1.3 with respect to the uncovering of Nonconforming Work, or Section 5.3.1 with respect to the correction, removal and replacement of Nonconforming Work;
- (d) DB Contractor suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work (exclusive of work stoppage: (i) due to termination by TxDOT, or (ii) due to and during the continuance of a Relief Event or suspension by TxDOT, or (iii) due to and during the continuance of any work stoppage under Section 8.8.4);
- (e) DB Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under this Design-Build Contract for the benefit of relevant parties, or fails to comply with any requirement of this Design-Build Contract pertaining to the amount, terms or coverage of the same;

- (f) DB Contractor makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Design-Build Contract in violation of Section 7.8;
- (g) DB Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and in accordance with applicable Laws, or fails to make payment to TxDOT when due of any amounts owing to TxDOT under this Design-Build Contract;
- (h) DB Contractor materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term, or condition required to be observed or performed by DB Contractor under the Contract Documents;
- (i) Any representation or warranty in the Contract Documents made by DB Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of DB Contractor to TxDOT pursuant to the Contract Documents is false or materially misleading or inaccurate when made or omits material information when made;
- (j) DB Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency, or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;
- (k) An involuntary case is commenced against DB Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to DB Contractor or DB Contractor's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of DB Contractor or any substantial part of DB Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by DB Contractor in good faith or shall remain undismissed and unstayed for a period of 60 days;
- (l) A voluntary or involuntary case or other act or event described in clauses (j) and (k) of this Section 8.8.1.1 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any member of DB Contractor with a material financial obligation owing to DB Contractor for equity or shareholder loan contributions or (ii) any Guarantor of DB Contractor;
- (m) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to DB Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, this Design-Build Contract or any of the other Contract Documents is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute;
- (n) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect;

- (o) Any final judgment is issued holding DB Contractor or any Guarantor liable for an amount in excess of \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal False Claims Act;
- (p) DB Contractor fails to resume performance of Work that has been suspended or stopped, within the time specified in the originating notification after receipt of notice from TxDOT to do so or (if applicable) after cessation of the event preventing performance;
- (q) 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; or
- (r) After any rights of appeal exercised by the entity have been exhausted, (i) DB Contractor, any Equity Member, or any Controlling Affiliate of DB Contractor is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or State department or agency or (ii) DB Contractor has not dismissed any Subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or State department or agency.

### 8.8.1.2

#### Notice and Opportunity to Cure

For the purpose of TxDOT's exercise of other remedies and subject to remedies that this Section 8.8 expressly states may be exercised before lapse of a cure period, DB Contractor shall have the following cure periods with respect to the following DB Contractor Defaults:

- (a) Respecting a DB Contractor Default under clauses (a), (c) through (g), (m), (p) and (q) of Section 8.8.1.1, a period of 15 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default; provided that TxDOT shall have the right, but not the obligation, to effect cure, at DB Contractor's expense, if a DB Contractor Default under clause (e) of Section 8.8.1.1 continues beyond five days after such notice is delivered.
- (b) Respecting a DB Contractor Default under clauses (h) and (i) of Section 8.8.1.1, a period of 30 days after TxDOT delivers to DB Contractor written notice of DB Contractor Default; provided that: (i) if the DB Contractor Default is of such a nature that the cure cannot with diligence be completed within such time period and DB Contractor has commenced meaningful steps to cure immediately after receiving the default notice, DB Contractor shall have such additional period of time, up to a maximum cure period of 60 days, as is reasonably necessary to diligently effect cure, and (ii) as to clause (i), cure will be regarded as complete when the adverse effects of the breach are cured.
- (c) Respecting a DB Contractor Default under clauses (b), (j), (k), (n) and (o) of Section 8.8.1.1, no cure period, and there shall be no right to notice of a DB Contractor Default under clauses (b), (j), (k), (n) and (o) of Section 8.8.1.1.
- (d) Respecting a DB Contractor Default under clause (l) of Section 8.8.1.1, a period of 10 days from the date of the DB Contractor Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to TxDOT for the benefit of the Project, in the amount of, as applicable: (i) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of DB Contractor

or (ii) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor.

- (e) Respecting any potential DB Contractor Default under Section 8.8.1.1(r), DB Contractor shall have the following cure rights:
- (i) With respect to a DB Contractor Default under Section 8.8.1.1(r) involving DB Contractor, there is no cure period and there shall be no right to notice of a DB Contractor Default;
  - (ii) With respect to a DB Contractor Default under Section 8.8.1.1(r) involving an Equity Member or Controlling Affiliate, DB Contractor shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion to remove the affected Equity Member or Controlling Affiliate and obtain TxDOT's approval of the Change of Control to the extent required under Section 7.8.2 or otherwise cure the default; and
  - (iii) With respect to a DB Contractor Default under Section 8.8.1.1(r)(ii) involving a Subcontractor, DB Contractor shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion to cure the default by removing the affected Subcontractor from the Project and either obtaining TxDOT's approval of any replacement Subcontractor or notifying TxDOT that DB Contractor will self-perform the Work.

### **8.8.1.3 Declaration of Event of Default**

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

## **8.8.2 TxDOT Remedies for DB Contractor Default**

### **8.8.2.1 Termination for Default**

#### **8.8.2.1.1**

In the event of any DB Contractor Default that is or becomes an Event of Default, TxDOT may terminate this Design-Build Contract or a portion thereof for default, including terminating DB Contractor's rights of entry upon, possession, control and operation of the Project, in which case, the procedures set forth in Section 8.9.2 shall apply. If this Design-Build Contract or a portion thereof is terminated for default, TxDOT shall have the following rights without further notice and without waiving or releasing DB Contractor from any obligations and DB Contractor shall have the following obligations (as applicable):

- (a) TxDOT may deduct from any amounts (including interest thereon as permitted under this Design-Build Contract) payable by TxDOT to DB Contractor such amounts payable by DB Contractor to TxDOT, including reimbursements owing, Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees, Lane Rental Charges, amounts TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers or other Persons, amounts of any Losses that have accrued, the cost to complete or remediate uncompleted Work or Nonconforming Work or other damages

or amounts that TxDOT has determined are or may be payable to TxDOT under the Contract Documents.

- (b) TxDOT shall have the right, but not the obligation, to pay such amount or perform such act as may then be required from DB Contractor under the Contract Documents or Subcontracts.
- (c) TxDOT may appropriate any or all materials, supplies and equipment as may be suitable and acceptable and may direct the Surety to complete this Design-Build Contract or may enter into an agreement for the completion of this Design-Build Contract according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the requirements of the Contract Documents, including completion of the Work by TxDOT.
- (d) If TxDOT exercises any right to perform any obligations of DB Contractor, in the exercise of such right TxDOT may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as TxDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions that it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

#### **8.8.2.1.2**

DB Contractor and each Guarantor shall be jointly and severally liable to TxDOT for all costs reasonably incurred by TxDOT or any Person acting on TxDOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). TxDOT shall be entitled to withhold all or any portion of further payments to DB Contractor until Final Acceptance or the date on which TxDOT otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time TxDOT will determine whether and to what extent DB Contractor is entitled to further payments. Promptly following Final Acceptance or the date on which TxDOT otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and TxDOT shall notify DB Contractor and each Guarantor in writing of the amount, if any, that DB Contractor and each Guarantor shall pay TxDOT or TxDOT shall pay DB Contractor or its Surety with respect thereto. TxDOT's Recoverable Costs will be deducted from any moneys due or that may become due DB Contractor or its Surety. If such expense exceeds the sum that would have been payable to DB Contractor under this Design-Build Contract, then DB Contractor and each Guarantor shall be liable and shall pay to TxDOT the amount of such excess.

#### **8.8.2.1.3**

In lieu of the provisions of this Section 8.8.2.1 for terminating this Design-Build Contract for default and completing the Work, TxDOT may, in its sole discretion, pay DB Contractor for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Design-Build Contract. No Claim under this Section 8.8.2.1.3 will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by DB Contractor.



**8.8.2.1.4** If this Design-Build Contract is terminated for grounds that are later determined not to justify a termination for default, such termination shall be deemed to constitute a Termination for Convenience pursuant to Section 8.9.1.

**8.8.2.1.5** DB Contractor Defaults Related to Safety

Notwithstanding anything to the contrary in this Design-Build Contract, if in the good faith judgment of TxDOT a DB Contractor Default results in an emergency or danger to persons or property, and if DB Contractor is not then diligently taking all necessary steps to rectify or deal with such emergency or danger, TxDOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to) (a) immediately take such action as may be reasonably necessary to rectify the emergency or danger, in which event DB Contractor shall pay to TxDOT on demand the cost of such action, including TxDOT's Recoverable Costs or (b) suspend the Work or close or cause to be closed any and all portions of the Project affected by the emergency or danger. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Design-Build Contract, shall not expose TxDOT to any liability to DB Contractor and shall not entitle DB Contractor to any other remedy, it being acknowledged that TxDOT has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. TxDOT's good faith determination of the existence of such a failure, emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such emergency or danger, as determined by TxDOT, acting reasonably, TxDOT shall allow the Work to continue or such portions of the Project to reopen, as the case may be.

**8.8.2.1.6** Damages

**8.8.2.1.7** Subject to Section 8.7, TxDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages) on account of the occurrence of a DB Contractor Default. DB Contractor shall owe any such damages that accrue after the occurrence of the DB Contractor Default and the delivery of notice thereof, if any, required by this Design-Build Contract regardless of whether the DB Contractor Default is subsequently cured.

**8.8.2.1.8** If TxDOT suffers damages as a result of a DB Contractor Default due to a DB Contractor-Related Entity's acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval, then, subject to Section 8.7, TxDOT shall be entitled to recovery of such damages from DB Contractor regardless of whether such acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval ripens into an Event of Default.

**8.8.2.1.9** DB Contractor, the Surety and Guarantor shall not be relieved of liability for any continuing Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees or Lane Rental Charges on account of a DB Contractor Default or by TxDOT's declaration of an Event of Default, or by actions taken by TxDOT under this Section 8.8.2.

**8.8.2.1.10** TxDOT's remedies with respect to Nonconforming Work shall include the right to accept such Work and receive payment as provided in Section 5.3.2 in lieu of the remedies specified in this Section 8.8.2.

### 8.8.2.2 Performance Security

Upon the occurrence of an Event of Default and without waiving or releasing DB Contractor from any obligations, TxDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other performance security available to TxDOT under this Design-Build Contract with respect to the Event of Default in question. Where access to a bond, letter of credit or other performance security is to satisfy damages owing, TxDOT shall be entitled to make demand, draw, enforce and collect, regardless of whether the Event of Default is subsequently cured. TxDOT will apply the proceeds of any such action to the satisfaction of DB Contractor's obligations under this Design-Build Contract, including payment of amounts due TxDOT. The foregoing does not limit or affect TxDOT's right to give notice to or make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other performance security, immediately after TxDOT is entitled to do so under the bond, letter of credit, guaranty or other performance security.

### 8.8.2.3 Other Rights and Remedies; Cumulative Remedies

Subject to Sections 8.7.4 and 8.7.5, TxDOT shall also be entitled to exercise any other rights and remedies available under this Design-Build Contract, or available at law or in equity, and each right and remedy of TxDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TxDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies.

### 8.8.3 Event of Default Due Solely to DB Contractor's Failure to Achieve Completion Deadlines

**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 Completion Deadline, TxDOT's sole remedy for such Event of Default shall be the right to assess Liquidated Damages and Qualifying Delay Late Fees, 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, exclusive of any days during which Qualifying Delay Late Fees are assessed and paid, and (b) DB Contractor continues to diligently perform the Work despite such Event of Default.

**8.8.3.2** The fact that TxDOT has agreed to accept Liquidated Damages and Qualifying Delay Late Fees as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude TxDOT from exercising its other rights and remedies respecting the delay set forth in Section 8.8.2 other than the right to collect other damages due to the delay, except that TxDOT agrees not to exercise such other rights and remedies respecting the delay so long as (a) the Project Schedule demonstrates that DB Contractor is capable of achieving Substantial Completion within 365 days after the Substantial Completion Deadline and Final Acceptance within 180 days after the Final Acceptance Deadline, as applicable, exclusive of any days during which Qualifying Delay Late Fees are assessed and paid, and (b) DB Contractor diligently performs the Work in accordance with said schedule. Nothing in this Section 8.8.3 shall prejudice any other rights or remedies that TxDOT may have due to any other Event of Default during such 365-day period or 180-day period, as applicable.

**8.8.3.3** If Substantial Completion has not occurred within 365 days after the Substantial Completion Deadline or if Final Acceptance has not occurred within 180 days after the Final Acceptance Deadline, TxDOT

shall have the right to (a) terminate this Design-Build Contract; (b) continue to assess Liquidated Damages subject only to the limitations set forth in Section 8.7.1; and (c) exercise any other right or remedy under this Design-Build Contract, at law or in equity. Such 365-day period and 180-day period shall be extended by the number of days, if any, for which DB Contractor is liable for and pays to TxDOT Qualifying Delay Late Fees.

#### **8.8.4 Right to Stop Work for Failure by TxDOT to Make Undisputed Payment**

DB Contractor shall have the right to stop Work if TxDOT fails to make an undisputed payment due hereunder within 15 Business Days after TxDOT's receipt of written notice of nonpayment from DB Contractor. Any such work stoppage shall be considered a suspension for convenience under Section 8.4.1 and shall be considered a TxDOT-Directed Change. DB Contractor shall not have the right to terminate this Design-Build Contract for default as the result of any failure by TxDOT to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon written notice from DB Contractor to TxDOT, the nonpayment may be deemed a Termination for Convenience pursuant to Section 8.9. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 8.9.

### **8.9 Termination**

#### **8.9.1 Termination for Convenience**

**8.9.1.1** TxDOT may, at any time, terminate this Design-Build Contract and the performance of the Work by DB Contractor, in whole or in part, if TxDOT determines, in its sole discretion, that a termination is in TxDOT's best interest ("Termination for Convenience"). TxDOT shall terminate by delivering to DB Contractor a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this Design-Build Contract under Section 8.9 shall not relieve DB Contractor or any Surety or Guarantor of its obligation for any claims arising prior to termination.

**8.9.1.2** Within three days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, DB Contractor shall meet and confer with TxDOT for the purpose of developing an interim transition plan for the orderly transition of the terminated Work, demobilization and transfer of the Project to TxDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date DB Contractor receives such notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to TxDOT in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in Section 8.9.2, all of which provisions and procedures DB Contractor shall immediately follow, regardless of any delay in the preparation or acceptance of the transition plan.

**8.9.1.3** DB Contractor acknowledges and agrees that TxDOT has no obligation to issue NTP1 and further agrees that, unless and until NTP1 is issued, TxDOT shall have no liability to DB Contractor hereunder except as provided under Section 8.9.9.

#### **8.9.2 DB Contractor's Responsibilities After Receipt of Notice of Termination**

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by TxDOT, DB Contractor shall timely comply with the following obligations independent of, and without regard to, the timing for determining, adjusting, settling, and paying any amounts due DB Contractor under this Design-Build Contract:

- 8.9.2.1** Stop the Work as specified in the notice.
- 8.9.2.2** Notify all affected Subcontractors (including Suppliers) that this Design-Build Contract is being terminated and that their Subcontracts (including orders for materials, services, or facilities) are not to be further performed unless otherwise authorized in writing by TxDOT.
- 8.9.2.3** Enter into no further Subcontracts (including orders for materials, services or facilities) except as necessary to complete the continued portion of the Work.
- 8.9.2.4** Unless instructed otherwise by TxDOT, terminate all Subcontracts and Utility Agreements to the extent they relate to the Work terminated.
- 8.9.2.5** To the extent directed by TxDOT, execute and deliver to TxDOT written assignments, in form and substance reasonably acceptable to TxDOT, of all of DB Contractor's right, title, and interest in and to (a) Subcontracts and Utility Agreements that relate to the terminated Work, provided TxDOT assumes in writing all of DB Contractor's obligations thereunder that arise after the effective date of the termination and (b) all assignable warranties, claims and causes of action held by DB Contractor against Subcontractors and other third parties in connection with the terminated Work, to the extent such Work is adversely affected by any Subcontractor or other third-party breach of warranty, contract or other legal obligation.
- 8.9.2.6** Subject to the prior written approval of TxDOT, settle all outstanding liabilities and claims arising from termination of Subcontracts and Utility Agreements that are required to be terminated hereunder.
- 8.9.2.7** Within 30 days after notice of termination is received, DB Contractor shall provide TxDOT with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by DB Contractor or any person or entity on behalf of or for the account of DB Contractor) for use in or respecting the terminated Work or on order or previously completed but not yet delivered from Suppliers for use in or respecting such Work. In addition, if requested by TxDOT, on or about the effective date of termination, DB Contractor shall transfer title and deliver to TxDOT or TxDOT's Authorized Representative, through bills of sale or other documents of title, as directed by TxDOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided TxDOT assumes in writing all of DB Contractor's obligations under any contracts relating to the foregoing that arise after the effective date of termination.
- 8.9.2.8** On or about the effective date of termination, DB Contractor shall execute and deliver to TxDOT the following, together with an executed bill of sale or other written instrument, in form and substance reasonably acceptable to TxDOT, assigning and transferring to TxDOT all of DB Contractor's right, title and interest in and to the following: (a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Documents, Construction Documents, surveys, and other documents and information pertaining to the design or construction of the terminated Work; (b) all samples, borings, boring logs, geotechnical data and similar data and information relating to the terminated Work; (c) all books, records, reports, test reports, studies and other documents of a similar nature relating to the terminated Work; and (d) all other work product used or owned by DB Contractor or any Affiliate relating to the terminated Work.
- 8.9.2.9** Complete performance in accordance with the Contract Documents of all Work not terminated, except to the extent performance of the remaining Work is rendered impossible due to the scope of the partial Termination for Convenience.

- 8.9.2.10** Take all action that may be necessary or that TxDOT may direct for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the Work and (c) equipment, machinery, materials and property related to the Project that is in the possession of DB Contractor and in which TxDOT has or may acquire an interest.
- 8.9.2.11** As authorized by TxDOT in writing, use its best efforts to sell to third parties, at reasonable prices, any property of the types referred to in Section 8.9.2.7; provided, however, that DB Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property itself under the conditions prescribed and at reasonable prices approved by TxDOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by TxDOT under the Contract Documents or paid in any other manner directed by TxDOT.
- 8.9.2.12** Immediately safely demobilize and secure construction, staging, lay down and storage areas for the Project and Utility Adjustments included in the Work in a manner satisfactory to TxDOT and remove all debris and waste materials, except as otherwise approved by TxDOT in writing.
- 8.9.2.13** Assist TxDOT in such manner as TxDOT may require prior to and for a reasonable period following the effective date of termination to ensure the orderly transition of the terminated Work and its management to TxDOT and shall, if appropriate and if requested by TxDOT, take all steps as may be necessary to enforce the provisions of Subcontracts pertaining to the surrender of the terminated Work.
- 8.9.2.14** Carry out such other directions as TxDOT may give for the termination of the Work.
- 8.9.2.15** Take such other actions as are necessary or appropriate to mitigate further cost.

**8.9.3 Settlement Proposal**

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, DB Contractor shall submit a final termination settlement proposal to TxDOT in the form and with the certification prescribed by TxDOT. DB Contractor shall submit the proposal promptly, but no later than 90 days from the effective date of termination, unless DB Contractor has requested a time extension in writing within such 90-day period and TxDOT has agreed in writing to allow such an extension. DB Contractor's termination settlement proposal shall then be reviewed by TxDOT and acted upon, returned with comments, or rejected. If DB Contractor fails to submit the proposal within the time allowed, TxDOT may determine, on the basis of information available, the amount, if any, due DB Contractor because of the termination and shall pay DB Contractor the amount so determined, and DB Contractor shall be bound by TxDOT's determination.

**8.9.4 Amount of Negotiated Termination Settlement**

DB Contractor and TxDOT may agree, as provided in Section 8.9.3, upon the whole or any part of the amount or amounts to be paid to DB Contractor by reason of the total or partial termination of the Work for convenience pursuant to Section 8.9.1. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Price as reduced by the amount of payments made and the Price of Work not terminated. Upon determination of the settlement amount, this Design-Build Contract will be amended accordingly, and DB Contractor will be paid the agreed amount as described in this Section 8.9.4. Nothing in Section 8.9.5 prescribing the amount to be paid to DB Contractor in the event that DB Contractor and TxDOT fail to agree upon the whole amount to be paid to DB Contractor by reason of the termination of Work pursuant to Section 8.9.1 shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to

be paid to DB Contractor pursuant to this Section 8.9.4. TxDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve DB Contractor from its obligations with respect thereto (including Warranties) or affect DB Contractor's obligations under any of the Performance Bond, Payment Bond and Guaranty as to such completed or non-terminated Work.

#### **8.9.5 No Agreement as to Amount of Termination Settlement**

If DB Contractor and TxDOT fail to agree upon either all or some portion of the amount to be paid DB Contractor by reason of a Termination for Convenience pursuant to Section 8.9.1, the amount payable (exclusive of interest charges) shall be determined by TxDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Section 8.9.4:

##### **8.9.5.1** TxDOT will pay DB Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

- (a) DB Contractor's actual reasonable out-of-pocket costs, without profit, and including equipment costs only to the extent permitted by Section 4.6.8.3 for all Work performed, including mobilization, demobilization, Work in progress, and Work done to secure the applicable portion of the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits, or similar items, as established to TxDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies, and equipment to be retained by DB Contractor, for amounts realized by the sale of such items, and for other appropriate credits against the cost of the Work, including those deductions that would be permitted in connection with Final Payment. When, in the opinion of TxDOT's Authorized Representative, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace Nonconforming Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents, and the excessive actual cost shall be disallowed.
- (b) A sum, as profit on clause (a) above, determined by TxDOT to be fair and reasonable, provided DB Contractor establishes to TxDOT's satisfaction that it is reasonably probable that DB Contractor would have made a profit had the Design-Build Contract been completed, and provided further that the profit allowed shall in no event exceed 4% of the cost owing to DB Contractor under clause (a).
- (c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts and Utility Agreements as provided in Section 8.9.2.6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience of Work under this Design-Build Contract, which amounts shall be included in the cost on account of which payment is made under clause (a) above.
- (d) The reasonable out-of-pocket costs (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 8.9.2.10 and any other reasonable out-of-pocket costs (including overhead) incidental to termination of the Work under this Design-Build Contract, including the reasonable cost to DB Contractor of handling material

returned to the Supplier, delivered to TxDOT or otherwise disposed of as directed by TxDOT, and including a reasonable allowance for DB Contractor's administrative costs in determining the amount payable due to termination of this Design-Build Contract.

**8.9.5.2** DB Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 8.9.5.1) plus its settlement costs and that items such as lost or anticipated profits, unabsorbed overhead, and opportunity costs shall not be recoverable by it upon termination of this Design-Build Contract. The total amount to be paid to DB Contractor, exclusive of costs described in Sections 8.9.5.1(c) and (d), may not exceed the total Price less the amount of payments previously made and the Price of Work not terminated. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits, or other items that were previously passed through to TxDOT by DB Contractor, such refund shall be paid directly to TxDOT or otherwise credited to TxDOT. Except for normal spoilage, and except to the extent that TxDOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to DB Contractor under Section 8.9.5.1 the fair value, as determined by TxDOT, of equipment, machinery, materials, supplies, and property that is destroyed, lost, stolen, or damaged so as to become undeliverable to TxDOT or sold pursuant to Section 8.9.2.11. Information contained in the EPDs may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, this Design-Build Contract shall be amended to reflect the agreed termination payment, DB Contractor shall be paid the agreed amount, and the Price shall be reduced to reflect the reduced scope of the Work.

**8.9.5.3** If a termination hereunder is partial, DB Contractor may file a proposal with TxDOT for an equitable adjustment of the Price for the continued portion of this Design-Build Contract. Any proposal by DB Contractor for an equitable adjustment under this Section 8.9.5.3 shall be requested within 90 days from the effective date of termination unless extended in writing by TxDOT. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Design-Build Contract.

## **8.9.6 Reduction in Amount of Claim**

The amount otherwise due DB Contractor under this Section 8.9 shall be reduced by (a) the amount of any claim that TxDOT may have against any DB Contractor-Related Entity in connection with this Design-Build Contract, (b) the agreed price for, or the proceeds of sale, of property, materials, supplies, equipment or other things acquired by DB Contractor or sold, pursuant to the provisions of this Section 8.9, and not otherwise recovered by or credited to TxDOT, (c) all unliquidated advance or other payments made to or on behalf of DB Contractor applicable to the terminated portion of the Work or Design-Build Contract, (d) amounts that TxDOT deems advisable, in its good faith discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners, (e) the cost of repairing any Nonconforming Work (or, in TxDOT's sole discretion, the amount of the credit to which TxDOT is entitled under Section 5.3.2); and (f) any amounts due or payable by DB Contractor to TxDOT.

## **8.9.7 Payment**

TxDOT may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments for costs incurred by DB Contractor in connection with the terminated portion of this Design-Build Contract, whenever in the opinion of TxDOT the aggregate of such payments shall be within the amount to which DB Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 8.9, such excess shall be payable by DB Contractor to TxDOT upon demand.

**8.9.8 Subcontracts**

**8.9.8.1** Provisions shall be included in each Subcontract regarding terminations for convenience allowing such termination rights and obligations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 8.9.

**8.9.8.2** Each Subcontract shall provide that, in the event of a termination for convenience by TxDOT, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment that constitutes consequential damages on account of the termination or partial termination.

**8.9.9 Termination Based on Delay to Issuance of NTP1**

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

**8.9.10 No Consequential Damages**

Under no circumstances shall DB Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of any termination under this Section 8.9. The payment to DB Contractor determined in accordance with this Section 8.9 constitutes DB Contractor's exclusive remedy for a termination hereunder.

**8.9.11 No Waiver; Release**

**8.9.11.1** Notwithstanding anything contained in this Design-Build Contract to the contrary, a termination under this Section 8.9 shall not waive any right or claim to damages that TxDOT may have and TxDOT may pursue any cause of action that it may have at Law, in equity or under the Contract Documents.

**8.9.11.2** Subject to Section 8.9.12 below, TxDOT's payment to DB Contractor of the amounts required under this Section 8.9 shall constitute full and final satisfaction of, and upon payment TxDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands, and Losses, known or unknown, suspected or unsuspected, that DB Contractor may have against TxDOT arising out of or relating to the terminated Work. Upon such payment, DB Contractor shall execute and deliver to TxDOT all such releases and discharges as TxDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

**8.9.12 Dispute Resolution**

The failure of the Parties to agree on amounts due under this Section 8.9 shall be a Dispute to be resolved in accordance with Section 4.9.



**8.9.13 Allowability of Costs**

All costs claimed by DB Contractor under this Section 8.9 must be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

**8.10 Submittals**

All submittals described in Item 8 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 8-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 8-1: Submittals to TxDOT**

Submittals	Submittal Schedule	Department Action	Reference Section
Schedule of Values	Submitted with Project Baseline Schedule PBS2 and updated whenever a Change Order is agreed	Acceptance	8.5.2
Project Baseline Schedule (PBS2)	Prior to issuance of NTP2	Acceptance	8.5.3
Project Baseline Schedule (PBS3)	Prior to Commencement of Construction	Acceptance	8.5.3
Project Schedule Updates	Monthly after initial PBS2 and PBS3 submittals and as part of the Draw Request	Approval	8.5.4
Project Schedule Revisions	As necessary	Acceptance	8.5.5
Change Order Revisions	As necessary	Acceptance	8.5.7
Time Impact Analysis	As necessary; within 15 days of receiving the request from TxDOT	Acceptance	8.5.7.2
As-Built Schedule	Prior to Final Acceptance	Approval	8.5.7.4

**ATTACHMENT 8-1**

**PROJECT BASELINE SCHEDULE – WORK BREAKDOWN STRUCTURE**

The Project Baseline Schedule shall be organized consistent with the WBS shown in Table 1. Additional WBS elements and levels may be added with TxDOT's approval

The Schedule of Values shall be the rollup of all Payment Activities to the WBS Level 3, 4, or 5 as appropriate.

WBS Minimum Requirements

- 1 [Name of Project]
  - 1.1. Project Administration
    - 1.1.1. Mobilization
      - 1.1.1.1. (By DB Contractor entity)
    - 1.1.2. Administrative Submittals and Permitting
      - 1.1.2.1. (By Governmental Agency)
        - 1.1.2.1.1. (By Specific Permit/Submittal Requirement)
  - 1.2. Right of Way Acquisition
    - 1.2.1. Acquisition by TxDOT
      - 1.2.1.1. (By Parcel No.)
    - 1.2.2. Acquisition by DB Contractor
      - 1.2.2.1. (By Parcel No.)
  - 1.3. Utility Adjustments
    - 1.3.1. Utility Coordination
      - 1.3.1.1. Administration and Planning
        - 1.3.1.1.1. Site Utility Engineering
        - 1.3.1.1.2. Conceptual Design

- 1.3.1.2. (By Owner)
  - 1.3.1.2.1. Master Agreements
  - 1.3.1.2.2. Utility Assemblies
- 1.3.2. Utility Relocations
  - 1.3.2.1. (By Owner)
    - 1.3.2.1.1. (By Line No.)
- 1.4. Design
  - 1.4.1. General Activities and Field Work
    - 1.4.1.1. Design Mobilization
    - 1.4.1.2. Schematics
    - 1.4.1.3. Survey Work
    - 1.4.1.4. Geotechnical Investigations
    - 1.4.1.5. Additional Field Investigations
  - 1.4.2. Develop Specifications
    - 1.4.2.1. (By Discipline)
  - 1.4.3. Geotechnical Design
    - 1.4.3.1. General
    - 1.4.3.2. Earthwork Geotech
    - 1.4.3.3. Bridge Geotech
    - 1.4.3.4. Culvert Geotech
    - 1.4.3.5. Wall Geotech

- 1.4.4. Pavement Design
  - 1.4.4.1. Data Analysis and Draft Report
  - 1.4.4.2. Final Design and Report
- 1.4.5. Drainage Design
  - 1.4.5.1. Hydrologic and Hydraulic Design
  - 1.4.5.2. Preliminary System Design
  - 1.4.5.3. Detailed Drainage Design
- 1.4.6. Roadway Design
  - 1.4.6.1. Alignments
  - 1.4.6.2. Sections
  - 1.4.6.3. Detailed Design
- 1.4.7. Bridge Design
  - 1.4.7.1. Establish Criteria and Procedures
  - 1.4.7.2. Bridge layouts
  - 1.4.7.3. Substructure Design
  - 1.4.7.4. Superstructure Design
- 1.4.8. Retaining Wall Design
  - 1.4.8.1. Establish Criteria and Procedures
  - 1.4.8.2. Fill Wall Design
  - 1.4.8.3. Cut Wall Design
- 1.4.9. Traffic Management

1.4.9.1. (By Phase)

1.4.10. Environmental Design

1.4.10.1. Erosion Control/SWPPP

1.4.10.2. Noise Wall Design

1.4.10.3. Wetland and habitat Mitigation

1.4.10.4. TCEQ Best Management Practices

1.4.11. Landscape and Aesthetic Design

1.4.11.1. Landscape Design

1.4.11.2. Aesthetic Design

1.4.12. Electrical Design

1.4.12.1. Illumination

1.4.12.2. Traffic Signals

1.4.13. ITS & TCS Design

1.4.13.1. Duct Bank System & Power Supply

1.4.13.2. ITS/TCS Equipment & Structures

1.4.14. Signage and Marking Design

1.4.14.1. Overhead

1.4.14.2. Small signs and pavement markings

1.4.15. Design Packages

1.4.15.1. Package Preparation

1.4.15.2. QA/QC Review

1.4.15.3. Submittal

1.4.15.4. TxDOT/IE Reviews

1.4.15.5. Comment Resolution

1.5. Construction

1.5.1. General

1.5.2. Material Submittals

1.5.3. Mobilization

1.5.4. Administration

1.5.5. Quality Control

1.5.6. By Phase or Work Area

## 1.5. Construction (Continued)

### 1.5.6.1. Removals

1.5.6.1.1. Building Removals

1.5.6.1.2. ROW Preparation

1.5.6.1.3. Roadway Removals

1.5.6.1.4. Bridge Removals

### 1.5.6.2. Earthwork

1.5.6.2.1. Topsoil Stripping and Placing

1.5.6.2.2. Excavation

1.5.6.2.3. Embankment

1.5.6.2.4. Special Geotechnical Measures

### 1.5.6.3. Landscaping

1.5.6.3.1. Seeding and Sodding

1.5.6.3.2. Fertilizer and Watering

1.5.6.3.3. Special Aesthetic Landscaping (if applicable)

### 1.5.6.4. Subgrade Treatment and Base

1.5.6.4.1. Lime Treatment

1.5.6.4.2. Flexible Base

### 1.5.6.5. Pavement

1.5.6.5.1. Asphalt Pavement

1.5.6.5.2. Concrete Pavement



1.5.6.5.3. Curb & Gutter

1.5.6.5.4. Driveways

1.5.6.5.5. Sidewalks and Median Paving

1.5.6.6. Retaining Walls

1.5.6.6.1. (By Wall No.)

1.5.6.7. Bridges

1.5.6.7.1. (By Bridge No.)

1.5.6.8. Drainage

1.5.6.8.1. Culverts

1.5.6.8.2. Storm Sewer

1.5.6.8.3. Riprap

**1.5. Construction (Continued)**

1.5.6.9. Traffic Control and Temporary Work

- 1.5.6.9.1. Barricades, Signs & Traffic Handling
- 1.5.6.9.2. Erosion Control
- 1.5.6.9.3. Detour Construction/Removal
- 1.5.6.9.4. Portable Traffic Barrier
- 1.5.6.9.5. Workzone Pavement Marking
- 1.5.6.9.6. Temporary Bridges
- 1.5.6.9.7. Temporary Walls/Shoring
- 1.5.6.9.8. Temporary Drainage
- 1.5.6.9.9. Temporary Illumination

1.5.6.10. Permanent Barriers

- 1.5.6.10.1. Permanent Concrete Barriers
- 1.5.6.10.2. Metal Beam Guard Fence
- 1.5.6.10.3. Crash Attenuators

1.5.6.11. Signals and Illumination

- 1.5.6.11.1. Roadway Illumination
- 1.5.6.11.2. High Mast Illumination
- 1.5.6.11.3. Electrical Services
- 1.5.6.11.4. Traffic Signals

1.5.6.12.ITS/TCS

- 1.5.6.12.1. Duct Bank System
- 1.5.6.12.2. Equipment Foundations
- 1.5.6.12.3. Support Structures and Equipment

1.5.6.13. Permanent Signing and Marking

- 1.5.6.13.1. Overhead Sign Structures
- 1.5.6.13.2. Small Signs
- 1.5.6.13.3. Pavement Markings

1.5.6.14. Environmental Mitigation

- 1.5.6.14.1. Noise Walls
- 1.5.6.14.2. Wetland and Habitat Mitigation

1.5.6.15. Hazardous Materials

- 1.5.6.15.1. Site Assessments
- 1.5.6.15.2. Remediation

1.6. Close-out

- 1.6.1. Inspections
- 1.6.2. Punch List
- 1.6.3. Closing Documentation
  - 1.6.3.1. Record Documents
  - 1.6.3.2. Maintenance Records
  - 1.6.3.3. Warranty Documents

1.6.4. Substantial Completion

1.6.5. Final Acceptance

**ATTACHMENT 8-2**

000-010

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**Special Provision to Item 000 Important  
Notice to Contractors**

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By the 20th day of each month, report to the Engineer the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor-related incidents and injuries that involved a third party.

An "incident" is defined as any work-related occurrence that caused damage only to vehicles, equipment, materials, etc.

An "injury" is defined as an OSHA recordable injury.

Acquire an Electronic Project Records System (EPRS) account to report incidents and injuries. Submit an EPRS User Access Request Form (Form 2451) to request an account. This form can be found at <http://www.txdot.gov/business/resources/doing-business/prequalification.html>.

Report injuries and incidents using the EPRS website located at <https://apps.dot.state.tx.us/apps/eprs/InjuryIncident/InjryIncdt.asp>.

Failure to submit this information to the Engineers by the 20th day of each month will result in the Department taking actions including, but not limited to withholding estimates and suspending the work. This report will not be paid for directly, but will be considered subsidiary to Items of the contract.

**ITEM 9            PAYMENT****9.1                Price****9.1.1             Amount**

As full compensation for the Work and all other obligations to be performed by DB Contractor under the Contract Documents, TxDOT shall pay to DB Contractor the lump sum "Price." The term "Price" as used herein means the lump sum amount set forth in Section 4.1 of the Design-Build Agreement, subject to adjustment from time to time to account for Change Orders. The Price shall be increased or decreased only by a Change Order issued in accordance with Section 4.6. The Price shall be paid in accordance with Section 9.3.

**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 Item 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.

**9.1.3             Payment for Work Prior to NTP2**

DB Contractor acknowledges and agrees that the amount of funds available to pay for Work prior to issuance of NTP2 is limited to the NTP1 Maximum Payment Amount. TxDOT has no obligation to make any payments to DB Contractor in excess of the NTP1 Maximum Payment Amount until such time (if any) as NTP2 is issued.

**9.2                Maximum Payment Schedule**

The Project Schedule shall provide for payment to be made solely on the basis of progress by DB Contractor, subject to a cap on payments shown on the Maximum Payment Schedule established for the Project. In other words, at no time shall DB Contractor's cumulative total progress payments (including mobilization payments and payments for Change Order Work) exceed the cumulative total expenditure permitted by the Maximum Payment Schedule. The Maximum Payment Schedule is set forth in Exhibit 10 to the Design-Build Agreement and shall only be revised by a Change Order issued in accordance with Section 4.6. At no time shall the total amount of anticipated draws and the total amount of cumulative draws set forth in the Maximum Payment Schedule exceed the Price, as it may be adjusted in accordance with Section 4.6. The Maximum Payment Schedule shall be revised to account for any Change Orders or amendments, at a minimum, (a) each time cumulative adjustments to the Price through one or more Change Orders or amendments issued since the later of the Effective Date or any previous revision of the Maximum Payment Schedule exceed five percent of the original Price, and (b) at DB Contractor's request, provided DB Contractor demonstrates to

TxDOT's satisfaction that its progress payments will exceed the Maximum Payment Schedule within 60 days of the date of DB Contractor's request. DB Contractor and TxDOT may mutually agree to revise the Maximum Payment Schedule more frequently through Change Orders issued in accordance with Section 4.6. The aggregate amount of progress payments to DB Contractor hereunder shall not exceed the amount allowed by the Maximum Payment Schedule at any time.

### **9.3 Invoicing and Payment**

The following process shall apply to invoicing and payment:

#### **9.3.1 Delivery of Draw Request**

On or about the fifth Business Day of each month following NTP1 and continuing through the last date of the Maximum Payment Schedule shown on Exhibit 10 to the DBA, DB Contractor shall deliver to TxDOT one hard copy and an electronic copy of a Draw Request in the form of Attachment 9-1 and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Draw Request shall be executed by DB Contractor's Authorized Representative. DB Contractor acknowledges that TxDOT will obtain funding for portions of the Work from the federal government, local agencies and other third parties, and DB Contractor agrees to segregate Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

#### **9.3.2 Contents of Draw Request**

Each Draw Request must include, at a minimum, all items required by Exhibit 3 to Attachment 9-1.

A Draw Request shall be considered complete and ready for further processing if it includes (i) all of the items required by Exhibit 3 to Attachment 9-1.

#### **9.3.3 Draw Request Cover Sheet Contents**

The Draw Request cover sheet shall include the following:

- (a) Project number and title;
- (b) Request number (numbered consecutively starting with "1");
- (c) Total amount earned to date for the Project; and
- (d) Authorized signature, title of signer, and date of signature.

#### **9.3.4 Certification by Professional Services Quality Assurance Firm and Independent Quality Firm**

Each Draw Request shall include a certificate signed by the Professional Services Quality Assurance Firm or the Independent Quality Firm, as appropriate, in the form included in Exhibit 2 to Attachment 9-1 or otherwise acceptable to TxDOT certifying that:

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

- (b) Except as specifically noted in the certification, all Work that is both the subject of the Draw Request and for which an audit or inspection has been performed conforms to the requirements of the Contract Documents;
- (c) The Professional Services quality program and the Construction quality program and all of the measures and procedures provided therein are functioning properly and are being followed;
- (d) The Professional Services percentages and construction percentages indicated are accurate and correct; and
- (e) All quantities for which payment is requested on a unit price basis are accurate.

### 9.3.5 Draw Request Data Sheets

Draw Request data sheets shall be subdivided into DB Contractor designated Project segments and shall be attached to a Project wide report and Draw Request data sheet. Payments will be based on the percentage of Work completed, not on measured quantities (except as expressly set forth in this Design-Build Contract), except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. The percentage completion of Payment Activities shown on the Project Schedule Update shall be subject to TxDOT's review and approval and shall be the basis for determining periodic payments. Where progress is measured by percentage completed and days remaining, the percentage completion of each Payment Activity shall be calculated using the latest scheduling software and the methods set forth in Section 8.5.2. DB Contractor shall present the format of the Draw Request data sheets for TxDOT approval at least 20 Business Days prior to the submittal of the first Draw Request. Once the Draw Request data sheet format has been approved by TxDOT, the format shall not change without TxDOT's prior written approval.

### 9.3.6 Payment by TxDOT

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



## 9.4 Deductions, Withholding, Exclusions and Limitations on Payment

### 9.4.1 Deductions

In addition to the adjustments that TxDOT may make to the payment amount requested in Draw Requests exceeding the amounts to which DB Contractor is entitled pursuant to Section 9.3.6, TxDOT may deduct from each progress payment and the Final Payment the following:

- (a) Any TxDOT or third-party Losses for which DB Contractor is responsible hereunder;
- (b) Any (i) Liquidated Damages, including any Liquidated Damages for Delay, Key Personnel Unavailability Liquidated Damages and Liquidated Damages for Lane Closures, (ii) Qualifying Delay Late Fees, (iii) Key Personnel Change Fees, or (iv) 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;
- (c) If a notice to stop payment, claim or Lien is filed with TxDOT, due to DB Contractor's failure to pay for labor or materials used in the Work, money due for such labor or materials will be withheld from payment to DB Contractor until such time as DB Contractor provides evidence to TxDOT that the stop payment, claim or Lien is released;
- (d) Any sums expended by or owing to TxDOT as a result of DB Contractor's failure to maintain the Record Documents, up to a maximum of 1% of the Price, which shall be released to DB Contractor upon TxDOT's receipt of acceptable Record Documents, as described in Section 9.5.3;
- (e) Any sums included in a Draw Request for materials that are impacted by, or Work that is the subject of, an NCR that is not resolved and closed out in accordance with the QAP for DB Projects and Section 4.1.2.2.4, which sums shall be withheld until such time as the NCR is resolved and closed out to TxDOT's satisfaction;
- (f) An amount of \$20,000 as described in Section 8.5.2 (b) for DB Contractor's failure to either address comments on a Project Schedule Submittal to TxDOT's satisfaction or submit a required Project Schedule in accordance with the Contract Documents; and
- (g) Any other sums that TxDOT is entitled to recover, deduct or withhold from DB Contractor under the terms of this Design-Build Contract.

DB Contractor shall provide documentation with the Draw Request describing any amounts included in the Draw Request for materials that are described in Section 9.4.1 (e), along with an itemized account of deducted and withheld sums using Appendix 2 to Exhibit 1 to Attachment 9-1. The failure by TxDOT to deduct any of these sums from a progress payment shall not constitute a waiver of TxDOT's right to such sums.

### 9.4.2 Materials on Hand

TxDOT will not pay for materials not yet incorporated in the Work unless such materials qualify as Materials on Hand and all of the following conditions are met:

- 9.4.2.1** Materials on Hand shall be (a) delivered to the Site, (b) delivered to DB Contractor and promptly stored by DB Contractor in storage at a location approved by TxDOT, or (c) stored at a Supplier's fabrication site, which shall be a location approved by TxDOT prior to submitting a request for such Materials on Hand. If such materials are stored at any site not approved by TxDOT, DB Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against TxDOT by any state or subdivision thereof on account of the storage of such material.
- 9.4.2.2** DB Contractor shall submit a completed Appendix 1 to Exhibit 1 of Attachment 9-1 with each Draw Request showing the amount requested for Materials on Hand and the cumulative amount earned to date for that period to report on line E of Exhibit 1 to Attachment 9-1 (Form of Draw Request and Certificate). DB Contractor shall submit invoices for such Materials on Hand seven days in advance of submittal of the Draw Request to allow TxDOT to verify requested amounts, which shall be a condition to payment for such Materials on Hand. TxDOT shall allow only such portion of the amount represented by these invoices as, in its sole discretion, is consistent with the reasonable cost of such materials. Such invoices shall not include freight and handling costs. Payment for precast products fabricated or constructed by DB Contractor for which invoices are not available may be made based on statements of actual cost. Payment will not exceed the actual cost of the material as established by invoice, or the total cost of the associated Payment Activity less reasonable placement costs, whichever is less. DB Contractor shall provide a paid invoice within 60 days of receiving payment for Materials on Hand or DB Contractor will not be eligible for any additional payments for Materials on Hand and payment shall be withheld from future Draw Requests in an amount equal to the payments for Materials on Hand that were not supported by a paid invoice. The total amount eligible for payment for Materials on Hand shall not exceed the cumulative maximum payment schedule amount. DB Contractor shall report the total earned value and Materials on Hand amounts for the Payment Activities for that period on Appendix 1 to Exhibit 1 of Attachment 9-1. Prior to payment, the IQF shall certify that Materials on Hand are in conformance with the approved material submittals and specifications in accordance with Section 3.1.1 of the QAP and are authorized for construction, unless approved by TxDOT in its sole discretion. Payment for Materials on Hand does not constitute acceptance of the Material.
- 9.4.2.3** All such Materials on Hand are the property of DB Contractor. DB Contractor shall be responsible for taking any actions required to ensure Materials on Hand meet the requirements of the Contract Documents and may be incorporated into the Work. DB Contractor at its own cost shall promptly execute, acknowledge and deliver to TxDOT proper bills of sale or other instruments in writing in a form acceptable to TxDOT assuring to TxDOT that such materials included in any Draw Request are free and clear of all Liens.
- 9.4.2.4** The cost and charges for Materials on Hand included in a Draw Request, which material is subsequently lost, damaged, unsatisfactory or impacted by Nonconforming Work may be deducted from succeeding Draw Requests if TxDOT, in its sole discretion, determines that is appropriate after considering the availability of insurance coverage and DB Contractor's actions to replace the lost, damaged or unsatisfactory material.
- 9.4.2.5** Payment for Materials on Hand furnished and delivered as indicated in this Section 9.4.2 will not exceed the amount paid by DB Contractor as evidenced by a bill of sale supported by a paid invoice.

## **9.5 Payments for Mobilization, Bond and Insurance Premiums and Record Documents**

### **9.5.1 Payments for Mobilization**

Subject to the limitations on payment imposed by the Maximum Payment Schedule, DB Contractor shall be entitled to payment for mobilization in installments in an amount equal to the Mobilization Payment Activity Amount. The first payment for mobilization shall be in an amount not to exceed 5% of the Mobilization Payment Activity Amount, payable as part of the first Draw Request following NTP1. The second payment for mobilization shall be in an amount not to exceed 20% of the Mobilization Payment Activity Amount, payable as part of the first Draw Request following NTP2. The third payment for mobilization shall be in an amount not to exceed 50% of the Mobilization Payment Activity Amount, payable when at least 10% of the Price (less the Mobilization Payment Activity Amount) is earned for Work performed without counting any payments for mobilization. The fourth payment for mobilization shall be in the remaining amount of the Mobilization Payment Activity Amount, payable when at least 25% of the Price (less the Mobilization Payment Activity Amount) is earned for Work performed without counting any payments for mobilization. The amounts calculated as due under this Section 9.5.1 shall be taken into account in assessing the amount to be paid under a Draw Request, which shall not be more than the amount in the Maximum Payment Schedule.

### **9.5.2 Payments for Bonds and Insurance Premiums**

The portion of the Price allocable to bond and insurance premiums, as set forth in the Proposal, shall be payable to reimburse DB Contractor for bond and insurance premiums actually paid, without markup, not to exceed the line item for such premiums in the Proposal, as part of the first Draw Request following NTP1 for bonds and insurance required at NTP1 and as part of the applicable Draw Request following NTP2 for bonds and insurance required on or after NTP2. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following Substantial Completion. The amounts paid under this Section 9.5.2 shall be taken into account in assessing the maximum amount payable under a Draw Request through application of the Maximum Payment Schedule.

### **9.5.3 Payment for Record Drawings**

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

### **9.5.4 Payment for Contract Administration**

DB Contractor shall be entitled to payment for the contract administration Payment Activity as part of each Draw Request following NTP1 in accordance with this Section 9.5.4. The payment for the contract administration Payment Activity shall not exceed the total Price allocable to contract administration multiplied by the percentage of Work completed in each Draw Request period. The percent of Work completed for purposes of determining the contract administration payments shall be calculated based on the percentage of Price earned excluding Price and Draw Request payments for contract administration, mobilization, bond premiums, and insurance premiums.

## 9.6 Equipment

TxDOT shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 9.5, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner that is consistent with the requirements of Section 4.6.8.3.

## 9.7 Final Payment

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

**9.7.1** On or about the date of Final Acceptance, DB Contractor shall prepare and submit a proposed Final Reconciliation to TxDOT showing the proposed total amount due DB Contractor as of the date of Final Acceptance, including any amounts owing from Change Orders. In addition to meeting all other requirements for Draw Requests hereunder, the Final Reconciliation shall propose a schedule of monthly payments that do not exceed the amounts set forth on the Maximum Payment Schedule. The Final Reconciliation shall list all outstanding PCO Notices stating the amount at issue associated with each such notice. The Final Reconciliation shall also be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners and other third parties against DB Contractor, TxDOT or the Project, (b) consent of any Guarantors and Surety to the proposed monthly payment schedule, (c) such other documentation as TxDOT may reasonably require, and (d) the release described in Section 9.7.4 executed by DB Contractor. Prior applications and payments shall be subject to correction in the Final Reconciliation. PCO Notices filed concurrently with the Final Reconciliation must be otherwise timely and meet all requirements under Section 4.6.

**9.7.2** If the Final Reconciliation shows no existing or threatened claims, Liens and stop notices of Subcontractors, Suppliers, laborers, Utility Owners or other third parties against DB Contractor, TxDOT or the Project, and provided TxDOT has approved the Final Reconciliation, TxDOT, in exchange for an executed release meeting the requirements of Section 9.7.4 and otherwise satisfactory in form and content to TxDOT, will pay in accordance with the monthly payment schedule described in Section 9.7.6 the entire sum found due on the approved Final Reconciliation, less the amount of any Losses that have accrued as of the date of Final Acceptance, any other deductions permitted under Section 9.4.1 above.

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

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

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

- (b) that DB Contractor has resolved any claims made by Subcontractors, Suppliers, Utility Owners, laborers, or other third parties against DB Contractor, TxDOT or the Project (except those listed by DB Contractor in accordance with Section 9.7.3);
- (c) that DB Contractor has no reason to believe that any Person has a valid claim against DB Contractor, TxDOT or the Project that has not been communicated in writing by DB Contractor to TxDOT as of the date of the certificate; and
- (d) that all guarantees, Warranties and the Payment Bond and the Performance Bond are in full force and effect.

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

**9.7.6** TxDOT will review DB Contractor's proposed Final Reconciliation, and any changes or corrections, including deductions and withholdings described in Section 9.7.2, will be forwarded to DB Contractor for correction within 20 Business Days. Any changes or corrections made pursuant to this Section 9.7.6 will be reflected in an updated monthly payment schedule showing the net amount owed to DB Contractor by month.

**9.7.7** TxDOT shall fulfill its payment obligations under this Design-Build Contract by paying the amounts identified in Section 9.7.6, in accordance with the schedule described in Section 9.7.6.

## **9.8 Payment to Subcontractors**

**9.8.1** DB Contractor shall pay each Subcontractor for Work performed within 10 days after receiving payment from TxDOT for the Work performed by the Subcontractor, and shall pay any retainage on a Subcontractor's Work within 10 days after satisfactory completion of all of the Subcontractor's Work. Completed Subcontractor Work includes vegetative establishment, test, maintenance, performance, and other similar works that are the responsibility of the Subcontractor.

**9.8.2** For the purpose of Section 9.8.1, satisfactory completion shall have been accomplished when:

- (a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and Contract Documents; and
- (b) the Work done by the Subcontractor has been inspected and approved by DB Contractor, and the final quantities of the Subcontractor's Work have been determined and agreed upon.

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

**9.8.4** The DB Contractor must provide a certification of prompt payment, using either the Prompt Payment Certification Form 2177 or TxDOT's electronic compliance tracking system which may be accessed at the following Internet address: <https://txdot.txdotcms.com/>, to certify that all Subcontractors, including Suppliers, were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 or a certification from the electronic compliance tracking system must be submitted each month and the month following the month when Final Acceptance occurs.

## **9.9 Payment Disputes**

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect DB Contractor's obligation to perform under the Contract Documents, including DB Contractor's obligation to achieve the Completion Deadlines and perform all Work in accordance with the Contract Documents, and DB Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any Claim or Dispute regarding such payment shall be resolved pursuant to Section 4.9, Section 4.10 and Exhibit 20 to the DBA. DB Contractor shall proceed as directed by TxDOT pending resolution of the Claim or Dispute. Upon resolution of any such Claim or Dispute, each Party shall promptly pay to the other any amount owing.

**ATTACHMENT 9-1**

**FORM OF DRAW REQUEST AND CERTIFICATE REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Exhibit 1 – Form of Draw Request and Certificate	2
Appendix 1 to Exhibit 1 – Materials on Hand Summary	2
Appendix 2 to Exhibit 1 – Deductions Summary	1
Exhibit 2 – Draw Request Certifications	2
Exhibit 3 – Draw Request Contents Checklist	2


**EXHIBIT 1 TO ATTACHMENT 9-1**

**FORM OF DRAW REQUEST AND CERTIFICATE<sup>1</sup>**

**Draw Request #** \_\_\_\_\_

**Date:** \_\_\_\_\_  
month/day/year

Texas Department of Transportation  
[Address]

 "Entry Required in Cell"

to

A. Draw Request for Work performed for the period: \_\_\_\_\_ month/day/year \_\_\_\_\_ month/day/year

B. Original Contract Amount

C. Approved Change Order Amounts

D. Revised Contract Amount (B+C)

E. Cumulative Amount Earned to Date (Amount "E" from Appendix 1 to this Exhibit 1)

F. Cumulative Maximum Payment Schedule Allowance (this Draw Request from DBA Exhibit 10)

G. Cumulative Amount of Previous Draw Requests

H. Amount Qualified for Payment this Draw Request (Lesser of "E-G" or "F-G") (includes Landscaping Allowance Work described below)

I. Total deductions from progress payment per Section 9.4.1 (from Appendix 2 to Exhibit 1)

	\$0.00
	\$0.00
	\$

<sup>1</sup> [Revise Form of Draw request as needed for applicable project requirements.]



J. Current Amount Due ("H" - "I" )

\$
----

---

Printed Name	Signature	month/day/year
DB Contractor's Authorized Representative		

---

Printed Name	Signature	month/day/year
TxDOT's District Engineer or Designee		

---

Printed Name	Signature	month/day/year
Texas Department of Transportation		

(Note: See Sheet 5 of 5 for Draw Request Checklist)

**APPENDIX 1 TO EXHIBIT 1 TO ATTACHMENT 9-1**

**MATERIALS ON HAND SUMMARY**

**Draw Request No.** \_\_\_\_\_

A. Cumulative Amount Earned to Date based on the Schedule of Values

\$	
----	--

B. Previous MOH Invoices

\$	
----	--

C. Installed to-date

\$	
----	--

D. Current MOH Invoices

\$	
----	--

E. Cumulative Amount Earned to Date (A+B-C+D)

\$	
----	--

**Materials on Hand Record Log**

[Create smart pdf to sum amounts and (+/-) toggle to ADD and DELETE line items in table]

Invoice Number	Sub/ Vendor	Payment Activity ID(s)	Item Number and Description	Material Description	Invoice Total	Paid on D.R. #	Installed	Installed on D.R. #

**Payment Activity Summary Log**

<b>Payment Activity ID(s)</b>	<b>Total Value based on SOV</b>	<b>Total Earned Value to Date</b>	<b>Total MOH</b>
	\$	\$	\$

**APPENDIX 2 TO EXHIBIT 1 TO ATTACHMENT 9-1****DEDUCTIONS SUMMARY**

Draw Request No. \_\_\_\_\_

Provide a summary of deductions as described in Section 9.4.1

<b>Deduction / Withholding</b>	<b>This Draw Request</b>	<b>Cumulative Total</b>
A. TxDOT or third party Losses (see Section 9.4.1(a))	\$	\$
B. Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees and Lane Rental Charges (see Section 9.4.1(b))		
C. Failure to pay for labor or materials (see Section 9.4.1(c))		
D. Failure to maintain Record Documents (see Section 9.4.1(d))		
E. Work or materials that is the subject of an NCR (see Section 9.4.1(e))		
F. Failure to monitor and maintain Project Schedule (See Section 9.4.1 (f))		
G. Any other sums owed to TxDOT (see Section 9.4.1(g))		
Total		

**EXHIBIT 2 TO ATTACHMENT 9-1**

**DRAW REQUEST NO. \_\_\_\_\_ CERTIFICATION**

The undersigned hereby certifies that (choose applicable bracketed language):

- ◆ Except as specifically noted in this certification, all Work, including that of designers, Subcontractors and Suppliers, that is the subject of this Draw Request has been checked and/or inspected in accordance with the respective Quality Management Plan;
- ◆ Except as specifically noted in this certification, all Work that is both the subject of this Draw Request and for which an audit or inspection has been performed conforms to the requirements of the Contract Documents;
- ◆ [The Professional Services quality program] [The Construction quality program] and all of the measures and procedures provided therein are functioning properly and are being followed; and
- ◆ [The Professional Services percentages] [The construction percentages] indicated are accurate, correct, and are based on the Schedule of Values. All quantities for which payment is requested on a unit price basis are accurate.
- ◆ All quantities for which payment is requested on a unit price basis are accurate.

Exceptions:

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\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Date

[PSQAF] [IQF] Representative

**DRAW REQUEST NO. \_\_\_\_\_ CERTIFICATION**

The undersigned hereby certifies that all Work that is the subject of this Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in this certification.

Exceptions:

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---

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\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Date

DB Contractor's Authorized Representative

**EXHIBIT 3 TO ATTACHMENT 9-1****DRAW REQUEST CONTENTS CHECKLIST**

The following items shall be included in the Draw Request package in the order listed below:

- A cover sheet.
- A completed Form of Draw Request and Certificate (Exhibit 1 to Attachment 9-1).
- Certification by the DB Contractor's authorized representative that all Work that is the subject of the Draw Request fully complies with the requirements of the Contract Documents, subject to any exceptions identified in the certification (Exhibit 2 to Attachment 9-1).
- Certification by the Professional Services Quality Assurance Firm, if applicable (Exhibit 2 to Attachment 9-1).
- Certification by the Independent Quality Firm, if applicable (Exhibit 2 to Attachment 9-1).
- Documentation showing the CSJ cost distribution, if applicable.
- Documentation describing in detail the related payments due and the Maximum Payment Schedule, as of the end of the prior month.
- A current Schedule of Values and status of completion of Payment Activities.
- Monthly expenditure projections in the WBS format.Cash flow curves and comparison to the Maximum Payment Schedule.
- Updated actual cumulative cash flow curve plotted along with the three cumulative cash flow curves: one based on the early dates; one based on the late dates; and one based on the Maximum Payment Schedule required in Section 8.5.3.2.
- Data sheets and documents that support and substantiate the amount requested in this Draw Request, which may include:
- Quantities and unit prices for unit priced Work including invoices, receipts or other evidence establishing the number of units delivered.
- Time and materials documentation for Force Account Change Orders in accordance with Section 4.6.8.
- Actual costs as evidenced by invoices for items to be paid from an allowance.
- Invoices or statements of actual cost for Materials on Hand with a completed Appendix 1 to Exhibit 1 of Attachment 9-1.
- A list of any Change Orders that were identified or executed during the progress period and their status.
- A description of any deductions, including any Losses for which DB Contractor is responsible, Liquidated Damages, Qualifying Delay Late Fees, Key Personnel Change Fees, Lane Rental Charges, and any other amounts subject to deduction pursuant to Section 9.4.1, with a completed Appendix 2 to Exhibit 1 of Attachment 9-1.

- A Nonconformance Report (NCR) log as described in Section 3.5.3.4 of the QAP for DB Projects.
- Certification of prompt payment using either Prompt Payment Certification Form 2177 or TxDOT's electronic compliance tracking system as described in Section 9.8.4, if applicable.
- A monthly report of personnel hours.
- [DBE utilization reports] in a format reasonably satisfactory to TxDOT.
- A listing of all Subcontracts in effect to which DB Contractor is a party with a list of the Subcontractors under such Subcontracts, guarantees of such Subcontracts and the guarantors thereunder, in accordance with Section 8.2.1.2(a).
- Details of amounts paid to Subcontractors, if applicable, including Suppliers, from the payments made by TxDOT to DB Contractor with respect to the Draw Request submitted two months prior.
- Any affidavits of payment and unconditional waivers of Liens and claims, if applicable, (including applicable waivers in the form required under Section 53.284 of the Texas Property Code) executed by DB Contractor and each Subcontractor with respect to all amounts paid in connection with the Draw Request submitted two months prior.
- Summary description of DB Contractor maintenance activities in accordance with Section 27.4 of the Design-Build Specifications.
- Any traffic incident reports.
- Status of Project ROW acquisition, if applicable, and a description of the survey activity performed and condemnation support services provided as described in Sections 15.2.6, 15.3.2 and 15.4.4 of the Design-Build Specifications.





# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

July 22, 2021

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# Item 10

## General



### 10.1 Offices, Equipment, and Vehicles

Except where noted elsewhere in the Contract Documents, DB Contractor and TxDOT shall co-locate until Final Acceptance to facilitate Project coordination and daily communication. The definition of “co-locate” for the Term is office space meeting the conditions of these DB Specifications that is within one mile of the Project ROW, or as approved by TxDOT. In addition to colocation requirements for specified personnel and Key Personnel elsewhere in these DB Specifications, the following DB Contractor’s personnel shall be co-located with TxDOT:

- Senior design engineer, and at least one CADD technician for the design duration; and
- ROW AM during ROW acquisition phase.

The office space requirements for the Project office are provided below.

TxDOT will provide a portion of the Northeast Bexar Maintenance Yard, located at 6550 Walzem Road, for the DB Contractor’s use for construction staging or other Project-related activities, as approved by TxDOT. DB Contractor shall enter into a facility-specific Memorandum of Agreement (MOU) with TxDOT prior to using this facility.

#### 10.1.1 Core Office

DB Contractor shall provide all space, facilities, and support elements necessary to design, construct, and maintain the TxDOT core office in accordance with the Contract Documents. DB Contractor shall provide office space for TxDOT’s design and Project management staff. If it is necessary to locate any office space for TxDOT’s design and Project management staff off-site or outside of the core office, DB Contractor shall obtain TxDOT’s prior written consent.

DB Contractor shall provide TxDOT office space. (i.e., available for occupancy) within 60 days following issuance of NTP1, and prior to NTP2. The location, condition, and amenities of the office space for TxDOT are subject to TxDOT’s prior written approval. DB Contractor shall provide a preliminary TxDOT facility area layout plan, in which DB Contractor shall identify the portion of the Project office space provided by DB Contractor for TxDOT’s use, to TxDOT no later than 10 days after NTP1. TxDOT will promptly review and comment on required modifications to the layout within 10 days. DB Contractor shall submit a final facility layout plan within 10 days of receipt of TxDOT comments.

DB Contractor shall provide separate office space for the exclusive use of TxDOT’s design and Project management staff in the TxDOT facility area as specified herein and subject to TxDOT’s prior written approval. This office space shall be located within the same building or complex as DB Contractor’s office staff. TxDOT will be reasonable regarding re-use of existing space within DB Contractor’s current office facility, provided that the space is contiguous and workable in TxDOT’s good faith discretion.

#### 10.1.1.1 Core Office Condition

The offices shall be in good and serviceable condition, at least of the same quality as those of DB Contractor’s counterpart office space, and available for occupancy as specified herein. Both Parties shall participate in a facility condition survey prior to and at the completion of occupancy. TxDOT shall return possession of DB Contractor-provided TxDOT facility area to DB Contractor in essentially the same condition as when TxDOT first took occupancy of the facilities, except for reasonable wear and tear and except for alterations, or loss or damage, caused by any member of a DB Contractor-Related Entity.

#### 10.1.1.2 Core Office Loss or Damage

If office spaces, related facilities, or fixtures are destroyed, damaged, or stolen during the Term in the TxDOT facility area, except as a direct result of willful misconduct of TxDOT or its personnel, DB Contractor shall, at its cost and within 10 Business Days after the occurrence of such destruction or damage, repair those items to their original condition or replace them. However, in the case of lost, damaged, or stolen office equipment (e.g., computers, fax machines, copy machines, and printers) necessary for normal office operations, replacement shall occur within two (2) Business Days. If loss or damage is caused as a direct result of willful misconduct of TxDOT or its personnel, DB Contractor shall replace the facilities noted herein within the

timeframes specified herein, and TxDOT shall reimburse DB Contractor for actual, reasonable, and documented costs incurred.

### 10.1.1.3

#### **Core Office Facilities and Equipment**

For the TxDOT facility area it provides, DB Contractor shall:

- General. Secure facility space, obtain all permits, install and pay for all utility services, and maintain the facilities as part of the Work;
- Access and Security. Provide separate TxDOT entrance/exit(s) from building, which shall be secured with electronic door lock(s) plus a deadbolt lock. DB Contractor shall provide security badge card access with locking doors running on time zone/holiday schedules for entry doors, as well as other designated areas (e.g., network/telecommunications, document storage, offices). DB Contractor shall provide software for maintaining access to these areas, which will be owned and/or maintained by TxDOT's design and Project management staff;
- Lighting and Electricity. Include with all interior spaces overhead lighting meeting OSHA, building, electrical, and energy code requirements for similar office space (provide nominal 30 foot candles of light at 30 inches above finish floor). Each office space shall have at least four duplex receptacles, with minimum circuit capacity of 20 amperes. In addition, each personal office area and conference room shall have a 1,500 Volt-ampere (VA) uninterruptible power supply (UPS). All LAN, telephone system equipment, and appurtenances shall have a UPS sized properly to be capable of providing up to one hour of battery run time;
- Janitorial and Trash Services. Provide daily janitorial service (except Saturdays, Sundays, and holidays) and maintain trash containers and trash pickup service for the building and surrounding areas beyond the TxDOT facility area. This shall include, but not be limited to, sweeping and mopping floors, cleaning restrooms and break room, emptying wastebaskets, and periodic dusting. This service shall be paid for by DB Contractor. DB Contractor shall pay for and procure janitorial services for the TxDOT facility area;
- Exterior Maintenance. Maintain the exterior areas of office spaces, including access to parking areas;
- Accessibility and Licensing. Meet all access requirements of the Texas Accessibility Standards, ADA Accessibility Guidelines, ADA, as amended, and the applicable building code. Facility design plans shall be submitted to the TDLR for review and approval as required by 16 TAC Chapter 68;
- Restrooms, Break Room, and Entry Space. Provide access to women's and men's restrooms, break room space, and building entry space. These spaces may be shared with DB Contractor's office space/staff. These spaces and all TxDOT spaces shall have access 24 hours per day, seven (7) days per week, and 365 days per year. In lieu of access to a common break room, DB Contractor may provide a 200 SF break room/kitchen within the TxDOT space, with refrigerator with freezer compartment, sink, and microwave. Break room/kitchen will have storage closet (25 SF) and cabinets with drawers and counter tops. In the event that access to restrooms cannot be accessed from a common building entry/lobby, DB Contractor may provide separate restrooms for the TxDOT facility area. In the event it is necessary to locate a separate break room and/or restrooms within the TxDOT facility area, the 3,000 SF TxDOT space allocation may be required to be increased to accommodate these spaces;
- HVAC. Provide electrical, HVAC systems capable of maintaining temperatures between 65 and 75 degrees Fahrenheit in all spaces, 24/7/365, through the year. Server room shall have dedicated air conditioning/cooling system capable of maintaining temperatures between 65 and 70 degrees Fahrenheit, and 15% relative humidity;
- Code Requirements. Meet all applicable building and fire code requirements;
- Disposal and Removal. Be responsible for disposal or removal of all DB Contractor-provided facilities and any facility and/or site restoration Work as required; and
- Pest Control. Provide pest control service to prevent and resolve pest infestation inside the office space.

## 10.1.1.4

**Core Office Space Requirements**

Although actual spaces may vary slightly, the following nominal size requirements will apply, and the typical TxDOT facility area shall include the following elements:

- Offices. Enclosed offices for TxDOT's management staff (nominal 150 SF each, unless otherwise approved by TxDOT), ten total with keyed door hardware, desk, desk chair, bookcase, file cabinet, credenza, and guest desk chair;
- Cubicles. Cubicle area spaces for administration staff (nominal 64 SF each), 20 total; (power supply and data and communication lines to cubicles may be provided through power pole drops);
- Conference Rooms. Two conference rooms (enclosed), one with a minimum size of 12 feet x 20 feet (240 SF) and one with a minimum size of 12 feet x 30 feet (360 SF); All shall have dimmable lighting; conference rooms shall have a 65-inch minimum flat panel monitor with VGA/HDMI accessibility, assembly room shall have an overhead projector and screen in the with a minimum 120-inch diagonal projected image 1024 by 768 resolution; each conference room shall have one chair for every 24 SF of conference room space and a conference table of sufficient size for each chair;
- Reception Area. Receptionist space with waiting area with seating for six visitors (nominal 200 SF); minimum 46" flat panel monitor with VGA/HDMI accessibility; other furniture to be determined jointly by DB Contractor and TxDOT;
- Work Room. Work room (nominal 150 SF) with 30-inch high plastic laminate wall-mounted counters (15 linear feet of counter). Work room shall be located near the center of the facility, and in close proximity to the receptionist space;
- Storage and Filing. One lockable space for storage and filing, nominal 15 feet x 20 feet (300 SF);
- Server Room. One computer server room (150 SF or larger to meet ADA, OSHA, and NEC requirements as applicable) that has limited access and is locked via security card access. Server room shall be accessible via hallway entry not sharing any walls with the exterior of the building, and have no windows, a non-static floor covering, a standard 7'-19" rack, and a minimum of six duplex receptacles with at least three dedicated 20-amp power circuits and one 30-amp circuit. All patch panels (phone and data) shall be located within the designated server room. Temperature shall be maintained with a dedicated air conditioning/cooling system as defined above;
- Parking Area. Parking area for at least 40 vehicles (30 staff/10 visitors) that is reasonably level (all-weather surface and all-weather access); a portion of the available parking area must accommodate an 8' vehicle height. If covered parking is available, no less than two covered parking spaces shall be made available to TxDOT;
- Exterior Lighting. Sufficient exterior security lighting that is automatically activated at low light levels to maintain 2 foot-candles of lighting within the building and parking areas of the site; and
- Corridors. Corridors within the TxDOT facility shall have a nominal width of 54 inches.

## 10.1.1.5

**Core Office Miscellaneous Requirements and Features**

The following shall be provided as noted:

- Flooring. Carpeted flooring (carpet not required in server room);
- Entry Access. Entry to TxDOT areas by electronic door hardware card access (not keyed), with UPS on locks (fail closed);
- Electrical Outlets. All data/voice outlets shall be installed next to power outlets;
- Window Coverings. Horizontal mini-blinds (no drapes) for each exterior window;
- Power Circuits. Provide dedicated electrical power circuits for copiers;
- Fire Extinguishers. DB Contractor shall provide fire extinguishers, per fire code and fire marshal with jurisdiction;
- Insurance. Insurance (obtained and provided by DB Contractor) covering the use of the Project office by DB Contractor and TxDOT, in accordance with the terms of the underlying

property use agreement with the property owner, but in no event shall the insurance be less than that required by the Contract Documents;

- Vending Area. DB Contractor shall provide access to general building vending area;
- Utilities. Initial installation and monthly expense of all utilities shall be paid by DB Contractor except long-distance telephone service;
- Monthly Services. DB Contractor shall procure and pay vendors directly for janitorial, trash, recycling, and secure document shredding services;
- Emergency Contacts. 24-hour emergency contact to DB Contractor;
- Furniture. DB Contractor-provided allowance of \$15,000 in the Price for additional furniture not listed in the requirements of this Section 10.1.1, which shall be obtained by DB Contractor at the direction of TxDOT and billed through DB Contractor. At the end of the Project, DB Contractor shall have ownership of the furniture and shall be entitled to the full salvage value of the furniture, with the right to retain or otherwise dispose of the furniture at its sole discretion, without any further accounting to TxDOT; and
- Cable Television. Provide cable television connections and service to each flat screen television.

## 10.1.2

### Field Office

DB Contractor shall provide all space, facilities, and support elements necessary to conduct field operations to complete the Work in accordance with the Contract Documents. DB Contractor shall provide office space for TxDOT's Project management acquisition staff including, the program manager and other contract employees. The field office shall be located within one mile of the Project ROW.

DB Contractor shall provide field office space for the exclusive use of TxDOT's field construction staff for the Project as specified herein. The field offices may be combined with the core office described in Section 10.1.1 as long as the combined offices meet the requirements of Sections 10.1.1 and 10.1.2.

Subject to TxDOT's prior written approval, DB Contractor shall provide separate facilities for TxDOT's resident engineer staff located within the same complex as DB Contractor's field office. Should DB Contractor elect to construct the Work using field offices other than the field office the DB Contractor originally specified, corresponding facilities shall be provided for TxDOT's exclusive use and shall be at least of the same quality as DB Contractor's counterpart management and field staff facilities.

Prior to commencing construction of TxDOT's field office space, DB Contractor shall submit for TxDOT's approval final wiring and circuitry plans, office furniture and equipment layout, a field office floor plan, a lighting plan, and a parking plan for TxDOT's Project management and contract staff vehicles.

Concurrent with NTP1, DB Contractor is authorized to begin work on the field office space. Final completion of TxDOT's field office space, including all punch list items, shall occur before TxDOT shall issue NTP2.

In regard to field offices for TxDOT field construction staff, DB Contractor shall ensure the following conditions are achieved:

### 10.1.2.1

#### Field Office Condition

The field office shall be in good and serviceable condition meeting all ADA and local government regulatory criteria for a safe workspace environment, at least of the same quality as those of DB Contractor's counterpart management and field staff facilities, and shall be available for occupancy as specified herein. Both Parties shall participate in a facility condition survey prior to and at the completion of occupancy. TxDOT shall return possession of DB Contractor-provided facilities to DB Contractor in essentially the same condition as when TxDOT first took occupancy of the facilities, except for reasonable wear and tear and except for alterations, loss, or damage caused by any member of a DB Contractor-Related Entity.

### 10.1.2.2

#### Field Office Loss or Damage

If office space(s) or related facilities, furniture, or fixtures that are provided by DB Contractor are destroyed, damaged, or stolen during the Term, except as a direct result of willful misconduct of TxDOT or its personnel, DB Contractor shall, at its cost and within 10 Business Days after the occurrence of such destruction or damage, replace those items that it had provided or repair them to their original condition; however, in the case of lost, damaged, or stolen office equipment (e.g., computers, fax machines, copy machines, printers) necessary for normal office operations, replacement shall occur within two (2) Business Days. If loss or damage is caused as a direct result of willful misconduct of TxDOT or its personnel, DB Contractor shall

replace the facilities noted herein within the timeframes specified herein, and TxDOT shall reimburse DB Contractor for actual, reasonable, and documented costs incurred.

### 10.1.2.3

#### **Field Office Facilities and Equipment**

For the facilities it provides, DB Contractor shall:

- General. Secure sites, obtain all site permits, install and pay for all utility services, and maintain the facilities clean and in good working order as part of the Work;
- Access and Security. Provide separate buildings or trailers for TxDOT staff that include at least two entrances/exits, providing an 8 foot by 10 foot (minimum) covered entrance area, from each building or trailer. Each entrance/exit shall be secured with a door lock plus a deadbolt lock;
- Lighting and Electricity. Include with all interior spaces overhead lighting meeting the requirements of OSHA and of building and electrical codes for office space. Each office space shall have at least two duplex receptacles. The minimum circuit capacity shall be 20 amperes;
- Janitorial and Trash Service. Provide daily janitorial service (except Saturdays, Sundays, and holidays) and maintain trash containers and trash pickup service. This will include, but not be limited to, sweeping and mopping floors, cleaning the toilet and lavatory, and emptying wastebaskets;
- Exterior Maintenance. Maintain the exterior areas of office spaces, including access to parking areas;
- Accessibility and Licensing. Meet all access requirements of the Texas Accessibility Standards, ADA Accessibility Guidelines, ADA, as amended, and the applicable building code. Facility design plans shall be submitted to the TDLR for review and approval as required by 16 TAC Chapter 68;
- Utility Service. Provide potable water, sewer service, and electricity to the field office facility;
- HVAC. Provide electrical and HVAC systems capable of maintaining temperatures between 65 and 75 degrees Fahrenheit in all spaces, 24/7/365, through the year. Server room or network/telecommunications room, as applicable, shall have dedicated air conditioning/cooling system capable of maintaining temperatures between 65 and 70 degrees Fahrenheit, and 15% relative humidity. Temperature controls for TxDOT's field office space shall be placed in an appropriate location within TxDOT's secured area;
- Code Requirements. Meet all local building and fire code requirements; and
- Disposal and Removal. Be responsible for disposal or removal of all DB Contractor-provided facilities and any site restoration Work as required.

### 10.1.2.4

#### **Field Office Space Requirements**

Although actual space requirements will depend upon Work schedule and geographic locations of the field offices, a typical field office should include the following elements:

- Offices. Enclosed offices with lockable doors for TxDOT's construction representative, TxDOT-designated construction manager and four other TxDOT or contract employees (six offices at 150 SF each, unless otherwise approved by TxDOT), with keyed door hardware, desk, desk chair, book case, file cabinet, credenza and guest chair;
- Offices/Cubicles. Offices or cubicles for up to twenty field engineer/inspection/administration staff (60-80 SF each);
- Conference Rooms. One enclosed conference room of not less than (350 SF) for TxDOT's exclusive use and access to another common conference room of not less than (350 SF);
- Server room. One (1) server room, matching the requirements of the core office server room;
- Storage and Filing. Two lockable spaces for storage and filing at each field office (a combined space of 200 SF);
- Surveying Equipment Storage. Clean inside storage space for surveying equipment (80 SF);
- Tool Shed. Outside shed for small tools and equipment (200 SF);
- Site Amenities. A well-graded site for the office with access road, parking area, and security fence with lockable drive-in gates sufficient to enclose the office and parking area;

- Staff Parking Area. A parking area for at least thirty vehicles that is reasonably level (all-weather surface and all-weather access) within the boundaries of a security fence;
- Visitor Parking Area. An all-weather level surface outside the security fence to accommodate visitor parking (all-weather surface and all-weather access-minimum of 2,000 SF);
- Security. A 24-hour security service or silent watchmen-type security system;
- Exterior Lighting. Sufficient exterior security lighting that is automatically activated at low light levels to maintain 2 foot-candles of lighting within the fenced field office site;
- Window Security. Security bars on all exterior windows;
- Laboratory Facility. A completed facility suitable to accommodate a functioning portable lab (approximately 2,500 SF) located immediately adjacent to the Independent Quality Firm (IQF) laboratory required in Section 4.4 of the QAP for DB Projects;
- Kitchen/Break Room. Each field office shall contain a 300 SF kitchen with storage closet (25 SF), cabinets with drawers and counter tops. Kitchen shall be equipped as described above for the core office;
- Restrooms. Two restrooms including toilets and sinks; and
- First Aid Supplies. Provide emergency first aid supplies in accordance with DB Contractor's Safety Plan.

#### 10.1.2.5 **Field Office Miscellaneous Requirements and Features**

The following shall be provided:

- Flooring. Carpeted flooring for offices (nonstatic in server room). All other rooms shall be tiled;
- Entry Access. Entry to TxDOT areas by electronic door hardware card access (not keyed), with UPS on locks (fail closed);
- Electrical Outlets. Each office and conference room shall have two (2 data, 1 com Cat 5E) outlets per room, and one (2 data, 1 com Cat 5E) outlet per cubicle, as well as outlets at designated printer, fax, and copier locations and any and all shared areas (i.e., workroom, storage room, etc.). All data/voice outlets shall be installed next to power outlets;
- HVAC. 24/7/365 HVAC as previously described;
- Window Coverings. Horizontal mini-blinds (no drapes) for each exterior window;
- Power Circuits. Provide dedicated electrical power circuits for copiers;
- Fire Extinguishers. DB Contractor shall provide fire extinguishers, per fire code and fire marshal with jurisdiction;
- Insurance. Insurance (obtained and provided by DB Contractor) covering the use of the Project office by DB Contractor and TxDOT, in accordance with the terms of the underlying property use agreement with the property owner, but in no event, shall the insurance be less than that required by the Contract Documents;
- Utilities. Initial installation and monthly expense of all utilities shall be paid by DB Contractor except long distance telephone service;
- Emergency Contacts. 24-hour emergency contact to DB Contractor; and
- Furniture. DB Contractor-provided allowance of \$15,000 in the Price for additional furniture not listed in the requirements of this Section 10.1.2, which shall be obtained by DB Contractor at the direction of TxDOT, and billed through DB Contractor. At the end of the Project, DB Contractor shall have ownership of the furniture and shall be entitled to the full salvage value of the furniture, with the right to retain or otherwise dispose of the furniture at its sole discretion, without any further accounting to TxDOT.

#### 10.1.3 **Office Network and Systems**

DB Contractor shall, for each TxDOT representative, provide, furnish, install, operate, and maintain the following for the TxDOT office spaces described in Item 10, Section 10.1:

- A local area network (LAN) with a minimum two 1 gigabits per second (Gbps) network drops for each personal office area and a minimum of four 1 Gbps drops for each conference room. All drops shall have the ability to connect to the internet. The network shall allow for multiple virtual private network (VPN) connections/sessions. The network shall also provide WPA2

secured wireless (Wi-Fi ®) in accordance with IEEE 802.11n standards. Coverage shall be provided for the entire office utilizing dual band radios capable of operating at both 2.4 and 5 gigahertz (GHz);

- A touch-tone telephone system (with voicemail) with at least one telephone, with speakers, for each personal office area. Also provide at least one telephone, with speakers, and a minimum of one satellite microphone for each conference room. The telephone system shall have the ability to host two lines per telephone, access all outside lines, receive any incoming call, caller identification, conference-call capability (three-way calling), call forwarding, call transfer, hold, hold music, and send to voice mail functionality;
- Access to DB Contractor's electronic document management system (EDMS) systems for file sharing, collaboration, reviews, and responses at each personal office area and within each conference room;
- Each office space shall be equipped with a laptop docking station compatible with TxDOT staff's computers with a minimum of two flat panel monitors or three flat panel monitors if requested by TxDOT, including all necessary peripherals such as mouse, keyboard, 128 gigabyte thumb drive, and wireless internet for laptop computers for each personal office area and the reception area in the Project office;
- For each of the core and field offices, one external DVD drive and one external hard drive with not less than two terabytes of memory per external hard drive;
- High speed, highly reliable internet service(s) capable of providing a minimum download speed of 1 Gbps with a minimum of three concurrent download connections and a minimum of two concurrent upload connections;
- The ability to print to any printer listed in this Section 10.1.3 from any network drop or wireless connection regardless of user domain (e.g. TxDOT and others' computers shall be able to print to any printer listed in this Section 10.1.3 from any network drop);
- Include all network equipment, racks, structured cabling, wall plates, jacks, patch panels, patch cords (including patch cables for each LAN and telephone drop in each personal office area and conference room), power assemblies, and other appurtenances needed to meet the requirements contained within these DB Specifications;
- All hardware and software shall meet applicable industry standards and protocols;
- Provide on-site technical support eight hours per day, five days per week until the completion and close out of the Project;
- Provide the office equipment meeting the following requirements, or multipurpose piece of equipment capable of meeting multiple parts of the following requirements:
  - One high-speed color laser computer printer capable of handling 11 inches x 17 inches prints for core office and one for field office;
  - One color plotter capable of handling 36 inches x 24 inches roll plots (core office only)
  - One high-speed color photocopy machine capable of handling 11 inches x 17 inches prints for core office;
  - One high-speed color scanner capable of handling 11 inches x 17 inches prints for core office and one for field office;
- One paper shredder for core office and one for field office;
- One commercial grade three-hole punch for core office and one for field office;
- One commercial grade GBC binder (or equal) for core office; and
- All office supplies, including copier paper, toners, pens, pencils, notepads, and other miscellaneous office supplies.

DB Contractor shall certify supplied components as functional before installation and will bear all responsibility for replacement of parts at work commencement. DB Contractor shall prepare a test plan for all parts and components, submit the test plan prior to installation, test installed systems, and supply test results, in conformance with industry standard testing procedures.

The DB Contractor shall provide the following additional items for TxDOT's use:

- Twelve 10.5 inch iPad Pro (latest version available), or equal, with Wi-Fi + Cellular, 256 gigabyte (GB) capacity along with 4G/LTE cellular service and protective case with key pad;

and

- One GoPro Hero4 Black Edition (latest version available), or equal.

## 10.2 **Three Dimensional (3-D) Design**

DB Contractor shall design the Project utilizing 3-D methodologies and techniques and submit its 3-D design files to TxDOT for use during the design and construction process.

Utilization of 3-D design is an integral part of the performance of the Project prior to and during construction and throughout the Project's service life. Additionally, the implementation of 3-D design techniques is intended to improve quality, reduce risk, improve collaboration with Project stakeholders, provide an early focus toward technical review, and increase opportunity for innovation.

DB Contractor shall utilize design software and versions currently in use by TxDOT to develop the 3-D design unless DB Contractor receives advanced written approval from TxDOT in accordance with Section 5.2.7 of the General Conditions.

### 10.2.1 **3-D Design Requirements**

DB Contractor shall submit proposed 3-D design file naming conventions to TxDOT for review and approval.

DB Contractor shall incorporate the Schematic Design into DB Contractor's Project design files utilizing 3-D methodologies and techniques.

DB Contractor shall create an integrated 3-D model of the existing condition of the Project that reflects, among other things, existing ground surface and subsurface elements and infrastructure (including, but not limited to, drainage structures, utilities, bridges, and wall foundations), data from light detection and ranging (LiDAR), SUE, field surveys, and existing plans (as-built) data collection; including currently available LiDAR or other existing ground surface data (digital terrain model (DTM) or triangulated irregular network (TIN) formats) provided in the RIDs.

DB Contractor shall utilize 3-D methodologies and techniques to develop the geometric design, as well as the 3-D design model for each proposed roadway and incorporate it into the Project's integrated design models. When preparing any geometric design, DB Contractor shall:

- Refine and finalize 3-D horizontal and vertical alignments for all high-occupancy vehicle lanes, exclusive lanes, general purpose lanes, ramps, direct connectors, collector-distributors, crossing and parallel roadways, pavement transitions, and tie-ins to existing lanes;
- Determine horizontal and vertical clearances at grade separations, underpasses and overpasses; and
- Develop superelevation and superelevation transition designs for each roadway. Verify rollover constraints are adequately addressed, including ramp, collector-distributor, and direct connector gore locations.

DB Contractor shall include existing and proposed 3-D design features for the following Elements of Work in accordance with these DB Specifications:

- Roadway: pavement structures, metal beam guard fence (MBGF), pedestrian facilities, existing and proposed ROW;
- Drainage: storm sewers (inlets, manholes), culverts, and channel grading;
- Structures: sufficient detail to show top of deck surface, structure type, bottom of beam surface, bent cap, piers, foundations (size and length), abutment, and retaining wall locations including straps, nails and footings;
- Utilities: relocated and existing Utilities to remain in place (existing Utilities to be abandoned in place are not required to be included);
- Signing: overhead span or cantilever sign structure locations and structure type, foundations (size and length); and
- Temporary structures: including, but not limited to, temporary shoring, soil nails, and temporary retaining walls.



## 10.2.2

**Immersive 3-D Over-the-Shoulder Milestone Review Meetings**

DB Contractor shall present the Project 3-D design model to TxDOT and stakeholders at review meetings. DB Contractor shall utilize software that allows for interactive visualization of the 3-D design model key features. The 3-D design model shall be completed to a sufficient level of detail that existing terrain, proposed design features, and existing infrastructure to remain in place can be viewed, analyzed, and discussed among participants. Review meetings shall occur prior to any design Submittals to TxDOT.

DB Contractor's 3-D design model shall be capable of providing the following minimum functionality during the immersive 3-D milestone review meetings:

- View the model and manipulate view settings to interactively change data display on the screen (e.g. pan, rotate, walk, fly, zoom, etc.);
- Measure distances and areas throughout all areas of the model;
- Reference baseline geometry, stationing, and existing and proposed ROW; and
- Dynamically visualize key existing and proposed design features and detect conflicts/clashes amongst the following disciplines:
  - Roadway;
  - Drainage;
  - Structures (bridges, retaining walls);
  - Utilities (existing and proposed);
  - Signing (overhead span or cantilever sign structure locations and structure type);
  - Lighting (pole and foundation locations);
  - Signals (controller, pole, and foundation locations); and
  - Temporary structures.

DB Contractor shall submit the following before every review meeting:

- Adobe PDF file of Project 3-D model which shall include proposed striping;
- All CADD and other electronic files used to develop the 3-D model along with all associated files required to duplicate the model; and
- Updated Utility Adjustment Concept Plan.

## 10.2.3

**3-D Design Deliverables**

DB Contractor shall prepare and submit to TxDOT for review and comment an integrated 3-D design model with the following Submittal packages:

- Preliminary Design Submittal
- Final Design Submittal
- Released for Construction Documents
- Early Start of Construction
- Record Documents

The integrated 3-D design model shall consist of 3-D MicroStation file(s) containing 3-D graphical elements (components, contours, superelevation transitions limits, and existing and proposed finish grade triangles) representative of the stage of design development of the Submittal package. The minimum level of detail of the elements in the 3-D model shall accurately depict the size, shape, and location of all Elements of the Work to be constructed in the Submittal package.

DB Contractor shall submit a final 3-D model consisting of a compilation of 3-D design models submitted with previous design submittal packages.

Additional electronic design files to be submitted to TxDOT by DB Contractor include:

- OpenRoads: 3-D MicroStation design files containing civil data of alignments, profiles, pertinent geometry, terrain surfaces, civil cells, corridor models and final surface, in addition to other MicroStation elements used in the creation of the corridor model such as point controls, corridor references, GPK files, etc.;
- InRoads template library (ITL): OpenRoads Template Libraries;

- XML: Output files of alignments, profiles, pertinent geometry, DTM for terrain surface and final surfaces;
- Drawing exchange format (DXF): Output files of DTM for terrain surfaces and final surfaces;
- Image color matching (ICM): Output files (infrastructure consensus model) in a rich data exchange format using Bentley i-model standards. The ICMs will be used to transfer the 3-D model information to construction equipment;
- DTM data:
  - GEOPAK original ground TIN file,
  - Preliminary design surface: A comprehensive model of existing terrain. Progression through detailed design will advance the preliminary design surface to a final design surface, and
  - Final design surface: Proposed Project model in final condition; and
- Electronic construction i-models: Compatible with DB Contractor's construction equipment to be utilized by TxDOT and IQFM to verify grading operations of subgrade and the final pavement surface, as well as construction of storm sewer systems and culverts.
- 3-D PDF, or equivalent, visualization of 3-D design models.

## 10.3

**Required Software during Construction Activities**

DB Contractor shall utilize a mobile based, web hosted, collaborative design-construction productivity software solution (such as PlanGrid or an equivalent) allowing real-time access to and management of construction documents. The DB Contractor must purchase and provide licenses to DB Contractor staff (including subconsultants, as appropriate), and 40 copies for TxDOT staff and TxDOT's consultants from the commencement of Construction Work through Final Acceptance. Utilization will cover the course of the Construction Work. This software application will be used to view drawings, specs and documents in the field and facilitate collaboration between Project stakeholders. The software solution must meet the following technical requirements:

- All features and Project documents uploaded in the system must be available offline in the event that there is no wireless connection.
- The solution must be compatible with iOS, Windows, and Android operating systems and devices.
- The solution must be able to export an as-built set. This as-built must be complete with documents, photos and hyperlinks embedded in the set.
- The solution must be capable of being used during post construction operations and maintenance phases.
- After Final Acceptance, the solution should be handed to the operations and maintenance team for post construction coordination.
- The solution must be able to provide a detailed audit trail of all parties collaborating in the application. This includes date/time stamp of any mark-ups, photos, issues, RFIs and punch list items.
- The solution must auto-tag sheet disciplines to distinguish different trade drawings.
- Vendor must be able to support the Project and each customer with a dedicated sales representative for rollout.
- Vendor must offer training/consulting on the software solution as needed during the Project.

## 10.4

**Design Visualization**

DB Contractor shall provide three-dimensional design files to TxDOT for use during the design and construction process.

DB Contractor shall provide accurate three-dimensional models that depict the Project. Completed models shall represent realism and aesthetic attributes of the existing conditions and the proposed Project. DB Contractor shall add roadway design details to the model that are not normally provided at the stage of Schematic Design and verify that the Schematic Design complies with design guidelines presented in the TxDOT *Roadway Design Manual*, TMUTCD, the AASHTO *Green Book*, the AASHTO *Roadside Design Guide*, and the AASHTO *Guide for the Development of Bicycle Facilities* or applicable standards listed in these DB Specifications.

The design visualization models shall show existing and proposed design conditions either separately or combined in the same display. Based on specific Project requirements the final design visualization deliverables may include photo-matched renderings, rendered plan view layouts, and animated sequences.

DB Contractor shall provide, along with the Record Drawings, a three-dimensional CADD model of the completed Project and any work product generated during the modeling process, such as site photographs, textures, material assignments, and additional terrain information. All CADD data should be in electronic format and native to TxDOT's CADD architecture using Bentley Systems, Inc. MicroStation (MicroStation) to provide complete compatibility between the DB Contractor's and TxDOT's CADD software and files.

DB Contractor shall collect, review, and evaluate all of the available existing data pertaining to the Project and prepare the design visualization models to reflect current design requirements. The data shall include MicroStation design files, GEOPAK geometry files, existing terrain models, and digital ortho photography. DB Contractor shall field verify the existing and proposed condition of design visualization models for dimensional accuracy and realism.

Resulting animations for design visualization purposes do not have to be native MicroStation, but do need to be capable of being viewed on any device with minimal support to, or effort by TxDOT.

All CADD data and associated files, in native form, shall be submitted by the DB Contractor to TxDOT as part of its final deliverable.

#### 10.4.1 **Design Visualization Services – Photo Rendering and Exhibits**

DB Contractor shall provide animation renderings video and create a fly-over video for the Project's existing condition and the future condition based on the Final Design, if requested by TxDOT. The animation renderings shall accurately depict the geometric design of the proposed improvements.

#### 10.5 **Aerial Imagery**

DB Contractor shall take aerial imagery of the Construction Work and Utility Adjustment Work that covers the entire Project limits and shall provide the videos to TxDOT on separate drives no less frequently than monthly.

Should DB Contractor desire to utilize unmanned aircraft systems (UAS) on the Project, it shall comply with the requirements of the current version of the TxDOT UAS Flight Operations and User's Manual. In addition to the requirements within the TxDOT UAS Flight Operations and User's Manual, DB Contractor shall comply with the requirements of the Federal Aviation Administration, the State, and local Governmental Entities for UAS operations, including flight restrictions.

#### 10.6 **Submittals**

All Submittals described in this Item 10 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth on Table 10-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 10-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Preliminary TxDOT facility area layout plan	No later than 10 days after NTP1	Review and comment	10.1.1
Final TxDOT facility area layout plan	No later than 10 days after receiving comments from TxDOT	Approval	10.1.1
Final wiring and circuitry plans, office furniture and equipment layout, a field office floor plan, a lighting plan, and a parking plan	Prior to commencing construction of TxDOT's field office	Approval	10.1.2
3-D design files	Upon request and with the Submittal packages identified in Section 10.2.3	Review and comment	10.2

**Table 10-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Proposed 3-D design file naming conventions	Prior to implementation	Approval	10.2.1
Project 3-D Model with proposed striping, all CADD files associated with the Model, and updated Utility Adjustment Concept Plans	Prior to every 3-D milestone review meeting and with the Submittal packages identified in Section 10.2.3	Review and comment	10.2.2, 10.2.3
Additional OpenRoads, ITL, XML, DXF, ICM and DTM design files	As necessary	For information	10.2.3
Electronic construction i-models	Upon request	For information	10.2.3
Animation renderings video and fly-over	Upon request	For information	10.4.1
Aerial imagery	No less than monthly	For information	10.5.1

# Item 11

## Public Information and Communications



### 11.1 General Requirements

In coordination with TxDOT, DB Contractor shall be responsible for developing and implementing a public information and communication program in order to maintain a high level of two-way communication by informing and engaging local Governmental Entities, special interest groups, businesses, communities, and the general public about the Project status throughout the design and construction period.

DB Contractor shall coordinate all public information communications with ongoing TxDOT public information activities to ensure that a consistent message is being distributed to the Customer Groups.

### 11.2 Administrative Requirements

On a schedule mutually agreed upon between DB Contractor and TxDOT's public information officer, DB Contractor shall meet regularly with TxDOT's public information officer and Customer Groups to coordinate efforts.

DB Contractor shall use, but not be limited to, the implementation strategies described in Sections 11.2.1 through 11.2.9.

#### 11.2.1 Public Information and Communication

- Develop a forum to coordinate on-going dialogue among Customer Groups, TxDOT, and DB Contractor.
- Prepare and distribute Project-related materials in a user-friendly format to inform Customer Groups through appropriate means such as: meetings, business owner task force meetings, interviews, website, media kits, news releases, telephone correspondence, newsletters, brochures, e-mail, text messaging service, social media, mobile phone apps, hotlines, HCRs, dynamic message boards, web alerts, public opinion polls/surveys, videos, display booths, presentations, public access information kiosks, open houses, milestone events, and special events.
- Organize and manage meetings and communications with Customer Groups. Meetings can be held on an ad hoc basis or, as appropriate, on a regular basis as established in consultation with TxDOT.
- Attend events and meetings when invited and seek opportunities to attend meetings, conferences, and other events at which Project information can be exchanged with Customer Groups.
- Notify Customer Groups in advance of Work being performed, including key Project ROW acquisition, construction, operations, and maintenance activities, and communicate the potential impacts of these activities.
- Develop, disseminate, and display timely, high-quality, innovative, user-friendly, accurate, and appropriate community information concerning the Project, including exhibits showing slope grading, drainage, bridge structures, retaining walls, noise walls, Project ROW acquisition, and aesthetic characteristics.
- Develop and manage a public relations campaign and communication strategy to convey key messages, branding, and pertinent information about the Project. Include Work elements, timing, and durations. Provide contact information for inquiries by Customer Groups.
- As requested by TxDOT, coordinate and perform tours of the Project.
- Comply with the latest requirements of the TxDOT Guidelines for Analysis and Abatement of Roadway Traffic Noise.
- Develop materials and make arrangements for multi-lingual groups when it can be reasonably anticipated that material will be presented to multi-lingual Customer Groups.

- Provide reasonable accommodation for individuals with disabilities, including providing access to and use of information and data that is comparable to the access to and use of the information and data provided to members of the public without disabilities.
- Communicate impacts to and Project design for accommodation of pedestrians and bicyclists throughout the Project.
- Develop 3-D drive-thru videos and renderings of the Project, as directed by TxDOT, to accurately depict the proposed Project to interested Customer Groups.
- Compile database of all Customer Group contacts and make readily available to TxDOT in an easily accessible format.

## 11.2.2

**Media**

- Utilize existing TxDOT media resources if available to create and develop advertising messages, including graphics, logos, and slogans.
- Place Project-related messages in the appropriate media.
- Develop and distribute public service announcements, paid advertising, news reports, and other communication materials as appropriate.
- Provide to TxDOT Project updates (such as anticipated closures and traffic switches) on a weekly basis that can be used on the TxDOT San Antonio District blog (<http://txdotsanantonio.blogspot.com/>).
- Manage media relations with key transportation and business reporters and prepare and distribute news releases and media kits.
- Develop and implement communications plans that anticipate and minimize traffic impacts on the Project from public, special, and seasonal events.
- Monitor local, state, and national media coverage regarding the Project for accuracy and to gauge local opinion. Coordinate with TxDOT regarding any inaccurate information related to the Project that DB Contractor discovers. Respond in a method, time, form, and message approved by TxDOT to such inaccurate information as soon as possible but no later than within one (1) day after discovery of the inaccurate information.
- Document and make available Project-specific media clips to the entire Project team.
- Employ the use of an internet-based communications, media alert, press release, and special list notifications system/service that provides information in real time with an up-to-date database of major media contacts in the area and subscriber lists.

## 11.2.3

**Public Information Coordinator**

DB Contractor shall provide a Public Information Coordinator to lead DB Contractor's public information activities on a day-to-day basis throughout the Term. The Public Information Coordinator shall have recent, relevant experience on projects of similar type and scope, and the ability to competently perform the following:

- Serve as the primary point of contact between DB Contractor and Customer Groups, be responsible for the dissemination of Project information, and serve as the clearinghouse for the receipt of and response to written or verbal comments or complaints regarding the Project.
- Coordinate all interactions with elected officials or their representatives with TxDOT's Public Information Office and its Government Affairs Office.
- Lead the production, implementation, quality control, and update of the PICP.
- Coordinate and supervise day-to-day activities of DB Contractor's personnel in performing the public information activities described in the PICP.
- Facilitate communication among DB Contractor, TxDOT personnel (including TxDOT's public information officers), and Customer Groups.
- Interact with Customer Groups and represent the interests of the Project at meetings and other formal and informal events.
- Develop a clear understanding for Customer Groups' concerns and reactions regarding the Project and public information program and incorporate that knowledge into improving the PICP.

- Liaise with the person assigned to coordinate the initial response to any Incident or Emergency and any Governmental Entity that may have jurisdiction over the Emergency.
- Liaise with the appropriate staff and Customer Groups as appropriate to outline the impacts and benefits of the Project in relation to parks and pedestrian/bicyclist access.
- Create and manage a Customer Group database. Allow TxDOT access to the database as requested.
- Speak fluent English and speak fluent Spanish or have a Spanish translator available at all times.

The Public Information Coordinator shall actively engage, inform, and seek appropriate support from Customer Groups for the Project throughout every phase of the Project.

#### 11.2.4

##### **Public Information Office**

DB Contractor shall maintain a public information office for the Term. The hours of operation for this office shall be as outlined below. This office shall serve as the primary business location for the Public Information Coordinator and shall be conveniently located within one mile of the Project site. The public information office shall provide a centralized location for residents and other Customer Groups to obtain information on the Project, including Project maps and Plans, fact sheets, alternative routes, lane closures, construction updates, community impacts, and commute options.

The public information office shall have readily available two conference rooms capable of hosting meetings with Customer Groups. The rooms shall be ADA-compliant, convenient to and accessible by Customer Groups, and appropriately supplied with electrical outlets, tables, and chairs, and other equipment to meet meeting requirements. One of these rooms shall accommodate at least 50 persons and another shall accommodate at least 15 persons. DB Contractor shall provide sufficient parking to accommodate use of the public information office.

During design and construction, the minimum hours of operation of the public information office shall be as follows:

- |                 |                                    |
|-----------------|------------------------------------|
| ▪ Monday-Friday | 8 a.m. – 5 p.m. and by appointment |
| ▪ Saturday      | By appointment                     |
| ▪ Sunday        | Closed                             |

DB Contractor shall extend hours of operation to appropriately service Customer Groups.

In addition to the services listed above, DB Contractor shall provide a 24-hour telephone hotline that is manned locally during the public information office's normal business hours and that provides a recorded message describing Emergency procedures after hours. DB Contractor shall respond to voicemail messages left after hours within 48 hours of receiving the voicemail message. DB Contractor's Public Information Coordinator shall log the messages, responses, day and time of message, and day and time of response.

#### 11.2.5

##### **Meetings with the Public and Customer Groups**

DB Contractor shall organize and manage meetings with the general public and Customer Groups during the Term and will develop with TxDOT the list of meeting and event invitations.

The frequency of such meetings is addressed in the PICP. This frequency must be increased or decreased as needs arise to better inform and engage the Customer Groups. From time to time, upon TxDOT's request, DB Contractor shall modify its meeting schedule to better inform and engage the Customer Groups.

To maximize public participation, DB Contractor shall advertise meetings hosted by DB Contractor a minimum of two weeks in advance. Advertisement shall include utilization of e-alerts, social media, and the Project website, and in the appropriate media outlets, such as the Texas Register, local newspapers, and television and radio stations, or via media advisories and media releases. Notices must include the following language:

"Special accommodations: If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you are a person with a disability who requires an accommodation to attend a meeting, please contact [Name], [Phone] or by email at [Email address] within two days of the meeting no later than 4:00 p.m. Please be aware that advance notice is requested as some accommodations may require time for TxDOT to arrange."

DB Contractor is solely responsible for creating all meeting advertisements.

During such meetings, DB Contractor shall inform participants of the Project's progress and discuss key issues as they emerge. DB Contractor shall provide timely and useful information regarding subjects of interest to the Customer Groups, including:

- Design and construction issues affecting adjacent residential areas, frontage roads, local streets, and utilities (including such issues as the Project ROW definition, the Project ROW acquisition process, grading, drainage, access, lighting, aesthetics, and noise, and retaining walls);
- Street and roadway detour design and implementation;
- Scheduling and duration of Work, including hours of construction;
- Haul routes;
- Methods to minimize noise and dust;
- Environmental mitigation measures, including noise wall meetings; and
- Other environmental issues.

DB Contractor shall notify TxDOT a minimum of 15 Business Days in advance of any meetings with the public. TxDOT reserves the right to attend any such meetings. When requested by TxDOT, DB Contractor shall participate in and provide support for any meetings with the Customer Groups scheduled and conducted by TxDOT. When TxDOT decides to conduct such meetings, DB Contractor shall share, in a form that is easy to manipulate, all necessary information regarding potential Customer Groups at TxDOT's request.

#### 11.2.6

##### **Meeting Summaries**

For all meetings DB Contractor conducts or directly participates in, DB Contractor shall prepare meeting summaries. DB Contractor shall submit draft versions of all meeting summaries to TxDOT for review and comment on SharePoint upon request. TxDOT comments shall be incorporated before distributing final versions to the meeting attendees and appropriate Customer Groups. At a minimum, DB Contractor shall include the following items in each meeting summary:

- A complete list of attendees (including their affiliations, telephone numbers, and e-mail addresses);
- Documentation of the exhibits, presentations and handouts available at the meeting;
- Documentation of the issues discussed and any associated solutions; and
- Description of remaining open issues and action items (including the person(s) responsible for follow-up and date for action or resolution).

For any formal public meetings or open houses at which a court reporter is required, DB Contractor shall also include detailed oral transcripts in the summary.

#### 11.2.7

##### **Emergency Communications**

For all Emergencies, including major vehicle collisions, severe weather conditions, and Hazardous Materials spills, the Public Information Coordinator shall timely notify and take appropriate action to inform TxDOT and Customer Groups of all pertinent details. The Public Information Coordinator shall provide these details through the use of appropriate tools to ensure effective communication. These tools include, but are not limited to: DMS, TxDOT's HCR, email/web (if applicable)/text alerts, telephone notification, and media releases/interviews, as appropriate. The Public Information Coordinator shall continue to provide updated information, as available and on a timely basis, until the Emergency no longer exists.

In the event of an Emergency, "timely notify" shall mean as soon as practicable, but in no event longer than within one hour of the occurrence. DB Contractor shall follow TxDOT's general guidelines requiring notification when an Emergency results in delays for motorists in traffic extending beyond 20 minutes. If advanced warning is available for an Emergency event such as ice/snow, "timely notify" shall mean as soon as practicable, but in no event longer than within one hour of the time the information is available. In both situations, the Public Information Coordinator shall continue to provide updated information, as available and on a timely basis, until the Emergency no longer exists.



## 11.2.8

**Disseminating Public Information**

DB Contractor shall prepare and distribute public information using all appropriate methods, including materials for meetings, news releases, telephone correspondence, newsletters, emails, text messages, mobile device applications, hotlines, HCR, DMS, web alerts (if applicable), maps, displays, renderings, presentations, milestone events, business owner taskforce meetings, open houses, brochures, pamphlets, highway advisory radio, video news releases, and other social media services as directed by TxDOT. Copies of draft public information materials shall be submitted to TxDOT. TxDOT shall have a period of five (5) Business Days to review and comment in advance of final editing. After incorporation of TxDOT comments to the satisfaction of TxDOT, DB Contractor shall provide complete copies of all final materials to TxDOT at least three (3) Business Days prior to dissemination.

All written materials produced for Customer Groups shall follow TxDOT *Brand Guidelines* and other appropriate spelling/writing guidelines.

DB Contractor shall create a public website to convey Project-related information, including:

- DB Contractor contact information;
- Project maps;
- Frequently asked questions (FAQs);
- Current Project activities addressing design, construction, and maintenance;
- Timing of street and ramp closures and openings;
- Recommended route alternatives during closures;
- Newsletter and meeting materials;
- Meetings and special events announcements and calendar;
- Links to TxDOT Highway Conditions Reports;
- Links to other related sites as deemed appropriate by TxDOT;
- Job opportunities;
- Subcontractor information;
- Comment form;
- Mailing list request form;
- Historical archive of photos taken during construction;
- Renderings or video animations of the Project, as appropriate; and
- Published materials in Spanish and other languages as needs warrant and in consultation with TxDOT.

Website design and creative development shall be coordinated with TxDOT's Communications Division to ensure content is consistent with TxDOT brand management and concurrence. DB Contractor shall submit the draft public website design to TxDOT for review and comment, and the final website design elements to TxDOT for approval. DB Contractor shall also coordinate website development to complement and integrate with TxDOT's existing My35.org website. The website shall contain other general Project-related information that enhances the engagement or education of the general public. DB Contractor shall regularly review and update information on this public website as it becomes available throughout the Project to provide current and appropriate information and the website shall provide for question and feedback opportunities for public communication. DB Contractor shall develop and implement a plan to make the Customer Groups aware of the Project website. DB Contractor shall ensure electronic and information technology is accessible to people with disabilities, in accordance with ADA and in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.

DB Contractor, working collaboratively with TxDOT, shall assess the need for multi-lingual communications and, where appropriate, also furnish Project-related materials in Spanish or other demographic adaptations.

DB Contractor shall track all incoming comments, inquiries, and requests for information related to the Project. The following information shall be collected with each contact, and a summary of all contacts (after removing information obtained in response to items (a) through (d) below) shall be reported to TxDOT on a bi-weekly basis:

- a) Name of individual

- b) Address (not required)
- c) Phone number
- d) E-mail address
- e) Subject matter
- f) Specific comment, question or request
- g) Date of comment, question or request
- h) Response given

DB Contractor shall track requests for language assistance services and ADA accommodations and provide information to TxDOT each quarter for TxDOT's use, including for its inclusion in the Office of Civil Rights' Limited English Proficiency Report, the Office of Civil Rights' Transition Plan Progress Report, and FHWA's ADA Program Reporting.

### 11.2.9

#### **Third Party Claims**

DB Contractor shall be responsible for resolving all complaints regarding the Project, whether received directly or forwarded by TxDOT, appropriately and in a timely manner and shall retain a record of the actions DB Contractor has taken with respect to each such complaint. Other Third Party Claims are addressed in the Contract Documents.

### 11.3

#### **Submittals**

All Submittals described in this Item 11 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth on Table 11-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 11-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Media responses as listed in Section 11.2.2	Within one (1) day of release	Approval	11.2.2
Draft meeting summaries	Upon request	Review and comment	11.2.6
Final meeting summaries (to TxDOT and meeting attendees)	Upon request	For information	11.2.6
Draft public website design	Prior to website development	Review and comment	11.2.8
Final website design elements	Five business days prior to publishing	Approval	11.2.8
Drafts of all materials to be presented to the public/media	At least five Business Days prior to final editing	Review and comment	11.2.8
Final copies of all materials to be presented to the public/media	At least three Business Days prior to dissemination	For information	11.2.8
Public comment/inquiry log	Bi-Weekly	For information	11.2.8
Language assistance and ADA accommodation log	Quarterly	For information	11.2.8

# Item 12

## Environmental



### 12.1 General Requirements

DB Contractor shall ensure fulfillment of the Environmental Commitments required by the Contract Documents, Governmental Entities, Environmental Approvals (including all TxDOT-Provided Approvals), all other Governmental Approvals, the CEPP and all applicable Laws and regulations, including, Environmental Laws.

The Work shall comply with Environmental Approvals and compliance requirements for any additional actions throughout the Term. DB Contractor shall monitor and document Work activities so that documents providing evidence for compliance are available to TxDOT for inspection at any time.

#### 12.1.1 CEPP

DB Contractor shall develop, implement and, as necessary, update a CEPP for the Work to ensure compliance with all applicable Environmental Laws, Environmental Approvals and Environmental Commitments. The CEPP shall obligate DB Contractor to protect the environment and document the measures to be taken during the performance of the Work to avoid and minimize impacts on the environment from the design, construction, maintenance, operation, and rehabilitation activities of the Project. The requirements for the CEPP are contained in Section 4.2.4 of the General Conditions.

The CEPP shall effectively demonstrate in detail DB Contractor's knowledge of all applicable Environmental Approvals, environmental issues on the Project, Environmental Commitments, and applicable Environmental Laws. The CEPP shall also describe the processes that will be followed during the course of the Work to address environmental issues to comply with those Environmental Approvals, Environmental Commitments, and Laws, as well as the documentation required to validate compliance. All monitoring and reporting documentation shall be:

- concise and consistent throughout the Term;
- applicable to the activities being performed; and
- in accordance with the requirements set forth in the DBC, the Environmental Approvals and applicable Environmental Laws.

The CEPP shall also effectively describe the quality control and assurance measures that DB Contractor will implement to verify the compliance of the program with all applicable Environmental Laws.

The CEPP shall describe procedures for obtaining Environmental Approvals and implementing procedures, and Environmental Commitments consistent with the Environmental Approvals, including New Environmental Approvals, and TxDOT environmental policies. The CEPP shall establish a goal of zero environmental violations during the performance of all Work activities. However, should violations occur, the CEPP shall set forth detailed processes for rectifying such violations in an appropriate and timely manner.

### 12.2 Environmental Approvals

#### 12.2.1 TxDOT-Provided Approvals

For TxDOT-Provided Approvals, see Section 3.1 of the DBA.

#### 12.2.2 New Environmental Approvals Including Amended TxDOT-Provided Approvals

TxDOT-Provided Approvals are based on the design features illustrated therein. Such approvals may require re-evaluation, amendment, supplement or additional studies and reports as the Work progresses in order to accommodate actions not identified in the TxDOT-Provided Approvals or covered specifically by existing resource agency coordination. Changes to the Schematic Design or incorporation of Additional Properties into the Project shall require the validity of existing Environmental Approvals to be reassessed and may require New Environmental Approvals.

DB Contractor is responsible for any coordination with Governmental Entities necessary to obtain New Environmental Approvals except where TxDOT has agreements with Governmental Entities to perform such coordination. DB Contractor shall extend an invitation to TxDOT five Business Days in advance for any

meetings it has with Governmental Entities to discuss changes to the NEPA Approvals and any other TxDOT-Provided Approvals.

### 12.2.3 **Responsibilities Regarding Environmental Studies**

DB Contractor is responsible for conducting continuing environmental studies based on the NEPA Approvals and the Schematic Design.

DB Contractor is responsible for conducting environmental studies and re-evaluations caused by actions not identified in the Environmental Approvals, actions not covered specifically by existing resource agency coordination, or incorporation of Additional Properties into the Project. DB Contractor is responsible for all coordination of environmental studies with appropriate Governmental Entities, except where TxDOT has agreements with Governmental Entities to perform such coordination.

### 12.2.4 **TxDOT Review and Approval of DB Contractor Submissions**

TxDOT reserves the right to review, comment on, require revisions to and reject for resubmission documentation that is submitted for environmental compliance or Environmental Approvals. Documentation shall conform to current TxDOT submission standards and the requirements of all applicable Governmental Entities and applicable Laws. TxDOT shall return approved documentation to DB Contractor for submittal to the appropriate Governmental Entity in cases where DB Contractor performs coordination. Those submissions for which TxDOT signature or other approval is required shall be subject to TxDOT approval, provided TxDOT approvals of such submissions are not subject to the review time limitations in the Contract Documents. Documentation not meeting then-current submission standards or requirements of Governmental Entities will be returned to DB Contractor and shall be revised by DB Contractor to meet the applicable standards or requirements.

### 12.2.5 **Responsibilities Regarding Commitments within Environmental Approvals**

DB Contractor is responsible for ensuring all commitments identified in the Environmental Approvals are met.

A document containing a summary of the NEPA commitments and mitigation measures is provided in Attachment 12-1 (Environmental Permits, Issues and Commitments (EPICs)).

### 12.2.5.1 **Clean Water Act – Sections 404 and 401: Waters and Wetlands of the United States**

TxDOT-Provided Approvals may identify Section 404 impacts associated with Project improvements. Based on the NEPA Approvals, the temporary and permanent Section 404 impacts are anticipated to be authorized by Nationwide Permit 14 – Linear Transportation Projects with or without a Preconstruction Notification. Table 12-1 below identifies water crossings that are subject to Nationwide Permit General Condition 18 regarding endangered species. Due to the potential to encounter Karst Features and listed karst invertebrates, any Work performed below the ordinary high water mark of the crossings listed in Table 12-1 must be authorized by a Nationwide Permit with a Preconstruction Notification, regardless of the area or linear feet of impacts required to complete the Work. The crossings not listed in Table 12-1 may be permitted with a Nationwide Permit without a Preconstruction Notification, depending on the area or linear feet of impacts required to complete the Work.

**Table 12-1: Water Crossings Subject to General Condition 18**

<b>Crossing Number</b>	<b>Crossing Name</b>
3	Walzem Creek
4	Beitel Creek tributary
5	Beitel Creek tributary
6	Beitel Creek
7	Quail Creek
8	Beitel Creek tributary

Crossing Number	Crossing Name
9	Salitrillo Creek
10	Selma Creek tributary
11	Selma Creek tributary
12	Selma Creek tributary
13	Selma Creek tributary
14	Selma Creek
15	Cibolo Creek
23	Salado Creek (at IH 410)
24	Salado Creek tributary
26	Cibolo Creek tributary

DB Contractor shall, based on Final Design, assess impacts to each potentially jurisdictional feature. Based on results of the assessment, and if required, DB Contractor shall update the related Section 404 impacts associated with the Project and perform all Work required to procure the necessary Section 404 permits and Section 401 certifications from the USACE and TCEQ. DB Contractor shall determine Project mitigation requirements, prepare a mitigation plan per 33 CFR Part 332, and perform all required mitigation.

DB Contractor is responsible for the maintenance and monitoring of any permittee-responsible mitigation sites for the term stipulated within the USACE approved mitigation plan. Project mitigation options shall be provided in accordance with TxDOT's *Standard Operating Procedure: Acquiring and/or Purchasing Section 404 Compensatory Mitigation Credits* dated August 2019. All coordination with the USACE regarding Section 404 permitting and mitigation shall be disclosed to TxDOT for review and comment before submission to USACE.

DB Contractor shall document how they will identify Section 404 impacts, obtain required Section 404 permits, and comply with the terms and conditions of the Section 404 permits and 401 certifications issued to DB Contractor during the life of the Project. At a minimum, the documentation shall include:

- Process for training personnel to recognize waters of the U.S. that fall under the jurisdiction of the USACE;
- Process for identifying Section 404 impacts associated with the Project;
- Process for obtaining required Section 404 permits;
- Process for communicating the terms and conditions of all Section 404 permits and TCEQ 401 certifications and other permits as necessary;
- Procedures for carrying out any required Environmental Commitments and mitigation; and
- Procedures for incorporating additional properties outside the original NEPA approved Schematic Design and any off-right-of-way Project Specific Locations (PSL) as required by all Section 404 permit(s) issued to either TxDOT or DB Contractor by the USACE.

DB Contractor shall comply with all general and regional conditions set forth by authorized Section 404 nationwide permits as described in TxDOT-Provided Approvals.

#### 12.2.5.2

#### Property Access

To fulfill the obligation of the TxDOT-Provided Approvals to maintain current access during and after construction, DB Contractor shall make reasonable efforts to minimize the inconvenience to vehicles,

bicycles, and pedestrians during the Term. DB Contractor shall maintain access to adjacent properties during construction and ensure that visibility of businesses is maintained.

#### 12.2.5.3 **Dust Control**

DB Contractor shall institute dust control measures to minimize air quality impacts. The measures shall be adjusted as necessary based on construction traffic, forecasted wind speeds, and persistent dry weather conditions.

Dust control measures shall include a combination of watering, chemical stabilization, and construction vehicle speed reduction (not to exceed 20 mph).

DB Contractor shall keep concrete traffic barriers and any other elements that can cause accumulation of dust, sand and debris (such as retaining walls, bridge columns, and drainage walls) within the Project limits clean of dust, sand and debris during construction.

DB Contractor shall prevent, control, and mitigate fugitive noxious or toxic vapors or particulate matter (dust) during disturbance of noxious or hazardous materials and media.

DB Contractor shall utilize the Texas Emissions Reduction Plan (TERP) to the fullest extent practicable.

#### 12.2.5.4 **Asbestos Containing Material and Lead Based Paint**

Bridge and building demolition will be required for the Project. Prior to the Effective Date, TxDOT has performed some asbestos containing material (ACM) and lead based paint (LBP) surveys on existing bridge structures. DB Contractor shall test remaining structures, including but not limited to bridges, buildings, rails, girders, and retaining walls for ACM and LBP. DB Contractor shall notify, amend notifications as necessary, pay notification fees, and perform abatement of ACM and LBP in accordance with appropriate or relevant Laws or guidance. TxDOT has provided the ACM and LBP inspection reports in the RIDs.

DB Contractor shall submit to TxDOT all inspection reports, proposed abatement plans, and/or reports documenting ACM and LBP abatement (as necessary).

Prior to scheduled demolitions, DB Contractor shall notify the Texas Department of State Health Services of bridge demolitions or building structures demolitions.

#### 12.2.5.5 **Other Hazardous Materials**

DB Contractor shall inspect, identify, test, issue and amend notifications as necessary, and pay notification fees for all Hazardous Materials encountered during construction. In accordance with Section 4.8.1 of the General Conditions, DB Contractor shall manage, treat, handle, store, remediate, remove, transport, and dispose of all Hazardous Materials, including contaminated groundwater, encountered within the Project limits, in accordance with applicable Laws, guidance, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents.

TxDOT-Provided Approvals have identified Hazardous Materials concerns within the Project limits. TxDOT has performed some Hazardous Materials site investigations that have confirmed contaminated areas exist within the Project limits. DB Contractor shall be responsible for abating the Hazardous Materials contamination identified in TxDOT's site investigation reports prior to constructing in these areas. TxDOT has provided the Phase II Environmental Site Assessment Reports in the RIDs.

DB Contractor shall take appropriate measures to prevent the spillage of Hazardous Materials in the construction areas. All construction materials used for the Project shall be removed as soon as the work schedule permits. DB Contractor shall initiate early regulatory agency coordination during Project development.

If any of the existing Hazardous Materials traps within the Project limits are impacted by the Work, then DB Contractor shall be responsible for reconstructing the traps to retain their existing functionality.

#### 12.2.5.6 **Karst Features**

The Project area may contain Karst Features. DB Contractor shall adhere to the USFWS conservation measures below for construction activities within karst zones 2 and 3 (the "Action Area" defined in the USFWS Informal Consultation Letter in the Re-evaluation of the 2015 Final EA and FONSI provided in the RIDs).

If previously unknown Karst Features are encountered during the construction process, within 24 hours of discovery, DB Contractor shall evaluate such Karst Features for the presence of endangered karst invertebrate habitat using the reconnaissance excavation and evaluation procedures outlined by the document entitled "United States Fish and Wildlife Service, Section 10(a)(1)(A) Scientific Permit Requirements for Conducting Presence/Absence Surveys for Endangered Karst Invertebrates in Central Texas." If a Karst Feature is determined to contain suitable endangered karst invertebrate habitat, DB Contractor shall notify TxDOT within 24 hours of such determination and DB Contractor shall cause presence/absence surveys to be conducted by a Karst Species Specialist. If a discovered Karst Feature is determined to be occupied or presumed to be occupied by an endangered karst invertebrate, then DB Contractor shall stop Work in the area and immediately notify TxDOT. In accordance with Section 4.2.4.2.6.1 of the General Conditions, DB Contractor shall assist TxDOT's agency coordination efforts by developing conservation and mitigation measures for the Project and preparing all reports and materials needed for completing the required agency coordination.

During borehole activities, Karst Features in bedrock are usually indicated by an unexpected drop of the drill bit or a decrease in drilling pressure. If a bit drop of more than one foot is detected or a decrease in drilling pressure indicates a Karst Feature while advancing a borehole, then the drill operator shall cease operation, and the borehole shall be inspected by a Karst Species Specialist using a downhole camera. If the borehole contains no Karst Features that meet the criteria for suitable endangered karst invertebrate habitat, then Work at that bore can continue. If the borehole contains Karst Features that meet the criteria for suitable endangered karst invertebrate habitat, an area no less than 50 feet from the edge of the Karst Feature (unless traffic control requirements dictate a smaller area) shall be cordoned off and protected. All other Work in the area immediately around the borehole shall cease until it can be safely closed. A Work stoppage near a borehole that contains a Karst Feature with suitable endangered karst invertebrate habitat shall be maintained during the period required for closure and to obtain the approvals of applicable protection plans. TxDOT shall coordinate with appropriate regulatory agencies and provide instructions to DB Contractor on how to proceed. Typically, the borehole will be plugged above the Karst Feature, leaving the Karst Feature open for endangered karst invertebrate habitat, and filled to the surface with grout or other suitable material.

If a potential Karst Feature is encountered during excavation, Work within at least 50 feet of the feature shall cease until an evaluation is complete. If an endangered karst invertebrate habitat assessment is warranted, DB Contractor shall follow the same protocols and steps outlined above. While a Karst Feature is being evaluated, the surface expression shall be covered in order to minimize the influence of diurnal variations in surface temperature. Protection of the Karst Feature may include a wood cover, plastic sheeting, and/or blanket that is weighted down with rocks around the perimeter of the Karst Feature in order to provide a moisture barrier and insulation. During periods of high temperatures (>100° F), a piece of insulation shall be added to the cover. Hazard fencing or barricades may be used to protect the area if there is a fall hazard, such as the case of an open shaft. Appropriate temporary erosion and sedimentation controls shall be implemented to prevent surface runoff from entering the feature.

If the Karst Feature does not meet the criteria for suitable endangered karst invertebrate habitat or is determined not to be occupied after conducting presence/absence surveys, then Work shall continue and disturbance to the Karst Feature shall be minimized if practical.

#### 12.2.5.7 **Existing Trees and Vegetation**

DB Contractor shall make efforts to protect any trees that are not in conflict with construction, especially those trees located near the edge of construction areas.

#### 12.2.5.8 **Federal Aviation Administration (FAA)**

Due to the Project's proximity to airport and heliport facilities, DB Contractor shall coordinate Plans with FAA and notify the FAA utilizing FAA Form 7460-1 no later than 45 days prior to the start of construction.

#### 12.2.5.9 **Project Specific Locations (PSLs)**

DB Contractor shall ensure regulatory compliance of all its PSLs. DB Contractor shall ensure its PSLs avoid impacting riparian vegetation areas.

#### 12.3 **Environmental Team (ET)**

DB Contractor, acting through the ECM, shall designate a team, as detailed in this Section 12.3, to prevent, minimize, and/or correct any violation of or noncompliance with Environmental Approvals (the "Environmental

Team” or “ET”). The ET shall include staff meeting the qualification requirements as indicated in this Section 12.3 below. All members of the ET shall be deemed other principal personnel.

In the CEPP, DB Contractor shall establish a detailed approach, procedures and methods for:

- Staffing and availability of ECM and all ET personnel; and
- ET staff response times during the Work.

#### 12.3.1 **ECM**

DB Contractor shall designate an ECM for the Work in accordance with Section 4.2.4.1.1 of the General Conditions.

#### 12.3.2 **Environmental Training Staff**

Under the direction of the ECM, the environmental training staff shall develop, schedule and conduct environmental awareness and environmental compliance training for DB Contractor’s personnel. All training shall be in accordance with the requirements set forth in Section 4.2.4.3 of the General Conditions. Environmental training staff members shall have at least one year of experience providing environmental compliance inspection services for freeway construction.

#### 12.3.3 **Environmental Compliance Inspectors (ECIs)**

The ECM shall designate as needed, staff members, who shall conduct on-site environmental monitoring, prepare documentation, and report to the ECM daily all violations, compliance, and non-compliance with Environmental Approvals (each an “Environmental Compliance Inspector” or “ECI”).

The ECIs shall report immediately to the ECM any violation or non-compliance with Environmental Approvals and shall include with any such reports, the appropriate recommendations for corrective action, including, but not limited to, stoppage of Work.

The ECIs shall have at least one-year operational control experience with SW3P activities.

#### 12.3.4 **Hazardous Materials Manager**

The ECM shall designate a Hazardous Materials Manager to provide expertise, as needed, in the safe handling of Hazardous Materials required to perform the Work and any Hazardous Materials that may be discovered/impacted during the Term. The Hazardous Materials Manager shall conduct appropriate activities such as the following:

- Schedule and/or conduct training for DB Contractor's employees;
- Verify all employees have required certifications prior to the handling of Hazardous Materials; and
- Maintain records of all incidents involving Hazardous Materials and notify the ECM, TxDOT and appropriate authorities in writing of any such incidents in accordance with the Contract Documents.

The Hazardous Materials Manager shall be a qualified professional with an accredited Certified Hazardous Materials Manager credential, a 40-hour HAZWOPER certification and at least five years of experience in similar projects in the following areas:

- Developing IWP, SIRs, and remedial action plans or equivalent reports necessary and acceptable to the TCEQ in material discovery and remediation efforts of Hazardous Materials; and
- TCEQ guidance for the investigation and remediation of Hazardous Materials under the TCEQ Voluntary Cleanup Program, Texas Risk Reduction Program, and the TCEQ Petroleum Storage Tank Rules.

#### 12.3.5 **Natural Resource Biologist**

The ECM shall designate an on-call natural resource biologist to provide expertise in monitoring impacts on wildlife and the natural environment during the course of the Work. The natural resource biologist shall have experience performing migratory bird and nest surveys in accordance with the Migratory Bird Treaty Act, and experience performing freshwater mussel surveys and mussel relocations in accordance with Texas Parks and Wildlife’s *Freshwater Mussel Survey and Relocation Protocols*.



The natural resource biologist shall meet the certification requirements of TxDOT Work Category 2.6.2, "Impact Evaluation Assessments" and 2.6.4, "Biological Evaluations/Assessments".

## 12.3.6

**USFWS Permitted Karst Species Specialist**

The ECM shall designate an on-call USFWS permitted Karst Species Specialist (must possess the appropriate 10(a)(1)(A) permit) to determine if an encountered Karst Feature is occupied or presumed occupied by endangered karst invertebrates. Endangered karst invertebrate species of concern include *Cicurina baronia* and *Texella cokendolpheri*.

The Karst Species Specialist shall be on-Site within 24 hours of DB Contractor encountering a Karst Feature. DB Contractor shall identify a secondary Karst Species Specialist meeting the criteria listed above in the event the primary Karst Species Specialist is unable to appear on-site in the allotted time.

The Karst Species Specialist shall assess the encountered Karst Feature using USFWS excavation and evaluation procedures to determine if the feature contains suitable habitat for endangered karst invertebrates or if the Karst Feature could open up into another Karst Feature with such suitable endangered karst invertebrate habitat.

The Karst Species Specialist also conducts presence/absence surveys to determine if a Karst Feature is occupied or presumed occupied by endangered karst invertebrates.

## 12.3.7

**Licensed Professional Geoscientist**

The ECM shall designate an on-call Licensed Professional Geoscientist to assist in the mapping of Karst Features and development and signing and sealing of Karst Feature closure plans. The Licensed Professional Geoscientist also assists the Karst Species Specialist in assessing the potential for a Karst Feature to contain suitable habitat for endangered karst invertebrates or if the Karst Feature could open up into another Karst Feature with such suitable habitat.

The Licensed Professional Geoscientist shall meet the certification requirements of TxDOT Work Category 2.5.1, "Geological Assessment for Edwards Aquifer Recharge Zone".

## 12.3.8

**Water Quality Specialist**

The ECM shall designate a water quality specialist to provide expertise in permitting, delineation, stormwater pollution prevention, and the protection of jurisdictional waters during the course of the Work.

The water quality specialist shall have verifiable experience implementing SW3Ps and be able to demonstrate a working knowledge of the TPDES and MS4 permit requirements applicable to the Project.

The water quality specialist shall meet the certification requirements of TxDOT Work Category 2.3.1, "Wetland Delineation" and TxDOT Work Category 2.4.1, "Nationwide Permit", and TxDOT Work Category 2.4.2, "Clean Water Act §404 (Title 33, United States Code §1344) Permits (including mitigation and monitoring)".

## 12.4

**Submittals**

All Submittals described in this Item 12 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth on Table 12-2. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 12-2: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Environmental monitoring reports	Upon request	For information	12.1.1
Section 404 Permit/Mitigation Plan	As necessary, prior to commencement of Construction Work	Review and comment prior to submittal to USACE	12.2.3.1
ACM / LBP Inspection Reports	Prior to demolition of applicable structures	Approval prior to demolition of applicable structures	12.2.3.6
ACM / LBP Abatement Plan	Prior to demolition of applicable structures	Approval prior to demolition of applicable structures	12.2.3.6

**Table 12-2: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
ACM / LBP Mitigation Report	Prior to demolition of applicable structures	Approval prior to demolition of applicable structures	12.2.3.6
FAA Form 7460-1	No later than 45 days prior to start of construction	For information	12.2.3.7
Threatened and endangered species survey report	As necessary, prior to commencement of Construction Work	Approval prior to commencement of Construction Work	General Conditions 4.2.4.2.5 & 4.2.4.2.6.1
Archeological survey report	As necessary, prior to commencement of Construction Work	Approval prior to commencement of Construction Work	General Conditions 4.2.4.2.9
IWP	As necessary, when Hazardous Materials are encountered prior to property acquisition and/or Construction Work	Approval prior to property acquisition and/or Construction Work	General Conditions 4.2.4.4.1
SIR	As necessary, when Hazardous Materials are encountered and prior to preventative or corrective actions	Review and approval prior to preventative or corrective actions	General Conditions 4.2.4.4.1

# Item 13

## Third Party Coordination



### 13.1 General Requirements

TxDOT has existing agreements with certain local, state and federal Governmental Entities with respect to the Project. These agreements define additional requirements for the design, construction, operations, and maintenance of the Project. These agreements do and will specify the local Governmental Entities' responsibilities and TxDOT's responsibilities with respect to the requirements.

DB Contractor shall assume and execute TxDOT's responsibilities and duties stated in Third Party Agreements to the extent set forth in the DBC, including payments for work performed or services provided by the Governmental Entity. DB Contractor is responsible for providing TxDOT and Governmental Entities with all information necessary to fulfill TxDOT's responsibilities stated in such agreements. In the case that the local Governmental Entity, under such agreements, will need to be reimbursed by TxDOT for work performed, DB Contractor shall make payment of stated costs to TxDOT within 30 days from receipt of TxDOT's request for payment. TxDOT will reimburse the local Governmental Entity such costs.

DB Contractor responsibilities and duties with respect to executed Third Party Agreements are described in Exhibit 8 to the DBA.

### 13.2 Traffic Signals

Some local Governmental Entities may request signals within the Project ROW throughout the Term. Should this occur, additional agreements between TxDOT and the Governmental Entity will be required. DB Contractor shall coordinate with TxDOT and the appropriate Governmental Entities to define design and construction requirements, local agency oversight of DB Contractor's Work, and final acceptance of traffic signals as further described in Section 24.3.7. DB Contractor shall not be required to design or construct additional traffic signals requested by Governmental Entities except in accordance with Section 4.6 of the General Conditions.

Requirements for new construction of traffic signals and modifications to the existing traffic signals are set forth in Item 24.

### 13.3 Roadway Illumination

Some local Governmental Entities may request continuous illumination along sections of the Project. Should this occur, additional agreements between TxDOT and the Governmental Entity will be required. DB Contractor shall coordinate with and provide reasonable accommodations to the third-party designated to carry out the installation, operations, and maintenance obligations as specified in such agreements. DB Contractor shall not be required to design or construct continuous lighting requested by Governmental Entities except in accordance with Section 4.6 of the General Conditions.

For sections of continuous lighting specified by these additional agreements, safety lighting included in those sections is considered a component of the overall system, and responsibilities for safety lighting shall be set forth in in the terms of the additional agreement.

Requirements for new construction of illumination features and modifications to the existing illumination features are set forth in Item 24.

### 13.4 Aesthetic and Landscaping Enhancements

Some local Governmental Entities may request aesthetic and landscaping enhancements along sections of the Project. Should this occur, additional agreements between TxDOT and the Government Entity will be required. DB Contractor shall coordinate with and provide reasonable accommodations to the third party designated to carry out the design, installation, and maintenance obligations as specified in such agreements. Design and construction of aesthetic and landscaping enhancements by DB Contractor will be handled in accordance with the terms of the DBC.

The definition of and requirements for "aesthetic and landscaping enhancements" are set forth in Item 23.

**13.5 Frontage Road Access**

TxDOT shall be solely responsible, at its expense, for handling requests and permitting for adjacent property access to frontage roads of the Project, provided that TxDOT may request DB Contractor to review access permit applications at DB Contractor's expense. DB Contractor shall provide TxDOT with any comments within 10 business days after receipt of the application. Nothing in the Contract Documents shall restrict TxDOT from granting access permits or determining the terms and conditions of such permits. TxDOT will keep DB Contractor regularly informed of access permit applications and will deliver to DB Contractor a copy of each issued access permit within five days after it is issued. DB Contractor shall have no claim for a Change Order by reason of TxDOT's grant of access permits, the terms and conditions thereof, or the actions of permit holders or their employees, agents, representatives and invitees. DB Contractor at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain access improvements allowed under their access permits.

**13.6 Other Affected Third Parties**

DB Contractor is responsible for coordination and cooperation with all third parties affected by the Work, except as specifically provided otherwise.

# Item 14

## Utility Adjustments



### 14.1 General Requirements

A number of existing Utilities are located within or in the vicinity of the Project ROW, some pursuant to statutory rights and some pursuant to property rights. Certain of those existing Utilities will need to be relocated or otherwise adjusted in order to accommodate the Project. This Item 14 establishes procedures and requirements for Utility Adjustments including such processes as coordination with Utility Owners, administration of the engineering, construction, and other activities necessary for Utility Adjustments and required documentation. This Item 14 references certain TxDOT forms for DB Contractor's use in Utility Adjustments. Copies of those forms are included in Attachment 14-1 (Utility Adjustment Forms). Except as otherwise provided in this Item 14 or directed by TxDOT, whenever a TxDOT form is provided, DB Contractor shall prepare all forms of the same type using the TxDOT form and obtain TxDOT approval of all changes to the forms agreed to by DB Contractor and the Utility Owner prior to execution by the Utility Owner.

DB Contractor shall cause all Utility Adjustments necessary to accommodate construction, operation, maintenance, and/or use of the Project. Some Utility Adjustments may be performed by the Utility Owner with its own employees and/or contractors and representatives (i.e., Owner-Managed); all others shall be performed by DB Contractor with its own employees and/or Subcontractors and representatives (subject to any approval rights required by the Utility Owner for those working on its facilities) (i.e., DB Contractor-Managed). The Utility Agreement shall specify the allocation of responsibility for the Utility Adjustment Work between DB Contractor and the Utility Owners as described in Section 14.1.3.

TxDOT Form 1818 Material Statement is required for all work performed for the Utility Owners prior to the installation of the materials to document compliance with Buy America requirements, if applicable. If the costs of the Utility Adjustment Work are not eligible for reimbursement from TxDOT under applicable law, the Utility Owner is not required to comply with 23 CFR Part 645 Subpart A, 23 CFR § 635.410 (Buy America) and FHWA's associated policies for such Utility Adjustment. DB Contractor's obligations regarding reimbursement to Utility Owners for eligible costs of Utility Adjustment Work, and DB Contractor's obligations regarding the accommodation of Utilities from and after the service commencement date, are set forth in this Item 14 and Section 4.5 of the General Conditions.

This Item 14 does not address utility services to the Project. Utility services to the Project shall be the subject of separate agreements between DB Contractor and the Utility Owners.

#### 14.1.1 When Utility Adjustment is Required

A Utility Adjustment may be necessary for the following reasons: (a) a physical conflict between the Project and the Utility, or (b) an incompatibility between the Project and the Utility based on the requirements in Section 14.2.1, even though there may be no physical conflict. The physical limits of all Utility Adjustments shall extend as necessary to functionally replace the existing Utility, whether inside or outside of the Project ROW. Section 14.2.4.2 contains provisions that address the acquisition of Replacement Utility Property Interests for Utilities to be installed outside of the Project ROW.

Utilities may remain in their existing locations within the Project ROW if (a) the requirements of Section 14.2.1 are met, (b) the existing location will not adversely affect the construction, operation, safety, maintenance, or intended use of the Project, and (c) the Utility Owner agrees to the Utility remaining in its existing location.

Existing Utilities that are not in physical conflict with the Project that cross a roadway centerline at approximately 90 degrees may remain in the existing alignment. The existing Utilities may remain, be adjusted in place, or be protected in place in these areas only if all other conditions of the UAR are met and the affected Utility Owners agree to and approve all corresponding proposed Utility Adjustment plans.

#### 14.1.2 Certain Components of the Utility Adjustment Work

##### 14.1.2.1 Coordination

DB Contractor shall communicate, cooperate and coordinate with TxDOT, the Utility Owners and potentially affected third parties, as necessary, for performance of the Utility Adjustment Work and SAWS Utility

Adjustment Work. DB Contractor shall be responsible for preparing and securing execution (by DB Contractor and the Utility Owner) of all necessary Utility Agreements.

All Utility Agreements must be approved by TxDOT prior to taking effect and prior to the commencement of any Utility Adjustment construction related activity.

#### 14.1.2.2

##### **Betterments**

Replacements for existing Utilities shall be designed and constructed to provide service at least equal to that offered by the existing Utilities, unless the Utility Owner specifies a lesser replacement. Utility Enhancements are not included in the Work; however, any Betterment work furnished or performed by DB Contractor as part of a Utility Adjustment shall be deemed added to the Work, on the date the Utility Agreement becomes effective or on the date such Betterment work is incorporated into the scope of the SAWS ILA, in each case, as set forth in Section 4.5.2 of the General Conditions. DB Contractor shall perform all coordination necessary for Betterments, except for Betterments under the SAWS ILA.

#### 14.1.2.3

##### **Protection in Place**

DB Contractor shall be responsible for Protection in Place of all Utilities impacted by the Project as necessary for the continued safe operation and structural integrity of each Utility, and to satisfy the requirements described in Section 14.2.1. For each impacted Utility, DB Contractor shall obtain Utility Owner's approval of DB Contractor's proposed Protection in Place prior to beginning Construction Work.

#### 14.1.2.4

##### **Abandonment and Removal**

DB Contractor shall make all arrangements and perform all Work necessary to complete each abandonment or removal (and disposal) of a Utility in accordance with the requirements listed in Section 14.2.1, including obtaining Governmental Approvals and consent from the affected Utility Owner and any affected landowner(s), or shall confirm that the Utility Owner has completed the work necessary to complete each abandonment or removal (and disposal) of such Utility. Utility facilities that will be abandoned in place must be clearly identified in the Utility Assembly plans and shall require approval by TxDOT. The Utility Assembly plans must detail the method of abandonment to be utilized for TxDOT to determine if UAR requirements are met. The plans must also detail the age, condition, material type, active status and size of each Utility. If a Utility is to be abandoned, the plans shall (i) state that the Utility Owner continues to own and maintain the abandoned Utility facility and keep records of its location, and (ii) include a certification from the Utility Owner stating that the facility doesn't contain nor is composed of hazardous/contaminated materials. Voids and abandoned pipe beneath the ROW are prohibited and only allowed at TxDOT's sole discretion. In accordance with jurisdictional requirements or as directed by TxDOT, all voids must be filled with cement slurry or backfilled, and any pipe to be abandoned in place must be grout filled and capped.

#### 14.1.2.5

##### **Service Lines and Utility Appurtenances**

Whenever required to accommodate construction, operation, maintenance, or use of the Project, DB Contractor shall cause Service Line Utility Adjustments and Utility Appurtenance Adjustments. Each Service Line shall have a definitive point of termination such as a meter or point of sale. On completion of adjustment to Service Lines and Utility Appurtenance Adjustment, DB Contractor shall cause full reinstatement of the roadway, including reconstruction of curb, gutter, sidewalks, driveways, and landscaping, whether the Utility Adjustment Work is performed by the Utility Owner or by DB Contractor.

#### 14.1.2.6

##### **Advance Utility Relocations**

At TxDOT's sole discretion, there will be early Utility adjustments managed by TxDOT through Advance Utility Relocation Agreements with certain Utility Owners to coordinate Utility adjustments that will progress the Project, as more particularly described in Section 6.4.4 of the DBA. Advance Utility Relocation Agreement(s) are included in the RIDs.

##### 14.1.2.6.1

##### **CPS Energy**

TxDOT has entered into an Advance Utility Relocation Agreement with CPS Energy for the adjustment of certain CPS Energy transmission lines.

DB Contractor shall not schedule Construction Work activities that could affect the CPS Energy transmission lines or the adjustment of such lines at the locations shown below in Table 14-1 until the "Adjustment Completion Date" for the applicable location has occurred.

**Table 14-1: CPS Energy Transmission Line Adjustment Completion Dates**

Location	Adjustment Completion Date
Station 3516+00 to Station 3520+00	NTP1 + 735
Station 3605+50 to Station 3608+00	NTP1 + 385

#### 14.1.2.6.2 San Antonio Pipeline

TxDOT will be entered into an Advance Utility Relocation Agreement with Allied Aviation for the adjustment of the San Antonio Pipeline.

DB Contractor shall not schedule Construction Work activities that could affect the San Antonio Pipeline or the adjustment of such line at the location shown below in Table 14-2 until the “Adjustment Completion Date” has occurred.

**Table 14-2: San Antonio Pipeline Adjustment Completion Date**

Location	Adjustment Completion Date
Station 3455+00 to Station 3476+00	NTP1 + 540

#### 14.1.3 Agreements Between DB Contractor and Utility Owners

Except as otherwise stated in this Item 14 or in the DBC, DB Contractor shall address each Utility Adjustment in a PUA or in a UAAA, as described elsewhere in this Item 14. DB Contractor is responsible for preparing, negotiating (to the extent allowed by this Item 14) and obtaining execution by the Utility Owners of all Utility Agreements, (including preparing all necessary exhibits and information about the Project, such as reports, Plans and surveys).

A Utility Agreement is not required for any Utility work consisting solely of Protection in Place of a Utility that is in its original location within the Project ROW, unless the Utility Owner is being reimbursed for costs incurred by it on account of such Protection in Place. If no reimbursement is required to the Utility Owner, a UJUA, Utility Installation Request, Form 1082 or Utility permit through TxDOT’s Utility Installation Review (UIR) system, as described in Section 14.2.4.5 and plans detailing UAR compliance are required pertaining to the Utility Adjustment or Protection in Place work. If a Utility Owner requests that DB Contractor relocate a Utility and the cost of that Utility Adjustment is the Utility Owner’s sole responsibility in accordance with Transportation Code 203.092, then DB Contractor shall enter into a DB Contractor-Managed PUA with the Utility Owner providing for the Utility Owner to be responsible for all costs of that Utility Adjustment Work.

##### 14.1.3.1 PUA

Except with respect to SAWS and CPS Energy transmission lines described in Section 14.1.2.6.1, DB Contractor shall enter into one or more PUAs with each affected Utility Owner to define the design, material, construction, inspection, and acceptance standards and procedures necessary to complete Utility Adjustments, and to define DB Contractor’s and the Utility Owner’s respective responsibilities for Utility Adjustment costs and activities, including material procurement, construction, inspection and acceptance. A PUA may address more than one Utility Adjustment for the same Utility Owner. Additional Utility Adjustments may be added to an existing PUA by a UAAA.

DB Contractor shall prepare each PUA using the TxDOT form DB-ROW-U-PUA-OM (Owner-Managed) or DB-ROW-U-PUA-DM (DB Contractor-Managed), included in Attachment 14-1 (Utility Adjustment Forms). DB Contractor shall not modify the forms except by approval of TxDOT.

Promptly following issuance of NTP1, DB Contractor shall begin negotiations with each affected Utility Owner (except SAWS) to reach agreement on one or more PUAs and UAAAs. DB Contractor shall finalize the necessary PUAs with each affected Utility Owner within a reasonable time period after issuance of NTP1. DB Contractor shall include any proposed changes to the form (other than filling in the blanks specific to a

particular Utility Owner) in a track-change format that clearly identifies the changes and the party requesting the change. Each PUAA (including the Utility Adjustment Plans attached thereto) shall be subject to TxDOT review and approval as part of a Utility Assembly.

DB Contractor shall obtain approval by TxDOT of any language modification to a PUAA by the Utility Owner and DB Contractor.

#### 14.1.3.2 **UAAA**

Except where UAFM are permitted pursuant to Section 14.4.7, modification of an executed PUAA or any component thereof, after it has been approved by TxDOT as part of a Utility Assembly, shall be stated in a UAAA. A UAAA may be used only when the allocation of responsibility for the Utility Adjustment Work covered by that UAAA is the same as in the parent Utility Agreement; otherwise, an additional PUAA will be required.

Each UAAA (including any Utility Adjustment Plans attached thereto) shall be subject to TxDOT approval. Except as otherwise directed by TxDOT or provided in an applicable Utility Agreement, DB Contractor shall prepare all UAAAs using the appropriate form included in Attachment 14-1 (Utility Adjustment Forms). DB Contractor shall include any proposed changes to the appropriate form (other than filling in the blanks specific to a particular Utility Owner) in a Utility Owner-specific addendum.

DB Contractor shall obtain TxDOT approval of all changes to a UAAA form prior to execution by the Utility Owner.

#### 14.1.4 **Recordkeeping**

DB Contractor shall maintain construction and inspection records in order to ascertain and demonstrate that Utility Adjustment Work is accomplished in accordance with the approved Utility Adjustment Plans and as required by the Contract Documents and the applicable Utility Agreement(s) or the SAWS ILA.

DB Contractor shall comply with all requirements under the SAWS ILA with respect to recordkeeping, invoicing and providing information and documents to SAWS.

### 14.2 **Administrative Requirements**

#### 14.2.1 **Standards**

All Utility Adjustment Work shall comply with all applicable Laws (including, but not limited to, 43 TAC, Part 1, Chapter 21, Subchapter C, UAR), the TxDOT *ROW Utility Manual*, requirements within the Contract Documents, including Section 4.5 of the General Conditions (as amended by Exhibit 24 to the DBA), and the requirements specified in this Item 14.

Additionally, all Utility Adjustment Work shall comply with the San Antonio District Utility Requirements.

#### 14.2.2 **Communications**

##### 14.2.2.1 **Communication with Utility Owners**

DB Contractor is responsible for holding meetings and otherwise communicating with each Utility Owner as necessary to timely accomplish the Utility Adjustments in compliance with the Contract Documents.

DB Contractor shall notify TxDOT of all meetings, and TxDOT may participate in these meetings if requested by the Utility Owner or DB Contractor or otherwise as TxDOT deems appropriate.

Before distribution of any mass mailings to Utility Owners, DB Contractor shall submit to TxDOT, 21 days in advance of distribution for its review and comment, the form, content and addressees of any such mass mailings. For purposes of this Item 14, the term "mass mailing" means correspondence that is sent to 50% or more of Utility Owners within a three-week time period and contains substantially the same content with respect to each Utility Owner.

##### 14.2.2.2 **Meetings**

At least three (3) Business Days in advance of each scheduled meeting, DB Contractor shall provide notice and an agenda for the meeting separately to TxDOT first and then to the appropriate Utility Owner, except for any special disputes resolution meetings under Section 6.B of the SAWS ILA which require notice and agendas at least five (5) Business Days prior to such meetings. DB Contractor shall prepare minutes of all meetings and shall keep copies of all correspondence.



DB Contractor shall prepare meeting minutes within five (5) Business Days after the conclusion of each meeting. At a minimum, DB Contractor shall include the following items in the meeting minutes:

- A complete list of attendees (including their affiliations, telephone numbers and e-mail addresses)
- Documentation of the issues discussed and any associated solutions or resolutions
- Description of remaining open issues and action items (including the person(s) responsible for follow-up and target date for resolution)

DB Contractor shall submit draft versions of all meeting minutes to TxDOT for review before distributing final versions to the meeting attendees and appropriate Customer Groups.

To the extent set forth in the SAWS ILA and as requested by TxDOT, DB Contractor shall participate in all meetings and dispute resolution procedures provided for under the SAWS ILA. DB Contractor shall give TxDOT reasonable notice of all meetings required under the SAWS ILA.

DB Contractor shall designate a "DB Contractor Utility Representative" in accordance with the SAWS ILA to serve as DB Contractor's representative for coordinating all matters with SAWS and TxDOT under the SAWS ILA.

### 14.2.3

#### **Utility Adjustment Team**

DB Contractor shall provide a Utility Adjustment team whose members have all appropriate qualifications and experience to perform the Utility Adjustment Work. DB Contractor shall provide a list of the names and contact details, titles, job roles and specific experience of the team members in the PMP. Specifically, DB Contractor shall provide a UM and a UDC to manage all aspects of the Utility Adjustment process. If DB Contractor assigns the construction activities to a Subcontractor or Affiliate, DB Contractor shall provide a DB Contractor Utility Coordinator (DUC) as described herein.

The UM's primary work responsibility shall be the performance of all DB Contractor's obligations with respect to Utility Adjustments. The UM shall have a bachelor's degree and have relevant experience in coordinating and solving complex Utility Adjustments on highway improvement projects. DB Contractor shall authorize the UM to approve all financial and technical modifications associated with Utility Adjustments and modifications to the Utility Agreement or SAWS ILA.

The UDC shall be a PE. The UDC shall be responsible for coordinating the Utility Adjustment design with the overall design features during the planning, design and construction phases of the Work.

If applicable, the DUC shall hold a bachelor's degree and have relevant experience in ROW and Utility coordination activities involving large transportation projects. The DUC will be responsible for tracking and following DB Contractor's Affiliate's and Subcontractor's activities and communicating the progress to DB Contractor. The DUC will assist with developing good working relationships with the Utility Owners and assisting DB Contractor in all Utility coordination matters.

### 14.2.4

#### **Real Property Matters**

DB Contractor shall provide the services described below in connection with the existing and future occupancy of property by Utilities.

#### 14.2.4.1

##### **Documentation of Existing Utility Property Interests – Affidavits**

For each Existing Utility Property Interest within the Project ROW claimed by any Utility Owner, DB Contractor shall include an Affidavit of Property Interest in the applicable Utility Assembly, with documentation of the Existing Utility Property Interest (e.g., an easement deed) attached. Any such claim shall be subject to TxDOT review as part of a Utility Assembly approval. Except as otherwise directed by TxDOT, DB Contractor shall prepare all Affidavits of Property Interest using the forms included at the following link: <https://www.txdot.gov/government/processes-procedures/row-forms.html>.

#### 14.2.4.2

##### **Acquisition of Replacement Utility Property Interests**

Each Utility Owner will be responsible for acquiring any Replacement Utility Property Interests that are necessary for its Utility Adjustments. DB Contractor shall have the following responsibilities for each acquisition, except with respect to acquisitions made by SAWS pursuant to the SAWS ILA:

- DB Contractor shall coordinate with, and provide the necessary information to, each Utility Owner as necessary for the Utility Owner to acquire any Replacement Utility Property Interests required for its Utility Adjustments; and
- If any DB Contractor-Related Entity assists a Utility Owner in acquiring a Replacement Utility Property Interest, such assistance shall be by separate contract outside of the Work, and DB Contractor shall ensure that the following requirements are met:
  - The files and records must be kept separate and apart from all acquisition files and records for the Project ROW;
  - The items used in acquisition of Replacement Utility Property Interests (e.g., appraisals, written evaluations and owner contact reports) must be separate from the purchase of the Project ROW; and
  - Any DB Contractor-Related Entity personnel negotiating the acquisition of Replacement Utility Property Interests must be different from those negotiating the acquisition of the Project ROW.

DB Contractor is not responsible for Utility Owner condemnation proceedings except for DB Contractor's cost share set forth in Section 4.5.6 of the General Conditions. The Utility Owner is responsible for utilizing its authority for condemnation proceedings for all Replacement Utility Property Interests.

#### 14.2.4.3 **Relinquishment of Existing Utility Property Interests**

DB Contractor shall cause the affected Utility Owner to relinquish to the State each Existing Utility Property Interest within the Project ROW, unless the Existing Utility Property Interest is allowed to remain in place pursuant to the SAWS ILA or the existing Utility occupying such interest is either (a) remaining in its original location or (b) being reinstalled in a new location still subject to such interest.

#### 14.2.4.4 **Quitclaim Deeds**

Except as otherwise directed by TxDOT or as otherwise provided for in the SAWS ILA, DB Contractor shall prepare and record in the appropriate jurisdiction a Quitclaim Deed for each relinquishment of an Existing Utility Property Interest using the TxDOT form included at the following link: <https://www.txdot.gov/government/processes-procedures/row-forms.html>. Each Quitclaim Deed is subject to TxDOT's approval.

Except for Existing Utility Property Interests relinquished pursuant to the SAWS ILA, DB Contractor understands and expects that a Utility Owner will not relinquish any Existing Utility Property Interest until after the Utility Adjustment has been accepted by the Utility Owner in its new location. Accordingly, instead of an executed Quitclaim Deed, the Utility Assembly for such Utility Adjustment shall include a letter signed by the Utility Owner's authorized representative confirming that the interest will be quitclaimed upon completion of the Utility Adjustment, with a copy of the unsigned Quitclaim Deed. In these cases, DB Contractor shall obtain the executed Quitclaim Deed within 90 days of completion of the Utility Adjustment or unless otherwise approved by TxDOT in writing. The Quitclaim Deed must be approved by TxDOT prior to DB Contractor recording such deed in the local real property records.

#### 14.2.4.5 **UJUAs, Utility Installation Request, Form 1082 and Utility Permit Requirements**

DB Contractor shall prepare a UJUA for each Utility that will remain within the boundaries of its Existing Utility Property Interest location within the Project ROW or for each Existing Utility Property Interest allowed to remain in TxDOT ROW pursuant to the SAWS ILA. DB Contractor shall prepare all UJUAs using the TxDOT form included in Attachment 14-1 (Utility Adjustment Forms), unless otherwise provided for under the SAWS ILA. DB Contractor also shall prepare all required documentation to be included with each UJUA.

DB Contractor shall arrange for the Utility Owner to execute each UJUA, as applicable, which shall be subject to TxDOT's written approval as part of a Utility Assembly.

DB Contractor shall assist the Utility Owner in preparing a Utility Installation Request, Form 1082 or Utility permit through TxDOT's UIR system, as required by TxDOT, for each Utility that will remain or be relocated within the Project ROW and is not located within an Existing Utility Property Interest held by the Utility Owner.

DB Contractor shall arrange for the Utility Owner to submit for approval to TxDOT a complete Utility Installation Request, Form 1082 or, as required by TxDOT, a complete Utility permit through TxDOT's UIR system, prior to DB Contractor's inclusion of the required documentation as part of a Utility Assembly. DB Contractor shall analyze each application and provide to TxDOT a recommendation (together with supporting

analysis) as to whether the request 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 UDC and DB Contractor's UM, using the standard forms included in Attachment 14-1 (Utility Adjustment Forms). 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 approvals to any Utility Installation Request, Form 1082 or submitted Utility permit in its sole discretion. Subject to Section 14.5.1, the 10 Business Day review time for TxDOT approval of Utility Installation Request, Form 1082 or Utility permit Submittals under this Section 14.2.4.5 shall begin after the DB Contractor provides its recommendation to TxDOT as to whether a Utility Installation Request, Form 1082 or Utility permit submitted by a Utility Owner should be approved.

#### 14.2.4.6 **Documentation Requirements**

DB Contractor shall prepare, negotiate (to the extent permitted by this Section 14.2.4), and obtain execution by the Utility Owner of (and record in the appropriate jurisdiction, if applicable) all agreements and deeds described in this Section 14.2.4, including all necessary exhibits and information concerning the Project (e.g., reports, Plans and surveys). Each agreement or deed shall identify the subject Utility(ies) by the applicable Utility Assembly Number and shall also identify any real property interests by parcel number or highway station number, or by other identification acceptable to TxDOT.

#### 14.2.5 **Utility Management Plan**

DB Contractor shall prepare and submit a Utility Management Plan in accordance with the requirements in Section 4.2.8 of the General Conditions.

#### 14.3 **Design**

##### 14.3.1 **DB Contractor's Responsibility for Utility Identification**

DB Contractor bears sole responsibility for locating and identifying, at its own expense, all Utilities, including all Service Lines, within the Project ROW or otherwise affected by the Project, whether located on private property or within an existing public ROW.

DB Contractor shall prepare and submit to TxDOT prior to the first Utility Assembly submission a DB Contractor Utility Strip Map in 11x17 format showing the information obtained and confirmed pursuant to this Section 14.3.1. The DB Contractor Utility Strip Map shall show in plan view all Utilities within the Project ROW and those outside of the Project ROW which are otherwise impacted by the Project. The map shall detail the type of Utility facility (e.g., communication, gas, oil, water, etc.) size, material, and the Utility Owner's name and contact information. The scale of the DB Contractor Utility Strip Map shall be 1 inch = 100 feet. DB Contractor shall verify and update the information provided in the Utility Strip Map with SUE data obtained by DB Contractor and incorporate such information into the DB Contractor Utility Strip Map.

##### 14.3.2 **Technical Criteria and Performance Standards**

DB Contractor shall ensure that all design plans for Utility Adjustment Work, whether furnished by DB Contractor or by the Utility Owner, are consistent and compatible with:

- the applicable requirements of the Contract Documents, including Section 14.2.1;
- the Project design including the Ultimate Project Configuration;
- any existing and proposed Utility facility;
- all applicable Governmental Approvals; and
- approvals of all private sector third parties necessary for such Work.

DB Contractor shall be prohibited from hanging utilities affected by the Project onto any bridge structure.

##### 14.3.3 **Utility Adjustment Concept Plans**

DB Contractor shall prepare and submit to TxDOT, a proposed conceptual Utility design (a Utility Adjustment Concept Plan) for the Project (or proposed Utility Adjustment Concept Plans for various segments of the Project, as appropriate), showing the approximate location of each existing Utility in accordance with Section 14.3.1, the existing Utilities to remain, the proposed location of each Utility, and DB Contractor's Utility Adjustment recommendations.

In accordance with the PMP, DB Contractor shall submit the proposed Utility Adjustment Concept Plan(s) to TxDOT for its review. The Utility Adjustment Concept Plan(s) shall be submitted in both tabular and plan

formats. The tabular format shall identify and numerically list each Utility conflict and each associated Utility and conform to the conflict matrix provided in the San Antonio District Utility Requirements. The plan(s) shall be color-coded and shall utilize a scale that clearly depicts all of the required information. DB Contractor shall coordinate with each affected Utility Owner as necessary to obtain its respective concurrence with the Utility Adjustment Concept Plan(s) and with any subsequent revisions. The Utility Adjustment Concept Plan is a working document, and DB Contractor shall modify the plan as more project information becomes available. DB Contractor shall make the updated Utility Adjustment Concept Plans available to TxDOT upon request. Each executed PUAA or UAAA will identify and approve the Utility location set forth in the Utility Adjustment Concept Plan.

#### 14.3.4 **Utility Adjustment Plans**

DB Contractor shall ensure that all Utility Adjustment Plans, whether furnished by DB Contractor or by the Utility Owner, are signed and sealed by a PE unless such requirement is waived by TxDOT at its sole discretion and as allowed by governmental regulations and industry practice.

##### 14.3.4.1 **Plans Prepared by DB Contractor**

In the event that DB Contractor and the Utility Owner have agreed that DB Contractor will furnish a Utility Adjustment design or as required in the SAWS ILA, DB Contractor shall prepare and obtain the Utility Owner's approval of Utility Adjustment Plans by having an authorized representative of the Utility Owner sign the plans as "reviewed and approved for construction." The Utility Adjustment Plans (as approved by the Utility Owner) shall be attached to the applicable Utility Agreement, which DB Contractor shall include in the appropriate Utility Assembly for TxDOT's approval. DB Contractor shall comply with the design submittal and approval process set forth in the SAWS ILA with respect to the approval, review and comment of plans for the SAWS Utility Adjustments. Additionally, with respect to the design submittal and approval process set forth in the SAWS ILA, DB Contractor shall provide TxDOT with a copy of all design submittal review comments as they are received from SAWS and responses as they are developed by DB Contractor.

Unless otherwise specified in the applicable Utility Agreement(s) or SAWS ILA, all changes to Utility Adjustment Plans previously approved by the Utility Owner (excluding estimates, if the Utility Owner is not responsible for any costs) shall require written Utility Owner approval. DB Contractor shall transmit any TxDOT comments to the Utility Owner and shall coordinate any modification, re-approval by the Utility Owner and re-submittal to TxDOT as necessary to obtain TxDOT's approval.

##### 14.3.4.2 **Plans Prepared by the Utility Owner**

For all Utility Adjustment Plans furnished by a Utility Owner, DB Contractor shall coordinate with the Utility Owner as necessary to confirm compliance with the applicable requirements as referenced in Section 14.2.1. Utility Owner-prepared Utility Adjustment Plans shall be attached to the applicable Utility Agreement, which DB Contractor shall include in the appropriate Utility Assembly for TxDOT's approval. DB Contractor shall transmit any TxDOT comments to the Utility Owner and shall coordinate any modification, review by DB Contractor, and re-submittal to TxDOT as necessary to obtain TxDOT's approval.

##### 14.3.4.3 **Design Documents**

Each existing Utility and each proposed Utility Adjustment shall be shown in the Design Documents, regardless of whether the Utility Adjustment Plans are prepared by DB Contractor or by the Utility Owner.

##### 14.3.4.4 **Certain Requirements for Underground Utilities**

Casing as specified in the UAR shall be used for all underground Utilities crossing the Project ROW. However, high-pressure gas and liquid petroleum pipelines may be allowed to cross the Project ROW without steel casing as long as the requirements of the UAR are met and such pipelines are at least 10 feet below proposed finished grade. All high-pressure gas pipelines within the Project ROW shall comply with a design factor "F" = 0.6 or less as required by the class location of the pipeline. The Utility Owner is required to submit or approve in writing the Barlow's Formula calculation(s) to be included in the Utility Assembly.

Underground communication facilities, including multiple conduits, that cross the roadway, including side roads, shall be encased in either steel, concrete, or one continuous piece of plastic pipe (Schedule 80 PVC or SDR 11 HDPE) as approved by the District, except that if horizontal directional drilling is used to place the casing, HDPE pipe shall be used.

Refer to Item 22 for design requirements for underground Utilities within the potential railroad corridor.

## 14.3.4.5

**Utility Assemblies**

Each Utility Adjustment, in addition to each Utility remaining in place in the Project ROW and not requiring any Protection in Place or other Utility Adjustment, shall be addressed in a Utility Assembly prepared by DB Contractor and submitted to TxDOT for its review and comment and for TxDOT's approval of any items for which this Item 14 requires TxDOT's approval. Temporary Adjustments that are installed within the Project ROW must also be included with an assembly for TxDOT's prior approval, unless TxDOT waives such requirement or allows other approval methods concerning temporary Utility Adjustments. Each Utility Adjustment shall be addressed in a full Utility Assembly, unless it is appropriate for a UAAA or Abbreviated Utility Assembly, as described below. DB Contractor shall coordinate with the Utility Owner to prepare all components of each Utility Assembly. Completion of the review and comment process for the applicable Utility Assembly, as well as receipt of any required TxDOT approvals, shall be required before the start of construction for the affected Utility Adjustment Work.

Provisions governing the procedure for and timing of Utility Assembly Submittals are in Section 14.5.

All Utility Adjustments covered by the same parent PUAA, or in the case of SAWS Utilities, the SAWS ILA, can be addressed in a single full Utility Assembly.

Each Utility Assembly shall include the following:

- (a) A transmittal memo recommending approval and detailing any unique characteristics or information pertaining to the Utility Adjustment. The transmittal memo shall also describe any applicable amendment (UAAA) and explain why the amendment is necessary;
- (b) A completed Utility Assembly Checklist;
- (c) A TxDOT approved Utility Agreement, if applicable;
- (d) Plans which:
  - (i) Show the existing and proposed Utility facilities;
  - (ii) Show existing and proposed grades for all Utility crossings;
  - (iii) Show the roadway centerline or baseline(s);
  - (iv) Show the existing and Project ROW lines along with the control of access denial line;
  - (v) Show an offset distance from the Project ROW line to all longitudinal Utilities within the Project ROW;
  - (vi) Present sufficient information to enable TxDOT to verify compliance with the UAR requirements for each Utility located within the Project ROW, including highway design features; and
  - (vii) Are folded to 8.5-inch by 11-inch size, unless waived by TxDOT.
- (e) Estimate(s) from the Utility Owner (and also from DB Contractor, where DB Contractor is furnishing design and/or performing construction), which estimates shall, without limitation, detail material type and quantity (material quantities detailed on the estimates must correlate to the materials shown on the plans described in (d) above), labor, and engineering. The estimate must list and identify the estimated amount of reimbursement to the Utility Owner, taking into consideration the Betterment credit calculation, salvage credit, and any applicable eligibility ratio. The estimated cost(s) associated with DB Contractor's internal coordination costs and overheads shall not be included in this estimate;
- (f) A proposed UJUA, approved Utility Installation Request, Form 1082 or approved Utility permit;
- (g) "Statement Covering Utility Construction Work" form (form DB-ROW-U-48), if applicable;
- (h) Affidavit(s) of Property Interest form (with property interest instrument of conveyance attached), if applicable;
- (i) A ROW map showing the existing and proposed Utility facilities identified on a plan view. This ROW map will only be required to be included with TxDOT's copy of the Utility Assembly, unless otherwise approved by TxDOT; and
- (j) All "Utility No Conflict Sign-Off Forms" (forms DB-ROW-U-USO-UDC and DB-ROW-USO-UM).

#### 14.3.4.5.1 **UAAAs**

For each UAAA or an amendment to the SAWS ILA, DB Contractor shall prepare an additional Utility Assembly for the relevant initial PUAAs or SAWS ILA (an Assembly), covering all Utility Adjustments addressed in the UAAA or SAWS ILA amendment, as applicable. The Assembly shall contain all requirements listed in (a) through (j) as identified in this Section 14.3.4.5.

#### 14.3.4.5.2 **Abbreviated Utility Assemblies**

DB Contractor shall prepare an Abbreviated Utility Assembly for each Utility proposed to remain in its original location within the Project ROW that is not required to be addressed in a PUAAs or UAAA, unless a Utility Adjustment is required pursuant to Section 14.1.1. If DB Contractor is reimbursing a Utility Owner, other than SAWS, any of its costs, a PUAAs or UAAA is required. Each Abbreviated Utility Assembly shall contain a transmittal memo recommending that the subject Utility(ies) remain in place, a set of plans detailing UAR compliance, a completed Utility Assembly Checklist, a certification from the Utility Owner approving leaving the Utility(ies) in place, as well as UJUA(s) or an approved Utility Installation Request, Form 1082 or an approved Utility permit through TxDOT's UIR system as required by Section 14.2.4.5 and Affidavit(s) of Property Interest, if applicable. Each of the foregoing items shall comply with the requirements for same described in Attachment 14-1 (Utility Adjustment Forms).

### 14.4 **Construction Requirements**

#### 14.4.1 **Reserved.**

#### 14.4.2 **General Construction Criteria**

All Utility Adjustment construction performed by DB Contractor shall conform to the requirements listed below. DB Contractor shall conduct all Work necessary to meet the requirements for this Item 14 in accordance with the requirements of this Item 14 and TxDOT Standard Specifications.

In addition, DB Contractor is responsible for verifying that all Utility Adjustment construction performed by each Utility Owner conforms to the requirements described below. In case of nonconformance, DB Contractor shall cause the Utility Owner (and/or its contractors, as applicable) to complete all necessary corrective work or to otherwise take such steps as are necessary to conform to these requirements:

- All criteria identified in Section 14.3.2;
- The Utility Adjustment Plans included in the Utility Agreement approved by TxDOT or the SAWS ILA, as applicable (other than UAFM complying with Section 14.4.7);
- All Project safety and environmental requirements;
- All pre-construction meeting requirements;
- The ROW acquisition schedule described in Item 15, "ROW," and
- Utility(ies) standards provided in the Utility Agreement or SAWS ILA, as applicable.

#### 14.4.2.1 **Reinstatement of Utility Cuts**

After installation of drainage structures, storm sewers or any other public or private Utility facility by open cut across existing pavements, the pavement shall be restored and maintained to a normal satisfactory riding surface equal to or better than the existing riding surface.

#### 14.4.2.2 **Private Water Meter Construction Requirements**

DB Contractor shall comply with all SAWS construction standards relating to Private Water Meters. To perform the work necessary to adjust the Private Water Meters, DB Contractor shall:

- Obtain necessary City of San Antonio general construction permit(s) by contacting David Rohde, City of San Antonio Plumbing Inspections Supervisor, at (210) 207-8279;
- Allow for the City of San Antonio inspector(s) to be onsite to inspect all onsite work; and
- Cause a licensed master plumber to install or move the Private Water Meters.

DB Contractor shall be responsible for all required fees for the installation of the Private Water Meters.

#### 14.4.3 **Inspection of Utility Owner Construction**

DB Contractor shall set forth procedures in the PMP for inspection of all Utility Adjustment Work performed by Utility Owners (and its contractors) to verify compliance with the applicable requirements described in Section 14.4.2. DB Contractor is responsible for quality control and quality assurance for all work performed by the Utility Owners and their contractors.

#### 14.4.4 **Scheduling Utility Adjustment Work**

The Utility Adjustment Work (other than construction) may begin at any time following issuance of NTP1. Refer to Section 8.1.2 of the General Conditions for the conditions to commence construction of Utility Adjustment Construction Work by DB Contractor. DB Contractor shall not arrange for any Utility Owner to begin any demolition, removal or other construction work for any Utility Adjustment until all of the following conditions are satisfied:

- The Utility Adjustment is covered by an executed Utility Agreement (and any conditions to commencement of such activities that are included in the Utility Agreement have been satisfied);
- A pre-construction meeting, in accordance with Section 14.2.2.2, shall be required after execution of the Utility Agreement and prior to commencement of any construction activities, unless otherwise approved by TxDOT;
- Availability and access to affected Replacement Utility Property Interests have been obtained by the Utility Owner (and provided to DB Contractor, if applicable);
- If any part of the Utility Adjustment construction work will affect the Project ROW, availability and access to that portion of the Project ROW has been obtained in accordance with the applicable requirements of the Contract Documents;
- If applicable, the Alternate Procedure List has been approved by TxDOT, as authorized by the FHWA, and either (a) the affected Utility is on the approved Alternate Procedure List, as supplemented, or (b) the Utility Owner is on the approved Alternate Procedure List, as supplemented;
- The review and comment process has been completed and required approvals have been obtained for the Utility Assembly covering the Utility Adjustment;
- All Governmental Approvals necessary for the Utility Adjustment construction have been obtained and any pre-construction requirements contained in those Governmental Approvals have been satisfied; and
- All other conditions to that work stated in the Contract Documents have been satisfied.

#### 14.4.5 **Standard of Care Regarding Utilities**

DB Contractor shall carefully and skillfully carry out all Work impacting Utilities and shall mark, support, secure, exercise care, and otherwise act to avoid damage to Utilities. At the completion of the Work, the condition of all Utilities shall be restored to existing condition.

#### 14.4.6 **Emergency Procedures**

DB Contractor shall provide Emergency procedures with respect to Utility Adjustment Work in the PMP. DB Contractor shall obtain Emergency contact information, establish Emergency procedures with each Utility Owner and immediately notify the Utility Owner in the event of rupture, break or damage to a Utility Owner's Utility facilities.

#### 14.4.7 **UAFM**

DB Contractor shall establish a procedure in the Utility Management Plan to address a UAFM as proposed by either DB Contractor or a Utility Owner, after the Utility Assembly (which includes the Utility Adjustment Plans) has been approved. The procedure shall provide, at minimum, the following:

- The Utility Owner's review and approval of a UAFM proposed by DB Contractor, or DB Contractor's review and approval of a UAFM proposed by the Utility Owner. DB Contractor shall obtain all required approvals of the UAFM prior to commencement of construction. All revisions shall be signed and sealed by a PE, unless otherwise permitted by TxDOT in its sole discretion;
- Transmittal of UAFMs to the appropriate construction field personnel; and

- Inclusion of any UAFMs in the Record Drawings for the Project.

DB Contractor shall cause the procedure to be followed for all UAFMs, whether the construction is performed by DB Contractor or by the Utility Owner.

#### 14.4.8 **Switch Over to New Facilities**

After a newly adjusted Utility has been accepted by the Utility Owner, except SAWS, and is ready to be placed in service, DB Contractor shall coordinate with the Utility Owner regarding the procedure and timing for placing the newly adjusted Utility into service and terminating service of the Utility being replaced. For SAWS Utilities, DB Contractor shall coordinate with SAWS regarding the procedure and timing for placing the newly adjusted Utilities into service and terminating service of the Utilities being replaced in accordance with the terms of the SAWS ILA.

#### 14.4.9 **Utility Record Drawings**

DB Contractor shall provide Utility Record Drawings to each Utility Owner for its adjusted Utilities where the Utility Adjustment Work was performed by DB Contractor. For the purpose of this Item 14, Utility Record Drawings means construction drawings and related documentation revised to show approved changes made during the construction process, usually based on marked-up Released for Construction Documents furnished by DB Contractor.

DB Contractor shall provide Utility Record Drawings to TxDOT regardless of whether design and/or construction of the subject Utilities was furnished or performed by DB Contractor or by the Utility Owner. Utility Record Drawings shall show the location of all abandoned Utilities, shall show and label all other Utilities (both remaining in place and relocated) that are located within the Project ROW or impacted by the Project, and shall comply with Item 4 of the General Conditions. DB Contractor shall provide the Utility Record Drawings for each Utility Adjustment to TxDOT prior to Final Acceptance.

Prior to Final Acceptance, DB Contractor shall provide to TxDOT an overall inventory set of utility plans of all final Utility facility locations (both Owner-Managed and DB Contractor-Managed) that include Utilities that remained in place, were adjusted in place or relocated. The overall inventory set of plans must detail the Utility facility horizontal alignment with highway stationing, ROW lines, roadway features, Utility Owners' name, Utility facility type, size and Utility Assembly Number. This overall inventory set of plans is separate from the individual Utility Record Drawing plans required for each Utility Assembly.

#### 14.4.10 **Maintenance of Utility Service and Access**

All Utilities shall remain fully operational during all phases of construction, except as specifically allowed and approved in writing by the Utility Owner. DB Contractor shall schedule Utility Adjustment Work in order to minimize any interruption of service, while at the same time meeting the Project Schedule and taking into consideration seasonal demands.

Each Utility Adjustment or remain in place location must allow for adequate access during construction and after completion of the Project. All access and access locations to the Utility facility must be agreed to by the Utility Owner and approved by TxDOT.

#### 14.4.11 **Traffic Control**

DB Contractor shall be responsible for the TMP. The TMP shall cover all traffic control made necessary for Utility Adjustment Work, whether performed by DB Contractor or by the Utility Owner. Traffic control for Utility Adjustments shall be coordinated with, and subject to approval by, the local agency(ies) with jurisdiction. Traffic control shall comply with the guidelines of the TMUTCD and of Item 26, "Traffic Control."

#### 14.4.12 **Substantial Completion and Final Acceptance Requirements for SAWS Utilities**

DB Contractor shall be responsible for the maintenance of adjusted SAWS Utilities until SAWS delivers a "Certificate of Final Acceptance" for the applicable SAWS Utilities pursuant to the SAWS ILA. DB Contractor shall be responsible for meeting all requirements for substantial completion and final acceptance of adjusted SAWS Utilities under the SAWS ILA.

#### 14.5 **Utility Assembly Submittals**

DB Contractor shall time all Submittals described in this Section 14.5 to meet the Project Schedule, taking into account the maximum number of Submittals set forth in this Section 14.5 or, if not stated therein, then as stated in Section 5.2.1 of the General Conditions. All Submittals shall conform to the standards required in



the PMP. Any deliverable submitted by DB Contractor to TxDOT for review after 11:59 a.m. will be considered as submitted on the next business day.

All Submittals described in this Item 14 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 14-3. Acceptable electronic formats include Microsoft Word, Microsoft Excel, and Adobe Acrobat files, unless otherwise indicated.

**Table 14-3: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Any proposed changes to the provided TxDOT DB ROW Utility forms	As necessary	Approval	14.1
Form 1818 Material Statement, if applicable	Prior to the installation of materials	For information	14.1
Project Utility Adjustment Agreement	After NTP1, based on DB Contractor schedule	Approval	14.1.3.1
Utility Adjustment Agreement Amendments	After NTP1, based on DB Contractor schedule	Approval	14.1.3.2
Any mass mailings to Utility Owners	In advance of distribution	Review and comment	14.2.2.1
Meeting agendas	In advance of each scheduled meeting	For information	14.2.2.2
Meeting minutes	After the conclusion of the meeting and prior to final distribution	Review and comment	14.2.2.2
Names, contact details, etc. for the Utility coordination team	Prior to NTP2, in the applicable chapter of the PMP	Approval	14.2.3
Affidavit of property interest	In the applicable Utility Assembly	Approval	14.2.4.1
Draft Quitclaim Deeds	Prior to submission of Utility Assembly	Approval	14.2.4.4
Letter of Confirmation (relinquishment of interest once Adjustment completed) from Utility Owner and/or Utility Owner's authorized representative, if applicable	In the applicable Utility Assembly, including copy of unsigned Approved Draft Quitclaim Deed	Approval	14.2.4.4
Executed Quitclaim Deeds	1. Prior to recording deed in local real property records, and 2. After the completion of Utility Adjustment, or unless otherwise directed by TxDOT in writing	For information	14.2.4.4
Utility Joint Use Acknowledgments	In the applicable Utility Assembly	Approval	14.2.4.5
Utility Installation Request, Form 1082 or Utility permit	Prior to DB Contractor's inclusion as part of a Utility Assembly	Approval	14.2.4.5
DB Contractor Utility Strip Map	(i) After NTP2 or (ii) before the first assembly package submission	Review and information	14.3.1

Table 14-3: Submittals to TxDOT

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Utility Adjustment Concept Plan(s)	(i) After NTP2 or (ii) before the first assembly package submission (this plan is a working document and shall be continuously updated and modified as more project information becomes available)	Review and, if applicable, comment	14.3.3
Utility Adjustment Plans	In the applicable Utility Assembly	Approval	14.3.4.1, 14.3.4.2
Utility Assemblies	Prior to start of the affected Utility Adjustment Work	Approval	14.3.4.5, 14.5
Temporary Adjustments	In the applicable Utility Assembly, if applicable, unless TxDOT waives/allows other method	Approval	14.3.4.5
Abbreviated Utility Assemblies	As necessary	Approval	14.3.4.5.2, 14.5.3
Quality control/Quality assurance procedures for Utility Adjustment Work	In the applicable chapter of the PMP and PSQMP	Approval	14.4.3, 14.4.4
Utility Adjustment Work emergency procedures and contact information	In the applicable chapter of the PMP and PSQMP, and prior to any construction activities	Approval	14.4.6
Set of Record Drawings and overall plan view maps of final Utility locations	<ol style="list-style-type: none"> <li>After Utility Owner acceptance, Utility Adjustment completion, or prior to deadline specified elsewhere in the Contract Documents or by TxDOT</li> <li>Preliminary overall plan view map upon completion of 50% of required Utility Adjustment Work</li> </ol>	Review, comment, and if applicable, Approval	14.4.9, 14.5.3
Individual Record Drawing plans	In the applicable Utility Assembly, and at Project closeout	Approval	14.4.9, 14.5.3
Utility Tracking Report (UTR)	Monthly	For information	14.5.2
Utility Assembly Submittal log	With each Submittal or group of Submittals	For information	14.5.3
Closeout information and documentation	Within 90 days after each Utility has been relocated, fully reimbursed and accepted by the Utility Owner	For information	14.5.3
Alternate Procedure List	Prior to commencement of any demolition, removal or other construction work for any Utility Adjustment	Approval	14.5.4

#### 14.5.1 Maximum Number of Submittals

DB Contractor shall coordinate all Submittals required pursuant to this Section 14.5. In each 10 Business Day period, DB Contractor shall not submit more than:

- Two Utility Assemblies (excluding Abbreviated Utility Assemblies and Utility Assemblies related to SAWS Utilities); and

- Two of any other Submittals required under this Item 14 and requiring TxDOT review and approval.

Where the number of Submittals exceeds these limits, the Submittals shall be considered excess and TxDOT may defer its review of any such excess Submittals to a subsequent 10 Business Day period, as necessary.

#### 14.5.2

##### **DB Contractor's UTR**

DB Contractor shall maintain a UTR in tabular form, listing all Utilities located within the Project ROW or otherwise potentially affected by the Project. DB Contractor shall submit the UTR to TxDOT on a monthly basis in the format described below unless otherwise approved by TxDOT. The UTR shall, at a minimum, contain the following information for each Utility:

- The name of the Utility Owner and the Utility Assembly Number;
- Utility size and type;
- Location of the Utility based upon station and offset;
- The proposed method of treatment;
- State whether the Utility Adjustment will be Owner or DB Contractor-Managed;
- Dates on which the Utility Agreement was executed by TxDOT, the Utility Owner and DB Contractor, as applicable;
- Dates on which the UJUA was executed or the Utility Installation Request, Form 1082 or Utility permit was approved by TxDOT, as applicable;
- The Utility Owner's existing right of occupancy of the ROW for each Utility (e.g., UJUA, permit, easement or combination);
- Whether any Replacement Utility Property Interest will be necessary;
- Estimated cost approved in the PUAU/UAAA, if applicable;
- Amounts and dates of payments made by DB Contractor to the Utility Owner, listing in each case the type of payment (final, partial or lump sum);
- Scheduled start and completion date for construction of each Utility Adjustment;
- Percent complete of construction;
- Whether any Betterment is included in the Utility Adjustment; and
- Whether TxDOT Form 1818 Material Statement is required for each Utility Adjustment.

The UTR shall also include a separate section for Replacement Utility Property Interests including each necessary Replacement Utility Property Interest with the names of property owners or parcel number(s), Utility Assembly Numbers, status of the acquisition, acquisition cost and other information as necessary. DB Contractor shall maintain this section of the UTR and submit it to TxDOT in the same manner as all other portions of the UTR.

#### 14.5.3

##### **Utility Assembly Submittals and Final Closeout Procedures**

The following procedures shall govern submittal, review and final closeout of each Utility Assembly, including UAAA and Abbreviated Utility Assemblies:

- Before submitting a Utility Assembly to TxDOT, DB Contractor shall:
  - Verify that each subject Utility (or the Utility Owner) is on the approved Alternate Procedure List, if applicable;
  - Submit the complete Utility Assembly to the quality control/quality assurance entity designated by DB Contractor in accordance with the PMP and the PSQMP; and
  - Resolve all comments made by the quality control/quality assurance entity, coordinating with the Utility Owner as appropriate.
- DB Contractor shall submit to TxDOT one electronic copy of each Utility Assembly, as appropriate. The assembly shall be color-coded and shall include the Project ROW map with the existing and proposed Utility facilities identified on a plan view. These Submittals shall be made through TxDOT's SharePoint site for the Project, unless otherwise approved by TxDOT, for TxDOT review and comment, except for any components of the Utility Assembly for which TxDOT approval is required by this Section 14.5.

- DB Contractor shall submit to TxDOT a Utility Assembly Submittal log with each Submittal or group of Submittals. The Utility Assembly Submittal log shall establish the review priority.
- TxDOT will review the Utility Assembly for compliance with the requirements of this Section 14.5.3, and within 10 Business Days will return the Utility Assembly to DB Contractor with the appropriate notations pursuant to Section 5.2.1 of the General Conditions to reflect its responses. DB Contractor shall transmit any TxDOT comments to the Utility Owner and shall coordinate any modification, review and approval by the Utility Owner and re-submittal to TxDOT, as necessary to resolve all TxDOT comments and/or obtain TxDOT's approval, as applicable. Upon (a) TxDOT's approval of any Utility Assembly components for which TxDOT's approval is required, and (b) completion of the review and comment process for all other Utility Assembly components, TxDOT will sign three originals of any approved UJUA and of any other components of the Utility Assembly for which this Item 14 requires TxDOT signature.
- DB Contractor shall provide closeout information and documentation within 90 days after each Utility has been relocated, fully reimbursed and accepted by the Utility Owner. The closeout information shall contain the following:
  - The Utility Agreement form, if applicable (PUAA, UAAA, et al);
  - Utility Record Drawings ("as-built") plans;
  - UJUA or Utility Installation Request Form 1082;
  - Quitclaim Deed (ROW-N-30) (or for SAWS Utilities, any applicable release of easement);
  - Actual cost and summary of the Utility Adjustment; and
  - TxDOT Form 1818 Material Statement.

DB Contractor shall address conditions of approval, if any, for each Utility Assembly prior to completing the final closeout procedure.

#### 14.5.4

#### **FHWA Alternate Procedure**

DB Contractor shall develop the Alternate Procedure List that includes the Utility Owner's name, approximate station numbers and estimated cost of Utility Adjustments. TxDOT is authorized by the FHWA to utilize the Alternate Procedure process. Upon receipt of the required information, TxDOT shall then consider and approve the list and notify DB Contractor. Promptly upon determining that any additional Utility Owner not referenced on the Alternate Procedure List is impacted by the Project, DB Contractor must submit to TxDOT all documentation as referenced above in order to amend the Alternate Procedure List.

# Item 15

## Right of Way (ROW)



### 15.1 General Requirements

DB Contractor's obligations in respect of the acquisition of Project ROW are set forth in Section 4.4.1 of the General Conditions.

This Item 15 sets forth the ROW activities assigned to DB Contractor, including pre-acquisition and acquisition activities, and designates which ROW activities TxDOT will conduct. This Section 15.1 also sets forth the requirements applicable to the Work assigned to DB Contractor related to the acquisition of Project ROW. DB Contractor shall provide all services necessary to acquire title to the Project ROW, in form and substance acceptable to TxDOT, in the name of the State; relocate displacees; and clear/demolish improvements from the Project ROW, as more fully described in the following sub-sections.

Except as otherwise set forth in the DBC, DB Contractor's Project ROW staff and/or Subcontractors will function as independent contractors while acquiring Project ROW, and not as an agent, representative, or employee of TxDOT.

DB Contractor shall provide TxDOT copies of all property agreements it obtains to facilitate design, construction or maintenance in relation to the Project. No conveyance documents shall be used for the purpose of Construction Work other than a PUA, a deed, or an award, unless otherwise approved by TxDOT.

### 15.2 Administrative Requirements

#### 15.2.1 Standards

DB Contractor shall acquire all Project ROW in accordance with State and Federal Law and the practices, guidelines, procedures, and methods contained in the following:

- All TxDOT ROW manuals (available online at <http://onlinemanuals.txdot.gov/manuals>);
- TxDOT *Access Management Manual* (available online at <http://onlinemanuals.txdot.gov/manuals>); and
- TxDOT *Survey Manual* (available online at <http://onlinemanuals.txdot.gov/manuals>).

Pursuant to the applicable Federal regulations, DB Contractor shall (i) acquire ROW parcels for the Project on behalf of the State, but without the direct participation of TxDOT, subject to TxDOT's rights of review, approval, and audit; (ii) utilize the TxDOT ROW Manuals; (iii) provide adequate access to all occupied properties; (iv) maintain Utility service to occupied properties until relocation is complete; and (v) not permit open burning within 1,000 feet of an occupied dwelling.

DB Contractor shall maintain a complete set of the TxDOT ROW Manuals, TxDOT *Access Management Manual*, and a current approved Project ROW map for public use. DB Contractor's complete set of ROW Manuals shall be current as of the Effective Date. Any TxDOT forms referenced in this Item 15 may be found in the TxDOT ROW Manuals or will be provided by TxDOT.

All real estate activities of the Project ROW must be completed and documented in compliance with all applicable Laws, including the Uniform Act, the rules and regulations for implementing the Uniform Act, and 23 CFR Part 710 governing the use of Federal funds for acquisition, management and disposal of real property.

#### 15.2.2 Software Requirements

DB Contractor shall utilize software that is fully compatible with the software in use by TxDOT, or fully transferable to TxDOT's systems, including TxDOT's interactive SharePoint site (for uploading, review, document retrieval, etc.). DB Contractor must supply and maintain a parcel-by-parcel status information database that incorporates the fields and information required by TxDOT's ROW tracking system: TxDOTConnect. DB Contractor must maintain and participate in any other required ROW tracking system required by the Contract Documents. The database shall be fully accessible to Persons authorized by TxDOT.

### 15.2.3 **ROW Acquisition Management Plan**

DB Contractor shall prepare a ROW Acquisition Management Plan in accordance with the requirements contained in Section 4.2.9 of the General Conditions.

### 15.2.4 **Schedule and Review Procedures**

The Project Schedule shall indicate the date to begin the acquisition of the Project ROW and the anticipated completion date of acquisition activities for each parcel. DB Contractor shall advise TxDOT of all Additional Properties and temporary rights or interests in real property to be acquired by DB Contractor. In developing the Project Schedule, DB Contractor shall give priority to the acquisition of parcels that have significant impact on the Project Schedule or affect a Critical Path. The monthly Project Schedule Update required by Item 8 of the General Conditions shall provide updated projections for the acquisition date of each parcel.

In developing the Project Schedule, DB Contractor shall incorporate adequate time periods for TxDOT review and approval of Acquisition Packages and Condemnation Packages. TxDOT intends to review the completed Acquisition Packages and Condemnation Packages as expeditiously as possible; *however*, for the purposes of the Project Schedule, DB Contractor shall assume that the reviews performed by TxDOT will require 10 Business Days for Acquisition Packages and Condemnation Packages that DB Contractor submits as final and complete in accordance with Section 15.3.6 and Section 15.4.4, up to a maximum of five Acquisition Packages and Condemnation Packages (collectively), unless otherwise directed by TxDOT. Any Submittals that would require TxDOT to review more than five Acquisition Packages and Condemnation Packages (collectively) within any given 10 Business Day period shall be considered excess, and TxDOT may defer its review of any such Acquisition Packages and/or Condemnation Packages to a subsequent 10 Business Day period (or periods as necessary). TxDOT will notify DB Contractor of its election to defer any excess Acquisition Packages and/or Condemnation Packages within 10 Business Days after receipt. The balance of Acquisition Packages and Condemnation Packages (collectively) in excess of five will be rolled over to the next 10 Business Day period and added to the Acquisition Package Submittals and Condemnation Package Submittals made by DB Contractor in that period. When DB Contractor submits more than five Acquisition Packages and Condemnation Packages (collectively) at any given time, DB Contractor shall indicate the priority of review.

DB Contractor shall also assume that the reviews performed by TxDOT will require 10 Business Days for the following Submittals: payment Submittals, relocation Submittals, administrative settlement Submittals, and closing Submittals, up to a maximum of five submissions for each type of Submittal noted above, in addition to the Acquisition Packages and Condemnation Packages. With the combination of the above, DB Contractor shall not submit more than 25 total Submittals, in any given 10 Business Day period.

If TxDOT notifies DB Contractor that any submitted Acquisition Package or Condemnation Package has a deficiency, DB Contractor shall correct such deficiency and resubmit the package to TxDOT. Resubmissions shall be treated as a new Acquisition Package or Condemnation Package, as applicable, for purposes of the limitations on the number of Submittals that may be submitted in a 10 Business Day period. An Acquisition Package or Condemnation Package shall be deficient, as determined by TxDOT, if any of its components fails to meet any of the criteria established by this Item 15 for such component, or contains any material errors or omissions. Schedule delays resulting from inadequate or incomplete submissions of Acquisition Packages and/or Condemnation Packages shall be the responsibility of DB Contractor and will not be eligible for treatment as a Change Order.

TxDOT shall have the right to undertake additional review and extend the review time for an additional 10 Business Days on Acquisition Packages and Condemnation Packages that contain or identify facts or issues of an unusual nature or which do not clearly fit within TxDOT Standards. In such event, TxDOT will notify DB Contractor in writing that the review period will be extended by an additional 10 Business Days before rendering a decision regarding approval of the package to DB Contractor.

DB Contractor may request TxDOT to perform a one-time preliminary review of a survey, Project ROW map, appraisal or any other Submittal listed in [Section 15.2.4](#). TxDOT may elect in its sole discretion to review the preliminary submissions and notify DB Contractor of any deficiencies after TxDOT's receipt and review of such preliminary submission. There will be no time limits associated with these preliminary reviews.

### 15.2.5 **DB Contractor's Project ROW Scope of Services**

DB Contractor shall complete all administrative activities and prepare all documentation sufficient for DB Contractor to acquire the Project ROW. DB Contractor shall obtain TxDOT's review and prior written approval of all Project ROW maps and surveys, appraisals, legal descriptions, acquisition documentation,

purchase price, requests to acquire Project ROW, condemnation-related activities, and funding/closing procedures. For such Project ROW acquisition documentation, TxDOT will (a) approve and return the Submittal, (b) provide review comments for incorporation by DB Contractor in accordance with Section 15.2.4, or (c) in the case of an Acquisition Package that is deficient, notify DB Contractor of the deficiency(ies) to be corrected by DB Contractor prior to resubmission in accordance with Section 15.2.4. Except as otherwise authorized by applicable State and Federal policy and regulations for early acquisition and approved by TxDOT, DB Contractor shall not proceed with acquisition of the Project ROW until all applicable NEPA Approvals are issued, public involvement procedures have been completed, and ROW maps and legal descriptions for the applicable constructible segment as established by the logical termini of the Project have been prepared and approved by TxDOT. TxDOT will provide a separate release for each NEPA approved highway segment. Further, DB Contractor shall not commence any negotiations with the owner of a parcel, and TxDOT will not begin eminent domain procedures with respect to the parcel until after the Acquisition Package for that particular parcel is approved by TxDOT.

If DB Contractor and the landowner cannot negotiate an agreed-upon conveyance by deed acceptable to TxDOT, DB Contractor shall not recommend any condemnation action through the statutory "Special Deposit and Possession" procedure. TxDOT will not acquire any property through the condemnation process via the "Special Deposit and Possession" procedure.

Neither DB Contractor nor its Subcontractors shall begin construction of any type on any parcel of real estate unless and until all requirements under the Uniform Act have been met (including relocation assistance in accordance with Section 15.4.2) and (i) property rights for the parcel have been conveyed and recorded in favor of TxDOT, (ii) possession has been obtained through eminent domain or any other method provided for by the standards set forth in Section 15.2.1, or (iii) a PUA has been executed and delivered by all necessary parties in accordance with Section 15.4.1.

#### 15.2.6

##### **Acquisition Process Summary**

DB Contractor's major activities with respect to the acquisition of the Project ROW include:

- Project ROW surveying and mapping;
- Project ROW and Utility cost estimates and updates;
- Title services;
- Appraisal services;
- Appraisal review;
- Negotiations;
- Closing services;
- Relocation assistance;
- Condemnation support services;
- Clearance and demolition of Project ROW;
- Environmental due diligence;
- Documentation and document control;
- Progress reports;
- Project ROW administration and management;
- Project ROW quality management;
- Letter from DB Contractor's design engineer certifying that the required Project ROW acquisition is necessary and that any proposed alternatives are not feasible or are cost prohibitive; and
- Obtaining ROEs, as necessary.

#### 15.2.7

##### **ROW Personnel Qualifications**

All ROW personnel shall be familiar with TxDOT policies and procedures and be compliant with the Uniform Act.

**DB Contractor's ROW AM** shall have at least ten years' experience managing the acquisition of transportation ROW projects for a condemning authority, be licensed as a real estate salesman or broker pursuant to the *Texas Real Estate License Act* or rules established by the TREC, be familiar with appraisal

and appraisal report review pursuant to the USPAP, and be familiar with the Uniform Act and applicable Laws of the State of Texas.

**Quality Control Specialist(s)** – DB Contractor shall designate a specific person(s) responsible for internal quality control. This individual shall review all DB Contractor deliverables associated with survey, title, appraisal, acquisition, relocation, and eminent domain prior to the deliverable being delivered to TxDOT for review.

**Appraiser and Appraisal Reviewer** – Each appraiser and appraisal reviewer shall be licensed and certified in the State of Texas and shall have a minimum of five years' experience in appraising real property for eminent domain purposes, including partial taking appraisal, partial taking appraisal review and expert witness testimony. Each individual must have been actively and continuously engaged for at least three years immediately preceding their selection for this Project in appraisal work primarily in the county(ies) where the Project is located, and as approved and pre-certified by TxDOT. The appraisers and the appraisal reviewers shall have separate and distinct duties, and appraisers must be employed by different firms from the appraisal reviewers. Each appraiser shall be required to submit three samples of previous appraisal work prepared for eminent domain purposes (one commercial, one residential and one vacant land appraisal). All appraisers preparing and signing appraisals must be approved and pre-certified by TxDOT before performing any appraisals on the Project. If required by TxDOT, the appraiser will be required to demonstrate his or her skills at expert witness testimony.

**Land Planner** – Each land planner shall have a minimum of five years' experience in land planning including experience with expert witness testimony in eminent domain proceedings. Each individual must have been actively and continuously engaged for at least three years immediately preceding selection for this Project in land planning work primarily in the county(ies) where the Project is located, or as approved and pre-certified by TxDOT. DB Contractor shall provide a minimum of two land planners to assist appraisers and complete land plans.

**Relocation Agent** – Each relocation agent shall have a minimum of five years' experience in relocation assistance for ROW projects pursuant to the Uniform Act. A relocation agent's responsibilities shall include the following: determination of eligibility of all displacees, contacting all displacees and informing them of their benefits, maintaining a file of all documentation concerning the relocation of the displacees, and extending all relocation assistance advisory services.

**Negotiator** – Each ROW negotiator shall be licensed as either a "Real Estate Sales Agent" or broker pursuant to the *Texas Real Estate License Act* or rules established by the TREC, and shall be familiar with appraisal and appraisal report review pursuant to the USPAP. The negotiator shall have a minimum of five years' experience in ROW negotiations. The ROW negotiator's responsibilities shall include the following: contact with property owners on the Project to discuss the acquisition of property needed for the Project, maintaining complete and accurate files of all transactions and contacts with the property owners and their representatives, and actively working toward a joint resolution to acquire the property with the property owner.

Other ROW personnel shall have at least five years' experience in title review and curative matters. ROW personnel's responsibilities shall include, but not be limited to the following: maintain complete and accurate files of all transactions and contacts with the property owners and/or their representatives, coordinate and clear all title issues and assist at closing for properties acquired for the Project.

**Eminent Domain Specialist** – Each eminent domain specialist shall have a minimum of five years' experience with TxDOT procedures and policies as related to acquisition of property through the use of eminent domain. The eminent domain specialist must have demonstrated experience in all activities necessary with the acquisition of parcels through the TxDOT eminent domain process. This includes correctly completing all TxDOT forms including the ROW-E-49, filing the eminent domain forms, coordinating hearings with all appropriate parties and ensuring that awards of Special Commissioners are deposited into the registry of the Court and all notices sent to the appropriate parties.

**Real Estate Attorney** – Each real estate attorney shall be licensed by the State of Texas and shall have at least five years' experience in title review and curative matters. The real estate attorney's responsibilities shall include coordinating and clearing all title issues, and compliance assistance with State and Federal acquisition requirements for the properties acquired for the Project.



### 15.2.8 **DB Contractor Conflict of Interest**

If at any time, to the best of DB Contractor's knowledge, any DB Contractor-Related Entity directly or indirectly (a) acquires or has previously acquired any interest in real property likely to be parcels of the Project ROW or the remainders of any such parcels, (b) has any financial interest in any real property likely to be a Project ROW parcel, or the remainder of any such parcel that is not a whole acquisition, or (c) purchases or has previously purchased from an existing mortgagee the mortgage instrument that secures an existing loan against real property likely to be a Project ROW parcel, or the remainder of any such parcel, DB Contractor shall promptly disclose the same to TxDOT. In the case of acquisitions, loans or mortgage purchases that occurred prior to the Effective Date, such disclosure shall be made within 10 days after the Effective Date.

In the event that DB Contractor, or any subsidiary, sister, or parent company of DB Contractor, acquires a real property interest, whether title or mortgage, in parcels of the Project ROW, the real property interest acquired or a release of mortgage as the case may be, shall be conveyed to the State of Texas without the necessity of eminent domain.

DB Contractor shall not acquire or permit the acquisition by DB Contractor or any DB Contractor-Related Entity of any real property interest in a Project ROW parcel, whether in fee title or mortgage, for the purpose of avoiding compliance with the Laws, practices, guidelines, procedures and methods described in Section 15.2.1.

### 15.2.9 **Meetings**

DB Contractor shall coordinate, facilitate and attend meetings as requested by TxDOT. At such meetings DB Contractor shall provide exhibits, take minutes, and distribute the minutes to all attendees for review and comment. Minutes will not be finalized until all attendees have been given a reasonable opportunity to comment on the content. DB Contractor shall provide meeting minutes to TxDOT within five (5) Business Days of the applicable meeting. TxDOT will respond within five (5) Business Days or at the next occurrence of the meeting. DB Contractor shall provide proposed agendas three (3) Business Days prior to each meeting.

### 15.2.10 **Documentation and Reporting**

DB Contractor shall provide TxDOT with all specific reports and supporting documentation for review and approval during the acquisition process. All correspondence with TxDOT and property owners relating to acquisition of real property shall include a heading with the following information (at a minimum):

- County;
- CCSJ number;
- RCSJ number;
- Federal Project Number (if applicable);
- Highway designation;
- Project limits;
- Parcel number; and
- Name of record owner(s).

DB Contractor shall utilize TxDOT's approved naming convention for all electronic files and reporting fields.

In administering and managing its Project ROW acquisition activities, DB Contractor shall:

- Maintain parcel records on file of all aspects of the acquisition process in accordance with TxDOT requirements and applicable Law. Each parcel file shall include all documents required by the Contract Documents, FHWA, and TxDOT.
- Provide monthly summaries for the cost of Project ROW acquisition and related relocation assistance, including amounts authorized and amounts paid on a parcel-by-parcel basis and cost forecasting on an overall Project basis as requested by TxDOT.
- Maintain and electronically transmit to TxDOT, in a format acceptable to TxDOT, monthly status reports, including appraisal, acquisition, eminent domain and relocation status of all parcels and activities related to Project ROW, acquisition and disposition of Additional Properties, acquisition and disposition of temporary easements and other property interests, and provide weekly (unless directed otherwise) updates to TxDOT.

- Evaluate and report to TxDOT, ROW Subcontractor status and performance on a monthly basis or more frequently as requested.
- Prepare and submit electronically to TxDOT, on a monthly basis, a spreadsheet that contains Project ROW specific data required in order to complete the fields in TxDOTConnect tracking software program or as directed by TxDOT.
- Input and update parcel status in TxDOT approved web-based tracking system as directed by TxDOT.

## 15.2.11

**Responsibilities of DB Contractor**

As set forth in Section 4.4 of the General Conditions and as more fully described in this Section 15.2.11, DB Contractor shall be responsible for all services and preparation of all documentation for all Project ROW acquisition, easement acquisition, permitting and related relocation assistance for the Project. The Work related to Project ROW acquisition includes mapping, surveying, environmental assessment, testing and remediation, appraisal, appraisal review, negotiation, acquisition, relocation advisory assistance and determination of relocation benefits to be provided, procurement of title insurance, clearing of title, closing of acquisitions, and condemnation support including expert witnesses required by TxDOT or the Office of the Attorney General for all condemnation proceedings. DB Contractor shall also be responsible for all expert witness testimony, exhibits, transcripts, and photos associated with condemnation services and proceedings required by the Office of the Attorney General or TxDOT for Special Commissioner's hearings, jury trials and appeals, through Final Acceptance.

DB Contractor shall not contact the Office of the Attorney General or an Assistant Attorney General handling a specific parcel that has been filed for eminent domain action or is in the process of settlement unless authorized by TxDOT.

DB Contractor acknowledges that subject to Section 18.2 it has incorporated the value of saleable improvements into DB Contractor's Project ROW acquisition costs, and DB Contractor shall concurrently, with conveyance of the real property interest to the State, and without the necessity of further documentation executed by the State, obtain the rights to said saleable improvements. TxDOT has received the benefit of the saleable value of the improvements by a reduced Price. DB Contractor shall not be entitled to a credit for any improvements retained by a property owner or TxDOT. Upon conveyance of the real property interest to the State, DB Contractor shall comply with all applicable Laws with respect to relocation assistance and demolition.

DB Contractor shall be responsible for the costs of acquisition and documentation for the acquisition of any temporary right or interest in real property not necessary for the Project, but that DB Contractor deems advisable to acquire for work space, contractor lay-down areas, material storage areas, borrow sites, or any other convenience of DB Contractor. Except as otherwise authorized by Law for temporary areas necessary for construction of the Project, TxDOT shall not be obligated to exercise its power of eminent domain in connection with DB Contractor's acquisition of any such temporary right or interest, and TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests.

DB Contractor shall be responsible for processing payment Submittals as described in Section 15.4.6 and distributing all payments of: agreed purchase prices or court awards and judgments; Special Commissioner's awards; relocation assistance payments; all legal, administrative, and incidental expenses of, or related to, Project ROW for which TxDOT is responsible.

DB Contractor is responsible for the payment of and all closing costs associated with the purchase of Project ROW in accordance with the Uniform Act and TxDOT policies. TxDOT shall be responsible for the purchase price of title insurance for Project ROW in accordance with Section 4.4.2 of the General Conditions.

DB Contractor's cost for Project ROW shall include all costs not paid by TxDOT.

DB Contractor shall be responsible for submitting to TxDOT the completed files in accordance with the closeout procedures as defined by TxDOT within 90 days of the completed ROW parcel activity. DB Contractor shall provide the following documentation including, but not limited to:

- Appraisal report(s) (initial appraisal and all other issued appraisal reports, approved and not approved, with most recent appraisal report on top);
- Original conveyance document(s) (PUA(s), deed(s), easement(s), judgment(s), Award of Special Commissioners);

- Original Title Insurance Policy or Attorney's Certificate;
- MOA; and
- Negotiator's Certificate.

For relocation and general correspondence, the following shall be included:

- Relocation files (in chronological order);
- Offer Letters;
- Negotiator Reports and Contact Sheets;
- General correspondence; and
- All other documentation regarding the parcel.

#### 15.2.12

#### **Responsibilities of TxDOT**

TxDOT will have the following responsibilities in connection with acquisition of Project ROW:

- Except as otherwise set forth in this Item 15, provide final approval for all Acquisition Packages, Condemnation Packages, payment Submittals, relocation eligibility, relocation appeals, relocation Submittals, administrative settlement Submittals, closing Submittals, court settlement requests, and other approvals required by the Contract Documents, by the State, or by applicable Law subject to submission requirements and timelines in Section 15.2.4.
- After receiving a complete Condemnation Package from DB Contractor in accordance with Section 15.2.4 and Section 15.4.4, TxDOT will submit a minute order request on the agenda of the next scheduled Texas Transportation Commission meeting; provided the completed Condemnation Package is submitted 10 Business Days before the Commission's required deadline for eminent domain minute order requests.
- After receiving a complete payment Submittal from DB Contractor in accordance with Section 15.2.4 and Section 15.4.6, TxDOT will submit a payment request to the Comptroller's Office. Upon receipt of the State warrant, TxDOT will relay the State warrant to DB Contractor within five (5) Business Days.
- TxDOT will coordinate with the Office of the Attorney General to provide legal counsel to prepare and deliver to TxDOT the condemnation petition within 20 Business Days after the Attorney General's receipt of the condemnation packet, including Commission minute order approval. TxDOT will deliver the condemnation petition to DB Contractor within 10 Business Days after receipt of the condemnation petition from the Office of the Attorney General. If e-filing is not applicable, DB Contractor shall follow the standard procedures as described in the TxDOT ROW Manuals.
- If applicable, TxDOT will provide all e-filed documents to DB Contractor as part of DB Contractor's support of the condemnation process and invoice DB Contractor for all e-filed charges. DB Contractor is responsible for reimbursing TxDOT all e-filed invoices. If e-filing is not applicable, DB Contractor shall follow the standard procedures as described in the TxDOT ROW Manuals.
- TxDOT will provide all coordination services between DB Contractor and the Office of the Attorney General for prosecution of jury trials.
- TxDOT will provide a ROW Administrator to serve as the point of contact for all Project ROW issues as set forth in 23 CFR § 710.309(d).
- TxDOT will review and approve the completed, final closeout files in accordance with the closeout procedures.

#### 15.2.13

#### **TxDOT Project Monitor/Reviewer**

In addition to its review and approval authority as expressly set forth in other provisions of this Item 15, TxDOT may audit and monitor the ROW activities and services performed by DB Contractor. TxDOT may contract with independent entities to assist it in fulfilling the audit/monitoring function provided that the audit authority is not delegated. In addition to any Submittal components specifically required to be provided to TxDOT, DB Contractor shall provide information to TxDOT as requested to assist in its review and assessment of the progress, timeliness, adequacy and sufficiency of DB Contractor's Project ROW activities.

## 15.2.14

**Responsibilities of the Office of the Attorney General**

The Office of the Attorney General, with the assistance of DB Contractor and coordination of TxDOT, will be responsible for implementing all necessary legal actions for acquiring and obtaining possession of the Project ROW (and any necessary temporary construction easements approved by TxDOT for acquisition by condemnation) through the eminent domain process and eviction process. The responsibilities of the Office of the Attorney General will include:

- Represent TxDOT as the State's attorney of record;
- Preparation of complete petitions for condemnation with the appropriate court for a cause number to be assigned;
- If applicable, e-file condemnation documents and coordinate delivery of filed documents with TxDOT;
- Coordination with TxDOT on all legal matters concerning acquisition processes, including negotiated settlements;
- Analysis of recommended parcel values and/or appraisal issues;
- Additional legal advice and opinions as needed by TxDOT;
- Special Commissioners' hearings;
- Jury trials including determination of expert witnesses and all appeals; and
- Preparation, obtaining, and filing of all necessary legal documentation for eviction of property owners or tenants.

## 15.3

**Pre-Acquisition Activities**

## 15.3.1

**Project ROW Surveying and Mapping**

DB Contractor shall perform all Project ROW surveying and mapping and shall prepare Project ROW documents in accordance with applicable TxDOT Standards, including the TxDOT ROW Manuals, the "District Right of Way Map Checklist" as provided in the RIDs, and the TxDOT *Survey Manual*. DB Contractor shall refer to the current *Manual of Practice* by the Texas Society of Professional Land Surveyors and the *U.S. National Map Accuracy Standards*. DB Contractor shall refer to Item 17 for additional survey requirements.

The Project ROW map shall be prepared by DB Contractor and submitted to TxDOT for review and approval. The Project ROW map may be prepared in separate constructible segments established by the logical termini of the Project. TxDOT shall have 10 Business Days for review of each submitted ROW map, each containing up to a maximum of 25 parcels. Any Submittals that would require TxDOT to review more than 25 parcels within any given 10 Business Day period shall be considered excess, and TxDOT may defer its review of any such excess parcels to a subsequent 10 Business Day period (or periods as necessary).

DB Contractor may use Acquisition Survey Documents prepared by TxDOT, if available, for the purpose of performing ROW acquisition work at DB Contractor's risk.

DB Contractor shall assemble an Acquisition Survey Document to be included in the submission of the Acquisition Package. The Acquisition Survey Document shall include:

- Three half size ROW maps on paper, Scale 1 inch = 100 feet (11 inches X 17 inches);
- One separate set of originals signed and sealed by a RPLS, legal descriptions and parcel sketch, traverse closure sheets and a copy of the parent tract deeds and subdivision plat if tract is a platted lot;
- A USB with DGN Master file, map sheets, Excel point list, raw data file and/or field notes, and scanned copies of the instruments of record or other pertinent documents;
- One full size ROW map on paper, Scale 1 inch = 50 feet (22 inches X 34 inches);
- One set of folders for each parcel, Parts 1 & 2, etc., would be considered one folder. With one copy (signed and sealed) legal description, sketch, closure sheet, parent tract deed and subdivision plat if tract is a platted lot (and bi-section, if applicable) secured inside on the right side;
- Three copies (signed and sealed) of each legal description and sketch;
- One separate set (copies) of legal description and sketch of each parcel for TxDOT records;

- One separate set (copies) of legal description and sketch of each parcel for the title company; and
- One separate set of originals legal description and sketch signed and sealed by a RPLS to be kept in mapping files.

In addition to the foregoing, DB Contractor shall prepare all Project ROW surveying and mapping in accordance with the following:

- DB Contractor shall assemble an Acquisition Survey Document. The Acquisition Survey Document shall include the Project ROW map, a parcel (metes and bounds) description, and a parcel plat, with a closure report for each of these three items for each of the parcels to be acquired. The latter three items shall be on standard 8-1/2-inch by 11-inch bond paper. The Project ROW map sheets shall be on 22-inch by 34-inch paper. Each final submission to TxDOT shall include two sets of each document, unless otherwise directed. Each map sheet and document page shall have an "as of" date near the lower right-hand corner. The parcel plat and parcel description for a given parcel should show identical "as of" dates.
- The ROW map sheet and plat shall show all areas of denied access for the parcel according to the current TxDOT *Access Management Manual* and amendments.
- The POB shall be located on the proposed Project ROW line and shown in all documents with its centerline (survey baseline) station and offset or as reviewed and approved by TxDOT.
- The POC, where applicable, shall be a well-defined monument or monument of record, and shall be tied to the POB by measured bearing and distance. The POC shall not be located on any proposed Project ROW line, or existing Project ROW line within the proposed Project ROW.
- The centerline (survey baseline) station and offset shall be shown on the Project ROW map sheets for all significant points along the Project ROW line such as PC, PT, PI, PCC, and PRC, and for property line intersections (PLI) with the Project ROW line, and for any other monumentation points on the Project ROW line.
- The centerline (survey baseline) station and offset shall be shown in the parcel description and parcel plat at the beginning and ending, being the points with the lowest station and the highest station, of each parcel along the proposed Project ROW line.
- Project ROW map sheets shall include all curve data, with the station and coordinates of the PI, and the stations at each end (PC, PT, PRC, PCC), for every centerline (survey baseline) curve on that map sheet.
- Any existing ROW lines being incorporated into the proposed Project ROW, including intersecting ROW, shall be surveyed and monumented (if not previously monumented).
- All Project ROW maps (and on the title sheet) and all parcel descriptions (at the end of the description) shall include a notation that identifies the State Plane Coordinate System, datum (NAD83) (2011), or as shown on the current ROW maps, and the Project grid-to-surface coordinate adjustment factor or refer to Project primary control provided by TxDOT (refer to Section 17.3).
- All Project ROW maps shall include a control sheet(s), to show the primary survey control points with their location relative to the Project.
- The parcel description and parcel plat documents shall all be referenced as parts of the exhibit recorded with the deed, so the pages shall be numbered accordingly. For example, if the parcel description is two pages, the parcel plat is one page, and then the first page of the parcel description is denoted "Page 1 of 3" and the parcel plat is denoted "Page 3 of 3."
- Improvements within 100 feet outside of all proposed Project ROW shall be depicted on the Project ROW map sheets. All improvements shall be current as of the date of the on-the-ground property survey.
- All visible improvements (buildings and structures) within 50 feet outside of the proposed Project ROW line shall be located by an "on-the-ground" survey and documented on the Project ROW map sheets and the parcel plats by measured offset distance from the proposed Project ROW line. Clearly indicate which distances are surveyed on-the-ground.
- Calculated points shall be shown by a symbol on the drawing, which shall also identify the point relationship to the found reference points.

- All property, city, county, abstract, section and survey lines shall be indicated appropriately. A map legend should clearly define the line styles and symbols used.
- Upon final submittal from DB Contractor of the Project ROW documents to TxDOT, DB Contractor shall cause the surveyor to mark on the ground, using permanent and stable monuments as described in Section 663.17 of the General Rules of Procedures and Practices of the TBPELS, all significant points along the Project ROW line, as described above, and all property line intersections with the Project ROW line. TxDOT requires these monuments to be a 1/2-inch iron rod, driven just below surface level, capped by a TxDOT-labeled aluminum cap (rod-and-cap monument).
- Prior to acceptance of the ROW maps and surveys by TxDOT, DB Contractor shall cause a TxDOT Type II monument to be set at all significant points on the Project ROW line and at intersections with existing Project ROW lines, replacing monuments as described above under the direction of a Texas RPLS (construct according to the TxDOT ROW manuals and TxDOT *Survey Manual*), unless otherwise directed by TxDOT.
- As part of the survey process, DB Contractor shall cause a TxDOT Type II monument to be set at all significant points such as PCs, PTs, angle points and at 1,500-foot intervals along tangent sections on the Project ROW line and at intersections with existing Project ROW lines, replacing monuments as described above, unless otherwise directed by TxDOT. Project ROW line intersections with property lines shall remain monumented by a 1/2-inch iron rod with a TxDOT aluminum cap (rod-and-cap monument). A TxDOT Type II monument shall be set on the Project ROW lines, perpendicularly left and right of each significant centerline point, radial on curves, regardless of the relative orientation of the final Project ROW line.
- For any required revisions, DB Contractor shall resubmit to TxDOT all documents pertaining to the parcel to reflect the most recent revision date and shall add a notation on the appropriate documents that briefly states the reason for the revision.
- Documents shall contain deed references (survey name, abstract number, volume and page or document number, grantee, and area) for all existing public ROW encountered within the Project limits. If there is no recorded information found, a note shall state "Based upon our research, there appears to be no recorded vesting deed for the public ROW as shown hereon."
- The documents produced by the surveyor are the property of TxDOT, and release of any document shall be subject to TxDOT's prior written approval.
- DB Contractor shall cause the surveyor to include the denial of access line on the Project ROW map sheets and on the parcel plats, as required for controlled access facilities. DB Contractor also shall cause the surveyor to describe the area of denied access in the parcel description and monument on the ground with a 5/8" iron rod with a TxDOT aluminum cap stamped "TxDOT ADL" the limits of the denial of access.
- The Project ROW map and each parcel plat shall include a parcel information table containing the areas, expressed in square feet, of the following: 1) the parent ownership as stated in all adjoining record vesting deeds or converted from the stated record acreage in those vesting deeds; 2) the parcel to be acquired as shown on the closure report for that parcel; and 3) the remainder tract (item 1 *minus* item 2). If the parcel to be acquired consists of multiple parts, the Project ROW map shall show the net remainder. The parcel information table shall also contain the areas, expressed in acres, of the parent tract, the parcel to be acquired, and the remainder. This acreage (except stated record) shall be converted from the square footage as contained in the table. A note shall be included on the Project ROW map and on each parcel plat stating: "The acreage calculated and shown hereon is converted from the square footage shown hereon and is for informational purposes only." Parcels with area less than one acre will not require acreage units to also be shown. All parcels, including parcels acquired by TxDOT or a Governmental Entity, shall be included on the Project ROW map.
- Within the proposed Project ROW, all property owned by a city, county, or other local public agency in fee or easement that does not have a vesting deed shall be identified by a parcel number and included on the Project ROW map. DB Contractor shall cause the surveyor to prepare a parcel description and parcel plat for use as an exhibit in the Project ROW acquisition (property transfer) documents.

- DB Contractor shall cause an independent RPLS to review the Acquisition Survey Document for consistency as to the information delineated thereon and for compliance with all applicable DB Specifications and survey documents. The boundary location and the survey methods remain the responsibility of DB Contractor and are not part of this review process. TxDOT will have no obligation to accept the Acquisition Survey Document as complete until the reviewing RPLS has signed and sealed the compliance certificate (compliance certificate form to be provided by TxDOT).
- Parcel numbering shall follow the TxDOT ROW Manuals. Parcels are to be numbered based upon the parent tract. DB Contractor shall revise parcel numbering due to subsequent transactions as in the following example: From a 50-acre parent tract, with a proposed Project ROW acquisition parcel identified as Parcel 14, a 5-acre tract is sold which will also require Project ROW acquisition. The result is, Parcel 14 is "Not Used", and the two new Project ROW acquisition parcels are identified as Parcel 14A and 14B. If the property containing Parcel 14B sells a portion, then 14B is "Not Used" and the new Project ROW acquisition parcels are identified as Parcel 14C and 14D, etc. DB Contractor shall not use the letter "E" to avoid confusion with easement designations. Parcel numbering shall be sensitive to the appraisal of the required parcels.
- Complicated portions of a Project ROW acquisition survey can cause the Project ROW map to be very difficult to read. TxDOT's preferred solution is to create an additional Project ROW map sheet or sheets for details, curve data, general notes, etc. The primary page would still retain the whole property inset, record ownership data, and most of the usual information. The additional sheet(s) should be clearly referenced and be numbered as the next sequential page(s). Pages numbered with a letter added (for example: 6A, 6B) are for revisions and corrections. DB Contractor shall use the preferred solution unless TxDOT approves an alternate method.
- An ownership sheet or sheets, containing an index to the information for all the parcels, shall be included and located near the beginning of the Project ROW map, after the title sheet and control sheet. The ownership sheet index shall include the parcel numbers, the names of the property owners, the vesting deed recording information, the record area of the parent tract, the area of parcel(s) to be acquired, the area of the remainder(s) left and right, the beginning and ending stations of the parcel along the Project ROW line, and the sheet number in the Project ROW map where the parcel is located.
- At property corners where more than one monument is found, a detail shall be provided to show the measured relationship between the monuments found and the monument set or held.
- DB Contractor shall purchase all materials, supplies and all other items necessary for proper survey monumentation. DB Contractor may purchase Type II monuments from TxDOT. TxDOT shall make available for pick-up by DB Contractor Type II monuments within 75 days after TxDOT receives from DB Contractor a written order, specifying the number of monuments to be purchased. Payment for TxDOT-supplied monuments shall be due within 30 days after TxDOT delivers to DB Contractor a written invoice. DB Contractor may use these monuments only for this Project and shall be responsible for proper storage thereof.
- DB Contractor, at the request of the property owner or TxDOT, shall re-stake the proposed ROW with a flagged wooden stake.

DB Contractor shall provide sufficiency of design to determine the ROW need and produce ROW maps that delineate the proposed ROW and potential impacts to the remaining ROW. DB Contractor shall provide a design certification of ROW for each parcel which confirms that the proposed ROW acquisition is adequate and necessary to construct and perform operations and maintenance on the Project and that other ROW acquisition alternatives are not feasible and/or are cost prohibitive.

### 15.3.1.1

#### **ArcGIS ROW Mapping Files**

DB Contractor shall submit for review and approval GIS files of the Acquisition Survey Documents in accordance with the standards and required deliverables detailed in Chapter 4, Section 8 of the TxDOT "ROW Preliminary Procedures for the Authority to Proceed" manual. DB Contractor shall submit GIS files concurrent with the Acquisition Survey Document and prior to submitting the first Acquisition Package and provide updates as needed.

### 15.3.2 Additional Reporting Requirements

In addition to the Project ROW map, parcel description, and parcel plats, DB Contractor shall submit the following reports and electronic files:

- Monthly Parcel Report: a report, prior to the first of the month, listing all parcel deletions, parcel additions, and parcel splits;
- Monthly Progress Report: a report, prior to the first of the month, of all survey activity that occurred during the previous month, including a two-week look ahead of anticipated survey activity; and
- CADD files: digital CADD files in MicroStation format which include property lines and/or existing ROW lines, as surveyed, proposed ROW lines, parcel numbers, resource files, level assignments, and plot files. DB Contractor shall submit CADD files prior to submitting the first Acquisition Package and provide updates as needed.

### 15.3.3 Title Services

With respect to title services, DB Contractor shall comply with the applicable standards identified in Section 15.2.1, including the following requirements:

- Select and contract with one or more title companies approved by TxDOT and submit with the Acquisition Package for each parcel to TxDOT a five year sales history, a preliminary title commitment or preliminary title report, and, if necessary or appropriate, copies of all underlying documents and a plot of all easements, including Existing Utility Property Interests, referenced therein for each parcel (including fee acquisitions, slope easements, other drainage and roadway ROW or easements and abandonment of Utility easements) to be acquired by TxDOT for the Project. Each title report shall be dated not more than 90 days prior to the date of submittal to TxDOT of the Acquisition Package for such parcel. DB Contractor shall, at its own cost, review each title report to ensure that it complies with the format required by the Contract Documents. DB Contractor shall, at its own cost, retain the services of a real estate attorney, licensed and located in the State of Texas, to be available for title support and acquisition assistance. All title reports must be in the following required format: clearly indicate which exclusions and exceptions shall be deleted upon acquisition of the subject parcel, and clearly indicate any required deliverables to the title company to clear identified exclusions and exceptions. Title reports shall be in accordance with Good Industry Practice. DB Contractor shall notify the title company, by letter, which exceptions should be removed, including easements that (a) are appurtenant to and/or of benefit to the parcel but are not included in the parcel to be acquired, and (b) are a burden on the parcel and not acceptable.
- Review the preliminary title commitment or report to ensure that all current owners of record title are contacted and that negotiations or condemnation actions are conducted with all appropriate parties.
- Work with the current owners of record title to each parcel or interest in a parcel or their designee and all other appropriate parties to clear any title exceptions or exclusions not acceptable to TxDOT.
- Secure an owner's policy of title insurance in the amount of the total acquisition cost, to include the cost of the property, improvements and damages to the remainder of the property, from a title company acceptable to TxDOT for each parcel acquired, whether by deed or eminent domain judgment, insuring title as required by TxDOT. All Project ROW shall be acquired, and TxDOT's title in the Project ROW shall be insured, in fee simple absolute or easement interest as appropriate, free and clear of any and all liens and encumbrances. Title policies must be in a form and substance approved by TxDOT. Title to the Project ROW shall be insured in the name of the "State of Texas by and through the Texas Transportation Commission."

### 15.3.4 Introduction to Property Owners

DB Contractor shall provide TxDOT the current property owner list, with addresses, and shall pay for the distribution of initial contact letters of introduction to both property owners and displacees. The letters shall clearly describe the Project, TxDOT's need for the owner's property, and shall include the name and telephone number of a DB Contractor's representative. TxDOT's ROW Administrator or designee will sign



the letters on TxDOT letterhead. The forms for these letters will be approved by TxDOT prior to use. DB Contractor shall provide translation for property owners or displacees unable to read or understand the notices.

DB Contractor shall furnish a copy of the State of Texas Landowner's Bill of Rights for each property owner for inclusion with the letter of introduction. The copy of the Bill of Rights shall be the latest version as shown on the Office of Attorney General website:

[http://www.texasattorneygeneral.gov/agency/Landowners\\_billofrights.pdf](http://www.texasattorneygeneral.gov/agency/Landowners_billofrights.pdf).

### 15.3.5

#### **Appraisals**

#### 15.3.5.1

#### **Appraisal Services**

DB Contractor shall submit to TxDOT market value appraisals prepared by appraisers meeting the minimum qualifications established herein. DB Contractor shall ensure that all appraisals are prepared in conformance with applicable Law (including the Uniform Act), and in accordance with professional appraisal methods and applicable TxDOT Standards for all parcels to be acquired by TxDOT. DB Contractor shall:

- Select appraisers from TxDOT's list of pre-certified fee appraisers meeting the requirements specified in Section 15.2.7. TxDOT shall have final approval of the selection of each appraiser and appraisal reviewers submitted by DB Contractor. DB Contractor must identify and receive written TxDOT approval of the appraiser who will be responsible for the appraisal work product and who will be signing the reports.
- Establish personal pre-appraisal contact with each owner of record title and each occupant, and document all contacts utilizing forms provided by TxDOT.
- If necessary, make a diligent effort to secure a written agreement between the record title owner and DB Contractor granting TxDOT, DB Contractor or assignees permission to enter the applicable parcel to be acquired (an "ROE Agreement"). DB Contractor may, at its sole discretion and expense, offer to pay reasonable compensation for any required ROE Agreements. If DB Contractor, after best efforts, is unable to secure a ROE Agreement from the property owner, DB Contractor shall provide documentation acceptable to TxDOT indicating conversations, correspondence, and efforts used to attempt to secure the ROE Agreement.
- Contact the record title owners or their designated representatives, in writing, to offer them the opportunity to accompany the appraiser on the appraiser's inspection of the parcel, and maintain a record of all such contacts and attempts to contact in the parcel file.
- Cause the appraiser to prepare a complete appraisal report for each parcel to be acquired to include the whole property, the portion to be acquired, and any damage to the remainder. It shall also include all improvements on the whole property, unless otherwise directed by TxDOT. The appraisal reports shall comply with and include all matters required by this Section 15.3.5 and TxDOT ROW related manuals, and shall satisfy the requirements of the USPAP in effect at the time the appraisal is submitted. Special analyses, studies or reports, as necessary, shall be made a part of each appraisal. The appraiser must use the most current edition of the USPAP standards referenced above and continually monitor these standards to ensure the appraisals conform to the most current requirements of professional appraisal practice. All appraisals shall utilize TxDOT form ROW-A-5 – Real Estate Appraisal Report, except for outdoor advertising signs which shall utilize TxDOT form ROW-A-5 OAS – Real Estate Appraisal Report. In very limited situations and with written permission from TxDOT on a per parcel basis, the appraiser may utilize TxDOT form ROW-A-6 for less complicated parcels. All appraisals must be performed utilizing guidance from the TxDOT ROW Manuals. All appraisals for condemnation proceedings shall utilize TxDOT form ROW-A-5 – Real Estate Appraisal Report.
- Obtain and provide TxDOT with copies of all written leases, licenses and other occupancy agreements, including outdoor advertising/sign agreements that are not already included in the title commitment.
- Perform an evaluation of all outdoor advertising signs, as required, utilizing the appropriate forms as instructed by TxDOT. The forms shall be completed and executed by the outdoor advertising sign owner.

For all parcels to be acquired that have off-premise outdoor advertising signs (sign structure), the preliminary appraisal package or the appraisal in the Acquisition Package, submitted for TxDOT approval, must include:

- Completed and executed appropriate TxDOT forms; and
- The value of the sign structure as a real property fixture.

DB Contractor shall:

- Cause the appraiser(s) to testify as an expert witness(es) or provide expert witness(es) approved by TxDOT in Special Commissioners' hearings or eminent domain proceedings through jury trial and be available for depositions, other discovery, pre-hearing or pre-trial meetings and appeals, as directed by TxDOT in accordance with the TxDOT ROW Manuals and USPAP. DB Contractor shall also provide administrative and/or technical support for such proceedings as requested by TxDOT.
- Coordinate with the review appraiser regarding corrections and additional information that may be required for a particular appraisal.
- Cause a report to be prepared by an environmental professional that meets the qualifications set forth in ASTM E-1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, documenting the environmental condition of each parcel, which may be used on field investigations and/or historical review, as appropriate for the particular parcel. As directed by TxDOT, DB Contractor shall submit a summary report of the Phase I site assessment. Upon completion, the report shall be made available to the appraiser(s). A Phase I environmental site assessment or a report provided in a manner approved by TxDOT shall be performed for all properties and submitted with the Acquisition Package. If it is determined that there is a potential environmental risk based on the Phase I report or other reports, then a Phase II investigation shall be performed and submitted to TxDOT before a payment Submittal is submitted for the purchase of the parcel or a Condemnation Package is submitted for approval. A Phase III investigation shall be performed if the Phase II report justifies it. The Phase III report must indicate the approximate cost to remediate the parcel to achieve its current use and its highest and best use. DB Contractor shall provide timely written notification to TxDOT of any environmental or other concerns associated with the Project ROW to be acquired that could require environmental remediation or other special attention or which would cause a report to be prepared. In the event that DB Contractor has exhausted all means possible and is unable to access the properties to perform a Phase II and/or III Environmental Site Assessment, DB Contractor may submit the Acquisition Package and Condemnation Package without the Environmental Site Assessment reports. However, DB Contractor shall be responsible for performing and receiving approval from TxDOT for all required Environmental Site Assessments after possession of the property has been obtained through condemnation before commencement of construction.
- Engage the services of, and cause, a land planner to assist in the preparation of, any and all appraisals that involve a valuation analysis indicating a highest and best use that is other than the current use of such parcels, or as directed by TxDOT, for certain other appraisals. DB Contractor shall notify TxDOT in writing of each and every instance when the highest and best use of a parcel is different from its current use, in which event TxDOT will determine to what degree land planner services will be utilized by DB Contractor.
- Cause the appraiser(s) to prepare updated appraisals, as well as updated appraisal reviews, when required by TxDOT or as needed during eminent domain proceedings. An updated appraisal package shall comply with USPAP. At a minimum, the updated appraisal report or new assignment must include:
  - A letter of transmittal with a specific reference to the original appraisal report, any changes in market conditions since the original appraisal, any changes in the subject property since the original appraisal, a statement of the current value or extension of the original value opinion, and the listing of the current date of value.
  - An updated Page 1 from TxDOT form ROW-A-5 – Real Estate Appraisal Report and TxDOT form ROW-A-5 OAS – Real Estate Appraisal Report with the current date of a recent inspection of the subject property and a current date of value. This form needs to have a current signature and date from both the appraiser and the reviewing appraiser in the appropriate spaces on the form.

- Any qualifying and limiting conditions or general assumptions by the appraiser shall be clearly stated and attached.
- A copy of the survey and legal description of the property being acquired and current photographs of the subject property clearly showing the area being acquired, even though the original appraisal report contained photographs of the subject property and the area of the acquisition. If there are significant changes to the subject property, the area being acquired, access to the remainder property, damages to the remainder(s), market conditions, the subject property's highest and best use from the previous appraisal, or significant changes in the approaches to value, the property shall be reappraised using the TxDOT form ROW-A-5 – Real Estate Appraisal Report and TxDOT form ROW-A-5 OAS – Real Estate Appraisal Report. Appraisers shall refer to the TxDOT *ROW Appraisal and Review Manual* for additional guidance. DB Contractor shall follow these guidelines in producing updated appraisal reports or new assignments and shall discuss specific updating requirements for any complex appraisals with TxDOT before beginning the assignment.
- Prepare and deliver to TxDOT, upon request, a copy of all file documents, as formally requested in discovery motions or requests for production.
- Complete with the property owner and furnish, to the appraiser and relocation agent, TxDOT form ROW-A-9 – Property Classification Agreement, before the appraisal is completed.

### 15.3.5.2

#### **Appraisal Review**

In connection with appraisal review, DB Contractor shall:

- Select review appraisers from TxDOT's list of pre-certified fee appraisers meeting the requirements of Section 15.2.7. The review appraiser selected must follow the appraisal guidelines and procedures found in the TxDOT *ROW Appraisal and Review Manual*.
- Determine, in consultation with TxDOT, if additional appraisal reports or technical expert reports are required. Initiate, review, and reconcile each report required.
- Review all appraisal reports for each parcel to determine consistency of methodology, supporting documentation related to the conclusion reached, and compliance with standards set forth, as defined in Section 15.3.5.1 and this Section 15.3.5.2, the TxDOT *ROW Appraisal and Review Manual*, the *Uniform Appraisal Standards of Federal Land Acquisitions*, and the requirements of the Appraisal Foundation's USPAP in effect at the time the appraisal is reviewed. The review appraiser must use the most current edition of the standards referenced above and continually monitor these standards to ensure the appraisals conform to the most current requirements of professional appraisal practice.
- Inspect the subject properties and the sale properties used in direct comparison for each appraisal being reviewed.
- Upon completion of the review outlined above, cause the review appraiser to certify in writing to TxDOT that all required standards have been met. This certification will occur by signing Page 1 of the TxDOT form ROW-A-5 – Real Estate Appraisal Report and TxDOT form ROW-A-5 OAS – Real Estate Appraisal Report, in the block provided. The review appraiser will also complete TxDOT form ROW-A-10 – Tabulation of Values, to accompany each appraisal.
- For appraisal updates or new assignments, cause the review appraiser to perform a complete review of the updated or new appraisal, re-inspecting the subject property and the comparable sales used, as of the current date of value. The review appraiser shall follow the procedures outlined in the TxDOT *ROW Appraisal and Review Manual*. A new TxDOT form ROW-A-10 – Tabulation of Values, will be required for each updated appraisal or new assignment.
- Cause its Quality Control Specialist(s) as referred to in Section 15.2.7, to ensure that appraisal consistency and quality for the entire Project is monitored for Project-wide controls and consistency.

### 15.3.6

#### **Project ROW Acquisition Package Approval**

Acquisition Packages submitted by DB Contractor for TxDOT approval shall include the following items, prepared for each parcel in accordance with the requirements of this Section 15.3.6:

- A cover sheet setting forth the following information for each parcel:

- Parcel number and number of parts;
  - Station number;
  - CSJ number;
  - Federal Identification Number (if applicable);
  - Project limits;
  - Name of owner;
  - County and/or other jurisdiction;
  - Extent of acquisition (partial or whole acquisition); and
  - Type of conveyance (fee, easement, etc.).
- A complete legal description of the parcel adequate to effect the desired acquisition of the parcel, signed and sealed by a RPLS. A legal description and parcel plat are required for each parcel. Control of access shall be addressed in all legal descriptions. All descriptions shall be in recordable form and shall be prepared in a form and manner acceptable to TxDOT in all respects.
  - The parcel plat, as prepared by the RPLS, and a half-size (11 inches by 17 inches) copy of the ROW map sheet(s) pertaining to the parcel. The plat must include control of access designations.
  - A title report, current within 90 days, including copies of all documents identified in the exceptions listed therein and a plot of all easements identified therein. The Acquisition Package shall include DB Contractor's analysis of each preliminary title report or title commitment to determine potential problems and proposed methods to cure title deficiencies. DB Contractor shall perform title curative work. DB Contractor shall provide TxDOT with copies of all curative documents.
  - A copy of the appraisal report with an effective date no earlier than 180 days prior to the date of submission of the Acquisition Package.
  - A copy of the Environmental Site Assessment and all amendments as described in Section 15.3.5.1.
  - A real/personal property report (TxDOT form ROW-A-9 – Property Classification Agreement) detailing the items making up each parcel that are classified as real estate, tenant-owned improvements or personal property. Particular attention shall be paid to items that have questionable classifications.
  - Replacement Housing Calculations, notification of business eligibility, completed displacee interviews, all comparables used in estimating the Replacement Housing Calculations, and letter to displacee(s) explaining Replacement Housing Calculations. The calculations and replacement housing benefit package shall be prepared and reviewed by a qualified specialist, in conformance with TxDOT's standard relocation procedures and applicable State and federal Laws.
  - The proposed initial offer letter, the State of Texas Landowner's Bill of Right, "State Purchase of Right of Way Booklet", "Relocation Assistance Booklet", MOA, deed, and any other documents, which shall be prepared by DB Contractor as required or requested by TxDOT, on DB Contractor's letterhead or as otherwise directed. TxDOT will provide the format for preparing these documents. Documents referred to in this Section 15.3.6 are standardized by TxDOT and modification of standardized documents shall be kept to a minimum. All changes are subject to approval by TxDOT in writing.
  - Any other required TxDOT forms, such as record of all contacts with the property owner or any party with a compensable interest.

No Acquisition Packages will be approved if prepared or submitted by appraisers or agents not previously approved by TxDOT for this Project.

Upon TxDOT's written approval of the Acquisition Package, DB Contractor may proceed with the offer to the property owner.

## 15.4 Acquisition Activities

### 15.4.1 ROW Negotiations

DB Contractor shall conduct all negotiations in accordance with the requirements of applicable Law. In conjunction with negotiations, DB Contractor shall:

- Within 10 Business Days of TxDOT approval of the Acquisition Package, in accordance with section 21.0111 of the Texas Property Code, send the initial offer letter and approved appraisal via certified mail, return receipt requested, to each property owner or owner's designated representative, and to meet in person where practical, to present the offer and deliver an appraisal report (not more than six months old) and appropriate brochures. A copy of the appraisal report for the subject property shall be provided to the property owner or authorized representative at the time of initial offer. All appraisal reports produced or acquired by TxDOT relating specifically to the property owner's property and prepared in the 10 years preceding the date of the offer must also be delivered to the property owner. DB Contractor shall also maintain a file record of receipt of appraisal signed by the property owner. DB Contractor shall also maintain follow-up contacts, secure necessary documentation and initiate title curative Work upon acceptance of the purchase offer.
- At the time of offer, produce and distribute to all property owners and displacees, TxDOT approved informational brochures and the State of Texas Landowner's Bill of Rights as updated on the Office of the Attorney General's website:  
[http://www.texasattorneygeneral.gov/agency/Landowners\\_billofrights.pdf](http://www.texasattorneygeneral.gov/agency/Landowners_billofrights.pdf)
- Identify lessees, licensees, occupants, or other parties with potential compensable interests including outdoor advertising sign owners, and, if appropriate, after consultation with TxDOT, negotiate with such parties for the acquisition of their compensable interests.
- Advise the property owners, lessees, licensees, occupants, and other holders of compensable interests, as applicable, of the administrative settlement process. Confer with and transmit to TxDOT ROW Administrator any settlement request from property owners, lessees, licensees, occupants, or other holders of any compensable interest, as applicable, including a detailed recommendation from DB Contractor in accordance with standards, manuals and procedures as identified in Section 15.2.1. TxDOT shall determine whether to accept a settlement request. Delivery of the administrative settlement request and DB Contractor's recommendation to TxDOT must occur within 15 Business Days following DB Contractor's receipt of the administrative settlement request.
- Participate in the evaluation of the administrative settlement requests and attend the relevant TxDOT Administrative Settlement Committee meetings at the request of TxDOT or the TxDOT Administrative Settlement Committee or at its own option, provided TxDOT consents to such participation or attendance.
- Provide a letter stating the TxDOT Administrative Settlement Committee's response to the property owner, lessee, licensee, occupant, or other holder of a compensable interest, as applicable. DB Contractor shall deliver all settlement responses (if within reasonable proximity of the Project) by hand within three (3) Business Days after receipt. If this delivery method is not feasible, DB Contractor shall mail (return receipt requested) response letters not more than three (3) Business Days following any decision by the TxDOT Administrative Settlement Committee. If DB Contractor selects the mailing option, DB Contractor shall contact the property owner to discuss the settlement offer prior to mailing the response letter. The TxDOT ROW Administrator, on an as-needed basis, will convene the TxDOT Administrative Settlement Committee.
- Notwithstanding an unsuccessful completion of the formal administrative settlement process, engage in ongoing negotiations with the owners of compensable interests. DB Contractor shall develop and incorporate in its ROW Acquisition Management Plan a procedure for these negotiated settlements. Said negotiations may continue until such time as the Texas Transportation Commission adopts a minute order authorizing the filing of a condemnation petition. DB Contractor shall submit its recommendation to TxDOT of a negotiated settlement and obtain TxDOT consent prior to acceptance of any settlement.
- Provide timely (i.e., not more than 10 Business Days after inquiry) response to the verbal or written inquiries of any property owner, lessee, licensee, occupant or other holder of a compensable interest, as applicable.

- Prepare a separate negotiator contact report for each meeting or conversation with any person (or other appointed representative(s) supported by a written confirmation of appointment) who has a compensable interest in each parcel on TxDOT form ROW-N-94 – Negotiator’s Report. Contact reports shall also be prepared for unsuccessful attempts to contact such persons.
- Maintain a complete parcel file for each parcel. All original documentation related to the purchase of the real property interests shall be maintained (housed separately from the relocation files) in conformance with all standards identified in Section 15.2.1, manuals, and procedures, as defined in Section 15.2.1. All original Project ROW documents shall be retained and properly secured in DB Contractor’s Project office or as otherwise approved by TxDOT. During the acquisition process, signed original documents shall be forwarded to TxDOT with a transmittal form periodically or as requested by TxDOT; provided, however, that all remaining original documents shall be forwarded to TxDOT upon completion of the acquisition of Project ROW for the Project.
- Prepare and deliver documents of conveyance (including bisection clause and access clause, if applicable) to the property owner, lessee, licensee, occupant, or other holder of any compensable interest, as applicable, and obtain their execution of the same. All signatures on documents to be recorded shall be notarized in accordance with State Laws.
- Pursue and obtain a PUA concurrently with the parcel negotiations. Except as otherwise set forth in this paragraph, each PUA shall include an incentive in the form of market rental consideration for the advance possession and use of the property and shall be in the form of Form ROW-N-PUAIC included in Attachment 15-1 (Form ROW-N-PUAIC). The amount of the market rental consideration shall be 10 percent (10%) of the approved value of the property, provided the minimum amount of the incentive shall be \$3,000 per parcel and the maximum amount shall be \$25,000 per parcel. For properties for which the Special Commissioners’ hearing is within 30 days of the date of the PUA, the PUA shall not include market rental consideration and shall be in the form of Form ROW-N-PUA included in Attachment 15-2 (Form ROW-N-PUA). Such agreements shall be sought and negotiated by DB Contractor strictly in accordance with the Law and only with the prior written consent of TxDOT. If DB Contractor uses a PUA, DB Contractor shall obtain a deed or commence action on condemnation proceedings by submitting a Condemnation Package to TxDOT for approval within six months from the date of the PUA. No other conveyance documents shall be used for the purpose of Construction Work unless otherwise approved by TxDOT.
- Consider all reasonable settlement requests (that comply with the regulations as outlined in this Section 15.4.1) from the property owners, which are feasible and help expedite the Project ROW acquisition process. DB Contractor acknowledges and understands that TxDOT encourages all positive and creative solutions which satisfy the property owner and promote the success of the Project.
- Prepare and deliver a final offer letter to the property owners, lessees, licensees, occupants, or other holders of any compensable interest, as applicable. The letter shall be on DB Contractor’s letterhead and shall be signed by the ROW AM. The final offer letter shall allow a property owner lessee, licensee, occupant or other holder of compensable interest at least 14 days as the consideration time period to review the final offer. DB Contractor shall submit to TxDOT, a copy of the final offer letter within two (2) days of delivery to the property owner.

If the final offer letter is not accepted, DB Contractor shall follow the procedures established for condemnation.

#### 15.4.2

#### **Relocation Assistance**

DB Contractor shall coordinate and perform the administrative requirements necessary to relocate any occupants and personal property from Project ROW and certain remainders, as permitted by TxDOT. All Work prepared by DB Contractor with respect to relocation assistance shall be performed in accordance with applicable Law, including the Uniform Act and TxDOT Standards, and in accordance with all provisions of the DBC and these DB Specifications.

DB Contractor shall be available to all displacees for relocation services at the convenience of the displacees.

DB Contractor's major activities with respect to the relocation assistance of occupants from Project ROW include:

- Preparing a Relocation Plan in accordance with the TxDOT ROW Manuals within 90 days after receipt of NTP1, as part of an updated ROW Acquisition Management Plan.
- Monitoring relocation assistance activities and provide advisory services.
- Preventing fraud, waste and mismanagement.
- Assisting with all requests and being responsible for carrying out decisions made by TxDOT, the review/appeal process and judicial reviews.

DB Contractor shall provide relocation assistance strictly in accordance with the Law, and, in particular, the Uniform Act and TxDOT Standards. With respect to relocation assistance, DB Contractor shall:

- Provide written notice to all property owners, lessees, licensees, occupants, other holders of compensable interests, and other potential displacees regarding relocation assistance and produce and provide them with a relocation assistance brochure that has been approved by TxDOT. DB Contractor shall perform relocation interviews, complete and maintain interview forms and discuss general eligibility requirements, programs, and services with potential displacees. DB Contractor shall maintain a written record of all verbal contacts.
- Give written notice of the pending acquisition to any non-eligible occupants. Any questions as to the eligibility of a potential displacee shall be directed in writing to the TxDOT ROW Administrator.
- Contact and provide relocation assistance to those parties affected by the Project ROW acquisition and complete forms for all displacees, as required.
- Locate, evaluate and maintain files on comparable available housing, commercial, retail and industrial sites.
- Calculate replacement supplement benefits.
- Compute and submit requests for relocation rental/housing supplement to TxDOT prior to submission to relocatees. All relocation supplements shall be subject to TxDOT's written approval.
- Perform a DSS inspection for each replacement housing comparable, photograph the comparable and complete the DSS inspection form, TxDOT form ROW-R-116 – Replacement Housing Inspection.
- Obtain at least two moving estimates from moving companies to effect relocation of personal property or consistent with the Uniform Act.
- Prepare moving plan with appropriate photos, sketches and inventory of personal property to be moved.
- Coordinate moves with displacees and moving companies in accordance with TxDOT Standards and the Uniform Act.
- Maintain relocation contact logs on a TxDOT form ROW-R-96 – Relocation Advisory Assistance – Parcel Record.
- Attend all closings on replacement properties, if requested by any party involved, and assure supplemental payments, if any, are properly distributed.
- Process and compute increased interest payments on the mortgage of owner-occupied dwellings, as required.
- Deliver to displacees a 90-day notice of eligibility letter simultaneously with the delivery of the relocation benefits package. Deliver a 90-day letter to displacees with the location of the comparable property used to compute the supplement.
- Deliver a 30-day notice to vacate to displacees and property owners upon possession of Project ROW.
- Notify TxDOT, in writing, when a displacee has vacated or abandoned the affected dwelling or structure. In addition, ensure that each displacee has removed all personal property from the Project ROW.
- Notify TxDOT ROW Administrator office immediately if a displacee has not moved after 30-day notice expires. Special effort and consideration should be extended to the displacees in

the move out process. If the displacees have not moved from the State-owned ROW and eviction is necessary, DB Contractor must provide a written request to TxDOT to begin eviction proceedings. The request must include written evidence of the due diligence efforts to vacate the displacees. Prepare a written recommendation to facilitate the displacee's move.

- Be available for any appeals or hearings.
- Prepare relocation payment claim submissions for all displacees and all relocation assistance benefits.
- Verify DSS dwelling criteria on all replacement housing as selected by the displacees.
- Secure dwellings and structures no later than 10 days after vacancy and protect the Project ROW following acquisition and relocation. It is DB Contractor's responsibility to ensure that all occupied and vacated improvements maintain insurance coverage or assume liability through completion of demolition.
- Maintain a complete file, separate from acquisition files, on each displacee and make available for inspection.
- Be responsible for all relocation activities that may occur after deposit of the Special Commissioner's award in the courts, including instances when a parcel referred to the Office of the Attorney General for eminent domain also has a relocation issue. Relocation computations shall be adjusted based on the approved administrative settlement and court award.
- Prepare all correspondence to the displacees or their representative(s) on DB Contractor's designated relocation letterhead and have DB Contractor's correspondence signed by the Project ROW relocation agent.
- Deliver to each displacee the relocation assistance payments according to the TxDOT ROW Manuals.
- Assist TxDOT and the Office of the Attorney General with eviction proceedings. Serve notice of eviction proceedings to the occupant(s) of the property who have not complied with move dates. Coordinate the eviction process with the local authorities and accompany the Sheriff's Department when the local authorities are carrying out eviction.

### 15.4.3

#### **Closing Services**

For purposes of closing services, DB Contractor shall:

- Submit a closing Submittal to TxDOT for review a minimum of 24 hours prior to closing. Closing Submittals shall include the following:
  - A reference to the disposition of any environmental matters;
  - Updated title commitment, dated no more than 15 days prior, with notations indicating the disposition of all schedule "B" and "C" items;
  - A copy of the executed warranty deed to be delivered;
  - A proposed closing statement indicating disposition of all proceeds;
  - A copy of any and all release(s) of liens;
  - A copy of any miscellaneous documents and other curative matters required to be delivered at closing; and
  - A copy of the closing memorandum outlined in the bullet below.
- Prepare the escrow agreement and closing documents, including a closing memorandum identifying all parties involved in the closing, and listing all documents to be executed and/or delivered in connection with the closing.
- Attend closings and provide curative documents and exhibits, as required, and in conjunction with the applicable title company. Confirm that all conditions to closing are satisfied and notify TxDOT of all closing appointments.
- Obtain and submit to TxDOT a copy of the issued title insurance policy and recorded conveyance document based on the approved updated title commitment within 45 days following closing.



## 15.4.4

**Condemnation Support**

DB Contractor shall support condemnation efforts as directed by TxDOT and further delineated as follows:

- Conduct all applicable eminent domain-condemnation activities in accordance with the policies and procedures as described in the TxDOT ROW manuals; in Chapter 21 of the Texas Property Code; and Tex. S.B. 18, 82<sup>nd</sup> Leg., R.S. (2011).
- Communicate with TxDOT as to the parcel status on a monthly basis or as requested by TxDOT.
- Notify TxDOT of any potential condemnation and document the reason(s) for condemnation including recommendations for property closure.

## 15.4.4.1

**Condemnation Package Preparation**

DB Contractor shall support condemnation efforts as directed by TxDOT and further delineated as follows:

- After non-response or upon receipt of a copy of the rejected final offer from a property owner or other property right holder entitled to compensation, request an updated title report from the title company issuing the original title commitment.
- Provide to TxDOT, within 10 days following non-response or rejected certified mailing, notification thereof together with a signed and sealed parcel description and parcel plat, and a bisection clause and access clause, if necessary, with the clauses attached to a property exhibit containing the parcel description and parcel plat.
- Use the information from the title report to join all parties having a property interest on the applicable TxDOT form. Spouses of property holders with compensable rights must also be joined.
- Upon completion of TxDOT form ROW-E-49 – Request for Eminent Domain Proceedings, prepare a condemnation packet containing two copies each of the following documents: the completed TxDOT form, negotiation logs, the updated title report not more than 30 days old, appraisal receipt acknowledgment, pre-appraisal contact sheet, signed and sealed field notes, parcel sketch, bisection clause and access clause exhibits (if necessary), initial offer letter and final offer letter reflecting the latest appraisal, complete minute order request form (form to be provided by TxDOT), any correspondence sent by DB Contractor, the owner of the compensable interest or any of their representatives, one copy of all the appraisal reports and evidence of a bona fide offer to the property owner. Submit two complete Condemnation Packages to TxDOT ROW Administrator for review and approval.

## 15.4.4.2

**Condemnation Support Upon Approval of a Condemnation Package**

DB Contractor shall support condemnation efforts as directed by TxDOT and further delineated as follows:

- Send a copy of the complete petition to the title company and confirm with the title company that the appropriate parties were joined in the case and that no changes in title have occurred since the original litigation guaranty was issued.
- File the petition for condemnation with the appropriate court clerk after a determination that a timely settlement is not feasible. In counties that require e-filing, the Office of the Attorney General will e-file as appropriate and provide a copy of the petition to TxDOT. DB Contractor shall record the lis pendens in deed records with the appropriate county. No later than three (3) Business Days from the date of filing, DB Contractor shall send a copy of the petition and lis pendens, by certified mail, return receipt requested, to the owner, lessee, licensee, occupant or other holder of compensable interest. DB Contractor shall provide a copy of the petition and lis pendens to TxDOT.
- Coordinate and provide technical support to TxDOT, as required to facilitate filing the petition. The Office of the Attorney General will file petitions as required by Law. DB Contractor shall provide the location and setting of a hearing date.
- Make available to TxDOT on behalf of the Office of the Attorney General an agent who will be expected to assist in making arrangements for conferences with witnesses prior to trial, filing the condemnation petition, informing all parties as to the filing date of the petition and the case number assigned to the suit, and perform any other duties which will assist in the successful prosecution of the suit, including his or her attendance in court and filing necessary documents to complete all eminent domain proceedings.

- Notify TxDOT if market conditions have changed substantially since the date of the initial offer or if over six months have elapsed since the date of the initial offer. Upon such notification, TxDOT will contact the Assistant Attorney General handling the case for TxDOT and confer about the advisability of preparing an updated appraisal. If it is determined that an updated or new appraisal is necessary or desirable, DB Contractor shall obtain such appraisal using the same procedures as described in Section 15.3.5.1. DB Contractor must also undertake appraisal review as described in Section 15.3.5.2.
- Submit the updated appraisal or new assignment to TxDOT for review and approval. Once approved, TxDOT shall transmit the approved appraisal to the Office of the Attorney General. TxDOT must approve any updated appraisals or new assignments. If an updated appraisal or new assignment is approved, notify the property owner or other holder of a compensable interest, as applicable, and submit a copy to TxDOT.
- Be responsible for coordinating the pre-hearing meeting with TxDOT on behalf of the Office of the Attorney General and all others required for testimony or exhibit preparation.
- Schedule all court reporter services, transcription services, expert witnesses, exhibits, and exhibit workbooks as directed by TxDOT.
- Serve in person, a "Notice of Hearing" not later than 20 days before the date of the Special Commissioners' hearing or other hearings. DB Contractor shall also comply with all other notice requirements as directed or authorized by the court.
- Call and send reminder letters two to three weeks in advance of any hearing to the assigned attorney, engineer, technical experts, appraiser, the commissioners, court reporter, and TxDOT ROW Administrator concerning hearing dates.
- Upon completion of the hearing, prepare TxDOT form ROW-E-73 – Data Sheet – Special Commissioner's Hearing, and Commissioners' time sheets. DB Contractor shall make payment to all commissioners involved in the hearing and include payment for commissioners as part of general Project ROW services.
- Timely file and provide proper service of citations if objections are filed after completion of the Special Commissioner's hearing and promptly submit evidence of filing and copies of all filed documents to TxDOT. As directed by TxDOT and the Office of the Attorney General, DB Contractor, at its cost, shall order transcripts of such hearing.
- Coordinate and provide support to TxDOT counsel, and facilitate distribution of copies of award, prepare requests for payment, and file notices of deposit.

#### 15.4.4.3

#### **Condemnation Support by an Expert Witness**

DB Contractor shall support condemnation efforts as directed by TxDOT and further delineated as follows:

- Provide an individual or individuals having sufficient knowledge of the design of the Project to appear as an expert witness for testimony at the Special Commissioners' hearing or other proceedings. This individual or individuals are also responsible for preparing exhibits as requested by TxDOT or the Office of the Attorney General in support of said testimony. Exhibits shall be left in the custody of TxDOT at the close of the hearing.
- Coordinate with TxDOT on behalf of the Office of the Attorney General regarding expert witnesses needed to testify on behalf of the State at the Special Commissioners' hearing and subsequent proceedings, including jury trials. At the request of the Office of the Attorney General or TxDOT, DB Contractor shall provide all necessary expert witnesses including: engineers, land planners, real estate specialists, cost estimators, outdoor advertising sign experts, and environmental specialists, and DB Contractor shall appear as expert witness or fact witness, as requested. DB Contractor shall also make any Subcontractors available to appear as an expert witness or fact witness, as requested at the Special Commissioners' hearing or subsequent proceedings until Final Acceptance of the Project and through any maintenance agreement periods. The selection of all expert witnesses to be used for jury trials shall be determined by the Office of the Attorney General.
- Require expert witnesses to be present at a pre-hearing meeting with all exhibits and documents.
- The expert witness report, if required, shall be completed and forwarded to the appraiser before the updated appraisal is completed.

**15.4.5 Clearance/Demolition of Project ROW**

Prior to demolition of any improvements, DB Contractor shall provide to TxDOT photographs of the subject property and all improvements. If legal proceedings are initiated, all photos of personal property and any other items in dispute shall be in, and of a quality suitable for presentation as evidence in court. Following acquisition or possession of any parcel of Project ROW, DB Contractor shall:

- Within 10 days from vacancy of the property, secure and protect the buildings, improvements and fixtures on the Project ROW until they are disposed of or demolished. DB Contractor shall board-up, mow, fumigate and winterize as required by TxDOT or applicable Law.
- Coordinate with the owner and occupants to assure the clearance of personal property from the Project ROW, as applicable.
- Provide for any insect and rodent control and initiate extermination as required to protect the adjacent properties and rid the Project ROW from infestations.
- Secure Governmental Approvals required for demolition and environmental surveys or tests, notify TxDOT in writing of all such activities, and provide copies of such Governmental Approvals to TxDOT.
- To the extent required by Section 15.2.11, prepare necessary documentation for disposal of improvements, fixtures and buildings in accordance with applicable Laws and submit the same to TxDOT.
- Provide written notification to TxDOT of any abandoned personal property remaining on the Project ROW.
- Terminate all utility service(s) when appropriate.
- Process all required forms, documents and permit applications in order to proceed with the timely demolition or removal of any and all improvements, buildings and fixtures located within the Project ROW, as applicable.
- Demolish and/or remove all improvements.
- Notify TxDOT upon completion of the demolition and clearance of the respective parcels within the Project ROW, as applicable.

**15.4.6 Payment Submittal**

DB Contractor must submit a payment Submittal for any item that is a TxDOT payment responsibility as outlined in this Item 15. A payment Submittal shall consist of:

- completed payment request forms for each type of payment;
- all required appropriate documents as shown on each payment request form; and
- Form AP-152 (Texas Identification Number).

The State's warrant will be returned to DB Contractor's ROW AM.

**15.4.7 Property Fence**

In connection with fences, DB Contractor shall comply with the policies and procedures of the TxDOT ROW Manuals, as well as TxDOT Standard Specifications. Fencing standards for DB Contractor-provided fencing shall conform to the overall aesthetics requirements in the Contract Documents and referenced standards.

**15.4.8 Property Fencing for Public Properties**

Where public facilities now exist that are in high risk areas for public use (particularly those containing parks, sport areas, schools or any highly traveled pedestrian areas), DB Contractor shall construct similar like fence as in the preexisting condition or, at a minimum, construct a 6-foot-high chain-link fence with metal posts if no fence was in the preexisting condition. DB Contractor shall use Good Industry Practice in fencing public properties to control public access to the Project.

**15.4.9 Property Fencing for Private Properties**

DB Contractor shall instruct the appraiser to use the "Cost to Cure" format to compensate an owner of private property for a replacement fence when the Project ROW line leaves one or more unfenced remainder property(ies) that were fenced before the taking. Compensation for the new fencing will be based upon the same type of fence as the property owner's existing fence.

When the property owner is paid through the appraisal process for the cost to rebuild the fence on the remainder property, DB Contractor shall include the following clause in the MOA or the purchase agreement for such property:

"It is further understood and agreed that the Grantor has been compensated for the construction of a new fence and shall be responsible for constructing the necessary fencing within 30 days from the date of closing. Grantor specifically understands and agrees that the fences are the property of the Grantor and they shall be liable and responsible for any reconstruction, maintenance, or adjustment with regard to such fencing."

DB Contractor shall make reasonable and good faith efforts to ensure that the property owners, who have been compensated for fencing of the remainder properties, erect the fence in accordance with the construction schedule.

If necessary to maintain the Project construction schedule and to control unauthorized access to the Project ROW by the public or livestock, DB Contractor shall be responsible for providing temporary fencing in cases where the property owner refuses to fence the property within 30 days from the date of closing.

After the property owner's retention period has expired and if any existing fencing remains, DB Contractor shall remove the existing fences from the newly acquired Project ROW and will be responsible for all costs associated therewith.

#### 15.5 **Early ROW Acquisition**

TxDOT will notify DB Contractor if certain Project ROW parcels are scheduled to be acquired by TxDOT or Governmental Entities prior to NTP2. TxDOT will update DB Contractor regularly on the status of the acquisition process for each parcel.

DB Contractor shall complete the acquisition process for Project ROW parcels not acquired by TxDOT, including early acquisition parcels, and coordinate the scheduling of all remaining Project ROW acquisitions.

#### 15.6 **Submittals**

All Submittals described in this Item 15 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 15-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated. Any deliverable submitted by DB Contractor to TxDOT for review after 11:59 a.m. will be considered as submitted on the next Business Day.

**Table 15-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Copies of all property agreements	As required	For information	15.4.3
Meeting Agendas	Three Business Days prior to each meeting	For information	15.2.9
Meeting Minutes	Within 5 Business Days after the date of the meeting	Review and comment	15.2.9
All specific reports and supporting documentation during acquisition process	<ol style="list-style-type: none"> <li>1. Prior to Acquisition Package submission, Condemnation Package submission, and as often as requested by TxDOT</li> <li>2. Final reports and supporting documentation to be provided with retirement of all acquisition, relocation, condemnation, and property management files</li> </ol>	Approval	15.2.10
Project ROW Acquisition and Relocation Cost Summaries	Monthly	For information	15.2.10
Project ROW Status Reports	Monthly	For information	15.2.10

Table 15-1: Submittals to TxDOT

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Project ROW Status Updates	Weekly or as requested	For information	15.2.10
Parcel Status	Monthly	For information	15.2.10
Subcontractor Status Report	Monthly or as requested	For information	15.2.10
TxDOTConnect compatible spreadsheet of Project ROW data	Monthly	For information	15.2.10
Completed closeout files	Within 90 days after the completed ROW parcel activity	Approval	15.2.11
Project ROW map	Part of the Acquisition Survey Document	Approval	15.3.1
Acquisition Survey Document	As part of any Acquisition Package	Approval	15.3.1
GIS Files	Concurrent with the Acquisition Survey Document and prior to submission of the first Acquisition Package and updates as needed	Approval	15.3.1.1
Monthly Parcel Report	Monthly	For information	15.3.2
Monthly Progress Report	Monthly	For information	15.3.2
ROW CAD Files	Prior to submission of the first Acquisition Package and updates as needed	For information	15.3.2
Title Reports, five-year sales history, copies of all underlying documents, plots of all easements	As part of Acquisition Packages	Approval	15.3.3
Title Policies	Within 45 days after closing	Approval	15.3.3, 15.4.3
Project ROW Property Owner List	After ROW Acquisition Management Plan approval	For information	15.3.4
TxDOT Introduction letter	After ROW Acquisition Management Plan approval	Approval	15.3.4
Appraisal Reports	Prior to submission of the first Acquisition Package, and as requested	Approval	15.3.5
Environmental Site Assessment Reports	As part of Acquisition Packages	Approval	15.3.5.1
Acquisition Packages	Prior to delivering the offer to each property owner	Approval	15.3.6
Administrative Settlement Submittals	As necessary	Approval	15.4.1
Relocation Assistance Submittals	As part of the respective parcel's Acquisition Package or separately	Approval	15.4.2
Relocation Plan	Within 90 days after NTP1, as part of a ROW Acquisition Management Plan update	Approval prior to commencement of Construction Work	15.4.2
Closing Submittals	Prior to closing	Approval	15.4.3
Condemnation Packages	Prior to TxDOT submission to TTC for a minute order	Approval	15.4.4.1
Updated Appraisals	As requested	Approval	15.4.4.2

**Table 15-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Condemnation Support Submittals	Upon approval of condemnation package	For information	15.4.4.2
Photographs of properties/improvements to be demolished	Following acquisition or possession of any parcel and prior to demolition	For information	15.4.5
Documentation for disposal of improvements	Following acquisition or possession of any parcel	For information	15.4.5
Notification of abandoned personal property remaining in Project ROW	Following acquisition or possession of any parcel	For information	15.4.5
Notification of completion of demolition and clearance of Project ROW	Upon completion	For information	15.4.5
Payment Submittals	As necessary	Approval	15.4.6

# Item 16

## Geotechnical & Pavement



### 16.1 General Requirements

DB Contractor shall perform all investigations, testing, research, and analyses necessary to effectively determine and understand the existing surface and subsurface conditions within the Project ROW needed to carry out the Work.

DB Contractor shall ensure the geotechnical investigations and analyses are both thorough and complete, to provide accurate information for the design of roadways, pavements, foundations, structures, retaining walls, embankments, excavations, slopes, temporary special shoring, and other facilities that result in a Project that meet the requirements of the Contract Documents.

All geotechnical work shall be performed in accordance with the TxDOT *Geotechnical Manual* and the TxDOT *Pavement Manual*.

DB Contractor shall comply with the TxDOT *Pavement Manual* and this Item 16, for the pavement design and quality acceptance process. Where there is a conflict between the requirements of these documents, the requirements in these Design-Build Specifications shall take precedence.

### 16.2 Geotechnical Investigation

#### 16.2.1 Geotechnical Investigation for Pavement Design

DB Contractor shall determine the specific locations, frequency, and scope of all subsurface investigations, testing, research, and analyses necessary to design a safe and reliable pavement foundation for the Project in accordance with TxDOT geotechnical requirements in the TxDOT *Pavement Manual* and this Item 16. DB Contractor shall take all soil borings within and along the proposed roadbed alignment, using the GPR data provided in the RIDs to determine boring locations. DB Contractor shall submit boring locations and traffic control plans prior to commencing any subsurface pavement investigations for review and approval. Traffic control plans shall be prepared in accordance with Item 26.

DB Contractor shall utilize drilling and field investigation measures that safeguard groundwater from contamination, and shall be responsible for any mitigation or restoration associated with the geotechnical investigation work.

DB Contractor shall prepare and amend as needed its Geotechnical Engineering Reports documenting the assumptions, conditions, and results of the geotechnical investigation and analyses in accordance with the TxDOT *Pavement Manual*.

Each Geotechnical Engineering Report, upon completion and including any later supplements or amendments, shall be submitted to TxDOT for review and comment no later than 10 Business Days prior to commencement of the applicable Design Work.

DB Contractor shall submit the final Geotechnical Engineering Report and the Pavement Design Report to TxDOT for approval with the Released for Construction Documents no later than 10 Business Days prior to commencement of the applicable Construction Work. Each report shall be signed and sealed by a PE.

#### 16.2.1.1 Soil Testing Requirements

DB Contractor shall use the TxDOT *Pavement Manual* and web soil survey maps to determine the frequency of subgrade soil survey exploration for use in determining plasticity index, liquid limit, moisture content, organic content, sulfate concentration, soil classification and calculating PVR (Tex-124-E) as it relates to pavement design. Borings shall terminate at the depth recommended in the PVR evaluation below the top of the proposed untreated subgrade elevation, and sampling shall be performed with Shelby tubes or a continuous sampler system.

DB Contractor shall develop the scope of testing and the evaluation for analyzing the subgrade and existing pavement structure to supplement the Pavement Design Report. DB Contractor shall use the TxDOT test procedures in Table 16-1 to characterize the subgrade soils or borrow material for pavement design:

**Table 16-1: Soil Exploration & Testing**

Testing	Properties
Dynamic Cone Penetrometer (DCP) (ASTM D6951)	Stiffness, estimated back calculated subgrade modulus
Falling Weight Deflectometer (FWD)	Modulus of elasticity (stiffness)
Soil Classification (Tex-103-106-E, Tex-110-E, Tex-142-E)	Moisture content, plasticity, particle distribution, percent binder and soil classification
Soil Mineralogy (Tex-145-E, Tex-148-E, Tex-128-E)	Sulfate content (ppm), organic content (%), and pH levels
Soil Treatment Design (Tex-120-E, Tex-121-E, Tex-127-E)	Target stabilizer content, compressive strength, max. dry density, and optimum moisture content

## 16.2.1.2

**PVR Requirements for Rigid and Flexible Pavement**

DB Contractor shall design the new, full width pavement (excluding widenings) to have a PVR no greater than 1.5 inches for mainlane rigid pavements as calculated in accordance with TEX-124-E.

DB Contractor shall calculate PVR using the Excel workbook in Tex-124-E and the default empirical volumetric swell curves in Tex-124-E or alternatively, by directly determining the percent volumetric swell for the in-situ soil column by measuring the volumetric swell properties at the associated depth and load (effective stress) of each soil strata in the soil column, in accordance to ASTM D4546. DB Contractor shall calculate PVR for a soil column 10 feet deep as measured from the top of the proposed natural subgrade elevation.

If the PVR of the in-situ conditions exceed the maximum allowable levels, DB Contractor shall determine the depth of mitigation from the bottom of the proposed base material required to comply with PVR requirements. Any mitigation measures shall take into account fluctuations of the water table. At a minimum, DB Contractor shall utilize the following mitigation measures which may be used independently or in combination:

- Where chemical soil treatment is used, it shall be in accordance with TxDOT's Guidelines for Modification and Stabilization of Soils and Base for Use in Pavement Structures. Only material meeting the definition of treated subgrade or treated subbase in Section 16.3 shall be used to provide a permanently treated subgrade.
- Undercut, remove and replace expansive soils with select fill subbase. Only material meeting the definition of select fill subbase in Section 16.3 shall be used; all other unbound materials used as a pavement layer that do not meet this definition shall be considered untreated subgrade/embankment.

Adopting mitigation measures does not excuse DB Contractor from meeting Performance Requirements set forth in Section 27.3.

## 16.2.2

**Geotechnical Investigation for Other Elements**

The subsurface investigation shall include, but not be limited to, soil borings, test pits, rock coring and pavement coring. DB Contractor shall determine the specific locations, frequency, and depth of test holes in accordance with the guidelines in the TxDOT *Geotechnical Manual*. The scope of the subsurface geotechnical investigations shall include field and laboratory testing, research, and analysis that DB Contractor considers necessary to provide a safe and reliable roadway, embankment and cut slopes, bridge foundations, noise and sign structures, drainage structures, temporary and permanent retaining walls, excavation support systems, and any other facilities for the Project.

DB Contractor shall ensure the depth of the test hole is adequate for the anticipated structure foundation type and loading, excavation depths, and scour.

DB Contractor shall ensure that the groundwater monitoring methods and durations are adequate to determine groundwater levels and their impacts on the design and construction. DB Contractor shall employ field investigation measures that avoid groundwater contamination and shall be responsible for all mitigation and/or restoration associated with the geotechnical investigations.

DB Contractor shall prepare and amend, as needed, its Geotechnical Engineering Reports documenting the assumptions, conditions, and results of the geotechnical investigation and analyses, including the following:



- The geology of the Project area, including soil and/or rock types, and drainage characteristics.
- Descriptions of field investigations and laboratory test results used to characterize subsurface conditions. Boring logs shall be provided including descriptions of the soil/rock, Texas Cone Penetration test results, in-situ test results, and percent recovery and RQD for rock cores. TxDOT log form 513 shall be used as required by the TxDOT *Geotechnical Manual*.
- Laboratory testing shall include moisture content, plasticity index, gradations for each major soil strata change, levels of shrink/swell potential, soil corrosivity, soil compressibility, compaction characteristics (Proctor tests), and properties in accordance with TxDOT and ASTM geotechnical testing standards. Other field exploration and laboratory testing shall be performed as appropriate.
- A discussion of surface and subsurface site conditions and testing results with reference to specific locations on the Project.
- Design and construction parameters resulting from the geotechnical investigation and analysis.
- Discussions of structure foundation type selection considerations including suitability of subsurface conditions anticipated loads, scour, and construction staging. As required by the TxDOT *Geotechnical Manual*, bridge foundations shall consist of either drilled shafts or piling.
- Geotechnical analyses for foundations of drainage structures, bridge structures, noise and sign structures, retaining walls, noise walls and embankments. The analyses shall include recommended bearing strata, deep foundation length and evaluations of bearing capacities and predicted settlements.
- Slope stability analyses for embankment and excavation, including roadway section, and retaining wall slopes including both short-term (undrained) and long-term (drained) conditions, and discussion of design measures undertaken to ensure stability and safety of all slopes. The design minimum factor of safety required for global stability of all slopes and retaining walls shall be in accordance with the TxDOT *Geotechnical Manual*. The analysis shall consider the potential for long-term surficial slide failures common to high plasticity clays in Texas, as well as the possibility of rapid drawdown and specific recommendations shall be provided to minimize their occurrence.
- Evaluation of applicable retaining wall types including design and constructability considerations. Both temporary and permanent retaining walls shall be evaluated. DB Contractor shall ensure the design retaining walls are evaluated in accordance with the TxDOT *Geotechnical Manual* and the associated TxDOT Standards for the wall type considered. Analyses of global stability for each retaining wall shall be performed to ensure the minimum factors of safety for global stability required by the TxDOT *Geotechnical Manual* have been achieved.
- Quantitative settlement analyses are intended to predict the post-construction settlements at the finished ground surface. These analyses shall consider both total and differential settlements. Quantitative settlement analyses shall consider the compressibility of the proposed fill and the underlying soil and rock and their potential for settlement due to the weight of the fill and the weight of proposed structures. These evaluations shall consider, but not be limited to, primary consolidation, secondary compression, hydro-compression, and expansion. Settlement analyses shall be performed for all approach embankments to grade separation and other bridge structures.
- Recommendations for instrumentation and monitoring of settlement, stability, vibrations, etc. during construction as required to achieve safe and reliable construction staging and to ensure safety of existing facilities and travelling public.
- Plan view of field sampling locations (field test plan), boring logs and other field data, laboratory test results, calculations, and analyses that support design decisions.

The report shall:

- Document that adequate investigation, testing, analysis, design, mitigating measures and construction planning are applied to assess and provide for the effects of swell pressures from expansive soil and rock materials on foundations, pipes, and earth retaining structures.

- Provide design and construction parameters derived from geotechnical investigations for the design of structure foundations, pipes, pavements, slopes, embankments, detention ponds and earth retaining structures
- Assess the corrosion potential of the soil and rock materials and conditions that will be encountered, and the impacts to planned surface and subsurface facilities.

Each Geotechnical Engineering Report, upon completion and including any later supplements or amendments shall be submitted to TxDOT for review and comment.

### 16.3

#### **Pavement Materials Requirements**

DB Contractor shall incorporate the following requirements into the pavement designs, plans, quality control and quality assurance programs, and the field construction procedures. DB Contractor shall conduct all Work in accordance with the requirements of this Item 16 and TxDOT Standard Specifications.

The DB Contractor shall also conduct all Work for this Item 16 in accordance with the following modifications to the TxDOT Standard Specifications:

- **Item 314:**
  - Emulsified asphalt, not less than 2 percent of the total mixture, shall be used in the final flexible base finishing process.
- **Item 316:**
  - When using latex asphalt, DB Contractor shall avoid drifting of asphalt onto traffic and adjacent properties.
  - DB Contractor shall ensure that the asphalt for precoating the aggregate and the asphalt used for the surface treatment will not result in a reaction that may adversely affect the bonding of the aggregate and asphalt during the surface treatment operation.
  - DB Contractor shall not add bag house fines in the production of precoated material.
  - DB Contractor shall clean all concrete curbs, islands, medians, etc. that get coated with asphalt.
- **Items 340 & SS3076**
  - When the Texas Gyrator Compactor is utilized, DB Contractor shall design all mixture types using a target laboratory-molded density of 96.5%. The target laboratory-molded density may be increased to 97.0% or 97.5% in the field with TxDOT approval.
  - When utilizing Superpave Gyratory Compactor, DB Contractor shall design all mixture types at 50 gyrations (N-Design) and a target laboratory-molded density of 96.0%. Gyrations may be reduced to no less than 35 in the field.
- **Items 340, 342, 346, 347, 348, SS 3076 & 3077:**
  - Table 10 in SS 3076 and Table 11 in SS 3077: Tex-242-F Hamburg Wheel test Requirements for Performance Grade (PG) 64-22 or lower and PG 70-22 shall be as follows: Minimum number of passes at 1/2" Rut Depth, tested at 122 degrees F will be 5,000 and 10,000 respectively.
  - Crushing of aggregate for hot mix and immediate use for production of the mix is not allowed. DB Contractor shall stockpile the aggregate until enough material is available for five days of production.
  - DB Contractor shall not use diesel or solvents as asphalt release agents in production, transportation, or construction. A list of approved asphalt release agents is available from the District Laboratory.
  - The use of Recycled Asphalt Shingles (RAS) will not be allowed on the final riding surface.
- **Items 340, SS 3076 & 3077**
  - DB Contractor shall place mixture when the roadway surface temperature is equal to or higher than listed in Table 16-2 when measuring the roadway surface temperature with a hand-held thermal camera or infrared thermometer. Placement may begin prior to the roadway surface reaching the required temperature if

conditions are such that the roadway surface will reach the required temperature within 2 hrs. of beginning placement operations.

**Table 16-2: Minimum Pavement Surface Temperatures**

High Temperature Binder Grade	Minimum Pavement Surface Temperatures in Degrees Fahrenheit *	
	Subsurface Layers or Night Paving Operations	Surface Layers Placed in Daylight Operations
PG 64	45	50
PG 70	55	60
PG 76	60	60

\* Except for PG 64, DB Contractor may pave at temperatures 10° F lower than the values shown in Table 16-2 when utilizing a Material Transfer Device that is capable of providing a remixing, and continuous flow of material from the haul truck to the paver, such as a Roadtec SM-2500e/ex, that eliminates thermal segregation. In these cases, use either an infrared bar attached to the paver, or a hand held thermal camera or infrared thermometer, or a hand held infrared thermometer operated in accordance with Text Method 244-F to demonstrate that the uncompacted mat has no more than 10° F of thermal segregation.

- DB Contractor may use a substitute PG binder listed below in Table 16-3 instead of the PG binder originally specified in Table 5 of the TxDOT Standard Specification, if the substitute PG binder and mixture made with the substitute PG binder meet the following:
  - The substitute binder meets the specification requirements for the substitute binder grade in accordance with Section 300.2.10., "Performance-Graded Binders;"
  - The mixture has less than 10.0 mm of rutting on the Hamburg Wheel test (Tex-242-F) after the number of passes required for the originally specified binder. Use of substitute PG binders may only be allowed at the discretion of the Engineer if the Hamburg Wheel test results are between 10.0 mm and 12.5 mm, and
  - The substitute binder may not lower the PG binder for the surface mixture below 70-22.

**Table 16-3: Allowable Substitute PG Binders and Maximum Recycled Binder Ratios**

Originally Specified PG Binder	Allowable Substitute PG Binder for Surface Mixes	Allowable Substitute PG Binder for Intermediate and Base Mixes	Maximum Ratio of Recycled Binder <sup>1</sup> to Total Binder (%)		
			Surface	Intermediate	Base
76-22 <sup>4,5</sup>	70-22	70-22	10.0	20.0	25.0
70-22 <sup>2,5</sup>	N/A	64-22	10.0	20.0	25.0
64-22 <sup>2,3</sup>	N/A	N/A	10.0	20.0	25.0
76-28 <sup>4,5</sup>	70-28	70-28	10.0	20.0	25.0
70-28 <sup>2,5</sup>	N/A	64-28	10.0	20.0	25.0
64-28 <sup>2,3</sup>	N/A	N/A	10.0	20.0	25.0

1. Combined recycled binder from RAP and RAS. RAS is not permitted in surface mixtures.
2. Binder substitution is not allowed for surface mixtures.
3. Binder substitution is not allowed for intermediate and base mixtures.
4. Use no more than 10.0% recycled binder in surface mixtures when using this originally specified PG binder.

5. Use no more than 20.0% recycled binder when using this originally specified PG binder for intermediate mixtures. Use no more than 25.0% recycled binder when using this originally specified PG binder for base mixtures.
- **Item 342, 347 & 348**
    - Aggregate soundness values shall not vary by more than eight (8) percent between Surface Aggregate Class (SAC) A and B. This applies to all aggregate sources in each mix. The soundness value shall be dictated by the Bituminous Rated Source Quality Catalog (BRSQC). The eight (8) percent shall be based on reported catalog values.

## 16.3.1

**Subgrade Material Composition**

DB Contractor shall analyze subgrade material composition and perform necessary construction procedures to address the following subgrade soil limitations.

- **Sulfate Content.** DB Contractor shall mitigate soluble sulfate induced heave by reducing soluble sulfate concentration to a level under 3000 ppm. DB Contractor shall follow Tex-145-E for measuring sulfate contents. When quantities of soluble sulfates detected are greater than 3000 ppm, DB Contractor shall determine the source of the sulfates and whether there are even greater concentrations in the general proximity or that would be created when materials are pulverized in and surrounding the sampled location. DB Contractor shall use the TxDOT *Guidelines for Treatment of Sulfate-Rich Soils and Bases in Pavement Structures* and Items 260, 265 and 275 of the TxDOT Standard Specifications for testing and detection and integrate these procedures with construction practices.
- **Organic Content.** DB Contractor shall evaluate subgrade soils for organic content using Tex-148-E and in accordance with general guidelines given in Chapter 3 of the TxDOT *Pavement Manual*, considering soil variability within the Project limits. If the organic content of the soils is greater than 1%, DB Contractor shall stabilize the subgrade as follows:
  - If cement is selected as the treatment for subgrade in accordance with Table 16-4, DB Contractor shall modify the treatment to lime-cement combination; or
  - If any other treatment for subgrade is selected, DB Contractor shall increase the chemical stabilizer 1%.

## 16.3.2

**Select Fill Material**

For all embankment areas under pavement, DB Contractor shall furnish Type C (Density Control), ( $5 < PI < 20$ ) fill material.

## 16.3.3

**Treated Subgrade**

DB Contractor shall use Table 16-4 for selecting subgrade treatments:

**16-4: Selecting Subgrade Treatments**

PI	Stabilizer Option
<15	Cement
15 > PI ≤ 35	Lime or Cement
>35	Lime

DB Contractor shall meet the requirements of Tex-121-E, Part I to determine a target lime content to achieve a minimum unconfined compressive strength (UCS) of 50 psi and Part III to verify the target lime content achieves a pH of 12.4.

DB Contractor shall meet the requirements of Tex-120-E, Part I to determine a target cement content to achieve a minimum USC of 50 psi.

DB Contractor shall meet the requirements of Tex-127-E to determine a target lime fly ash content.

Any subgrade that does not conform to these treatment requirements shall not be included in the pavement design. To use the treated layer as part of the proposed pavement structure DB Contractor shall use the TxDOT Material and Tests Division's *Treatment Guidelines for Soils and Base in Pavement Structures*.

For rigid pavements, the treated subgrade shall extend a minimum 2 feet outside the edge of pavement, including shoulders, on each side to provide a stable area for the paving equipment.

The treated subgrade shall be compacted using density control only.

For fill, at grade, and cut sections, if the proposed structural pavement section exceeds the project PVR requirements in Section 16.2.1.2, then DB Contractor shall stabilize the moisture conditions in the pavement structure by extending the treated subgrade to at least four feet beyond the edge of the pavement.

#### 16.3.4

#### Treated Base

Treated base may be modified with cement, lime, lime-fly ash, or asphaltic binders.

Base materials to be treated shall meet the specifications for the type and grade specified in accordance with TxDOT Standard Specification *Item 247* and shall meet the requirements set forth in the applicable TxDOT Standard Specification for the selected stabilizer.

Base treatment shall be in accordance with the TxDOT Material and Tests Division's *Treatment Guidelines for Soils and Base in Pavement Structures*. DB Contractor shall use Table 16-5 for selecting base treatments.

**Table 16-5: Selecting Base Treatments**

PI	Stabilizer Option
<12	Cement, Cement-asphalt, Lime-asphalt, Asphalt, or Fly ash (CS)
>12	Lime, Cement-asphalt, Lime-asphalt, Lime-fly ash (FS), or Cement

When TxDOT Standard Specification Item 276 is used, DB Contractor shall determine the target cement content meeting the minimum and maximum UCS and 24-hour submerged strength requirements shown in Table 16-6 when tested in accordance with Tex-120-E, Part I.

**Table 16-6: Item 276 of the TxDOT Standard Specifications, Cement Treatment (plant-mixed), Minimum and Maximum Strength Values to be Achieved by Pavement Type**

Pavement Type	Minimum 24-hour submerged strength (psi)	Minimum 7-day UCS (psi)	Maximum 7-day UCS (psi)
Flexible pavement	240	300	500
Rigid pavement	400	500	No maximum

When TxDOT Standard Specification Item 275 is used, DB Contractor shall designate a target cement content and optimum moisture content necessary to produce a stabilized mixture that meets the strength requirements shown in Table 16-7.

**Table 16-7: Item 275 of the TxDOT Standard Specifications, Cement Treatment (road-mixed), Requirements for Cement Treatment**

Description	Minimum	Maximum
Cement Content (by dry weight of base)	2%	5%
7-Day Unconfined Compressive Strength (min.)* (Tex-120-E, Part I)	150 psi	-No maximum

\*Microcracking is required in accordance with TxDOT Standard Specification Item 275.4.7.

When lime is used to treat the base materials, DB Contractor shall determine the required lime content using Tex-121-E, Part I to achieve a minimum UCS of 150 psi.

When lime-fly ash is used to treat the base materials, DB Contractor shall determine the required lime-fly ash content using Tex-127-E.

When asphalt is used to treat the base materials, DB Contractor shall determine the required asphalt content using Tex-126-E and an approved TxDOT Standard Specification.

For rigid pavements, the treated base shall extend a minimum 2 feet outside the edge of pavement to provide a stable area for the paving equipment.

Treated base layers shall be compacted using density control.

For fill, at grade, and cut sections, if the proposed structural pavement section exceeds the project PVR requirements in Section 16.2.1.2, then DB Contractor shall stabilize the moisture conditions in the pavement structure by extending the treated base and subbase for at least four feet beyond the edge of pavement.

#### 16.3.5 **Tack Coat**

For flexible pavements, DB Contractor shall place a non-tracking tack coat (Tracking Resistant Asphalt Interlayer (TRAIL)) between all lifts of new hot-mix asphalt (HMA) in accordance with the applicable and relative hot-mix asphalt TxDOT Specification. Tack coat shall meet the requirements of TxDOT Standard Specification Item 300. TRAIL material used on the Project must be a pre-approved product from the TxDOT Material Producer list. Tack coat will not be required where underseal is used in accordance with Section 16.3.7 below and the underseal has not been subjected to traffic.

#### 16.3.6 **Surface Mix Type**

Where flexible pavement structures are used, the mainlane surface mix shall be either permeable friction course (PFC) or thin bonded permeable friction course (TBPFC) meeting TxDOT Standard Specification Items 342 or Item 348. An impermeable dense graded SMA Type D intermediate layer meeting Standard Specification Item 346 shall be used directly beneath the surface mixture with a minimum layer thickness of 2.0 inches. DB Contractor's surface mix selection (PFC or TBPFC) for flexible pavement mainlanes shall be consistent for the limits of the Project with the exception of overlays on bridge structures. Where an overlay on bridge structures is required, the surface mixture shall be SMA.

The frontage road/cross street/u-turn surface mix shall be Superpave meeting TxDOT Special Specification Item 3077.

DB Contractor shall obtain components for the surface mix material from a vendor listed at <http://www.txdot.gov/business/resources/producer-list.html>.

The performance-graded asphalt binder in the asphalt mixture directly beneath the surface mixture shall have the same high temperature performance grade as the asphalt surface layer.

#### 16.3.7 **Underseal**

DB Contractor shall place an underseal course in accordance with TxDOT Special Specification 3085 over any milled surface prior to all HMA overlays. For a surface of PFC, the underseal shall use a seal coat meeting Item 316 of the TxDOT Standard Specifications. For TBPFC, the underseal shall be in accordance with Item 348 of the TxDOT Standard Specifications.

DB Contractor shall place a prime coat complying with TxDOT Standard Specification Item 310 to any untreated or treated flexible base layer.

When placing any hot mix asphalt directly on concrete pavement, DB Contractor shall place an underseal consisting of a seal coat using either Asphalt Rubber (AR) or AC20-5TR meeting Item 300 and Item 316 of the TxDOT Standard Specifications.

#### 16.3.8 **Final Surface**

When HMA is used, level up shall not be considered part of the final surface course thickness.

### 16.4 **Design**

#### 16.4.1 **New Pavement**

##### 16.4.1.1 **Design Traffic Considerations**

The corridor traffic data (I-35 NEX\_ML\_EL\_ESALS\_Section1-8.pdf) has been provided in the RIDs and shall be deemed a minimum acceptable traffic volume and composition to be used by DB Contractor for the purpose of pavement design for the mainlanes and ramps. DB Contractor is responsible for determining appropriate traffic to be used as a minimum for the design of detour, temporary, cross street, frontage road, and driveway pavements. DB Contractor shall not be entitled to rely on the corridor traffic data the RIDs for the purpose of meeting the Performance Requirements of these DB Specifications or the CMA. The final

pavement design shall be a DB Contractor risk regardless of whether the actual traffic volume and composition exceeds that identified in the RIDs.

#### 16.4.1.2

##### **Subgrade Considerations**

For flexible pavement, DB Contractor shall be responsible for determining the design back calculated modulus value for subgrade using FWD testing.

For CRCP, DB Contractor will select the subgrade classification based on soil classification testing for the input in the design program. The subgrade K value for the inputted subgrade classification is hard-coded in the design program.

The IQF shall ensure the Final Design subgrade modulus is achieved during construction using methods in Section 16.5.

#### 16.4.1.3

##### **Pavement Type Requirement**

The following requirements shall be incorporated into the final pavement design:

##### 16.4.1.3.1

##### Mainlanes

Continuously Reinforced Concrete Pavement (CRCP) shall be used for the new mainlane pavement. The pavement shall have minimum thicknesses shown below in Table 16-8:

**Table 16-8: Minimum New Mainlane Pavement Thicknesses**

Pavement Location		SL-1604		I-410 <sup>1</sup>	
Service Life (years)		30			
Material Type	TxDOT Item	Material Thickness, Inches			
		Opt. 1	Opt. 2	Opt. 1	Opt. 2
CRCP	360	12.0	13.0	13.0	13.0
DG HMA <sup>2</sup> Type D (PG 64-22)	SS3076	1.5	-	1.5	-
DG HMA <sup>2</sup> Type B (PG 64-22)	SS3076	-	4.0	-	4.0
Cement Treated Base <sup>3</sup>	275, 276	6.0	-	6.0	-
Lime-Treated Subgrade <sup>3</sup>	260	-	12.0	-	12.0
<u>Estimated</u> <sup>4</sup> PVR, inches		≤2.5		≤2.75	

- I-410 mainlane pavement design is applicable to I-410 northbound ramp from the mainlanes to the elevated lanes (from physical gore to elevated lane structure).
- A Tack Coat (TxDOT Standard Specification Item 300) should be applied between each lift of HMA.
- Prime coat MC-30 or AEP (asphalt emulsion prime) (Item 310) should be placed on top of cement treated base and lime treated subgrade layers.
- The above pavement designs have not considered PVR mitigation.

##### 16.4.1.3.2

##### Ramps

Except as specified in Table 16-8 above, for ramps connecting mainlanes with elevated lanes, pavements shall be constructed with the same section (materials and depths) as the adjacent mainlane pavement.

For ramps connecting frontage roads with mainlanes, pavements shall be constructed with the same section (materials and depths) as the adjacent frontage road pavement.

##### 16.4.1.3.3

##### Frontage Roads, Cross Streets, U-turns and Park & Ride #4

A flexible pavement structure shall be used for the new frontage road, cross street, u-turn and Park & Ride #4 pavement. DB Contractor shall utilize one of the two options shown in Table 16-9:

**Table 16-9: New Frontage Road, Cross Street, U-turn and Park & Ride #4 Pavement Thicknesses**

Pavement Location	I-35	I-410, N. of IH-35		SL-1604		
Service Life (years)	20					
Material Type	Material Thickness, Inches					
	Opt. 1	Opt. 2	Opt. 1	Opt. 2	Opt. 1	Opt. 2
SP-D, SAC-A (PG 76-22)	2.0	2.0	2.0	2.0	2.0	2.0
Underseal Course	Yes					
DG HMA Type B (PG 64-22) <sup>1</sup>	7.0	13.0	6.5	12.0	5.5	13.0
Prime Coat	Yes					
Flexible Base	6.0	-	6.0	-	6.0	-
Treated Subgrade	12.0	-	12.0	-	12.0	-

1. A Tack Coat (TxDOT Standard Specification Item 300) shall be applied between each lift of HMA.

Park & Ride #4 pavement shall match the I-35 frontage road pavement.

TxDOT form 2088 will be required when determining the minimum Surface Aggregate Classification of the final surface.

#### 16.4.1.3.4

##### Shoulders

Pavement for the shoulders of all roadways shall be the same section (materials and depths, including treated subgrade) as the adjacent roadway pavement.

#### 16.4.1.3.5

##### Driveways

For replaced driveways, pavement type (flexible or rigid) shall match the type of the existing driveway being replaced. For new driveways, pavement type shall be rigid (concrete).

Concrete driveways shall be a minimum of 6 inches of High Early Strength (HES) concrete using #4 rebar reinforcement at 12" X 12" spacing.

#### 16.4.1.4

##### Required Pavement Design Reports

The pavement designs developed by DB Contractor shall be signed and sealed by a PE.

In addition to those requirements in the TxDOT *Pavement Manual*, Pavement Design Report(s) shall document the assumptions, considerations, and decisions contributing to DB Contractor's pavement designs, including the following:

- Pavement design details by location, including structural layer materials, general specifications, and thicknesses;
- Basic life-cycle cost considerations as described in Chapter 2 of the TxDOT *Pavement Manual*. Use an LCCA tool that allows for input of essential cost items; at a minimum consider future maintenance, resurfacing, reconstruction and other rehabilitation measures, describing what these activities are likely to entail. Do not include user costs.
- Relevant pavement evaluation data (structural and functional) and condition information on adjacent roads; include analysis of the GPR data provided by TxDOT in the RIDs;
- Site conditions which might influence the design and performance of pavements;
- Relevant geotechnical data and drainage requirements, including boring logs, laboratory soil test results, and active or passive drainage system design;
- Design criteria used in determining the pavement design(s), including traffic loads, pavement material characterization, environmental conditions, and pavement design life;



- Form 2088 as part of flexible pavement design only for determining the appropriate Surface Aggregate Classification (SAC) of the aggregate used for the final HMA riding surface
- Other considerations used in developing the pavement design(s), including subgrade preparations and stabilization procedures; and
- Description for selection of material types and grades.

DB Contractor shall include the proposed permanent, detour, temporary, transition pavement (from concrete to flexible) and rehabilitated pavement designs for the Project in its Final Design and shall indicate the applicable roadway and station limits for each pavement design. DB Contractor shall provide a tabulation of all pavement design software input values for each pavement layer, falling weight deflectometer (FWD) data, or other basis for the pavement thickness designs, and include station limits.

#### 16.4.1.5 **Flexible Pavement Design Requirements**

DB Contractor shall use FPS 21 software as the sole design methodology for flexible pavements. DB Contractor shall check all pavement thickness designs using the Modified Texas Triaxial design method, and other analyses methods necessary to prevent premature failure from subgrade rutting and fatigue. DB Contractor shall use design values recommended by the TxDOT *Pavement Manual*, Chapter 5 except as noted below.

##### 16.4.1.5.1 **Minimum Layer Thickness**

Minimum layer thickness for all unbound materials used in flexible pavement designs shall be 6.0 inches.

##### 16.4.1.5.2 **Pavement Design Life**

DB Contractor shall use 30 years for mainlane flexible pavement types and 20 years for frontage road flexible pavement types.

##### 16.4.1.5.3 **Minimum Time to First Overlay**

DB Contractor shall use 15 years for all perpetual flexible pavement designs and 20 years for all non-perpetual flexible pavement designs.

##### 16.4.1.5.4 **Reliability Level**

DB Contractor shall use Level C (95%) for flexible pavement designs.

##### 16.4.1.5.5 **Design Moduli**

Design moduli shall not exceed the maximum values in Table 16-10, as established from methods and criteria stated below, and in accordance with layer thickness specified in Table 16-10.

**Table 16-10: Design Structural Values for HMA Pavements**

Material Type	TxDOT Standard Specifications	Modulus for TxDOT FPS 21
Dense-Graded HMA	Special Specification (SS) 3076	Combined HMA thickness: ≤ 4.0" use 500 ksi 4.0" < T ≤ 8.0" use 650 ksi > 8.0" use 850 ksi
PFC and TBPFC	Item 342 and 348	300 ksi
Superpave Mixtures	SS 3077	Combined HMA thickness: ≤ 4.0" use 650 ksi 4.0" < T ≤ 6.0" use 750 ksi > 6.0" use 850 ksi
SMA	Item 346	Same as SS 3077
TOM	Item 347	TOM-C: 650 ksi TOM-F: 500 ksi
Flexible Base (Unbound Base)	Item 247, Grades 1-2 or 5	50 ksi
Treated Base	Item 260	*65 ksi
	Item 265	*65 ksi.
	Item 275, 276	*130 ksi
	Foam or Emulsion	*230 ksi
	Item 292	*400 ksi
Treated Subgrade or Subbase	Item 314	*20 ksi
	Item 260	*3 times the modulus of the subgrade **
	Item 275	*40 ksi**
Natural Subgrade	Existing	Back-Calculated. Value should not be larger than 25 ksi

\* Maximum design values.

\*\*Minimum modulus value for perpetual pavement design must be 35 ksi

#### 16.4.1.6

#### **Rigid Pavement Design Requirements**

DB Contractor shall use the design procedures outlined in the TxDOT *Pavement Manual* as the design methodology for all rigid pavement design. TxCRCP-ME is the required design procedure for CRCP and the 1993 AASHTO Guide for Design of Pavement Structures is the approved design method for Concrete Pavement Construction Design. DB Contractor shall use design values recommended by the TxDOT *Pavement Manual*, Chapter 8, and the TxDOT Standard Specifications for joint and reinforcement design. CRCP design will require a maximum of 10 punch outs per mile. DB Contractor shall select one of the two base layer combinations in the TxDOT *Pavement Manual*, Chapter 8.

Pavement Design Life: DB Contractor shall use a 30 year pavement design life for all rigid pavement types and locations.

For CRCP design: DB Contractor shall use 570 psi for the 28-day modulus of rupture for concrete.

The maximum modulus of base layer shall be 500 ksi for cement treated base (CTB) and 400 ksi for asphalt treated base (ATB) or HMA.

#### 16.4.2

#### **Reserved.**

#### 16.4.3

#### **Resurfaced Pavement Areas**

The Project includes areas of pavement, the maximum extents of which are defined within Exhibit 1 to the DBA as the "Resurfaced Pavement and Base Repair Areas", within which DB Contractor may retain some or all of the existing pavement cross section in place, provided that:

- A new surfacing course be provided meeting or exceeding the smoothness requirements of Section 16.5.2;

- The resurfaced pavement design meets or exceeds the design criteria specified in Section 16.4.3.1 below.

Within the resurfaced pavement areas, the DB Contractor shall construct up to 75,000 square yards of full-depth (10-inch) pavement base repair for the mainlanes and 133,000 square yards of full depth (8-inch) pavement base repair for the ramps and frontage roads. The minimum extents of base repair are defined within Exhibit 1 to the DBA and depicted in RID Exhibit "Resurfaced Pavement and Pavement Base Repair Areas".

During the implementation phase, TxDOT will confirm any additional areas of pavement base repair, provided that the total area of base repair work does not exceed the total square yardage amount specified above. The timing of the pavement base repairs will be based on DB Contractor's construction sequencing. DB Contractor is responsible for maintaining the existing pavement—which includes Resurfaced Pavement and Base Repair Areas—in accordance with Item 27. DB Contractor shall meet the smoothness requirements in Section 16.5.2 at Substantial Completion.

#### 16.4.3.1

#### **Resurfaced Pavement Areas Design Criteria**

In the resurfaced pavement areas, DB Contractor shall meet or exceed the following criteria:

- Existing flexible mainlane pavement:
  - Milling depth shall be based on DB Contractor's analysis of the depth of the existing surface layer and the relevant distresses, the results of which shall be included in the Pavement Design Report;
  - Overlay shall be PFC/TBPFC on top of a minimum of 2" SMA (Type D), with overall thickness equal to the milling depth.
- Existing rigid pavement with an asphalt overlay\*:
  - Milling shall be the full depth of existing asphalt;
  - Overlay shall be PCF or TBPFC with a thickness of 1.5" over a tack coat of Asphalt Rubber Type II.

\*If the existing concrete section has an asphalt overlay greater than 6", resurface the area as if it is a flexible pavement section.
- Concrete structures with an asphalt overlay:
  - Milling shall be down to 0.5" of existing asphalt;
  - Overlay shall be SMA (Type D) with thickness of 1.5" (overall asphalt thickness of 2"). DB Contractor shall utilize a 50:1 taper mill to level-up on bridge transitions.
- Existing flexible non-mainlane pavement:
  - Milling depth shall be based on DB Contractor's analysis of the depth of the existing surface layer and the relevant distresses, the results of which shall be included in the Pavement Design Report;
  - Overlay shall be Superpave with overall thickness equal to the milling depth.
- Layer thicknesses not specified above shall be in accordance with the applicable TxDOT Standard Specification or Special Specification Item for the surface mix selection. For existing flexible pavement, if the overlay thicknesses dictated by the applicable TxDOT Standard or Special Specification are greater than the milling depth indicated by the GPR data, the milling depth shall be increased to order to maintain the existing vertical profile.
- Park & Rides #1, #2, and #3 shall have a Superpave overlay consistent with the overlay constructed on the frontage roads.
- Both the 10-inch and 8-inch base repair pavement sections shall consist of HMA Type B (PG 64-22) complying with TxDOT Special Specification 3076. The surface materials in base repair areas shall be as required for the overlay sections described above (PFC/TBPFC and 2" SMA (Type D) on mainlanes and Superpave on frontage roads).

#### 16.4.4

#### **Use of Shoulders to Carry Construction Traffic**

DB Contractor shall perform a structural evaluation of all shoulders proposed to carry mainlane traffic during construction utilizing FPS 21. DB Contractor shall use the non-destructive testing and field sampling

described above for this structural evaluation. The Pavement Design Report shall include the results of a shoulder evaluation.

#### 16.4.5

##### **Pavement Widening**

For widening of existing pavement sections, DB Contractor shall provide documentation of criteria and rationale for the construction approaches selected to widen sections. DB Contractor shall comply with the TxDOT Pavement Manual, historical performance, and TxDOT District guidelines when selecting construction approaches. The widened pavement section shall match the existing travel lane pavement section (materials and depth). DB Contractor shall submit an analysis to address concerns about blocking subsurface moisture flow and to minimize the risk of failure of the construction joint between the different pavement structures.

Longitudinal construction joints for all pavement layers along the existing and new pavement sections shall be placed within six inches from the final in-service lane stripe or the center of the lane. Geotextiles or stress absorbing membrane interlayer (SAMI) may be placed over the widening joint to delay reflective cracking prior to performing asphalt overlays only.

For all widened sections, the interface between the new widened pavement and the existing pavement shall provide a uniform surface of the same material type across all adjacent lanes. In areas where an existing asphalt surface is in place and widening is required, a new surface course overlay will be required over the existing and widened pavements, with the surface HMA longitudinal joint offset from the underlying layers' longitudinal joint by at least 6 inches.

#### 16.5

##### **Construction Quality**

The IQF shall perform independent material testing, inspection, and audits of the CQMP.

When performing construction activities under or adjacent to existing structures or Utilities, DB Contractor shall limit vertical settlements and ground deformations so as to not damage structures, including foundation elements, and/or Utilities.

For those occurrences involving third party structures and Utilities, DB Contractor shall coordinate excavation activities in accordance with the requirements of Item 13 and Item 14. For those occurrences involving TxDOT's structures and Utilities, DB Contractor shall coordinate excavation activities with TxDOT.

All testing required in the TxDOT Standard Specifications and the Guide Schedule of Sampling and Testing for DB Projects by the IQF (DB Guide Schedule) shall be conducted for each pavement layer, except where superseded by these Design-Build Specifications. DB Contractor shall also ensure that the design assumptions are met by the testing requirements described in this Section 16.5.

#### 16.5.1

##### **Field Verification of Design Subgrade Modulus for Flexible Pavement**

The IQF shall perform the following field testing.

#### 16.5.1.1

##### **100% Coverage Testing**

The following two options are permitted for coverage testing of the compacted subgrade (both treated and untreated) layer. For untreated subgrade, the IQF shall complete the testing within 24 hours of the completion of compaction. On treated subgrade layers, the IQF shall allow the compacted material to cure a minimum of three (3) days before testing.

**Option 1 Proof Rolling:** IQF shall follow the requirements of Item 216 of the TxDOT Standard Specifications. All areas which are determined as unstable or that rut more than 0.5 inch shall be considered as failures and require corrective action.

**Option 2 Intelligent Compaction (IC):** to be performed on top of the compacted subgrade or treated subgrade. The IQF shall develop a color-coded "proof-mapping" chart in accordance with criteria listed in Table 1 from TxDOT *Special Specification* 2304 provided in the RIDs. Red-mapped areas constituting locations not achieving at least 25% of the Intelligent Compaction Measured Value (ICMV) shall be further evaluated by the IQF with the DCP to determine depth of weak material for corrective action.

#### 16.5.1.2

##### **Point Specific - Testing**

When using proof rolling, the IQF shall perform one DCP test in accordance with ASTM D6951 for every 250-linear foot section of roadbed to estimate  $M_R$ . The IQF shall use ASTM D 3665 to select one random location for each 250-foot section. All locations shall be greater than 1 foot from the future edge stripe.

When using proof-mapping IC data of the compacted layer, the IQF shall perform one DCP test in accordance with ASTM D6951 for every 250 linear foot section of roadbed for those locations classified as “red-mapped,” or as directed by TxDOT. The IQF shall perform one DCP test for every 1000-linear foot section of roadbed for non-“red-mapped” locations. The IQF shall use ASTM D 3665 to select one random location for each test section. All locations shall be greater than 1 foot from the future edge stripe.

The process for the IQF shall be as follows:

- Perform DCP tests to a depth of 3 feet. If a test location meets refusal, then select an alternate location within 2 to 5 feet to begin a new test. Refusal is defined as slow or no penetration progress where the penetration rate is less than 1 inch in a 10-blow set anywhere within the top 1 foot of subgrade material. If refusal is met after penetrating at least 1 foot, then the results to the depth of refusal shall be used.
- Convert the DCP data for each test to an estimated  $M_R$  for each 6-inch interval of penetration using the equations given in the TxDOT *Pavement Manual*.
- Compare  $M_R$  for each 6-inch interval of penetration in the section to the design value.
- If  $M_R$  for each 6-inch interval of penetration in the section meets or exceeds the design value, then review proof rolling. If proof rolling passes, then accept section.
- If no estimated  $M_R$  result for any 6-inch interval of penetration is below 50% of the design value, take the average of results for all 6-inch intervals and compare to design value. If the average  $M_R$  for all intervals is computed to be higher than the design value, then accept the section provided proof rolling passes. If the computed average is less than the design value, perform two additional DCP tests (one on either side) 10 feet longitudinally from the original test to determine the extent of the weak area. Continue testing at additional 10-foot increments until results no longer show weakness. DB Contractor shall determine a course of action to correct the weak areas. The IQF shall reevaluate following DB Contractor’s corrective action.
- If  $M_R$  for any 6-inch interval of penetration in the section is below 50% of design value, take two additional DCP tests (one on either side) 10 feet longitudinally from the original test to determine the extent of the weak area. Continue testing at additional 10-foot increments until results no longer show weakness. DB Contractor shall propose options to address these failed areas. The IQF shall reevaluate following DB Contractor’s corrective action.

If corrective action is required, DB Contractor shall develop options for consideration. These could include:

- Calcium-based treatment;
- Reworking failing areas;
- Excavating existing subgrade and replacing with material meeting requirements in Section 16.3, to a depth that meets requirements; or
- Other options as recommended by DB Contractor with TxDOT approval.

Additional pavement thickness shall not be considered corrective action.

## 16.5.2

### **Smoothness Specification**

Smoothness of the pavement constructed shall conform to the requirements of Item 585 of the TxDOT Standard Specifications, amended as cited below:

Article 585.3.4. Acceptance Plan and Pay Adjustments. The DB Contractor will evaluate profiles for determining acceptance and corrective action. The entire section is voided and replaced by the following:

Surface Test Type A. Use diamond grinding or other approved work methods to correct surface areas that have more than 1/8-inch variation between any two contacts on a 10-foot straightedge. For flexible pavements, fog seal the aggregate exposed from diamond grinding. Following corrective action, retest the area to verify compliance with this Item 16. Diamond grinding is not allowed on the final HMA riding surface except for localized areas as approved by TxDOT.

Surface Test Type B. IRI values will be calculated using the average of both wheel paths using Department software. A Nonconformance Report (NCR) and a corrective action acceptable to TxDOT is required, at DB Contractor’s sole expense, for any 0.1-mile section that measures an average IRI in excess of 75 inches per mile for rigid pavements, in excess of 95 inches per mile for flexible resurfaced mainlane pavements, or for correction of local roughness. After making corrections, re-profile the pavement section to ensure that

corrections have achieved the required level of smoothness. It is recommended to conduct profiler measurements when an HMA layer is directly below the final surface to identify need for corrective action prior to final HMA lift in order to obtain desired IRI on final surface. For flexible pavement, DB Contractor shall fog seal the aggregate exposed when diamond grinding is used. Diamond grinding is not allowed on the final HMA riding surface except for localized areas as approved by TxDOT.

When diamond grinding is used on concrete pavements, ensure thickness and clear cover requirements are met in conjunction with corresponding specification. Diamond grinding on concrete pavements is only allowed for correction of localized areas.

Article 585.4 Measurement and Payment. The entire section is voided.

All travel lanes constructed within the project limits and areas identified as travel lanes in the facility's ultimate configuration shall be tested in accordance with TxDOT Standard Specifications as travel lanes. Exceptions include pavement described in articles 585.3.2.1.1 thru 585.3.2.2.

#### 16.6 **Uniformity of Support Layers**

For both rigid and flexible pavements, DB Contractor shall collect FWD data for information about both the adequacy and uniformity of support layers. FWD testing shall be performed on the outside wheel paths and the data shall be stored in raw format (.FWD files), including GPS coordinates for each drop. DB Contractor shall provide the FWD data in the required format to TxDOT within 48 hours of test completion.

For rigid pavements, FWD testing shall be conducted on top of the asphalt base or asphalt bond breaker prior to placement of any concrete. For flexible pavements, FWD testing shall be conducted on top of the base layer prior to placement of any hot mix asphalt. For treated bases, DB Contractor shall allow a minimum of three (3) days following final compaction before testing. Testing shall be conducted at 100-foot intervals in each travel lane.

The FWD shall conform to TxDOT Standard Specifications as described in the TxDOT *Pavement Manual* (seven sensors at 1-foot spacing). The test load shall be as close as possible to 9000 pounds.

#### 16.7 **Construction Requirements**

DB Contractor shall conduct all Work in accordance with the requirements of this Item 16 and TxDOT Standard Specifications.

The DB Contractor shall also conduct all Work for this Item 16 in accordance with the requirements of the following TxDOT special specifications and special provisions:

- SS3076
- SS3077
- SS3084
- SS3085

#### 16.8 **Submittals**

All Submittals described in Item 16 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 16-11. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 16-11 Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Boring plan and traffic control plans associated with subsurface pavement investigations	Prior to performing any investigations	Approval	16.2.1
Preliminary Geotechnical Engineering Reports	Prior to commencement of applicable Design Work	Review and comment	16.2.1, 16.2.2
Final Geotechnical Engineering Report	Prior to commencement of applicable Construction Work	Approval	16.2.1, 16.2.2
Preliminary Pavement Design Reports	Prior to commencement of applicable Design Work	Review and comment	16.2.1, 16.4.1.4

**Table 16-11 Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Final Pavement Design Report	Prior to commencement of applicable Construction Work	Approval	16.2.1, 16.4.1.4
FWD data	As part of the daily QC inspection and test reports described is the TxDOT QAP for DB Projects and upon TxDOT request	For information	16.6

# Item 17

## Land Surveying



### 17.1 General Requirements

DB Contractor shall provide accurate and consistent land surveying and mapping necessary to support ROW acquisition, design, and construction of the Project.

DB Contractor shall review existing survey data and determine the requirements for updating or extending the existing survey and mapping data as required to complete its Work. DB Contractor is responsible for the precision, accuracy, and comprehensiveness of all survey and mapping.

### 17.2 Administrative Requirements

#### 17.2.1 Standards

DB Contractor shall ensure that all surveying conforms to the TxDOT *Survey Manual*, and the *General Rules of Procedures and Practices* of the TBPELS. DB Contractor shall ensure that any person in charge of a survey field party is proficient in the technical aspects of surveying.

#### 17.2.2 ROE

DB Contractor shall secure written permission from the property owner prior to entering any private property outside the Project ROW. It shall be DB Contractor's sole responsibility to negotiate and obtain this permission and DB Contractor shall be responsible for any and all damages and claims resulting from that ingress. DB Contractor shall maintain proper documentation of ROE maintained at all times.

#### 17.2.3 Survey by TxDOT

In performing surveys for other adjoining projects, TxDOT may need to verify and check DB Contractor's survey work. DB Contractor shall coordinate with the adjoining project regarding planned construction activities. DB Contractor shall notify TxDOT within two (2) Business Days if TxDOT stakes and marks are altered or disturbed.

### 17.3 Design Requirements

#### 17.3.1 Survey Control Requirements

DB Contractor shall base all additional horizontal and vertical control on the Level 2 and Level 3 control provided by TxDOT. DB Contractor shall be responsible for tying into TxDOT CORS vertical control and local monumentation. DB Contractor shall verify owner provided survey control.

DB Contractor shall establish and maintain additional survey control, as needed, and Project ROW monumentation throughout the Term. DB Contractor shall tie any additional horizontal and vertical control for the Project to the TxDOT-supplied Primary (Level 2) or Secondary (Level 3) control network. If DB Contractor chooses to use GPS methods, DB Contractor shall meet the accuracy of the appropriate level of survey as defined in the TxDOT *Survey Manual* and shall utilize the primary survey control provided by TxDOT.

All survey control points shall be set and/ or verified by a Register Professional Land Surveyor licensed in the State of Texas.

DB Contractor shall establish and maintain a permanent survey control network. The control network should consist of, at a minimum, monuments set in indivisible pairs at spacing of no greater than two miles.

Monuments shall be TxDOT bronze survey markers installed in concrete and marked as directed by the TxDOT *Survey Manual*. DB Contractor shall replace all existing survey monuments and control points disturbed or destroyed during execution of the Work. DB Contractor shall make all survey computations and observations necessary to establish the exact position of all other control points based on the primary control provided.

#### 17.3.2 Conventional Method (Horizontal & Vertical)

If DB Contractor chooses to use conventional methods to establish additional horizontal control, DB Contractor shall meet the accuracy of the appropriate level of survey as defined in Tables 17-1 and 17-2.



### 17.3.2.1 Horizontal Accuracy Requirements for Conventional Surveys

Horizontal control is to be established (at a minimum) according to the appropriate level of survey as defined below in Table 17-1.

**Table 17-1: Horizontal Accuracy Requirements**

	<b>TSPS First Order</b>	<b>TSPS Second Order</b>	<b>Remarks and Formulae</b>
Error of Closure	1: 50,000	1:20,000	Loop or between monuments
Allowable Angular Closure	$\pm 3'' \sqrt{N}$	$\pm 8'' \sqrt{N}$	$N$ = number of angles in traverse
Accuracy of Bearing in Relation to Course *	$\pm 04''$	$\pm 10''$	Maximum for any course
Linear Distance Accuracy (Minimum Length of Line)	1: 50,000 (2,500 feet)	1: 20,000 (1,000 feet)	
Positional Tolerance of Any Monument	$AC/50,000$	$AC/20,000$	$AC$ = length of any course in traverse
Adjusted Mathematical Closure of Survey (No Less Than)	1:200,000	1:200,000	

Notes: TxDOT policy requires all bearings or angles to be based on the following source: Grid bearing of the Texas Coordinate System of 1983, with the proper zone and epoch specified.

### 17.3.2.2 Vertical Accuracy Requirements for Conventional Surveys

Vertical control shall be established (at a minimum) on the North American Vertical Datum of 1988 (NAVD 1988), (Geoid 12A) and according to the appropriate level of survey as defined below in Table 17-2.

**Table 17-2: Vertical Accuracy Requirements**

	First Order	Second Order	Third Order	Remarks and Formulae
Error of Closure	0.013 feet $\sqrt{K}$	0.026 feet $\sqrt{K}$	0.039 feet $\sqrt{K}$	Loop or between control monuments
Maximum Length of Sight	250 feet	300 feet		With good atmospheric conditions
Difference in Foresight and Backsight Distances	$\pm 10$ feet	$\pm 20$ feet	$\pm 30$ feet	Per instrument set up
Total Difference in Foresight and Backsight Distances	$\pm 20$ feet per second	$\pm 50$ feet per second	$\pm 70$ feet per second	Per total section or loop
Recommended Length of Section or Loop	2.0 miles	3.0 miles	4.0 miles	Maximum distance before closing or in loop
Maximum Recommended Distance Between Benchmarks	2000 feet	2500 feet	3000 feet	Permanent or temporary benchmarks set or observed along the route
Level Rod Reading	$\pm 0.001$ foot	$\pm 0.001$ foot	$\pm 0.001$ foot	
Recommended Instruments and Leveling Rods	Automatic or tilting w/ parallel plate micrometer precise rods	Automatic or tilting w/ optical micrometer precise rods	Automatic or quality spirit standard, quality rod	When two or more level rods are used, they should be identically matched
Principal Uses	Broad area control, subsidence or motion studies jig & tool settings	Broad area control, engineering projects basis for subsequent level work	Small area control, drainage studies, some construction and engineering	

## 17.3.3

**ROW Surveys**

DB Contractor shall base all surveys on the horizontal and vertical control network provided by TxDOT.

DB Contractor shall coordinate with TxDOT regarding the assignment of RCSJ numbers for each new mapping project.

The documents produced by DB Contractor, or its Subcontractors, are the property of TxDOT, and release of any such document must be approved by TxDOT. All topographic mapping created by DB Contractor shall be provided to TxDOT in digital terrain model format using the software and version thereof being used by TxDOT at the time the mapping is developed. DB Contractor shall provide two sets of all mapping to the TxDOT District office surveyors. DB Contractor shall provide the mapping so as to allow a minimum of 20 days for TxDOT review and comment. DB Contractor shall obtain and address all TxDOT District office comments to TxDOT's satisfaction prior to signing maps.

In preparing the property description, the following will be required:

- Scanned copies of the deeds on USB flash drive and a graphics file of the abstract map; and
- Scanned copies of the field notes, control sketches, and a graphics file of all field survey data.

The surveyor shall submit the following interim mapping products:

- A preliminary ROW layout to determine if there are any changes to the proposed ROW; and
- An initial copy of the ROW map for review purposes.

### 17.3.3.1 Accuracy Standards

In performing ROW surveys consisting of boundary locations, DB Contractor shall meet the accuracy standards of the appropriate level of survey as defined below in Table 17-3.

**Table 17-3: Chart of Tolerances**

	Urban/Rural	Urban Business District	Remarks and Formulae
Error of Closure	1:10,000	1:15,000	Loop or between Control Monuments
Angular Closure	15" $\sqrt{N}$	10" $\sqrt{N}$	N = Number of Angles in Traverse
Accuracy of Bearing in Relation to Source *	20"	15"	Sin $\alpha$ = denominator in error of closure divided into 1 (approx.)
Linear Distance Accuracy	0.1 foot per 1,000 feet	0.05 foot per 1,000 feet	Sin $\alpha$ x 1000 (approx.) where $\pm$ = Accuracy of Bearing
Positional Error of any Monument	AC/10,000	AC/15,000	AC = length of any course in traverse
Adjusted Mathematical Closure of Survey (No Less Than)	1:50,000	1:50,000	

NOTE: \* TxDOT policy requires all bearings or angles to be based on the following source: Grid bearing of the Texas Coordinate System of 1983, with the proper zone and epoch specified.

### 17.3.4 Survey Records and Reports

DB Contractor shall produce a horizontal and vertical control report, including coordinate listing, maps showing control, preparation of standard TxDOT data sheets for all primary control, monument description and location, description of all primary and secondary survey control points installed, marked and referenced, along with a listing of the existing control used to create the installed control points. The report shall provide control from adjoining, incorporated, or crossed roadway projects that are currently in design, and show a comparison of the horizontal and vertical values. DB Contractor shall provide survey records and reports to TxDOT upon request.

DB Contractor may use an electronic field book to collect and store raw data. DB Contractor shall preserve original raw data and document any changes or corrections made to field data, such as station name, height of instrument, or target. DB Contractor shall also preserve raw and corrected field data in hardcopy output forms in a similar manner to conventional field book preservation.

Field survey data and sketches that cannot be efficiently recorded in the electronic field book shall be recorded in a field notebook by DB Contractor and stored with copies of the electronic data.

All field notes shall be recorded in a permanently bound book. (Loose leaf field notes will not be allowed.) DB Contractor shall deliver copies of any or all field notebooks to TxDOT upon request.

### 17.3.5 Units

All survey Work shall be performed in the U.S customary units system of measurement (U.S. Survey Foot). Work shall conform to Texas State Plane Coordinate System, South Central Zone (4204), NAD83 (2011) Epoch 2010. The surface adjustment factor for the Project is 1.00017.

## 17.4 Construction Requirements

### 17.4.1 Survey Records

DB Contractor shall deliver to TxDOT, for its review and comment, a listing of all primary, secondary control coordinate values, original computations, survey notes and other records including GPS observations and analysis made by DB Contractor prior to Final Acceptance.

### 17.4.2 Construction Surveys

DB Contractor shall perform all construction surveys in accordance with the design requirements set forth in the Contract Documents.

## 17.4.3

**ROW Monuments**

Upon final submittal of the ROW documents to TxDOT, DB Contractor shall set, using permanent and stable monuments as defined in Section 663.17 of the General Rules of Procedures and Practices of the TBPELS, all significant points along all ROW lines of the Project including the following:

- PCs;
- PTs;
- Pls;
- PCCs;
- PRCs;
- All permanent drainage easements at the intersection with the ROW line;
- All intersecting crossroad ROW lines and all ROW acquired for this project shall be marked with a rod and cap monument. These monuments shall be 1/2-inch iron rods, driven just below surface level, capped by a TxDOT-labeled aluminum cap (rod-and-cap monument); and
- All beginning and ending points of control of access (denied) lines.

Upon completion of the ROW acquisition and all Construction Work, DB Contractor shall replace all rod-and-cap monuments located on the final ROW line at all PCs, PTs, Pls, PCCs, and PRCs, and all intersecting crossroad ROW lines, with TxDOT Type II monuments (constructed according to the TxDOT ROW Manuals and the TxDOT *Survey Manual*) such that the final ROW lines will not be disturbed by construction. DB Contractor shall monument with a TxDOT Type II monument all final ROW lines where the distance between such significant ROW line points exceeds 1,500 feet. ROW line intersections with property lines shall remain monumented by a 1/2-inch iron rod with a TxDOT aluminum cap (rod-and-cap monument). DB Contractor shall ensure that the ROW monuments are set by a survey crew working under the direction of a RPLS, licensed to practice in Texas.

DB Contractor shall purchase all materials, supplies, and other items necessary for proper survey monumentation.

DB Contractor shall submit updated maps with the ROW monumentation information. (This is for final monumentation set, for example, type II, and type of monuments set, etc.) DB Contractor shall add all deed recording information to the map sheets in the ownership blocks on the map sheets.

## 17.4.4

**Record Documents**

DB Contractor shall submit the following as part of the Record Documents and as a condition of Final Acceptance:

- A listing of all primary and secondary control coordinate values, original computations and other records, including GPS observations and analysis made by DB Contractor;
- Copies of all survey control network measurements, computations, unadjusted and adjusted coordinates, and evaluation values;
- Survey records and survey reports;
- Parcels for the ROW maps in GPK format;
- Electronic files and paper copies of the ROW maps; and
- The final ROW maps consisting of the graphics files and two sets of the paper copy of the ROW maps, exhibits showing the metes and bounds description and parcel plat, signed and sealed by the surveyor. The required geo-referenced parcel data (features) for all existing and revised parcels shall be submitted in ArcGIS 10 format or the version in use by the TxDOT at the time of the submittal, and in the format of the TxDOT ROW Geo-Database Template "ROW\_Parcels\_Edits."

DB Contractor shall produce reports documenting the location of the as-built alignments, profiles, structure locations, utilities, and survey control monuments as part of the Record Documents as a condition of Final Acceptance. These reports shall include descriptive statements for the survey methods used to determine the as-built location of the feature being surveyed. DB Contractor's as-built data shall include the coordinate types (x, y, and/or z) and feature codes in the same format in which the preliminary construction data was generated. Where data has been provided to DB Contractor from TxDOT in an x, y, z only coordinate format,

or z only coordinate format, DB Contractor shall provide TxDOT with data in an x, y, z only coordinate format or z only coordinate format.

17.5

**Submittals**

All Submittals described in this Item 17 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 17-4. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 17-4: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
ROE documentation	Upon request	For information	17.2.2
Verification of owner provided survey control	After NTP2	For information	17.3.1
Interim mapping products	Prior to signing Final ROW maps	Review and comment	17.3.3
A horizontal and vertical control report	Upon request	For information	17.3.4
Survey records and reports	Upon request	For information	17.3.4
Copies of all field notebooks	Upon request	For information	17.3.4
Survey records as listed in Section 17.4.1	Prior to Final Acceptance	Review and comment	17.4.1
ROW Surveying and Mapping documents	Upon completion but prior to Final Acceptance	Approval	17.4.3
Updated mapping with any ROW monumentation information	Upon completion of the ROW acquisition and all Construction Work	For information	17.4.3
Record Documents	As a condition of Final Acceptance	For information	17.4.4

## Item 18 Grading



### 18.1 General Requirements

DB Contractor shall conduct all Work necessary to meet the requirements for grading, including clearing and grubbing, excavation and embankment, removal of existing buildings, concrete slabs, pavement and miscellaneous structures, subgrade preparation and stabilization, dust control, aggregate surfacing, and earth shouldering in accordance with the requirements of this Item 18.

### 18.2 Preparation within Project Limits

DB Contractor shall develop, implement, and maintain, for the Term, a Demolition and Abandonment Plan that considers types and sizes of Utilities and structures that will be abandoned during the Term. The plan shall ensure that said structures are structurally sound after the abandonment procedure. The plan shall be submitted to TxDOT for approval prior to NTP2.

DB Contractor shall demolish or abandon in place, all existing structures within the Project ROW no longer required for service, including, but not limited to: pavements, bridges, and headwalls. Any features that are abandoned in place shall be removed to an elevation at least the lower of two (2) feet below the final finished grade or one (1) foot below the pavement subgrade and drainage structures. DB Contractor shall ensure that abandoned structures are structurally sound after abandonment.

TxDOT reserves the right to require DB Contractor, at any time, to salvage and deliver to a location designated by TxDOT within the TxDOT District, in which the portion of the Project is located, any TxDOT-owned equipment and materials in an undamaged condition.

TxDOT reserves the right to require DB Contractor to salvage and deliver to a Project-specific location designated by TxDOT any ITS equipment and materials in an undamaged condition.

Unless otherwise specified by TxDOT, the material from structures designated for demolition shall be DB Contractor's property. All material removed shall be properly disposed of by DB Contractor outside the limits of the Project.

### 18.3 Slopes and Topsoil

DB Contractor shall follow TxDOT *Roadway Design Manual* and exercise Good Industry Practice regarding design limitations and roadside safety guidelines associated with the design of slopes along roadways.

DB Contractor shall perform finished grading and place topsoil to an adequate depth in all areas suitable for vegetative slope stabilization (and areas outside the limits of grading that are disturbed in the course of the Work) that are not paved. DB Contractor shall use only materials and soils next to pavement layers that do not cause water or moisture to accumulate in any layer of the pavement structure. DB Contractor shall ensure ditch profile grade lines are sufficient to prevent hydraulic backflow into pavement structure. DB Contractor shall provide stable slopes.

For designated construction easements and other approved PSLs outside DB Contractor's limits of maintenance, DB Contractor shall provide stable slopes.

For slopes steeper than 4:1, DB Contractor shall submit to TxDOT a slope stability analysis that demonstrates the adequacy of DB Contractor's design. DB Contractor shall submit the slope stability analysis to TxDOT for approval prior to Final Design Submittal. DB Contractor shall pave slopes steeper than or equal to 2:1 with concrete riprap.

Slopes that are to remain unpaved must accommodate mower access from the frontage road. Where access for mowing and maintenance operations cannot be provided from the frontage road, slopes must be paved with concrete riprap unless DB Contractor receives prior approval from TxDOT for an alternative access point.

### 18.4 Sodding

Block sod shall be placed at all open disturbed areas within the Project ROW prior to completion of the Project. DB Contractor shall establish and maintain all erosion and sediment controls in accordance with the

approved SW3P, and the condition of the erosion and sediment controls shall be in good working order throughout construction of the Project. DB Contractor shall stabilize disturbed areas on which construction activities have ceased temporarily or permanently, within 14 days unless they are scheduled to resume construction within 21 days. The areas adjacent to creeks and drainage ways have priority followed by devices protecting storm sewer inlets.

18.5 **Construction Requirements**

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 18 in accordance with the requirements of this Item 18 and the TxDOT Standard Specifications.

18.6 **Submittals**

All Submittals described in this Item 18 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 18-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 18-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Demolition and Abandonment Plan	Prior to NTP2	Approval	18.2
Slope stability analysis	Prior to Final Design Submittal	Approval	18.3

## Item 19

### Roadways



#### 19.1 General Requirements

DB Contractor shall coordinate roadway design, construction, and maintenance with other elements of the Project to achieve the Project objectives of a safe, reliable, cost-effective, and aesthetically pleasing corridor for the traveling public. The requirements contained in this Item 19 provide the framework for the design and construction of the roadway improvements to help attain the Project objectives.

DB Contractor shall coordinate roadway design, construction, and maintenance with other elements of the Project to achieve the objectives of the Project.

Where changes to the roadway geometrics result in revisions to the Project ROW, DB Contractor is responsible for demonstrating the proposed change is an equally safe alternative, as well as the initiation and progression of all environmental and public involvement processes in coordination with TxDOT. DB Contractor shall perform all ROW acquisition services that are necessitated by proposed changes in accordance with the Contract Documents.

#### 19.1.1 Lead Roadway Design Engineer

DB Contractor shall employ a Lead Roadway Design Engineer responsible for ensuring the design of the roadway is completed and design criteria requirements are met. The Lead Roadway Design Engineer shall be a PE and be responsible for coordinating interdisciplinary design reviews in cooperation with leaders of other disciplines. The Lead Roadway Design Engineer or a PE reporting directly to the Lead Roadway Design Engineer shall be the engineer of record for the design of the roadway Elements.

#### 19.2 Design Requirements

DB Contractor shall design the Project roadways in accordance with the Basic Configuration as defined in Exhibit 1 of the DBA and the Schematic Design. Deviations from the Schematic Design shall be requested in accordance with Section 5.2.2.2.1 of the General Conditions.

DB Contractor shall design roadways to be consistent with the design of all other elements of the Project, including aesthetics. The Project roadways shall be designed to integrate with streets and roadways that are adjacent or connecting to the Project. All design transitions to existing facilities shall be in accordance with the TxDOT *Roadway Design Manual*.

DB Contractor shall design all roadway Elements in accordance with the TxDOT *Roadway Design Manual*, AASHTO and TxDOT's policies, TxDOT Engineering Standard Sheets, applicable design criteria, and Good Industry Practice based on the Design Speeds as shown in the Contract Documents.

DB Contractor shall design the Project roadways to promote safety and to mitigate visual and noise impacts on neighboring properties.

All new roadside safety devices used on the Project and existing devices that are impacted by the Work shall meet current crash test criteria as specified in the AASHTO *Manual for Assessing Safety Hardware (MASH)*, TxDOT *Bridge Railing Manual*, and other safety requirements. Existing roadside safety devices used on the Project that are not impacted by the Work do not have to meet current crash test criteria and safety standards provided that the device meets the minimum rail height requirements in Chapter 4 of the TxDOT *Bridge Railing Manual*. In addition, DB Contractor is required to upgrade all metal beam guard fence (MBGF) that do not meet the TxDOT 31" MBGF height standard. All roadside safety devices shall be installed and utilized in accordance with TxDOT Engineering Standard Sheets.

DB Contractor may utilize NCHRP 350-compliant roadside safety devices to meet current crash test criteria. If a MASH-compliant crash cushion or barrier is available for a specific application per the "MASH Compliant Standards Listing" provided in the RIDs, then DB Contractor shall specify the MASH-compliant device and the specific application of the device in the plans. If there is not a MASH-compliant device available for a specific application per the "MASH Compliant Standards Listing", then DB Contractor may utilize NCHRP 350-compliant devices. DB Contractor shall specify the device and the specific application of the device in the plans.



TxDOT has performed a visual assessment of the existing roadside safety devices as documented in the exhibit “Existing Roadside Safety Devices Assessment – Safety Barriers” provided in the RIDs. DB Contractor shall perform a visual assessment of the existing safety devices for safety and crash worthiness and replace or upgrade any devices that are not functioning as intended. If an existing barrier requires an upgrade or replacement and does not meet current clear zone and barrier length requirements, DB Contractor shall upgrade or replace the existing barrier, and extend the barrier as needed, to comply with such requirements.

DB Contractor shall design and construct moment slabs for segments of the existing retaining walls at the I-35/LP 1604 interchange in accordance with the TxDOT Engineering Standard Sheet RW(TRF). TxDOT has performed an assessment of the existing retaining walls at the interchange and has identified locations where the existing wall coping requires the addition of a moment slab. The approximate locations of the existing wall coping requiring a moment slab based on TxDOT’s assessment are depicted on exhibit “Existing Roadside Safety Devices Assessment – Safety Barriers” provided in the RIDs. DB Contractor shall perform an assessment of the existing retaining walls at the interchange to verify the segments of the walls that require moment slabs. The Work shall consist of cutting and restoring the existing pavement for the drilling of new moment slabs into the existing coping for the segments of the existing retaining walls that do not have moment slabs. The addition of a new moment slab is not considered a physical impact to the existing retaining wall.

### 19.2.1

#### Control of Access

DB Contractor shall maintain all existing property accesses, except where access will be denied due to the implementation by DB Contractor of the channelization requirements at the five ramps identified in Table 19-1.

The five locations where channelization is required must include channelization between the physical and theoretical gore, and from the theoretical gore for the distance as defined in Table 19-1. The required channelization method shall consist of a longitudinal channelizing raised curb system as shown on exhibit “Control of Access Channelization Method” provided in the RIDs. Where the channelization is implemented at these five locations, DB Contractor is not responsible for providing any additional control of access.

If DB Contractor changes the location of any exit or entrance ramp shown on the Schematic Design, DB Contractor shall design revised exit and entrance ramps, as applicable, to meet at least the minimum spacing requirements between ramps and driveways, side streets, or cross streets listed in the TxDOT *Roadway Design Manual* and TxDOT *Access Management Manual*. In locations where the minimum spacing cannot be achieved, DB Contractor shall submit documentation to TxDOT for approval as part of the Preliminary Design Submittal demonstrating why the spacing cannot be achieved and a request for permission to design and implement channelization methods per the TxDOT *Roadway Design Manual* and TxDOT *Access Management Manual*.

If only slight modifications are made to any exit or entrance ramp shown on the Schematic Design, DB Contractor shall submit documentation to TxDOT for approval as part of the Preliminary Design Submittal demonstrating that the modification results in equal or better access compared with the access provided on the Schematic Design. Slight modifications shall mean adjustments to the Schematic Design ramp alignments that are made to accommodate the placement of adjacent bridge columns. If the ramp alignment shown on the Schematic Design is adjusted for any reason other than to avoid the placement of adjacent bridge columns then the new ramp location must meet minimum spacing requirements.

DB Contractor shall comply with the control of access requirements in this Section 19.2.1 unless DB Contractor receives TxDOT approval to deviate from such requirements. DB Contractor shall coordinate access with landowners when tying-in to private property; shall replace necessary signs, mailboxes, fences, and landscape features.

**Table 19-1: Control of Access Channelization Requirements**

No.	Ramp Name	Station	Channelization Requirements
<b>IH 35</b>			
1	IH 35 Exit Ramp NB Evans Rd.	3816+00	250 ft channelization from theoretical gore ramp STA 18+00.00.

No.	Ramp Name	Station	Channelization Requirements
2	IH 35 Exit Ramp NB Schertz Pkwy.	3879+00	250 ft channelization from theoretical gore ramp PT STA 25+62.45 to deny access to Chelsea Place.
3	IH 35 Exit Ramp NB FM 3009	3931+00	250 ft channelization from theoretical gore ramp PT STA 23+37.09 to deny access to Cabana Drive.
<b>IH 410</b>			
4	IH 410 Exit Ramp EB Starcrest Dr.	80968+00	250 ft channelization from theoretical gore at ramp PT STA 23+24.53.
<b>IH 35 Frontage Road</b>			
5	IH 35 FR Exit Ramp SB Schertz Pkwy. Turnaround	3917+00	Extend barrier channelization to deny access to Journey's Way.

## 19.2.2 Design Criteria

### 19.2.2.1 Geometric Design Criteria

DB Contractor shall design the elements of the Project to meet or exceed the geometric design criteria in Table 19-2 (Geometric Design Criteria), with the exclusion of the roadway design Deviations listed in Section 19.2.2.4, in order to meet the Project objectives.

**Table 19-2: Geometric Design Criteria**

	Elevated Lanes	Mainlanes	Direct Connector Ramps	Mainlane Ramps
Functional Classification	Urban Freeway	Urban Freeway	Freeway Ramp	Freeway Ramp
Design Speed	70 mph	60 mph	45 mph	45 mph
Stopping Sight Distance	730 ft	570 ft	360 ft	360 ft
<b>Horizontal Alignment Criteria:</b>				
Maximum Curvature (Min Radius)	3390 ft	2195 ft	740 ft	810 ft
Superelevation – e(max)	6%	6%	8%	6%
Maximum Curvature (Min Radius) w/o Superelevation	14,100 ft	11,100 ft	6,710 ft	6,480 ft
<b>Vertical Alignment Criteria:</b>				
Maximum Gradient	4%	4%	6%	6%
Minimum Gradient	0.50%	0.50%	0.50%	0.50%
Crest (min K-Value)	247	151	61	61
Sag (min K-Value)	181	136	79	79
Maximum Algebraic Difference w/o Vertical Curve	0.5%	0.5%	1%	1%
Min Vertical Clearance – Roadway	18 ft 6 in	18 ft 6 in	18 ft 6 in	18 ft 6 in
Min Vertical Clearance – Railroad	23 ft 4 in	23 ft 4 in	23 ft 4 in	23 ft 4 in
<b>Cross Section Criteria:</b>				
Lane Widths	12 ft	12 ft	14 ft/ 12 ft (see note 2)	14 ft / 12 ft (see note 2)
HOV Buffer Width	2 ft	N/A	N/A	N/A
U-turn Width	N/A	N/A	N/A	N/A
Inside Shoulder Widths	4 ft / 6ft (See Note 16)	10 ft	4 ft	2 ft (rdwy) 4 ft (str)
Outside Shoulder Widths	10 ft	10 ft	8 ft	6 ft (rdwy) 6 ft (str)
Pavement Cross Slope	0.02 ft/ft	0.02 ft/ft	0.02 ft/ft	0.02 ft/ft
Side Slope Within Clear Zone	N/A	6:1	N/A	6:1

**Table 19-2: Geometric Design Criteria**

	Elevated Lanes	Mainlanes	Direct Connector Ramps	Mainlane Ramps
Side Slope Outside Clear Zone	N/A	4:1	N/A	4:1
Curb Offset	N/A	N/A	N/A	N/A
Clear Zone Width	N/A	30 ft	N/A	16 ft
Intersection Horizontal and Vertical Criteria:				
Corner Radii	N/A	N/A	N/A	N/A
Design Vehicle (Intersection)	N/A	N/A	N/A	N/A
Preferred Corner Geometry	N/A	N/A	N/A	N/A

**Table 19-2: Geometric Design Criteria (Continued)**

	Ramps to Elevated Lanes	Collector Distributors	Frontage Roads	Cross Streets
Functional Classification	Freeway Ramp	Urban Collector	Urban Collector	Low Speed Urban
Design Speed	60 mph	40 mph	40 mph	30 mph
Stopping Sight Distance	570 ft	305 ft	305 ft	200 ft
Horizontal Alignment Criteria:				
Maximum Curvature (Min Radius)	2195 ft	485 ft	485 ft	RDM, Table 2-5
Superelevation – e(max)	6%	6 %	6 %	
Maximum Curvature (Min Radius) w/o Superelevation	11,100 ft	5,230 ft	5,230 ft	
Vertical Alignment Criteria:				
Maximum Gradient	4%	6%	6%	6%
Minimum Gradient	0.50%	0.50 %	0.50 %	0.50 %
Crest (min K-Value)	151	44	44	19
Sag (min K-Value)	136	64	64	37
Maximum Algebraic Difference w/o Vertical Curve	0.5%	1%	1%	1%
Min Vertical Clearance – Roadway	18 ft 6 in	16 ft 6 in	16 ft 6 in	16 ft 6 in
Min Vertical Clearance – Railroad	23 ft 4 in	23 ft 4 in	23 ft 4 in	23 ft 4 in
Cross Section Criteria:				
Lane Widths	14 ft/ 12 ft (see note 2)	12 ft	12 ft (See note 3)	12 ft
U-turn Width (see note 4)	N/A	27 ft	27 ft	27 ft
Inside Shoulder Widths	4 ft	4 ft	N/A (see note 3)	N/A
Outside Shoulder Widths	8 ft	6 ft	N/A (see note 3)	N/A
Pavement Cross Slope	0.02 ft/ft	0.02 ft/ft	0.02 ft/ft	0.02 ft/ft
Side Slope Within Clear Zone	N/A	6:1	6:1	6:1
Side Slope Outside Clear Zone	N/A	4:1	4:1	4:1
Curb Offset	N/A	N/A	1 ft either side (see note 5)	1 ft either side
Clear Zone Width	N/A	10 ft	6 ft (curbed)	6 ft (curbed)
Intersection Horizontal and Vertical Criteria:				
Corner Radii / Turnarounds (see note 6)	N/A	N/A	75 ft	75 ft
Design Vehicle (Intersection)	N/A	N/A	WB-62	WB-62
Preferred Corner Geometry	N/A	N/A	Simple	Simple

## Notes:

1. Any conflict between the TxDOT *Roadway Design Manual* and Table 19-2, then Table 19-2 shall govern.

2. Two-lane ramps shall have 12 ft lanes. Single lane ramps shall have 14 ft lanes. If the clear zone width requirement for ramps cannot be met and barrier protection is required, then the minimum shoulder widths for structures (str) shall be used. The minimum inside and outside shoulder widths on ramps may be interchanged to accommodate stopping sight distance.
3. See Table 19-7 for frontage road lane width deviations. In addition, the outside lane on the new construction LP 1604 frontage roads shall be an 11-ft lane in combination with an adjacent 5-ft bike accommodation lane and 4-ft inside shoulder as shown on the Schematic Design.
4. Turnaround at Schertz Parkway shall have a 1 ft inside barrier offset width and 2 ft outside barrier offset width for a total of 30 ft width between safety barriers.
5. DB Contractor may replace the existing frontage road shoulder width with curb and 1 ft curb offset, except on the existing LP 1604 frontage roads where the existing shoulder widths shall be maintained.
6. The corner radii / turnaround requirement of 75 ft minimum radius applies to new turnaround construction at Schertz Parkway and the LP 1604 turnarounds at UPRR and Lookout Rd. Deviations to the 75' minimum radius are provided below in Table 19-8. For new intersection construction, the minimum intersection design radii shall be the radii shown on the Schematic Design (30 ft / 30 ft at Pasatiempo Drive, 40 ft / 50 ft at Evans Road and 60 ft / 60 ft at Chelsea Place).
7. For pavement widening and rehabilitation (resurfacing) areas, existing design values for cross slope and superelevation may be maintained and the lane striping shall be in accordance with the TxDOT Schematic Design. For such pavement widening and rehabilitation (resurfacing) areas, existing design values supersede the requirements in Table 19-2. The design values for transitions to existing facilities may utilize existing values at the transition.
8. For new bridges over roadways (excluding bridges to be widened) listed as part of TxDOT's Texas Highway Freight Network (both primary and secondary routes), the minimum vertical clearance shall be 18.5 feet.
9. To reduce sheet flow hazards, the mainlane pavement will require a cross slope break at the lane line between the second and third lane. The typical section cross slope break shall be .02 ft/ft to .025 ft/ft. The cross slope break requirement does not apply to the elevated lanes.
10. Any side slopes steeper than 4:1 must be approved by TxDOT in accordance with Section 18.3.
11. The design of ramp acceleration and deceleration lengths shall be in accordance with Table 3-36 of the TxDOT *Roadway Design Manual*. If the design length using the TxDOT *Roadway Design Manual* is less than the length shown on the Schematic Design, then the length shown on the Schematic Design shall be used.
12. For new ramp construction, DB Contractor shall provide a minimum design spacing of 1500 ft between the desirable control points (striped gores) of successive ramps with an auxiliary lane in accordance with the TxDOT *Roadway Design Manual*. DB Contractor may maintain the spacing between existing ramps if the spacing is not impacted by construction.
13. The minimum radius for the mainlane exit and entrance ramp baseline with the gore areas without superelevation shall be a 2-degree curve, in which case the mainlane cross slope or superelevation may control through the gore area when ramp and mainlane curvature are in the same direction, except for the I-35 northbound entrance ramps from Forum Pkwy/Olympia Pkwy and from FM 1518 (ENRPNBFORUM and ENRPNB1518), which shall be no less than the 2000 ft and 2400 ft used for the Schematic Design. DB Contractor shall use Table 3-22 in the TxDOT *Roadway Design Manual* for the maximum algebraic difference in pavement cross slope in the gore areas of connecting roadways when superelevation is required or when ramp and mainlane curvature are not in same direction.
14. The design speed of the portion of a mainlane ramp closer to the frontage road shall not be less than the design speed of the intersecting frontage road in accordance with Chapter 3, Section 6 – *Design Speed* of the TxDOT *Roadway Design Manual*.
15. If the Work impacts only one end of an existing U-turn, then DB Contractor is required to upgrade only that end of the U-turn impacted by the Work in accordance with the U-turn requirements specified in Table 19-2.
16. DB Contractor shall provide a 6-foot wide inside shoulder in locations where there is not a 2-foot buffer between the HOV lane and express lanes.
17. DB Contractor shall increase the outside shoulder width on the following mainlane to frontage road ramps from a minimum of six feet to at least eight feet. Any reduction to the eight foot shoulder width requirement at the following locations must be approved by TxDOT, which may be granted or denied in TxDOT's sole discretion:
  - EB 410N Exit @ Starcrest Drive
  - WB 410N Exit @ Perrin Beitel Road

- SB I-35 Exit @ Randolph Blvd.
- SB I-35 Exit @ Thousand Oaks
- SB I-35 Ent @ N. Weidner Road
- SB I-35 Exit @ N. Weidner Road
- ENRPNBFORUM-B
- EXRPNBSCPWY
- ENRPNB1518
- ENRPSBEVANS
- EXRPNB3009
- EXRPEBLO
- EXRPEBNA02
- ENRPWBLO
- EXRPWBNA

### 19.2.2.2 Future Roadway Design Envelopes

#### 19.2.2.2.1 Cross Street Intersections

DB Contractor shall not design and construct bridge bents in the center median of the intersecting streets. DB Contractor shall design and construct cross street improvements to accommodate the future cross street intersection envelopes in Table 19-3 as shown on "I-35 NEX Cross Street Exhibit" in the RIDs. The improvements shall include the modification of the turnaround islands for column placement and associated Work to accommodate the future cross street intersection envelopes.

**Table 19-3: Future Cross Street Envelope Design Criteria**

No.	Cross Street	Envelope Clear Span Width
1	Thousand Oaks Drive / Starlight Terrace	116 ft (58 ft each side of CL)
2	N. Weidner Road	116 ft (58 ft each side of CL)
3	O'Connor Road / PA 1502	116 ft (58 ft each side of CL)
4	Judson Road	116 ft (58 ft each side of CL)
5	Toepperwein Road	116 ft (58 ft each side of CL)
6	I-35 Access Road	76 ft (38 ft each side of CL)
7	Pat Booker Road / TX 218	80 ft (40 ft each side of CL)
8	Loop 1604	116 ft (58 ft each side of CL)
9	Forum Parkway	116 ft (58 ft each side of CL)
10	Olympia Parkway	76 ft (38 ft each side of CL)
11	N. Evans Road	116 ft (58 ft each side of CL)
12	FM 1518 / Corporate Drive	116 ft (58 ft each side of CL)
13	Schertz Parkway	116 ft (58 ft each side of CL)
14	FM 3009	116 ft (58 ft each side of CL)

#### 19.2.2.2.2 Future Wurzbach Parkway

DB Contractor shall accommodate the connection of the future Wurzbach Parkway as described in Section 21.2.2 within the limits defined below:

- NB Elevated Lanes STA 1585+00 to 1630+00
- SB Elevated Lanes STA 2585+00 to 2630+00

#### 19.2.2.2.3 IH 35 / Loop 1604 Interchange

DB Contractor shall ensure that the design and construction of the elevated lanes and direct connector ramps at the IH-35 / Loop 1604 interchange does not preclude the widening of the Loop 1604 mainlanes from two to three lanes in each direction at the interchange. All columns for the elevated lanes and direct connector ramps shall be constructed outside of the No-Column Zone as shown on the "Loop 1604 No-

Column Zone” exhibit in the RIDs in order to accommodate the addition of a future 12-ft mainlane in each direction with a 10-ft outside shoulder, within the limits shown on the exhibit, and to maintain existing ramp access, in accordance with the geometric requirements for ramps in Table 19-2.

#### 19.2.2.2.4 CPS Energy Transmission Crossings

DB Contractor shall not raise the vertical alignment of the northbound and southbound elevated lanes as shown on the Schematic Design at the following locations in order to accommodate the design and construction of the CPS Energy transmission crossings as further described in Section 14.1.2.6.1:

- ML STA 3516+00 to STA 3520+00
- ML STA 3605+50 to STA 3608+00

#### 19.2.2.3 **Superelevation**

In areas where proposed roadways and ramps are to connect to existing pavement, DB Contractor’s design may retain existing cross slope or superelevation if appropriate. Pavement widening shall be constructed by extending the existing pavement cross slope or superelevation. Superelevation transitions shall be designed and constructed such that zero percent cross-slopes will not occur on longitudinal grades flatter than 0.35 percent.

DB Contractor may maintain the existing pavement normal crown or superelevation in overlay sections. At normal crowns, pavement widening adjacent to existing pavement shall be constructed by extending the existing pavement cross slope.

Cross slopes and superelevation in the rehabilitated (resurfacing) pavement areas shall be equal to the existing condition.

#### 19.2.2.4 **Roadway Design Deviations**

DB Contractor shall design the Project to meet the criteria in Table 19-2 with the exception of those identified in Tables 19-4, 19-5, 19-6, 19-7, and 19-8.

DB Contractor shall design the curves identified in Table 19-4 to meet or exceed the stopping sight distance for the given Design Speed.

DB Contractor shall design the curves identified in Table 19-5 to meet or exceed the given minimum radii.

DB Contractor shall design the roadway elements identified in Table 19-6 to meet or exceed the given minimum Design Speed.

DB Contractor shall design the frontage road segments identified in Table 19-7 to meet or exceed the minimum frontage road lane widths.

DB Contractor shall design the turnaround curves identified in Table 19-8 to meet or exceed the given minimum radii.

Additional design deviations are provided by TxDOT for the following:

- A reduction to the proposed inside LP 1604 mainlane shoulder width of 26 feet to accommodate placement of the proposed overhead sign bridge (OSB) columns in the LP 1604 median, as shown on the Schematic Design.
- A reduction in the vertical clearance requirement of 16’-6” in Table 19-2 to accommodate the widening of the existing mainlane bridge over FM 1518 and the SB-NB turnaround at FM 1518.
- An increase in maximum gradient from 6% in Table 19-2 to a maximum of 8% for the LP 1604 eastbound collector distributor road over the UPRR.

**Table 19-4: Design Deviations for Horizontal Stopping Sight Distance**

Roadway	Curve	Design Speed
I-35 EL NB	CURVE I35_PNBML 5	60 MPH
I-35 EL NB	CURVE I35_PNBML 8	60 MPH

Roadway	Curve	Design Speed
I-35 EL NB	CURVE I35_PNBML 15	65 MPH
I-35 EL NB	CURVE I35_PNBML 22	65 MPH
I-35 EL NB	CURVE I35_PNBML 37	65 MPH
I-35 EL SB	CURVE I35_PSBML 13	65 MPH
I-35 EL SB	CURVE I35_PSBML 26	65 MPH
I-35 EL SB	CURVE I35_PSBML 27	65 MPH
I-410 EB to I-35 EL NB Direct Connector Ramp	CURVE N410-ELNB-7	40 MPH
I-410 EB to I-35 EL SB Direct Connector Ramp	CURVE N410-ELSB-1	40 MPH
I-35 EL SB to I-410 WB Direct Connector Ramp	CURVE ELSB-N410-6	40 MPH
I-35 EL NB to I-410 WB Direct Connector Ramp	CURVE ELNB-N410-3	40 MPH
LP 1604 EB to I-35 EL SB Direct Connector Ramp	CURVE 1604EB-ELSB-7	40 MPH
LP 1604 EB to I-35 EL NB Direct Connector Ramp	CURVE 1604EB-ELNB-3	40 MPH
I-35 EL NB to LP 1604 WB Direct Connector Ramp	CURVE ELNB-1604WB-5	40 MPH
I-35 EL SB to LP 1604 WB Direct Connector Ramp	CURVE ELSB-1604WB-2	40 MPH
I-35 EL SB to LP 1604 WB Direct Connector Ramp	CURVE ELSB-1604WB-1	40 MPH

## Notes:

1. DB Contractor shall not utilize the TxDOT-provided design deviations for stopping sight distance for the following curves without TxDOT approval, which may be granted or denied in TxDOT's sole discretion:

- I-35 EL SB: CURVE I-35\_PSBML 26 (from approximately STA 2790+25 to 2804+85.66)
- I-35 EL SB: CURVE I-35\_PSBML 27 (from approximately STA 2809+74.87 to 2816+77.12)

**Table 19-5: Design Deviations for Minimum Radius**

Roadway	Curve	Minimum Radius
I-410 EB to I-35 EL NB Direct Connector Ramp	CURVE N410-ELNB-7	R = 675 ft
I-410 EB to I-35 EL SB Direct Connector Ramp	CURVE N410-ELSB-1	R = 670 ft
I-35 EL SB to I-410 WB Direct Connector Ramp	CURVE ELSB-N410-6	R = 644 ft
LP 1604 EB to I-35 EL SB Direct Connector Ramp	CURVE 1604EB-ELSB-7	R = 650 ft
LP 1604 EB to I-35 EL NB Direct Connector Ramp	CURVE 1604EB-ELNB-3	R = 644 ft
I-35 EL NB to LP 1604 WB Direct Connector Ramp	CURVE ELNB-1604WB-5	R = 674 ft
I-35 EL SB to LP 1604 WB Direct Connector Ramp	CURVE ELSB-1604WB-1	R = 700 ft

## Notes:

1. DB Contractor shall not utilize the TxDOT-provided design deviation for minimum radius of 674 ft for CURVE ELNB-1604WB-5 of the I-35 EL NB to LP 1604 WB Direct Connector Ramp without TxDOT approval, which may be granted or denied in TxDOT's sole discretion.

2. DB Contractor shall increase the minimum radius of CURVE ELSB-1604WB-1 of the I-35 EL SB to LP 1604 WB Direct Connector Ramp from the TxDOT-provided minimum radius of 700 ft to 725 ft. DB Contractor shall not utilize a minimum radius of less than 725 ft without TxDOT approval, which may be granted or denied in TxDOT's sole discretion.

**Table 19-6: Design Deviations for Design Speed**

Element	Alignment	Design Speed
Mainlane Ramp	EXRPSB35-TO	30 MPH
Mainlane Ramp	ENRPSBNW-35	40 MPH
Mainlane Ramp	ENRPEBLO	40 MPH
Mainlane Ramp	EXRPEBRB	40 MPH
Elevated Lanes Ramp	EXRPNBELEV	50 MPH
Elevated Lanes Ramp	ENRPSBELEV	50 MPH
Frontage Road	1604FR EB2	35 MPH
Frontage Road	1604FR WB	30 MPH

**Table 19-7: Design Deviations for Frontage Road Lane Widths**

No.	Location	Description of Deviation
1	I-35 Southbound Frontage Road from approximately STA 3620+00 to STA 3625+50	Restripe existing 12 ft lanes to 11 ft lanes to accommodate 4 ft sidewalk in front of drainage structure extension.
2	I-35 Northbound Frontage Road from approximately STA 3829+50 to 3831+50	Restripe existing 12 ft lanes to 11 ft lanes to accommodate 6 ft sidewalk and combination rail.
3	I-410N Westbound Frontage Road from approximately STA 81050+00 to 81056+00	Restripe existing 12 ft lanes to 11 ft lanes to accommodate a 4 ft sidewalk.

**Table 19-8: Design Deviations for Turnaround Minimum Radii**

No.	Location	Minimum Radius
1	LP 1604 at UPRR – Eastbound approach to turnaround	60 ft
2	LP 1604 at UPRR – Westbound approach to turnaround	60 ft

## 19.2.2.5

**Design Exceptions**

The Design Exceptions provided by TxDOT for the Project for lane width and shoulder width on existing facilities are listed in Table 19-9 and described in “I-35 NEX Central Design Exceptions” provided in the RIDs. FHWA has provided concurrence with the shoulder width requirements in Table 19-2 and described in “I-35 NEX Central FHWA Design Exceptions Clarifications” provided in the RIDs. DB Contractor may rely on the RID to the extent that a Design Exception will not be required for a mainlane shoulder width of 10 feet and an inside shoulder width of 4 feet for the elevated lanes.

DB Contractor shall not utilize the TxDOT-provided Design Exceptions for shoulder width at the following locations without TxDOT approval, which may be granted or denied in TxDOT’s sole discretion:

- I-35 ML NB Exit Ramp to O’Connor Rd. at I-35 CL STA 3605+00
- I-35 ML SB Exit Ramp to O’Connor Rd. at I-35 CL STA 3621+90
- I-35 ML SB Entrance from LP 1640 at I-35 CL STA.3734+50
- I-35 CD SB between I-35 CL STA. 3735+50 and 3771+25
- I-35 ML NB Exit Ramp to Schertz Pkwy at I-35 CL STA 3883+45
- I-35 ML NB Exit Ramp to FM3009 at I-35 CL STA. 3935+05
- I-35 ML NB Entrance Ramp from Schertz Pkwy at I-35 CL STA 3957+45

**Table 19-9: Design Exceptions**



<b>DESIGN EXCEPTIONS FOR SHOULDER WIDTH</b>	
<b>Facility</b>	<b>Description of Design Exceptions for Shoulder Width</b>
I-35 Northbound and Southbound Mainlanes	Reduced inside and/or outside shoulder width at various locations on mainlanes identified in the RID exhibit entitled "I-35 NEX Central Design Exceptions" to accommodate placement of proposed bridge columns and proposed OSBs.
I-410N and Loop 1604 Eastbound and Westbound Mainlanes	
I-35, I-410N and LP 1604 Mainlane Entrance and Exit Ramps	Reduced inside shoulder width for several entrance/exit ramps at various locations identified in the RID exhibit entitled "I-35 NEX Central Design Exceptions" to accommodate placement of proposed columns between mainlanes and frontage road.
<b>DESIGN EXCEPTIONS FOR LANE WIDTH</b>	
<b>Facility</b>	<b>Description of Design Exceptions for Lane Width</b>
I-35 Northbound and Southbound Mainlanes	Reduced lane width at various locations identified in the RID exhibit entitled "I-35 NEX Central Design Exceptions" including an extension of the existing 11 ft northbound mainlanes to just south of FM 3009 and adding proposed 11 ft auxiliary/acceleration lanes
I-410N Eastbound Mainlanes	Reduced lane width consisting of an additional 11 ft mainlane and 11' auxiliary mainlane between Haskin Drive (East of FM 2252) and Goldstar Drive (East of Starcrest Drive).

### 19.2.3

#### **Miscellaneous Design Requirements**

The border width, measured from back of curb, along frontage roads and crossing streets shall be 15 feet minimum, to the greatest extent possible, unless specified otherwise in these DB Specifications. At locations where a border width of 15 feet cannot be attained, DB Contractor may use the border width provided on the Schematic Design at that location as a minimum border width.

Where traffic barrier is necessary for mainlane pavement in the permanent configuration, DB Contractor shall utilize anchored Single Slope Concrete Barrier (SSCB) along the centerline and Single Slope Traffic Rail (SSTR) along the outside edge of mainlane pavement. DB Contractor shall use SSTR along mainlane ramps and at the base of retaining walls, where needed, for protection. Only cast-in-place or new, unused pre-cast barrier is allowed.

DB Contractor shall use San Antonio District Standards. District standards can be found at:

<https://www.txdot.gov/inside-txdot/district/san-antonio/specinfo.html>

### 19.2.3.1

#### **Driveways**

DB Contractor shall design driveways to be functionally adequate for existing land use of adjoining property and permits approved prior to the Effective Date. This shall be in accordance with the guidelines specified in *TxDOT Roadway Design Manual – Appendix C, "Driveways Design Guidelines,"* provisions of which will be requirements for use on this Project. DB Contractor shall design driveways to utilize consistent pavement to the existing driveway pavement, except for unpaved existing driveways which shall accommodate the applicable land use.

19.3 **Construction Requirements**

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 19 in accordance with the requirements of this Item 19 and TxDOT Standard Specifications.

19.4 **Submittals**

All Submittals described in this Item 19 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 19-10. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 19-10: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Control of Access Deviations	As part of the Preliminary Design Submittal for proposed changes to access requirements	Approval	19.2.1

## Item 20

### Drainage



20.1

#### General Requirements

In the design of the drainage facilities and the modification of existing drainage facilities, DB Contractor shall account for all existing sources of runoff that may reach the Project, whether originating within or outside the Project ROW.

Unless otherwise identified in the Item 20, in areas outside the Project ROW or areas within the Project ROW but not affected by the Work, DB Contractor is not responsible for upgrading the existing drainage system whether or not it is determined to meet the criteria in the current TxDOT *Hydraulic Design Manual* in the existing condition, unless the existing drainage system is physically impacted by the Work.

“Physical impact” in the context of this Item 20 and Item 21 shall mean any modification to an existing drainage component as a result of the Work, including any extension, realignment, or adjustment that changes the hydraulic characteristics of the existing drainage component resulting in an “adverse impact.” A “physical impact” shall also include the placement of any additional structural loads on the existing drainage structure that compromises the structural integrity of the existing drainage component, such as embankment that exceeds the original structural design capacity of the component, settlements, and/or other structural impacts associated with the Project as further described in Section 21.2.9.

DB Contractor shall design the Project, including all drainage facilities, such that the revised or newly constructed drainage system will not increase flooding to properties outside the Project ROW. If existing drainage patterns or flows are revised during the Project design, DB Contractor shall design and construct a solution that does not have adverse impacts to property owners outside the Project ROW.

“Adverse impacts” for the purposes of this Item 20 are defined as impacts that have the potential to increase risk to health and human safety, cause or exacerbate flooding of developed structures or increase the number of structures in the 100-year floodplain resulting from the Work. If DB Contractor changes existing drainage patterns or flows during the Project design, DB Contractor shall design and construct a solution to avoid any adverse impacts. DB Contractor’s drainage design shall contain any increase in water surface elevation (WSE) within either a drainage easement or channel banks to avoid any adverse impact.

DB Contractor’s drainage design shall include assessments of pre- and post-construction conditions, as well as assessments of conditions during construction staging. DB Contractor shall ensure and demonstrate by performing such assessments that its drainage design does not cause any adverse impact to off-site property owners in terms of developability or marketability of their property. DB Contractor shall obtain appropriate drainage easements at its own cost if such easements are deemed necessary and have not previously been obtained by TxDOT. Grading activities and cross drainage structures needed outside of the Project ROW may require the acquisition of additional ROW.

DB Contractor shall meet the requirements specified in this Item 20 along with the requirements of the TxDOT *Hydraulic Design Manual*.

20.2

#### Administrative Requirements

20.2.1

##### Data Collection

To establish a drainage system that complies with the requirements and accommodates the historical hydrologic flows in the Project limits, DB Contractor is responsible for collecting all necessary data, including those elements outlined in this Section 20.2.1.

DB Contractor shall collect all available and applicable data identifying all water resource issues, including water quality requirements as imposed by State and federal government regulations; national wetland inventory and other wetland/protected waters inventories; FEMA mapped floodplains; and official documents concerning the Project, such as the Environmental Assessment (EA) or other drainage and environmental studies. Water resource issues include areas with historically inadequate drainage (flooding or citizen complaints), environmentally sensitive areas, localized flooding, maintenance problems associated with drainage, and areas known to contain Hazardous Materials. DB Contractor shall also identify watershed

boundaries, protected waters, county ditches, floodplains, and boundaries between regulatory agencies (e.g., watershed districts and watershed management organizations) that pertain to the Project.

DB Contractor shall acquire all available and applicable municipal drainage plans, watershed management plans, and records of citizen concerns. DB Contractor shall acquire all available and pertinent existing storm drain plans and existing survey data, including data for all culverts, drainage systems, and storm drain systems within the Project limits. DB Contractor shall also identify existing drainage areas that contribute to the highway drainage system and the estimated runoff used for design of the existing system.

DB Contractor shall obtain photogrammetric and GIS data within the Project limits that depicts the "Outstanding National Resource Waters" (ONRW) and impaired waters as listed by the TCEQ. DB Contractor shall conduct surveys for information not available from other sources.

DB Contractor shall create an inventory of all existing drainage facilities including structures, culverts, ditches, and storm drains within the Project corridor. The inventory must include the condition, size, material, location, status, videotape or photographs, and other pertinent information. Pre-construction CCTV condition assessments shall be made of any existing drainage structures proposed to be physically impacted by the Work. The assessments shall be submitted to TxDOT for information prior to submittal of the preliminary design packages incorporating the existing structures.

DB Contractor shall verify that all existing drainage components that are physically impacted by the Work meet the hydraulic and structural capacity requirements as defined in this Item 20 and Item 21. If any elements of the existing system are physically impacted by the Work and do not comply with the requirements of this Item 20 or Item 21, DB Contractor shall upgrade or replace those elements to meet such requirements.

If existing drainage system components are not physically impacted by the Work, then DB Contractor is not responsible for upgrading or replacing those existing drainage system components to meet the requirements of this Item 20 and 21.

The data collected pursuant to this Section 20.2.1 shall be used in the design of the drainage facilities.

## 20.2.2

### **Coordination with Other Agencies**

DB Contractor shall coordinate all water resource issues with affected stakeholders and regulatory agencies. DB Contractor shall document the resolution of water resource issues.

DB Contractor shall coordinate with the local floodplain administrator and provide information relating to all FEMA drainage crossings and outfalls.

Drainage areas and structures that fall under the jurisdiction of the USACE shall comply with all USACE requirements. DB Contractor shall coordinate review and approval of the design and construction, if necessary, with the USACE. DB Contractor shall be responsible for obtaining applicable USACE permits.

In areas surrounding railroad facilities, DB Contractor shall coordinate the drainage design with the TxDOT District Railroad Coordinator and the appropriate railroad owner in accordance with Item 22.

## 20.3

### **Design Requirements**

DB Contractor shall design all elements of the drainage facilities in accordance with this Item 20, the applicable design criteria, Good Industry Practice and the TxDOT *Hydraulic Design Manual*.

The design of temporary and proposed drainage systems shall meet the performance requirements as defined in this Item 20. DB Contractor may make use of existing drainage facilities, provided overall drainage requirements for the Project are achieved and the combined drainage system functions as required. Should a temporary or proposed drainage system tie to an existing drainage system, the connected existing system shall also be designed and reconfigured, as necessary, to ensure the temporary or proposed system meets the performance requirements as defined in this Item 20 or Item 21 while maintaining or improving the performance of the connected existing drainage system.

DB Contractor shall provide drainage facilities compatible with existing drainage systems and all applicable municipal drainage plans or approved systems on adjacent properties. DB Contractor shall preserve existing drainage patterns wherever possible. Modifications to existing drainage patterns should be minimized. DB Contractor bears full responsibility for the Final Design and its effects on property owners outside the Project ROW.

DB Contractor shall base its design on design computations and risk assessments for all aspects of Project drainage.

DB Contractor shall design roadside open channels such that the profiles have adequate grade to minimize sedimentation.

DB Contractor shall provide a drainage system that maintains or improves the existing drainage.

DB Contractor shall utilize the TxDOT statewide precast drainage standard sheets for inlets, manholes, and additional details as shown in the TxDOT Engineering Standard Sheets.

DB Contractor shall make available to TxDOT, as part of the Submittals, all native design files used in the hydrologic and hydraulic analyses to prepare computations and plans. Such native files include input and output data from SWMM, HEC-HMS, HEC-RAS, or HY-8 models, culvert hydraulic computations, drainage area reports, and rational method. The native files for the models and analyses should represent the record set submitted.

### 20.3.1 **Surface Hydrology**

#### 20.3.1.1 **Design Frequencies**

DB Contractor shall use the design frequencies listed in Table 20-1 below.

#### 20.3.1.2 **Hydrologic Analysis**

DB Contractor shall ensure that no adverse drainage impacts will result from the construction of the Project. DB Contractor shall evaluate and document the analysis confirming that the temporary drainage system and proposed drainage improvements do not result in any adverse impacts. Flood damage potential for the Project, while under construction and when completed, shall not exceed pre-Project conditions.

DB Contractor shall design drainage structures that intercept and convey flow from off-site through the Project (e.g., cross-culverts). Such structures shall be designed with sufficient capacity to accommodate existing off-site conditions.

Existing cross-culvert drainage structures that are physically impacted by the Work must be upgraded or replaced to accommodate existing off-site conditions and meet the hydraulic and structural capacity requirements defined in this Item 20 and Item 21

If existing cross-culvert structures are not physically impacted by the Work, then DB Contractor is not required to upgrade or replace such structures.

DB Contractor shall use the following criteria for developing runoff calculations:

- Run-off Coefficients:
  - Pavement (Asphalt) = 0.9
  - Pavement (Concrete) = 0.9
  - Unpaved areas within the Project ROW = 0.7
  - For areas outside the Project ROW:
    - Undeveloped = 0.35
    - Residential = 0.50
    - Commercial = 0.65
- Minimum Time of Concentration,  $T_c = 10$  minutes
- DB Contractor's base hydraulic model shall reflect the most current as-built conditions.

#### 20.3.1.3 **Hydrologic Calculations**

DB Contractor shall use the National Weather Services' Atlas 14 rainfall data for hydrologic calculations.

For the temporal distribution of Atlas 14 rainfall data, DB Contractor shall use the Balanced Storm Method, also known as the Frequency Storm in HEC-HMS, for SWMM model calculations, instead of NRCS Type II and III distributions. NRCS Type II and III distributions are no longer allowed for use in hydrologic modeling.

#### 20.3.1.4 **Mitigation of Hydrologic Impacts**

The City of San Antonio has established a 'Mandatory Detention Area' map identifying areas that require mandatory detention for future projects within San Antonio city limits. The map is located in Appendix D of the "I-35 NEX Drainage Analysis Report" in the RIDs. Detention storage shall be provided for all crossings located within the San Antonio Mandatory Detention Area as required to mitigate runoff impact volumes at these crossings. See Section 20.3.4 for detention storage pond requirements.

The increase in runoff volumes due to the increase in impervious cover between existing and proposed conditions may be mitigated by adding storage volume in ponds, roadside ditches and underground storage facilities, including storm drain pipes, as described in Section 20.3.4. DB Contractor is permitted to use restrictor pipes for in-line detention facilities. The use of restrictor plates is not permitted.

**Table 20-1: Drainage Design Summary Table**

Functional classification and structure type	Design Annual Exceedance Probability (AEP)				
	50% (2-yr)	20% (5-yr)	10% (10-yr)	4% (25-yr)	2% (50-yr)
<b>Freeways (mainlanes):</b>					
Culverts					X
Bridges <sup>+</sup>					X
<b>Principal arterials:</b>					
Culverts				X	
Small bridges <sup>+</sup>				X	
Major river crossings <sup>+</sup>					X
<b>Minor arterials and collectors (including mainlane ramps and frontage roads):</b>					
Culverts			X		
Small bridges <sup>+</sup>				X	
Major river crossings <sup>+</sup>					X
<b>Local roads and streets:**</b>					
Culverts			X		
Small bridges <sup>+</sup>			X		
<b>Storm drain systems on interstates and controlled access highways (mainlanes, ramps and elevated lanes):</b>					
Inlets, drain pipe, and roadside ditches			X		
Inlets, drain pipe for depressed roadways <sup>*</sup>					X
<b>Storm drain systems on other highways and frontage roads:</b>					
Inlets, drain pipe, and roadside ditches			X		
Inlets, drain pipe for depressed roadways <sup>*</sup>					X

**Table 20-1 notes:**

All facilities, including storm drain systems, must be evaluated to the check flood/1% AEP (100-yr) flood event. The purpose of the check flood evaluation is to ensure the safety of the drainage structure and downstream development by identifying significant risk to life or property in the event of capacity exceedance.

All features of the roadway facility shall be assessed under the 2-, 5-, 10-, 25-, and 50-year storm events to ensure no adverse impacts.

For structures extending underneath both mainlanes and frontage roads the structure shall be designed to the mainlane design AEP.

As a tributary of Cibolo Creek, classified as a major river crossing, Selma Creek is classified as a major stream crossing with the frontage road drainage structures classified as small bridges with a 25-year design AEP.

\* A depressed roadway provides nowhere for water to drain even when the curb height is exceeded.

\*\*Drainage design for existing local roads and streets shall meet existing condition or better; however, the design shall meet at a minimum the 20% AEP (5-yr).

+ It may be necessary to calculate the 4% (25-yr), 2% (50-yr), 0.5% (200-yr), or 0.2% (500-yr) AEP for scour computations. See the TxDOT *Geotechnical Manual: Chapter 5*.

## 20.3.2

**Storm Drain Systems**

Where precluded from handling runoff with open channels by physical site constraints, or as directed in this Item 20, DB Contractor shall design enclosed storm drain systems to collect and convey runoff to appropriate discharge points.

DB Contractor shall prepare a storm drain drainage report encompassing all storm drain systems that contains, at a minimum, the following items:

- Detailed table of contents and narrative of design methodology;
- Drainage area maps for each storm drain inlet with pertinent data, such as boundaries of the drainage area, best available topographic contours, runoff coefficients, time of concentration, and land use with design curve number and/or design runoff coefficients, discharges, velocities, ponding, and hydraulic grade line data;
- Location and tabulation of all existing and proposed pipe and drainage structures. These include size, class and gauge, detailed structure designs, and all special designs;
- Specifications for the pipe bedding material and structural pipe backfill on all proposed pipes and pipe alternates;
- Complete pipe profiles, including pipe size, type, and gradient; station offsets from the centerline of the roadway; length of pipe; class/gauge of pipe; and numbered drainage structures with coordinate location and elevations;
- Complete documentation of DB Contractor's assessment of the potential for the Project to cause adverse impacts, including how adverse impacts are mitigated (if needed), and reasonable substantiation that the Project will not cause any adverse impacts; and
- Demonstration that the drainage design does not cause any adverse material impact to offsite property owners or that DB Contractor has obtained appropriate drainage easements.

This report shall be a component of the Drainage Design Report.

DB Contractor shall design all storm drain systems such that the hydraulic grade line for the design frequency event is no higher than one foot below:

- Gutter depression for curb inlet;
- The top of grate inlet; and
- The top of manhole cover.

Runoff within the jurisdiction of the USACE shall be conveyed in accordance with applicable Laws and permits.

The gutter depression used for curb and grate combination inlets shall not encroach into the travel lane if the gutter depression exceeds the normal cross slope.

DB Contractor shall place manholes or combination manholes and inlets wherever necessary for clean-out and inspection purposes. See Chapter 10, Section 7 of the *TxDOT Hydraulic Design Manual* for the manhole spacing criteria.

The use of "T" connections and "Y" connections in storm sewer systems is not permitted unless approved in writing by TxDOT.

The use of slotted drains or trench drains will not be allowed unless approved by TxDOT. Existing slotted and trench drains may remain if not impacted by the Work.

The use of slotted barriers is permitted in both temporary and permanent conditions provided that storm water runoff does not flow into adjacent travel lanes or fall onto roadways, pedestrian facilities, into waterways, or onto railroad ROW. DB Contractor shall not be permitted to mitigate impacts by using restrictor plates for in-line detention facilities.

Refer to Section 21.2.7 for requirements for underdrains and storm sewer systems adjacent to MSE retaining walls.

DB Contractor shall comply with TxDOT standards and specifications for storm drain pipe bedding and structural pipe backfill material.



### 20.3.2.1 Storm Drain System Solutions

DB Contractor shall design and construct storm drain system solutions at the following locations, which are intended to improve the existing drainage conditions by preventing runoff from ponding on the existing roadways:

- DB Contractor shall design and construct a RCP storm drain system adjacent to the I-35 southbound frontage road from approximately I-35 mainlane STA 3941+00 to 3950+50 to prevent ponding on the southbound frontage road. An exhibit entitled "Area 2 – Ultimate Option" showing the proposed location of the storm drain line is provided in "I-35 NEX Storm Drain System Solutions" in the RIDs.
- DB Contractor shall design and construct a RCP storm drain system under an existing raised median along the I-35 northbound frontage road that begins south of FM 3009 and extends north of FM 3009 from approximately I-35 mainlane STA 3967+50 to 3975+00 to prevent ponding along the outside edge of the I-35 northbound mainlanes. The storm drain should terminate at approximately STA 3975+00 as shown on the figure entitled "Area 3 – Ultimate Option" in "I-35 NEX Storm Drain System Solutions" provided in the RIDs and include regrading of the existing channel from the outfall at approximately STA 3975+00 to convey the runoff to the outfall further to the north at approximately STA 3980+50.
- DB Contractor shall design and construct a RCP storm drain system under the embankment slope between the I-35 southbound frontage road and southbound mainlanes just north of FM 3009 from approximately STA 3970+50 to 3977+00 to prevent ponding along the outside edge of the southbound mainlanes. An exhibit entitled "Area 4 – Ultimate Option 1" showing the proposed location of the storm drain line is provided in "I-35 NEX Storm Drain System Solutions" in the RIDs.

### 20.3.2.2 Pipes

DB Contractor shall meet the requirements set forth in Chapter 10 of the TxDOT *Hydraulic Design Manual*.

Storm drain pipes shall be designed to maintain a minimum velocity of three feet per second whenever feasible. If design flow velocities less than three feet per second are unavoidable, pipes shall be designed for full flow at 80% of the internal diameter to account for sedimentation in the pipe.

Other storm drain pipes shall be designed using the full internal diameter. Storm sewers shall be designed to prevent surcharging of the system at the flow rate for the design year event.

Pipes shall be designed to achieve a maximum velocity of 12 feet per second in the pipe.

All storm drains shall be designed and constructed to sustain all external loads with zero deflection and shall have positive seals at the pipe joints.

All pipes shall be reinforced concrete pipe (RCP), with the exception of vertical pipe drains for mechanically stabilized earth (MSE) walls and bridge deck drains.

On mainlanes, ramps, frontage roads, driveways, and cross-streets, the minimum storm drain pipe size inside diameter shall be 24 inches, including restrictor pipes, in accordance with Chapter 10, Section 7 of the TxDOT *Hydraulic Design Manual*. The minimum pipe size inside diameter of a discrete drainage system may be less than 24 inches if the drainage system is tying to an existing system that is in good condition and is of adequate size to properly convey the flow. The existing system must meet the performance requirements in this Item 20 and Item 21.

Where possible, storm drain systems shall be "gravity flow" designs with the hydraulic grade line designed in accordance with Section 20.3.2. Pressure flow design may be used at locations where the DB Contractor can demonstrate pressure flow is unavoidable or may provide benefit to the Project.

Trunk lines may be designed through the inlets.

Storm drain pipe requirements include:

- Pipe depth of cover: 1 foot desirable; 6 inches minimum (top of pipe to bottom of treated subgrade)
- Pipe slope:  $\geq 0.50\%$  desirable; 0.30% minimum
- Pipe flow velocities: 3 fps minimum; 12 fps maximum

- Outfall velocity criteria: 6 fps desirable; > 8 fps provide outfall protection

Outfall protection is required when outfall velocities for pipes exceed 8 fps. If the existing system is not impacted by the Work, then no additional outfall protection is required. If flow is added to the existing system and velocities in the existing pipes increase beyond 8 fps, then velocity-reducing devices are required.

20.3.2.3

**Ponding**

DB Contractor shall design drainage systems to limit ponding to the widths defined in Table 20-2 below for the design frequency event:

**Table 20-2: Allowable Ponding Widths by Roadway Classification**

Roadway Classification	Design Storm Allowable
Interstate, Controlled Access Highways	Shoulder width
Elevated Lanes	10 feet
Ramps, Direct Connectors	Shoulder width
Frontage Roads	One travel lane width
Minor Cross Streets	One travel lane width

Maximum carryover is 0.5 cfs.

20.3.3

**Miscellaneous Drainage Design Requirements**

DB Contractor shall design mainlane cross structures (culverts and bridge openings) in accordance with the TxDOT *Hydraulic Design Manual*.

DB Contractor shall examine water surface elevations to assure that the Project will not cause any adverse impacts to adjacent properties. A rise in water surface elevation can be considered as having no adverse impact if the rise is contained within either a drainage easement or channel banks.

20.3.3.1

**Inlet Design Criteria**

DB Contractor shall use TxDOT Statewide Standards for the design of curb inlets and drop inlets.

Curb extensions are limited to one 10' maximum curb extension.

Grate inlets within a roadway or driveway are not allowed.

DB Contractor shall design inlets in accordance with the criteria shown below in Table 20-3 and the TxDOT *Hydraulic Design Manual*.

**Table 20-3: Inlet Design Criteria**

Storm Drain Inlets	
<b>Inlet Locations</b>	<ol style="list-style-type: none"> <li>1. On-grade: Place inlets to keep gutter ponding less than or equal to maximums, as defined in Section 20.3.2.2 Carryover is acceptable.</li> <li>2. Low points: Inlet shall be located at low point of vertical curve, not at P.I. Place flanking inlets on both sides of low point at a maximum spacing of 100' from low point.</li> <li>3. Redundant inlets: Inlets may be located at ends of curb returns at intersections if needed.</li> <li>4. 100% flow interception: On pavement at end of retaining walls, at ramp gores, at intersections.</li> <li>5. Inlets shall be placed outside the travel lanes.</li> </ol>

Design drop inlets for the following criteria:

- Maximum ponding depth shall be 1 foot for the design frequency

- Area Reduction Factor = 0.5
- Perimeter Reduction Factor = 0.5

#### 20.3.4 **Stormwater Storage Facilities**

DB Contractor shall complete design of the Stormwater Storage Facilities (SWSF) to meet State requirements for water quantity, and rate control.

DB Contractor shall comply with Chapter 13, Section 4 of the TxDOT *Hydraulic Design Manual* which shall be considered requirements to the extent they are not superseded by the requirements of this Item 20.

Types of SWSF include ponds, basins, and any other facilities including roadside channels and underground facilities including in-line detention facilities employed to detain quantities of storm water for a given period of time. Roadside ditches that are used as SWSF are not required to meet the minimum roadside ditch grade requirements in Section 20.3.5.3.

A preliminary analysis was performed to determine the proposed detention storage for the proposed improvements and the recommended preliminary number of SWSF. The results are reported in the "I-35 NEX Drainage Analysis Report" contained in the RIDs.

SWSF shall be designed for the 100-year AEP and the conveyance facilities shall be designed in accordance with design AEP requirements in Table 20-1.

DB Contractor shall be responsible for determining the size, number and locations of SWSF and shall ensure the SWSF comply with State requirements.

DB Contractor shall perform analyses including a detailed routing analysis for SWSF affected by significant environmental issues, such as hazardous waste or groundwater concerns.

##### 20.3.4.1 **SWSF Locations**

DB Contractor shall analyze all applicable SWSF information and develop a "Storm Water Management Plan" for the Project incorporating the proposed SWSF locations. DB Contractor shall coordinate the proposed locations with TxDOT. DB Contractor shall design the Storm Water Management Plan to account for any regional SWSF.

##### 20.3.4.2 **Inlets and Outlets**

DB Contractor shall design and construct the SWSF inlets to be above the vertical limits of the dead sediment storage volume. DB Contractor shall design and construct SWSF to prevent circuiting and discharge of floating debris (e.g., have a skimmer baffle). The maximum available outflow shall be limited to the existing 1% peak flow.

##### 20.3.4.3 **SWSF Depth and Shape**

DB Contractor shall design and construct the SWSF in accordance with TxDOT design criteria.

The length-to-width ratio for SWSF shall be 3:1. Any length-to-width ratio variation shall require review and concurrence by TxDOT prior to completion of 100% design. A 10-foot bench, with a 10:1 slope or flatter, must be provided at the normal water level for safety and maintenance. In addition, DB Contractor shall comply with the rules contained in the Aggregate Quarry and Pit Safety Act which can be viewed at: <http://www.txdot.gov/inside-txdot/division/maintenance/quarry.html>

##### 20.3.4.4 **Freeboard and Spillway**

A minimum of two (2) feet of vertical freeboard above the design flood elevations shall be provided on SWSF. All SWSF must have an emergency spillway sized to carry events beyond the 100-year event.

##### 20.3.4.5 **Design Details**

DB Contractor shall include all inlet and outlet details, skimmers, and emergency spillway designs in the design. DB Contractor's drainage design must address safety and measures to secure access to SWSF.

##### 20.3.4.6 **Flood Routing**

DB Contractor shall perform flood routing analyses and submit calculations to the reviewing authorities, such as municipalities, TCEQ, and USACE for approval.

#### 20.3.4.7 **Environmental Issues**

DB Contractor shall include special analysis and documentation for SWSF affected by environmental issues in the Final Design, such as hazardous waste or groundwater concerns.

#### 20.3.4.8 **Documentation**

DB Contractor shall include a graphic display (both paper and electronic format) showing what areas are treated by each SWSF with the design calculations provided to TxDOT. The display must also show those areas not treated.

#### 20.3.5 **Hydraulic Structures**

##### 20.3.5.1 **Culverts**

DB Contractor shall analyze existing and proposed culverts and drainage-ways physically impacted, replaced, or created by the Project for any localized flooding problems.

Where culvert design is influenced by upstream storage, the analysis of the storage shall be incorporated into the design of the culvert.

The design year AEP water surface elevation for culvert structures physically impacted by the Work shall be no higher than the top of treated subgrade at the upstream end of the culvert, with the exception of the crossings listed below for which the design year AEP water surface elevation shall be no higher than the edge of pavement at the upstream end of the culvert.

- SAL-10 (2-7'x4' MBC @ Station 3546+80) for the 10-yr frontage road WSE and 50-yr mainlane WSE
- SAL-12 (4-6'x4' MBC @ Station 3622+84) for the 50-yr mainlane WSE.

Culverts shall be designed to maintain a minimum velocity of two feet per second if feasible. If design flow velocities less than two feet per second are unavoidable, DB Contractor shall design the culvert for full flow at 80% of the internal diameter to account for sedimentation in the culvert. Culverts shall be designed to achieve a maximum velocity of 8 feet per second in the culvert. If design flow velocities of greater than 8 feet per second are unavoidable, then DB Contractor shall provide a shear analysis and proposed mitigation strategies for TxDOT review and approval.

As feasible, culverts shall be designed to achieve a minimum tailwater velocity of two (2) feet per second, or a maximum tailwater velocity of eight feet per second. In the event the maximum desirable tailwater velocities are exceeded, velocity-reducing devices and outfall channel erosion protection shall be included in the design in order to reduce erosion at the culvert outlets. DB Contractor shall submit concepts for velocity-reducing devices for TxDOT approval prior to the first design submittal package. DB Contractor may request deviations for TxDOT approval during final design if it can be demonstrated that velocity-reducing devices are not required.

Culverts are classified as major or minor, as follows:

- Major Culvert: A culvert that provides an opening of more than 35 SF in single or multiple installations. A major culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Culverts are classified as bridges when they provide an opening measured along the center of the roadway of more than 20 feet between spring lines of arches, or extreme ends of the openings for multiple box culverts; such culverts shall be included in the bridge inventory. Bridge class culverts shall have a minimum rise of 5 feet and design shall include drop-off protection. Major culverts should be analyzed using HEC-RAS.
- Minor Culvert: Any culvert not classified as a major culvert.

The minimum inside box culvert height dimension for all proposed box culverts shall be 3 feet. Existing box culverts that have inside height dimensions of less than 3 feet but that meet all other hydraulic requirements may be extended at their existing height.

Bridge class culverts shall be analyzed and designed using HEC-RAS. Minor culverts shall be analyzed and designed using HY-8. DB Contractor shall analyze and design any culvert located in the floodplain using HEC-RAS.

The culvert hydraulic analysis shall include a thorough investigation of field conditions and appropriate survey data to develop hydraulic models to: evaluate water surface elevations, velocities and floodplain boundaries. DB Contractor shall coordinate the analysis and hydraulic models with the local floodplain administrator.

#### 20.3.5.2 **Bridges**

All bridge hydraulic computations, designs, and recommendations shall be consistent with past studies and projects in the area by the USACE and other State or federal agency studies and projects.

Where bridge design is influenced by upstream storage, the analysis of the storage shall be considered in the design of the bridge.

#### 20.3.5.3 **Ditches**

DB Contractor shall be responsible for the design of both normal and special ditch sections, as needed. When necessary, ditch linings shall be designed by DB Contractor according to Hydraulic Engineering Circular (HEC)-15. Open channels shall be designed to minimize sedimentation.

DB Contractor shall use the following drainage ditch design criteria:

Ditches between roadways:

- Design AEP = 10-year
- Flat-Bottom Ditch = 6-foot bottom width, 4:1 side slopes
- V-Ditch = 6:1 side slopes
- Minimum Ditch Slope = 0.5% (0.25% for concrete-lined ditches)

Ditches next to Project ROW line:

- Design AEP = 10-year
- Flat Bottom Ditch = 6-foot bottom width, 4:1 side slopes
- V-Ditch = 6:1 side slopes
- Minimum Ditch Slope = 0.5% (0.25% for concrete-lined ditches)

Roadside ditches shall be designed for the 10-year AEP irrespective of the design AEP of upstream drainage structures. DB Contractor shall design ditches for the 10-year AEP and mitigate any potential downstream impacts as needed to avoid adverse impacts.

All ditch lining types will be determined by the shear stress calculations for the design discharge procedure as contained in the TxDOT *Hydraulic Design Manual*.

DB Contractor shall provide a minimum 0.5 feet of freeboard to top of ditch bank for all ditches.

#### 20.3.5.4 **Method Used to Estimate Flows**

DB Contractor shall use methods outlined in the TxDOT *Hydraulic Design Manual* for flow determination. DB Contractor shall not use the regional regression method.

DB Contractor shall use Atlas 14 rainfall data for hydraulic analysis.

#### 20.3.5.4.1 **Design Frequency**

Major waterway crossings, bridges, culverts, and storm drain systems shall be designed for the frequency corresponding to the roadway classification shown in Section 20.3.1.1. The functional classification for each roadway is shown in Item 19.

DB Contractor shall evaluate bridges for contraction scour and pier scour concerns in accordance with FHWA Hydraulic Engineering Circular No. 18 (HEC-18) – *Evaluating Scour at Bridges* and incorporate protection in accordance with Good Industry Practice. DB Contractor shall provide a scour analysis in accordance with TxDOT *Geotechnical Manual*, Chapter 5, Section 6 for all bridges. If necessary, DB Contractor shall provide countermeasures for any instability and scour problems in accordance with FHWA HEC-23 – *Bridge Scour and Stream Instability Countermeasures Experience Selection and Design Guidance*.

DB Contractor shall calculate the peak discharge for both existing and proposed conditions. Water surface profiles for design and check flood conditions shall be determined.

#### 20.3.5.4.2 **Hydraulic Analysis**

DB Contractor shall use the most comprehensive available hydraulic models as design base models. For waterways mapped as FEMA Special Flood Hazard Area (SFHA), DB Contractor must comply with TxDOT *Hydraulic Design Manual* procedures, including coordination with the local floodplain administrator(s) and use of the current FEMA effective models to create revised effective and proposed effective models.

DB Contractor shall revise the FEMA effective model and shall include: any corrections for identified errors in the effective model if applicable, any more accurate surveyed data to be used, and any major developments that are not incorporated in the existing FEMA model but resulting in impacts to the model. The proposed effective model shall be based on the revised effective model as the baseline model by adding the proposed designs or changes to the baseline model.

DB Contractor shall coordinate with major adjacent developments that are pursuing a LOMR during the initial development period.

All mitigation measures to offset hydraulic impacts at cross drainage structures shall be located within the Project ROW. DB Contractor shall coordinate the proposed effective model and any mitigation measures for floodplain impacts with the local FEMA floodplain administrator.

DB Contractor shall design riprap at abutments in accordance with the procedures outlined in HEC-23. For bridge abutments in urban areas, DB Contractor shall install protection in accordance with the Project's aesthetic plan.

#### 20.3.5.4.3 **Bridge/Culvert Waterway Design**

For existing crossings, DB Contractor shall analyze the existing structure using the proposed flows to ensure the headwater does not exceed allowable headwater elevations, as defined in Section 20.3.5.1. If the proposed drainage produces headwater elevations greater than those allowed by Section 20.3.5.1, DB Contractor shall design and construct a replacement structure with sufficient capacity to pass the required design-frequency flows and ensure the maximum headwater for the required frequency event does not exceed that of the corresponding event for the current condition. Culvert extensions may increase the headwater elevation, but not above the maximum allowable headwater.

When designing a bridge over waterways, DB Contractor design shall minimize changes to the existing channel. Bridge waterway design shall maintain the existing channel morphology through the structure. An existing bridge spanning a waterway shall not be replaced with a structure of a lesser total span than the original structure. New bridges spanning a waterway shall not result in a narrowing of the existing channel.

#### 20.3.5.4.4 **Bridge Deck Drainage**

DB Contractor shall design bridge drainage systems in accordance with Chapter 9 Section 7 of the TxDOT *Hydraulic Design Manual* and TxDOT San Antonio District Standards.

Storm water flowing toward the bridge shall be intercepted upstream from the approach slab.

If ponding width limits are exceeded on the new bridges, then the runoff must be conveyed in a closed system within the bridge columns to the roadway drainage system below. The bridge deck drainage system shall outlet at the bottom of the substructure either into a storm drain system or into an open channel. In no case shall storm water be discharged against any part of the structure.

If inlets are located outside of the bent locations as a result of insufficient shoulder width, super elevation transitions or where sags in the roadway do not coincide with bridge bent locations, DB Contractor shall design inlets to drain into a suspended conduit between the bridge deck beams in order to improve the aesthetics of the bridge deck inlet system. For minimal maintenance intervention and ease of cleanout, any closed system conduit shall be designed to promote sufficient water velocities to be self-cleaning and avoid debris accumulation.

Open deck drains and slotted rail may be used to minimize the amount of bridge deck inlets in certain locations, provided runoff from the open deck drains or slotted rail do not fall onto roadways, pedestrian facilities, waterways, or railroad ROW below/under the open deck drains or slotted rail.

Deck drain pipes shall be a minimum of 8 inches. The use of “Y” connections is permitted for pipe drain connections for bridge deck drainage.

#### 20.3.5.4.5

#### **Drainage Report for Major Stream Crossings**

DB Contractor shall prepare a drainage report for each major stream crossing. Major stream crossings are defined as waterways listed as a FEMA SFHA or requiring a bridge class structure, as defined in Section 20.3.5.1. Any other waterway will be a minor stream crossing.

The report shall include the detailed calculations, electronic and printed copies of the computer software input and output files, a discussion about hydrologic and hydraulic analysis, and reasons for the design recommendations. The report shall follow the Hydraulic Report Guidelines referenced and outlined in the TxDOT *Hydraulic Design Manual*, Chapter 3.

The report shall be a component of the Drainage Design Report.

Each major stream crossing report shall include, at a minimum:

- FEMA SFHA
  - FIRMette;
  - Discussion of SFHA and implications; and
  - Documentation of DB Contractor’s coordination with the local floodplain administrator.
- Hydrology
  - Drainage area maps with watershed characteristics/parameterization including topography, both hardcopy and GIS format;
  - Hydrologic calculations (where computer software is used, both hardcopy and electronic input and output files); and
  - Historical or Site data used to review computed flows.
- Hydraulics and Recommended Waterway Opening and/or Structure
  - Photographs of the Site (pre- and post-construction);
  - General plan, profile, and elevation of recommended waterway opening and/or structure;
  - Calculations – hardcopy of output, as well as electronic input and output files for all computer models used for final analysis, as well as summary of the basis of the models;
  - Cross-sections of waterway (DB Contractor shall provide a hard copy plot, plus any electronic data used); and
  - Channel profiles.
- Scour Analysis
  - Channel cross-sections at bridge showing predicted scour;
  - Calculations and summary of calculations, clearly showing predicted scour and assumptions regarding bridge opening and piers used to calculate predicted scour;
  - Discussion of review of long-term degradation/aggradation and effects; and
  - Recommendation for abutment protection.

DB Contractor shall provide bridge hydraulic summary sheets and bridge scour envelope sheets with projected scour calculation summaries for every bridge crossing a waterway in the Drainage Design Report.

DB Contractor shall provide a scour analysis report that is signed and sealed by a PE for each bridge class structure crossing a waterway. DB Contractor shall submit the scour analysis report for TxDOT review and comment in addition to including the report as a component of the Drainage Design Report.

#### 20.3.6

#### **Drainage Improvements at Utopia and Brightleaf**

DB Contractor shall design and construct the proposed drainage improvements described in “TxDOT Right-of-Way Drainage Improvements at Utopia and Brightleaf” provided in the RIDs. DB Contractor shall design and construct the proposed improvements to remedy an existing ponding issue located to the north of Park-and-Ride Facility No. 2, within existing TxDOT ROW, by installation of new drainage features including concrete trickle channels and valley gutters. DB Contractor shall coordinate the design of these drainage improvements with the City of Selma.

## 20.4 Drainage Design Report

A preliminary Drainage Design Report shall be submitted with the Preliminary Design Submittal. The preliminary Drainage Design Report shall include at a minimum everything included in the Drainage Design Report as described in this Item 20.

Prior to construction of any drainage element, DB Contractor shall submit with the Final Design Submittal a final Drainage Design Report for each drainage element to TxDOT.

DB Contractor shall submit to TxDOT, as part of the Record Documents, a revision to the final Drainage Design Report, which shall be a complete documentation of all components of the Project's drainage system. The revision to the final Drainage Design Report shall document all changes to the drainage design made during construction. At a minimum, the Drainage Design Report shall include:

- Record set of all drainage computations, both hydrologic and hydraulic, and all support data including all geospatial data. If computations are in electronic format, the original format in which the computations were executed shall be submitted, such as XLSX for Microsoft Excel or XMCD for Mathcad.
- Hydrology/Hydraulic notes, models, and tabulations. Models are to be submitted in the original electronic format (e.g., GEOPAK drainage file – GDF, HEC-RAS – PRJ, HEC-HMS). Please note some programs such as HEC-HMS generate multiple files which are essential to the overall model. All files shall be included with the Submittal to ensure the results match those in the record set.
- Storm drain drainage reports.
- Bridge and culvert designs and reports for major stream crossings.
- Open channel design data.
- SWSF designs, including graphic display of treatment areas and maintenance guidelines for operation.
- Complete documentation of DB Contractor's assessment of the potential for the Project to cause adverse impacts, including how adverse impacts are mitigated (if needed), and reasonable substantiation that the Project will not cause or increase to damage to properties outside the Project ROW.
- Demonstration that DB Contractor has obtained appropriate drainage easements.
- Correspondence files that include:
  - Meeting minutes pertaining to drainage
  - Email and letter correspondence with all Governmental Entities pertaining to drainage and drainage studies
  - Letters to all Governmental Entities pertaining to drainage
- Drainage system data (location, type, material, size, and other pertinent information) in a GIS data format for the existing system to remain in place and the proposed system constructed in conjunction with this Project.

## 20.5 Construction Requirements

DB Contractor shall design drainage to accommodate construction staging. The design shall include temporary erosion control measures and other BMPs needed to satisfy the NPDES and other regulatory requirements. DB Contractor shall conduct all Work necessary to meet the requirements for this Item 20 in accordance with the requirements of this Item 20 and the TxDOT Standard Specifications, supplemented as needed by local governmental requirements.

The water resources notes in the plans shall include a description of the drainage design for each stage of construction, including temporary drainage elements.

## 20.6 Submittals

All Submittals described in this Item 20 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 20-4. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.



**Table 20-4: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Inventory of existing drainage facilities including pre-construction CCTV assessments	Prior to submittal of preliminary design	Information	20.2.1
All native design files used in the hydrologic and hydraulic analyses to prepare computations and plans	Upon request	Review and comment	20.3
Calculations of flood routing analyses	Prior to submittal of the applicable design submittal package	Approval	20.3.4.6
Shear analysis and proposed mitigation strategies for design flow velocities greater than 8 fps	Prior to submittal of the applicable design submittal package	Review and approval	20.3.5.1
Concepts for velocity-reducing devices	Prior to the first design submittal package	Approval	20.3.5.1
Hydraulic summary sheets and bridge scour envelope sheets with projected scour calculation summaries for every bridge crossing a waterway	As part of the Drainage Design Report	Review and comment	20.3.5.4.5
Scour analysis report	As part of the Drainage Design Report	Review and comment	20.3.5.4.5
Preliminary Drainage Design Report	Concurrent with the Preliminary Design Submittal	Review and comment	20.4
Final Drainage Design Report	Concurrent with the Final Design Submittal	Review and comment	20.4
Revision to the final Drainage Design Report	As part of Record Documents	Review and comment	20.4

## Item 21

### Structures



#### 21.1 General Requirements

The structural Elements of the Project, including bridges, culverts, drainage structures, signage supports, illumination assemblies, traffic signals, retaining walls, and noise walls, shall be designed and constructed in conformance with the requirements of the Contract Documents.

All structural Work shall be performed in accordance with TxDOT Engineering Standard Sheets, and AASHTO *LRFD Bridge Design Specifications*, except where directed otherwise by the TxDOT *Bridge Design Manual – LRFD*, TxDOT *Bridge Project Development Manual*, TxDOT *Geotechnical Manual* and TxDOT bridge design policy and information listed at <http://www.txdot.gov/inside-txdot/division/bridge.html>.

DB Contractor shall design bridges, retaining walls, noise walls, and sign structures in conformance with the approved aesthetic schemes, guidelines, and standards as identified in Item 23.

Throughout the Term, DB Contractor shall allow access to TxDOT bridge inspectors performing National Bridge Inspection Standards (NBIS) inspections. DB Contractor shall coordinate with TxDOT 90 days prior to opening any portion of a new bridge to traffic to allow for the initial NBIS inspection by TxDOT.

#### 21.1.1 Lead Structural Engineer

DB Contractor shall employ a Lead Structural Engineer responsible for overseeing the design and construction of all structural elements of the Project such that each element is complete and design requirements are met. The Lead Structural Engineer shall be a PE responsible for coordination of interdisciplinary design reviews in cooperation with leaders of other disciplines. The Lead Structural Engineer or PEs reporting directly to the Lead Structural Engineer shall be the Engineer of Record for the design of all structural elements on the Project.

#### 21.2 Design Requirements

For bridges, walls, bridge class culverts, sign structures and other miscellaneous structures, a Corridor Structure Type Study and Report shall be submitted to TxDOT for review and comment prior to design of these Elements. At a minimum, structural concepts, details and solutions, soil parameters, hydraulics, environmental requirements, wetland impacts, safety, highway alignment criteria, constructability, aesthetics requirements and continuity for the Project shall be evaluated in the Corridor Structure Type Study and Report. The Corridor Structure Type Study and Report shall clearly define DB Contractor's action to achieve a durable structure compatible with the AASHTO *LRFD Bridge Design Specifications* (or extended life if otherwise called for in the Contract Documents) for new Project bridges, walls, culverts and miscellaneous structures. Evaluation of existing structures within the Project limits that will be retained shall be included in the Corridor Structure Type Study and Report.

Bridges crossing over the Project shall, at a minimum, be designed to accommodate the configurations described in Item 19, including location of abutments, retaining walls, foundations, and substructures. DB Contractor shall design bridge structures required for the Project, if applicable, to the total length and span arrangement required, including spanning lanes that will be constructed below the structure.

#### 21.2.1 NBI Reporting Procedures

Upon completion of the bridge layout during the design phase, DB Contractor shall coordinate with the TxDOT San Antonio District Bridge Engineer to obtain permanent structure numbers for all bridges and bridge class culverts. This will require an approved bridge layout and completion of the permanent structure number request form. The NBI numbers shall be shown on the applicable layout sheets of the Final Design Submittal.

DB Contractor shall stencil NBI numbers on all bridge structures consistent with the TxDOT San Antonio District Standard Sheet for Bridge NBI Number Stencil. DB Contractor shall stencil NBI numbers and bent numbers on all bridges with four or more spans. The NBI numbers and bent numbers shall be placed at locations directed by TxDOT.

## 21.2.2

**Design Parameters**

Unless otherwise noted, design for all roadway structural elements shall be based on the LRFD methodology included in the TxDOT *Bridge Design Manual – LRFD*, TxDOT bridge design policy and information listed at <http://www.txdot.gov/inside-txdot/division/bridge.html>, and the AASHTO *LRFD Bridge Design Specifications*.

Design of Project structures, foundations, embankments, walls, excavations, retained structures, slopes, bridges, and other related design features as well as soil exploration frequencies, and boring requirements shall be in compliance with provisions of the TxDOT *Geotechnical Manual* and in accordance with the provisions of Item 16. Where design requirements are not specified in the TxDOT *Geotechnical Manual*, the following FHWA manuals and guidance provided at [https://www.fhwa.dot.gov/engineering/geotech/library\\_listing.cfm](https://www.fhwa.dot.gov/engineering/geotech/library_listing.cfm) shall be used in their entirety:

- Geotechnical Engineering Circular No. 7 - *Soil Nail Walls*
- Geotechnical Engineering Circular No. 10 - *Drilled Shafts: Construction Procedures and LRFD Design Methods*
- Geotechnical Engineering Circular No. 11 - *Design and Construction of Mechanically Stabilized Earth Walls and Reinforced Soil Slopes*
- Geotechnical Engineering Circular No. 12 - *Design and Construction of Driven Pile Foundations*

For areas with potential for karstic subsurface conditions under foundations and retaining walls, DB Contractor shall provide sufficient testing frequency and testing methods to account for karstic subsurface conditions and to facilitate the design and construction of foundations and retaining walls. In accounting for karstic subsurface conditions, DB Contractor shall incorporate testing and design that includes geophysical investigation, conformance to environmental requirements, consideration of both lateral and vertical load carrying capacity, impact to construction methods, and a mitigation plan for foundations and retaining walls in, over and around karstic subsurface condition.

If a Karst Feature is discovered, DB Contractor shall follow the karst protocol found in Attachment 21-1: San Antonio Karst Protocol for Structural Elements.

DB Contractor shall design, rehabilitate and modify existing bridge structures not originally designed to LRFD specifications to the design requirements and specifications described in the AASHTO *Standard Specifications for Highway Bridges* that applied to the original design of such existing bridge structures. In no event shall any modified or rehabilitated bridge structure fail to meet HS-24 operating rating for a condition state of 5 or better. The HS-24 load is depicted on the exhibit "HS-24 Design Truck" provided in the RIDs. Design of widening of existing bridge structures shall be based on the LRFD methodology included in the TxDOT *Bridge Design Manual - LRFD*, HL-93 loading and the AASHTO *LRFD Bridge Design Specifications*, and adhere to the TxDOT *Bridge Design Guide*, unless noted otherwise.

DB Contractor is prohibited from using segmental superstructure construction of the northbound and southbound elevated lanes, within the station ranges defined in Section 19.2.2.2.2, in order to accommodate the future connection to Wurzbach Parkway. Bridge span lengths shall span the typical section widths of the roadways below, including appropriate clear distance unless otherwise shown on the Schematic Design or approved by TxDOT.

Steel bridge design shall comply with TxDOT *Preferred Practices for Steel Bridge Design, Fabrication, and Erection*.

Corrosion protection measures shall be in accordance with TxDOT Bridge Division and San Antonio District's practices. Specific corrosion protection measures can be found at <http://www.txdot.gov/inside-txdot/division/bridge/specifications/super-corrosion.html> and District-specific requirements can be found at <http://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/district-corrosion.pdf>. DB Contractor shall adhere to additional corrosion requirements outlined in Section 21.2.4.

Segmental bridges shall conform to the requirements of the AASHTO *LRFD Bridge Design Specifications* except where directed otherwise by the TxDOT *Bridge Design Manual – LRFD*.

Hydraulic design shall be in accordance with the provisions of Item 20.

DB Contractor shall provide structural design of signs, luminaires, and traffic signals in accordance with the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*.

Falsework, shoring, and other temporary supports shall be designed in accordance with the AASHTO *Guide Design Specifications for Bridge Temporary Works* and shall be compliant with OSHA and local jurisdictional standards and requirements.

Load ratings shall be in accordance with the AASHTO *Manual for Bridge Evaluation* and the TxDOT *Bridge Inspection Manual*.

Compliance with the requirements in National Fire Protection Association (NFPA) 502 – *Standard for Road Tunnels, Bridges, and Other Limited Access Highways* is not required for this Project.

DB Contractor shall design bridge units without any uplift at supports under all load conditions.

DB Contractor shall ensure that bridges crossing over waterways shall meet the structural load and resistance requirements for a 100-year frequency event as outlined within the AASHTO *LRFD Bridge Design Specifications* with design for flood scour in accordance with TxDOT *Geotechnical Manual*, Chapter 5, Section 6. DB Contractor shall ensure all applicable requirements of FHWA *HECs* are met for bridge structures.

Unless otherwise directed, DB Contractor shall ensure at least 1 foot of clearance between the design-year frequency water surface elevation described in Item 20 and the low chord of bridges crossing over waterways physically impacted by the Work. For existing bridges over waterways identified to be widened, the widened portion shall meet or exceed the 1 foot of clearance between the design-year frequency water surface elevation and the low chord of bridges. The requirement to provide 1 foot of clearance between the design-year frequency water surface elevation and the low chord of the widened portion of the northbound frontage bridge over Selma Creek is not required.

At TxDOT's request during the Term, all electronic and hard copies of files and design calculations shall be made available with the Preliminary Design Submittal of elements related to the request. All files and calculations (bridge design notes) shall be submitted with the Record Documents in accordance with the TxDOT Bridge Division's Procedure for Archiving Bridge Design Notes in Chapter 6 of the TxDOT *Quality Control and Quality Assurance Guide* and other requirements of the Contract Documents. DB Contractor shall submit load rating calculations, including input and output files, for TxDOT review and comment, for all new or widened bridges and all new or widened bridge class culverts no later than the start of construction of those structures.

Sidewalks and bicycle lanes shall be provided on bridge structures as shown on the Schematic Design and in accordance with the provisions of Item 19 and Item 28. DB Contractor shall design sidewalks to meet the criteria of the AASHTO *A Policy on Geometric Design of Highways and Streets* and the AASHTO *Guide for the Planning, Design, and Operation of Pedestrian Facilities*. Pedestrian bridges shall additionally conform to the requirements of AASHTO *LRFD Guide Specifications for the Design of Pedestrian Bridges*.

### 21.2.3

#### **Bridge Design Loads and Load Ratings**

All roadway bridges and bridge class culverts shall be designed to accommodate the following live loads:

- New Construction: A vehicular design load designated HL-93 consisting of the design truck or the design tandem, and the design lane load as defined in the AASHTO *LRFD Bridge Design Specifications* shall be utilized for bridges. Sidewalks of vehicular bridges shall be loaded in accordance with requirements in the AASHTO *LRFD Bridge Design Specifications*.
- Existing Bridge Structures: Load rating with a rating factor of 1.0 for all Texas legal loads. Structures failing to meet this standard shall be rehabilitated to an operating load rating of rating factor of 1.0 for all Texas legal loads at the operating level or replaced using LRFD design and HL-93 loading.
- Existing Bridge Class Culverts: Load rating with a rating factor of 1.0 for all Texas legal loads. Structures failing to meet this standard shall be rehabilitated to an operating load rating of rating factor of 1.0 for all Texas legal loads at the operating level or replaced using LRFD design and HL-93 loading.
- Existing Bridge Widening: HL-93 for widening and a minimum rating factor of 1.0 for all Texas legal loads for existing portion (designate both existing and widening loading on bridge layouts). Existing structures with an operating load rating exceeding rating factor of 1.0 for all Texas legal loads at the operating level shall not have their existing capacity reduced in the process of widening. Neither shall the service nor inventory load rating of any existing bridge components be reduced in the process of widening.

To meet requirements of Texas legal loads, load ratings for existing structures shall achieve an operating rating of 1.0 for HL-93 or HS-24 loading.

Pedestrian bridges and sidewalks of vehicular bridges shall be loaded in accordance with requirements in the AASHTO *LRFD Bridge Design Specifications* and the AASHTO *LRFD Guide Specifications for the Design of Pedestrian Bridges*. In addition, all pedestrian bridges shall also be designed for an AASHTO H-10 truck live load as defined in the AASHTO *Standard Specifications for Highway Bridges*, to account for maintenance and emergency vehicles.

#### 21.2.4

##### **Bridge Decks and Superstructures**

Fracture critical members shall not be used for bridge superstructures.

The type of bridge substructure and superstructure shall be restricted to those identified within the TxDOT *Bridge Design Manual – LRFD*.

Type A joints and armor joints are not permitted. If sealed expansion joints are used, only Type M joints are permitted.

DB Contractor shall minimize the number of bridge deck joints. DB Contractor shall locate joints to provide for maintenance accessibility and future replacement. Joints for all grade separation structures shall be sealed.

DB Contractor shall provide reinforcing steel in accordance with TxDOT provisions for corrosion protection measures.

DB Contractor shall incorporate the following additional superstructure corrosion protection measures:

- 8.5-inch minimum concrete bridge deck thickness with 2.5-inch clear cover to the top mat of reinforcing steel; and
- High performance concrete or fiber reinforced concrete in the bridge deck.

In addition, DB Contractor shall not waive the air entrainment requirement for bridge decks, approach slabs, and rails except as permitted by TxDOT in accordance with the District's corrosion protection measures.

DB Contractor shall make bridge superstructures, joints, and bearings accessible for long-term inspection and maintenance. DB Contractor shall make open-framed superstructures accessible with walkways or by use of ladders or an under-bridge inspection truck.

DB Contractor shall embed all conduits within bridge structures, with the exception that conduits shall not be embedded in bridge beams unless specifically approved by TxDOT. No exposed conduit will be allowed on bents, columns, outer face of exterior bridge beams, bridge slab overhangs, retaining walls, or any other visible surface unless specifically approved by TxDOT.

Box girders and caps (substructure) shall be accessible without impacting traffic below. DB Contractor shall make concrete box girders and caps (substructure) with a minimum inside depth of six feet to facilitate interior inspection. DB Contractor shall include a minimum access opening of 3-foot diameter into all cells and between cells of the girders to allow free flow of air during inspections. The outside access opening cover shall hinge to the inside of the box girder and caps (substructure). Steel tub girders shall meet the guidelines in the TxDOT *Preferred Practices for Steel Bridge Design, Fabrication, and Erection*.

Cast-in-place slab spans widened with cast-in-place slab spans shall use a breakback detail that provides a full lap splice for the top and bottom transverse mats and shall not use a dowel detail for connection. Cast-in-place slab spans widened with prestressed concrete slab beams shall develop a shear key or other positive connection in the edge of beam in addition to connection details employed in the slab.

Prestressed I-beam spans widened with prestressed I-girders shall adhere to the following:

- Slab breakback line shall be located at the centerline or 4 inches outside of the centerline of existing beam;
- Existing transverse steel shall be cleaned and extended full length and lapped with transverse steel in widening. Pattern of reinforcing steel shall match that of the existing bridge and grade 60 reinforcing shall be used. The empirical deck allowances within the TxDOT *Bridge Design Manual – LRFD* do not apply to the widened deck;
- Thickened end slab may be used in the widened construction; and

- Proper bedding and strand extension for prestressed concrete panels used in the first beam bay shall be evaluated. If insufficient room exists, timber or permanent metal deck forms shall be used as forming in this bay.

Expansion joint systems in widenings shall have a water resistant seal and match the expansion joint system of the existing structure unless it has been retrofit with a header joint. DB Contractor shall evaluate the condition of the existing joint and replace full width if damage exists.

Bridge approach slabs shall be added to widenings with existing approach slabs. The widened approach slab details shall be thickened to the current standard thickness.

Segmental bridges shall additionally conform to the following:

- Segmental bridge decks shall use deck protection systems to prevent infiltration of corrosive agents into reinforcing steel in the superstructure. The deck protection system used shall minimize cracking and develop adequate bond strength with the superstructure.
- If monolithically cast overlay is used as part of the deck protection system, DB Contractor shall develop fully engineered design guidelines for the thickness of the monolithic concrete removed and replaced in a manner that keeps distress and changes in surface profile at the time of concrete removal to levels that do not reduce the structural integrity of the structure.
- The surface deck of a completed segmental unit shall achieve the desired ride quality using Surface Test Type A as specified in Item 585 of the TxDOT Standard Specifications. Grinding depth shall not exceed more than one inch to achieve correction.
- All expansion joints shall be sealed or drained.
- External tendons, if used, shall be protected with welded high-density polyethylene joints.
- The design, detail and construction of segmental bridges shall provide additional ducts or other means to allow for future post-tensioning. Flexible fillers are not permitted.

## 21.2.5

### Bridge Substructure

Integral abutments, where the superstructure is structurally framed (either completely or partially) into the abutment, shall not be used unless approved by TxDOT. MSE walls shall not serve as structural foundations for bridges on the Project, and shall not be subjected to vertical loads from the bridges. Bridge approach slabs or other settlement mitigation measures, if approved by TxDOT, shall be designed and constructed to mitigate settlement immediately behind abutment backwalls. Use of riprap for bridge structures shall conform with the requirements of Item 23.

At cross streets, overpass bridge structures shall clear span all intersection pavement including through lanes, turn lanes on the Project and proposed future expansion configurations as identified in Item 19, "Roadway." Bridge foundations and columns may be located between the cross street pavement and U-turns.

Spread footing foundations are not allowed.

Mono-shaft foundations are permitted and design of mono-shafts shall adhere to the requirements within AASHTO *LRFD Bridge Design Specifications*. For round columns to drilled shaft transitions in mono-shafts, DB Contractor shall adhere to the requirements in AASHTO *LRFD Bridge Design Specifications* Section 5.10.8.4.2a for non-contact splices. For rectangular columns to drilled shaft transitions in mono-shafts, DB Contractor shall adhere to the following requirements:

- Avoid non-contact splices where possible;
- If non-contact splices cannot be avoided, the  $\lambda_{rc}$  factor (reinforcement confinement factor) within AASHTO *LRFD Bridge Design Specifications* Section 5.10.8.2.1a shall not be used to reduce the required splice length; and
- If non-contact splices are employed with distances greater than 6 inches, the additional transverse reinforcement in non-circular columns must meet the following requirement:

$$S_{tr,col} = \frac{n_{tr} \times (A_{tr}) \times (f_{ytr}) \times (l_s)}{(A_{T1}) \times (f_{ut})}$$

where,  $S_{tr,col}$  is the spacing of column transverse reinforcement (in.);  $n_{tr}$  is the number of legs of column transverse reinforcement;  $A_{tr}$  is the area of column transverse reinforcement ( $\text{in}^2$ );  $f_{ytr}$

is the specified minimum yield strength of column transverse reinforcement (ksi);  $l_s$  is the standard required splice length (in.);  $A_{Tl}$  is the total area of longitudinal reinforcement in tension (in<sup>2</sup>); and  $f_{ult}$  is the ultimate strength of longitudinal reinforcement (ksi).

DB Contractor may consider both skin friction and point bearing in drilled shaft design.

DB Contractor shall include groundwater elevations on bridge layouts when groundwater is present in the boring logs.

DB Contractor is permitted to conduct drilled shaft load testing for drilled shaft foundations based upon LRFD methodology. Pursuant to the TxDOT *Geotechnical Manual's* approach to deep foundation design, DB Contractor is not permitted to use load testing to refine skin friction and point bearing curves. Foundation load testing shall conform to the requirements of Item 405 of the TxDOT Standard Specifications for foundations designed using TxDOT methodology. For foundations designed using LRFD methodology, foundation load testing shall conform to the requirements within the AASHTO *LRFD Bridge Design Specifications*. Drilled shaft load testing results shall be consistent with recommendations from DB Contractor's Geotechnical Engineering Report and shall be submitted to TxDOT for approval as part of the Preliminary Design Submittal.

For each mono-shaft and each drilled shaft larger than 60-inch diameter, DB Contractor shall employ Thermal Integrity Profiler (TIP) testing of drilled shafts in accordance with TxDOT Special Specification 4021 to determine the integrity of drilled shafts. DB Contractor is permitted to use crosshole sonic logging (CSL) testing in place of TIP testing when the testing method is consistent with recommendations from DB Contractor's geotechnical report. DB Contractor shall submit drilled shaft TIP testing results to TxDOT for approval as part of the quality assurance procedure.

DB Contractor shall designate a substructure concrete element as mass concrete when any of the following apply:

- Least dimension of a concrete element is 5 feet or greater using non-high performance concrete;
- Least dimension of a concrete element is 6 feet or greater using high performance concrete; or
- Substructure concrete element uses Class H concrete with a concrete strength greater than 6,000 psi for post-tensioned straddle bent caps.

For a substructure concrete element designated as mass concrete, DB Contractor shall perform an analysis in TxDOT ConcreteWorks, or an equivalent method approved by TxDOT, to verify if mass concrete protocols are needed for a specific element. DB Contractor shall verify the mix design meets the criteria for temperature differential and maximum temperature for the pour. DB Contractor shall utilize the maximum cementitious content allowed for Class I cement and without fly ash for post-tensioned straddle bent caps.

DB Contractor shall construct elements designated as mass concrete in accordance with Items 420 and 421 of the TxDOT Standard Specifications.

DB Contractor may use reinforced concrete, prestressed concrete, or structural steel for straddle bents for bridge substructure design and construction. Control of service level cracking is required in reinforced concrete straddle bents to avoid appearance issues or long-term deterioration. Structural steel straddle bents shall not be fracture critical.

Fracture critical members shall not be used for bridges substructures. Steel box and plate substructure caps are typically considered fracture critical by the definition of load path redundancy. DB Contractor may use steel box or plate substructure caps only if DB Contractor submits to TxDOT and FHWA prior to construction, for review and approval, sufficient criteria and analytical methods to demonstrate the bridge substructure will have structural redundancy to achieve the goal of avoiding in-service fracture critical inspections. Demonstration of structural redundancy shall use criteria and analytical methods developed by the DB Contractor. DB Contractor shall meet the requirements set forth in AASHTO *Guide Specifications for Analysis and Identification of Fracture Critical Members and System Redundant Members* and AASHTO *Guide Specifications for Internal Redundancy of Mechanically-Fastened Built-Up Steel Members*. Non-load path redundant steel tension members with structural redundancy shall conform to the fracture control plan requirements of AASHTO and AWS. Provisions for durability that demonstrate a minimum 100 year service life are required.

Foundations of widened bridge sections are permitted to be of different type than the existing foundation for the widened bridge. Foundations shall be installed to the same depth or deeper than the existing foundation. DB Contractor shall provide a minimum clearance between the new foundation and the existing foundation of two times the least dimension of the existing/proposed foundation and three times the least dimension of the existing/proposed foundation measured center to center. If a foundation element is outside of the bounds of supporting the substructure due to adherence to the minimum clearance requirements, then DB Contractor may design the new foundation with less than the minimum clearance provided the following is evaluated:

- Group effect interaction of the existing foundations and the new foundations; and
- Load carrying capacity of existing foundation while it remains in service during installation of adjacent foundation.

If the immediate adjacent substructure of a widened bridge section employs a tie beam or web wall, the tie beam or web wall shall be incorporated into the substructure widening, except if the existing bridge inspection report indicates that these components will cause measurable negative impacts to scour, debris accumulation, or excess stream force.

Abutment substructure components of widenings shall adhere to the following criteria:

- Widened cap shall match the width of the existing cap and connected with one or more foundations using a bent cap shear connection consisting of 4 ~ #6 dowels minimum using an epoxy post-installed connection, or larger as necessary; and
- If there is an existing backwall and if bearing area is sufficient for new superstructure, the widened backwall shall match the face of the existing backwall and connected by breaking back and providing a minimum splice length of horizontal steel.

Interior bents of widenings may consist of the following:

- Independent non-connected bents with one or more supporting columns;
- A connected bent with one or more columns using a bent cap shear connection consisting of 4 ~ #6 dowels minimum using an epoxy post-installed connection, or larger as necessary. Where column collision force evaluation is required, such a shear connection will not qualify for the use of two shear planes for column resistance unless the widening consists of more than two columns; or
- A connected bent with one or more columns using a bent cap shear and moment connection with mechanically coupled longitudinal reinforcing. DB Contractor shall verify that localized removal of end concrete in the existing bent cap does not compromise the existing bent's resistance relative to existing structural loads. Where column collision force evaluation is required, such a connection will qualify for the use of two shear planes for column resistance, regardless of the number of columns in the widening.

## 21.2.6

### **Bridge Railing and Barriers**

All new barrier systems and railing used on the Project and existing barrier systems and railing that are impacted by the Work shall meet current crash test criteria as specified in the *AASHTO Manual for Assessing Safety Hardware (MASH)*, *TxDOT Bridge Railing Manual*, and other safety requirements as determined by TxDOT. Existing railing used on the Project that is not impacted by the Work does not have to meet current crash test criteria and safety standards provided that the railing meets the minimum rail height requirements in Chapter 4 of the *TxDOT Bridge Railing Manual*. All testing and associated costs for non-standard railings shall be the sole responsibility of DB Contractor and shall be accomplished through a third party acceptable to TxDOT. A current list of standard railing is provided in the *TxDOT Bridge Railing Manual*. SSTR shall be utilized on bridge structures. DB Contractor shall protect sidewalks on high speed bridges from vehicular impact by using TxDOT-approved bridge railings.

DB Contractor shall not utilize traffic rails with steel elements unless required for compliance with Item 22 and Item 28.

For railing on top of retaining walls, DB Contractor shall utilize a moment slab design in accordance with TxDOT Engineering Standard Sheet RW(TRF).



## 21.2.7

**Retaining Walls**

DB Contractor shall design and construct components of the Project to provide embankments without the use of retaining walls. Where earthen embankments are not feasible, DB Contractor may use retaining walls.

If DB Contractor's Work does not include a wall impact to an existing retaining wall, then DB Contractor is not required to reconstruct any portion of the existing retaining wall.

If Work includes disturbances to backfill, foundation soils, earth reinforcement, or soil excavation in front of an existing retaining wall, then DB Contractor shall perform a global stability analysis for that retaining wall to ensure the minimum factors of safety for global stability required by the TxDOT *Geotechnical Manual* have been maintained.

Existing retaining walls to be reconstructed and the limits of reconstruction, based on existing retaining wall conflicts with the Schematic Design, are identified in Table 21-1. If DB Contractor's Work includes a wall impact to an existing retaining wall where the wall impact length is greater than 10% of the length of retaining wall, then DB Contractor shall reconstruct the retaining wall in its entirety, with the exception of retaining wall nos. 11, 12, 20, 29, and 47. If DB Contractor's Work includes a wall impact to an existing retaining wall where the wall impact length is less than or equal to 10% of the length of retaining wall, then DB Contractor is only required to reconstruct the part of the retaining wall experiencing the wall impact. If an existing retaining wall is to be fully reconstructed due to a wall impact, that existing retaining wall is not required to be removed and may remain in place in accordance with this Item 21.

"Wall impact" in the context of this Item 21 shall include all wall modifications to a single existing retaining wall, including changes to the front face of the retaining wall, removal of wall panels, removal of concrete elements, and removal of foundations. "Wall impact region" of a single existing retaining wall shall be one of the following locations within a retaining wall where a wall impact occurs: a single interior region (distinct begin and end locations within a retaining wall), a single end region (encompassing the begin or end of a retaining wall), or multiple end regions (encompassing both the begin and end of a retaining wall). "Wall impact length" of a single existing retaining wall shall be the distance encompassing the entirety of a wall impact, measured station to station, calculated dependent upon the wall impact region where the wall impact occurs, as follows:

- Single interior region: From the begin to the end of the wall impact;
- Single end region: From the beginning of a retaining wall to the end of a wall impact, or from the beginning of a wall impact to the end of a retaining wall; or
- Multiple end regions: The combination of a single end region at both ends of a retaining wall.

If DB Contractor's Work results in a wall impact only within the Work limits provided in Table 21-1 for retaining wall nos. 11, 12, 20, 29 and 47, then DB Contractor is only required to reconstruct the part of the retaining wall experiencing the wall impact within those limits regardless of the percentage of wall impacted. If DB Contractor's Work results in a wall impact greater than the Work limits provided in Table 21-1 for retaining wall nos. 11, 12, 20, 29, and 47, then DB Contractor shall reconstruct the retaining wall in its entirety.

For all full and partially reconstructed retaining walls, DB Contractor shall identify the existing type of retaining wall to be reconstructed, and if wall is to be removed, provide a plan of removal for TxDOT review and approval as part of the Preliminary Design Submittal. DB Contractor shall reconstruct full and partially reconstructed retaining walls with approved wall types identified in the TxDOT *Geotechnical Manual* and in accordance with this Item 21.

DB Contractor shall design and construct new retaining walls, partial, and fully reconstructed retaining walls in accordance with the approved Aesthetics and Landscaping Plan and the requirements of Item 23. For existing retaining walls that are impacted by the Work, DB Contractor shall clean and paint portions of the partially reconstructed retaining walls that are not being reconstructed.

Existing bridge abutments are not required to be reconstructed due to impacts to adjacent existing retaining walls. DB Contractor shall clean and paint these existing bridge abutment walls in accordance with the approved Aesthetics and Landscaping Plan and the requirements of Item 23.

**Table 21-1: Existing Retaining Walls to be Reconstructed that are Impacted by the Schematic Design**

Retaining Wall No.	Roadway	Orientation	Alignment	Approximate Alignment Begin Station	Approximate Alignment End Station
1	I-35	I-35FR SB-I-35ML SB LT	CL I-35 ML	3456+69	3458+59
2	I-35	I-35FR SB-I-35ML SB RT	CL I-35 ML	3456+68	3458+79
3	I-35	I-410ML WB	CL I-35 ML	3491+20	3493+08
4	I-35	I-35ML NB	CL I-35 ML	3506+66	3523+51
5	I-35	I-35ML SB	CL I-35 ML	3516+25	3523+25
6	I-35	I-35ML SB	CL I-35 ML	3520+15	3531+96
7	I-35	I-35 SB EXIT @ THOUSAND OAKS/STARLIGHT RD	CL I-35 ML	3534+12	3545+80
8	I-35	I-35ML SB	CL I-35 ML	3534+12	3545+80
9	I-35	I-35ML SB	CL I-35 ML	3543+30	3551+25
10	I-35	I-35ML SB	CL I-35 ML	3558+25	3562+75
11	I-35	I-35ML SB	CL I-35 ML	3560+10 *	3563+00 *
12	I-35	I-35ML SB	CL I-35 ML	3582+00 *	3585+50 *
13	I-35	EXRPSB35-NW	CL I-35 ML	3583+20	3593+16
14	I-35	I-35ML NB & NB I-35 EXIT @ O'CONNOR RD.	CL I-35 ML	3593+67	3606+65
15	I-35	SB I-35 ENT @ O'CONNOR RD.	CL I-35 ML	3597+05	3602+41
16	I-35	I-35ML NB	CL I-35 ML	3603+23	3610+00
17	I-35	I-35ML NB	CL I-35 ML	3610+00	3623+11
18	I-35	I-35ML SB	CL I-35 ML	3601+22	3617+84
19	I-35	I-35ML NB	CL I-35 ML	3633+13	3640+08
20	I-35	SB I-35 ENT @ JUDSON RD. & I-35ML SB	CL I-35 ML	3654+00 *	3655+81 *
21	I-35	I-35FR NB	CL I-35 ML	3648+40	3653+22
22	I-35	I-35ML NB	CL I-35 ML	3656+48	3661+25
23**	I-35	I-35ML SB	CL I-35 ML	3655+10	3658+00
24**	I-35	I-35ML SB	CL I-35 ML	3658+00	3672+67
25	I-35	I-35FR SB	CL I-35 ML	3667+93	3674+13
26	I-35	NB I-35 ENT @ TOEPPERWEIN RD.	CL I-35 ML	3689+82	3697+06
27	I-35	NB I-35 EXIT @ PAT BOOKER RD.	CL I-35 ML	3692+44	3696+20
28	I-35	NB I-35 EXIT @ PAT BOOKER RD.	CL I-35 ML	3693+31	3695+14
29	I-35	1604FR EB-I-35FR SB	CL I-35 ML	3747+25 *	3747+90 *
30	I-35	I-35FR NB	CL I-35 ML	3737+26	3742+37
31	I-35	I-35CD NB-1604CD EB	CL I-35 ML	3742+39	3746+76
32	I-35	I-35ML NB	CL I-35 ML	3772+88	3781+80

**Table 21-1: Existing Retaining Walls to be Reconstructed that are Impacted by the Schematic Design**

Retaining Wall No.	Roadway	Orientation	Alignment	Approximate Alignment Begin Station	Approximate Alignment End Station
33	I-35	I-35ML SB	CL I-35 ML	3774+22	3783+70
34	I-35	I-35ML NB & EXRPNB3009	CL I-35 ML	3910+20	3935+04
35	I-35	I-35ML SB	CL I-35 ML	3910+97	3930+19
36	LP 1604	1604FR-WB	CL LP 1604 ML	4908+40	4915+50
37	LP 1604	1604FR-EB2	CL LP 1604 ML	4912+90	4922+41
38	LP 1604	1604UPEBTA	CL LP 1604 ML	4915+50	4922+41
39	LP 1604	1604FR-WB	CL LP 1604 ML	4923+00	4929+95
40	LP 1604	1604FR-EB2	CL LP 1604 ML	4926+50	4929+71
41	LP 1604	1604UPWBTA	CL LP 1604 ML	4923+00	4926+50
42	LP 1604	1604EB-ELSB	CL LP 1604 ML	4933+43	4933+94
43	LP 1604	EXRPEBRB	CL LP 1604 ML	4937+30	4942+00
44	LP 1604	EXRPEBRB	CL LP 1604 ML	4944+40	4950+08
45	LP 1604	EXRPEBRB	CL LP 1604 ML	4944+41	4948+12
46	LP 1604	ELSB-1604WB	CL ELSB-1604WB	108+58	115+87
47	I-410	1604EB-ELNB	CL I-410 ML	80962+00 *	80966+65 *

\* The station limits provided are the retaining wall reconstruction limits.

\*\* Wall nos. 23 and 24 comprise one continuous wall which is split into two separate walls to provide for separate allowable lane closures in Exhibit 15 of the DBA.

DB Contractor shall not use interlocking blocks for modular walls where surcharge loads from vehicular traffic are present.

Metal walls, including bin walls and sheet pile walls, recycled material walls, and timber walls are not allowed.

Perched retaining walls (i.e. retaining walls founded in non-in situ soil, embankment fill, or manmade subgrade) are permitted, provided the walls adhere to the geometric revisions set forth on TxDOT Engineering Standard Sheet RW(MSE)DD and DB Contractor has demonstrated the design provides an adequate level of safety through a global stability analysis performed in accordance with Section 16.2.2.

The design of wall structures shall take into account live load surcharges. DB Contractor shall apply the appropriate live loading condition (vehicular, heavy rail, transit, etc.) to which each wall is subjected. These live load surcharges shall be based on AASHTO *LRFD Bridge Design Specifications*, *AREMA Manual for Railway Engineering*, or the requirements of the specific railroad and transit owner/operator.

The retaining wall layout shall address slope maintenance above and below the wall.

DB Contractor shall use Type DS fill material for all MSE retaining walls meeting the requirements in Item 423 of the TxDOT Standard Specifications for retaining wall backfill material.

If pipe culverts are to extend through the retaining walls, the pipe shall be installed so that no joints in the pipe are located within two (2) feet of face of wall. Slip joints shall be placed on either side of the pipe and a headwall shall be placed over the portion of the pipe exiting the wall when any portion of the pipe exits the wall above finished ground.

Pipe for storm drain systems shall not run longitudinally within MSE retaining wall earth reinforcement zones unless approved by TxDOT.

No weep holes through the face of the retaining walls will be permitted, except at the base of the walls.

Underdrains are required and shall be a minimum of six inches with cleanouts at a maximum of 300-foot spacing unless an alternative is approved by TxDOT. Underdrains shall be sloped to drain to permanent outfalls. The bottom of the retained fill shall be constructed with a 5% slope from front to back and have a longitudinal underdrain at the back of the straps/retaining wall fill. Outfalls, minimum slope, and flowlines shall be shown on the retaining wall layouts. During underdrain placement DB Contractor shall confirm the minimum slope shown on the retaining wall layouts is maintained from end to end of pipe.

The top of the retaining wall leveling pad shall be located a minimum of two feet below finished ground, unless approved by TxDOT.

DB Contractor shall use Attachment 21-2: MSE Retaining Wall Design Data for the design of MSE retaining walls. The length of earth reinforcements for MSE retaining walls shall be a minimum of either 8 feet or 70% of the wall height, whichever is greater. Earth reinforcement length shall be measured perpendicular to the wall. DB Contractor shall adjust skewed earth reinforcements as necessary to obtain the length required by this Item 21 and Section 16.2.2. Wall height shall be measured from the distance from the top of the leveling pad to the finished grade at the top of the wall.

Unless otherwise set forth in this Section 21.2.7, DB Contractor shall use approved MSE panel systems found at <https://www.txdot.gov/business/resources/specifications/mse-wall.html>, except for wall systems utilizing extensible earth reinforcement, which are not permitted.

DB Contractor shall provide specific minimum lengths of soil reinforcement. Soil reinforcement shall be properly modeled for global stability analysis. DB Contractor shall not model the reinforcing zone as infinite strength.

If verification load tests or proof load tests for soil/rock nail walls do not meet design criteria, DB Contractor shall notify TxDOT and stop installation of new nails until further instruction from TxDOT.

Retaining walls shall end as close as practical to proposed grade within limits of fabrication heights of wall panels. Riprap shall be used to channel water from flume behind walls to outlets and to avoid soil erosions at ends of walls.

## 21.2.8

### **Noise Walls**

DB Contractor shall design and construct all noise walls to achieve the decibel reduction requirements in the NEPA Approvals and meet the aesthetic requirements in Item 23.

DB Contractor shall design and construct all noise walls for 115 mph wind speed and exposure category C in accordance with AASHTO *LRFD Bridge Design Specifications*.

Any damage to noise walls caused by DB Contractor-Related Entities shall be repaired in accordance with TxDOT Standard Specifications. Damage caused by third parties shall be repaired in accordance with the Contract Documents.

Panel design and construction shall limit the risk of falling debris resulting from traffic impacting the noise wall.

Timber noise walls are not allowed.

If any portion of the existing noise walls needs to be temporarily disassembled for any reason during construction, the noise walls shall be reassembled and restored to its existing condition. DB Contractor shall repair all existing noise walls that are damaged during construction within the Project limits.

If pipe culverts are to extend through the noise walls, the pipe shall be installed so that no joints in the pipe are located within two feet of face of wall.

## 21.2.9

### **Drainage Structures**

In developing the design of drainage structures, DB Contractor shall account for maximum anticipated loadings for the Project.

Energy dissipaters, if used, shall be considered as structural Elements.

DB Contractor shall analyze existing drainage structures that are physically impacted by the Work for capacity and condition and as necessary retrofit or replace elements to accommodate required hydraulic capacity, and any additional structural loads, such as embankment that exceeds the original structural design

capacity, settlements, and/or other structural impacts associated with the Project in accordance with TxDOT Standards and TxDOT Standard Specifications.

## 21.2.10

**Sign, Illumination, and Traffic Signal Supports**

DB Contractor shall provide structural design of signs, luminaires, and traffic signals in accordance with the *AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*. DB Contractor shall design foundations for signs, luminaires, and traffic signals using the Texas Cone Penetrometer method as shown in the TxDOT Engineering Standard Sheets. DB Contractor shall design overhead and cantilever sign supports to accommodate the Project. Cantilever and sign bridge supports shall be placed outside the clear zone or shall be otherwise protected by appropriate safety measures. Sign supports shall be provided at locations necessary to meet the signing requirements of the Project. Type O signs shall not be attached to the face of a bridge or otherwise attached to the bridge deck or rail at underpasses or overpasses. DB Contractor shall place bridge lighting brackets no more than ten feet from abutments or bents; however, in special circumstances, including conflicts with a physical feature of the bridge that does not permit typical attachment methods, the bridge lighting brackets may be placed a maximum of 20 feet from abutments and piers.

“Large guide signs,” as defined by the TxDOT SHSD, shall not be mounted on bridges unless approved by TxDOT.

For overhead sign supports on bridges, DB Contractor shall indicate on bridge layouts a cantilever-type overhead sign support (COSS) founded on a bent cap or on an isolated concrete column on drilled shaft, or an overhead sign bridge (OSB) attached directly to the bridge superstructure. The location of any overhead sign support on bridges requires special design to be reviewed and approved by TxDOT.

## 21.2.11

**Rehabilitation of Structures to be Widened, Extended, or Reused**

Unless otherwise identified in Table 21-2, rehabilitation of existing bridges and bridge class culverts and widening of existing bridges and bridge class culverts will not be allowed, unless approved by TxDOT.

The following structures are to be widened, extended, or reused and shall be rehabilitated:

**Table 21-2: Bridges to be Rehabilitated**

Structure Number (NBI Number)	Feature Crossed	Facility Carried
15-015-0521-04-325	Perrin Beitel Road	IH 410 ML WB
15-095-0016-06-192	Cibolo Creek	IH 35 ML NB
15-095-0016-06-193	Cibolo Creek	IH 35 ML SB
15-015-0016-07-183	Selma Creek	IH 35 FR NB
15-015-0521-04-301	Salado Creek	IH 410 EB FR

The Bridge Condition Rating Summary provided in the RIDs contains a table that provides the most current condition ratings for structures.

DB Contractor shall rehabilitate any bridge component of an existing bridge or bridge class culvert identified in Table 21-2 that has a condition rating less than 7 as determined in the condition survey or upon DB Contractor discovery of any other defects. DB Contractor shall perform all follow-up actions identified in the follow-up action worksheet of the condition survey. Rehabilitation must achieve a minimum condition rating of 7 for each structural component at Substantial Completion. Pier protection shall be added to existing two-column bents for structures to be reused. For any structures that will be reused, DB Contractor shall upgrade any substandard or obsolete rail.

DB Contractor shall clean and repair existing expansion joints and provide new full width seals for existing and widened structures including all existing open joints.

DB Contractor shall inspect all existing bridge bearings. As necessary, DB Contractor shall rehabilitate, repair, or replace existing bridge bearings to accommodate design loads and expansion.

DB Contractor shall patch and repair concrete spillings and concrete delaminations, clean and repair exposed reinforcing, seal cracks and repair or replace structurally damaged elements of existing structures.

DB Contractor shall perform concrete repair work in accordance with TxDOT's *Concrete Repair Manual*.

DB Contractor shall remove rust, clean, and paint all existing steel bridge superstructures and associated steel bridge bearings. DB Contractor shall perform a paint condition assessment for all painted structures prior to any rehabilitation activities. Recommendations to leave any existing coatings intact shall be submitted to TxDOT for approval prior to any rehabilitation activities.

Full bridge deck replacements shall consist of a minimum of 8.5-inch-thick Class S concrete bridge deck. Bridge beams/girders and substructures shall be rehabilitated or replaced as required to support the new bridge deck load in combination with live load specified in Section 21.2.3. Bridge widenings shall utilize an 8.5-inch-thick deck regardless of the deck thickness of the existing bridge. Existing decks less than 8.5-inch-thick may only remain in place if the deck meets the bridge design load and rating criteria set forth in Section 21.2.3.

### 21.3 Construction Requirements

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 21 in accordance with the requirements of this Item 21 and TxDOT Standard Specifications.

DB Contractor shall also conduct all Work for this Item 21 in accordance with the requirements of the following TxDOT special specifications and special provisions:

- TxDOT Special Specification Item 4021

#### 21.3.1 Concrete Finishes

All concrete surfaces of new structures and structures to be reconstructed, widened, extended, or reused that do not have aesthetic treatments shall have a uniform texture and appearance. Painting or coating, where required as an aspect of the aesthetic treatment of the concrete, shall be uniform in appearance. Where the following do not have aesthetic treatments as identified in Item 23, Ordinary Surface Finish as defined by Sections 420.4.13 and 427.4.1.1 of the TxDOT Standard Specifications shall be applied as a minimum:

- Inside and top of inlets;
- Inside and top of manholes;
- Inside of sewer appurtenances;
- Inside of culvert barrels;
- Bottom of bridge decks between girders or beams;
- Vertical and bottom of surfaces of interior concrete beams or girders;
- Wingwalls and headwalls;
- Riprap, mowstrips and flumes; and
- Traffic railing.

#### 21.3.2 Steel Finishes

If weathering steel is used, DB Contractor shall protect all components of the structure (superstructure and substructure) that are susceptible to corrosion and/or staining from weathering steel run-off.

#### 21.3.3 Structure Metals

Welding shall be in accordance with the requirements of the AASHTO/American Welding Society D1.5 *Bridge Welding Code* and Item 448 of the TxDOT Standard Specifications.

#### 21.3.4 Steel Erection

Steel erection shall be in accordance with AASHTO/NSBA Steel Bridge Collaboration S10.1-2014.

DB Contractor shall prepare steel erection drawings in accordance with the requirements of Item 441 of the TxDOT Standard Specifications and shall submit the drawings for approval prior to steel erection.

DB Contractor shall use structural metal components in accordance with the requirements in Item 442 of the TxDOT Standard Specifications.

## 21.4

**Submittals**

All Submittals described in this Item 21 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 21-3. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 21-3: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Corridor Structure Type Study and Report	Prior to the design of bridges, walls, bridge class culverts, sign structures and other miscellaneous structures	Review and comment	21.2
Design calculations and bridge structural details for future widened typical sections	As part of the Preliminary Design Submittal	Approval	21.2.2
Load rating calculations	Upon request and no later than the start of construction of elements related to the request	Review and comment	21.2.2
All electronic and paper copies of files and design calculations for requested elements	Upon request as part of the Preliminary Design Submittal	For information	21.2.2
Drilled shaft load testing results	As part of the Preliminary Design Submittal	Approval	21.2.5
Drilled shaft TIP testing results	After drilled shaft installation and before column placement	Approval	21.2.5
Criteria and analytical methods to demonstrate substructure structural redundancy	As part of the Preliminary Design Submittal	Approval	21.2.5
Type of existing retaining wall and plan of removal	As part of the Preliminary Design Submittal	Approval	21.2.7
Recommendations to leave any existing coatings intact	Prior to any rehabilitation activities	Approval	21.2.11
Steel erection drawings	Prior to steel erection	Approval	21.3.4

## Item 22

### Rail



#### 22.1

#### General Requirements

This Item 22 defines the criteria required to design and construct rail corridors, rail facilities, rail structures, and rail line crossings within the Project ROW.

The Project includes five rail corridor crossings within the Project ROW as shown in the Schematic Design and reflected in Table 22-1. DB Contractor shall prepare a geometric design for the rail corridor crossings.

**Table 22-1: Rail Corridor Crossings**

Station	Owner	Proposed Facilities Crossing RR	Location
LP 1604ML-1 Sta. 4923+00 (approx.)	Union Pacific Railroad	SL 1604 grade separation	Near Lookout Rd
CL I-35ML Sta. 3464+00 (approx.)	Union Pacific Railroad	I-410 East to I-35 South DC grade separation	I-35/I-410 North Interchange
CL I-35ML Sta. 3464+00 (approx.)	Union Pacific Railroad	I-410 East to I-35 North DC grade separation	I-35/I-410 North Interchange
CL I-35ML Sta. 3464+00 (approx.)	Union Pacific Railroad	I-35 North to I-410 West DC grade separation	I-35/I-410 North Interchange
CL I-35ML Sta. 3486+00 (approx.)	Union Pacific Railroad	I-35 South to I-410 West DC grade separation	I-35/I-410 North Interchange

DB Contractor's PMP shall set forth an approach, procedures, and methods for the rail corridor design and construction meeting the requirements set forth in the Contract Documents.

DB Contractor shall ensure that the Project does not negatively impact the safety of railroad operations. DB Contractor shall coordinate the Work with the railroad to avoid impacts to railroad operations, except as specifically approved by the railroad.

#### 22.2

#### Administrative Requirements

##### 22.2.1

#### Railroad Agreements

Railroads may require an executed preliminary engineering agreement, also known as a Letter of Authority, which is executed between TxDOT and the railroad company. Subject to DB Contractor's obligations under



DBA Section 6.10.2.1, TxDOT will obtain: (i) the preliminary engineering agreements; (ii) the approved Preliminary Exhibit A(s); and (iii) the Construction and Maintenance Agreement(s) (“C&M Agreement(s)”) with the appropriate railroad for all crossings and railroad impacts. DB Contractor shall be responsible for obtaining any other required approvals, permits, and agreements required for the Work, including, but not limited to, Railroad’s Contractor ROE Agreements for any railroad-related Work or temporary haul roads; and railroad protective flagging. Additional information regarding C&M Agreement(s) can be found in the TxDOT *Rail-Highway Operations Manual*.

For any preliminary activities on railroad ROW, DB Contractor shall be responsible for executing any necessary agreements with the railroad to enter railroad property and authorize the railroad to provide flagging or to pay for a railroad approved flagging vendor.

Current approved templates for TxDOT/railroad company agreements are available from the TxDOT Rail Division at [Robert.Travis@txdot.gov](mailto:Robert.Travis@txdot.gov).

The following agreements may be required based upon the railroad’s requirements:

- Preliminary Engineering Agreement or Letter of Authority – Most railroads require preliminary engineering agreements in order to proceed with the development and review of Preliminary Exhibit As. These agreements are between TxDOT and the railroad. TxDOT will prepare and be responsible for executing any required preliminary engineering agreements with the applicable railroad for the Project. TxDOT will be responsible for payment to the railroad for reimbursement of costs incurred by the railroad, including preliminary engineering, collaboration in the development of plans, reviewing and approving plan submittals, construction monitoring, attending Project meetings, and developing any necessary cost estimates required under the preliminary engineering agreement or letter of authority;
- C&M Agreement – A C&M Agreement is normally required for any work in railroad ROW, including but not limited to, when the highway project involves a new crossing or grade separation of the railroad, modification of existing structures, State owned Utility Adjustments within railroad ROW, or work on the common ROW. A C&M Agreement will be needed for each location there is an impact to the railroad. TxDOT will reimburse the railroad for the construction and maintenance license fee(s).

Subject to DB Contractor’s obligations under DBA Section 6.10.2.1, TxDOT will prepare all the documents required to obtain the C&M Agreement(s) for the five rail corridor crossings within the Project ROW as shown in the Schematic Design and reflected in Table 22-1. In order for TxDOT to prepare, finalize and execute the C&M Agreement(s) DB Contractor shall: (i) make any required modifications to the Preliminary Exhibit A(s); (ii) prepare the 30% submittal(s); and (iii) prepare the final plans submittal(s) required by the railroad in order for TxDOT to obtain the C&M Agreement(s). Railroad submittal requirements for the C&M Agreement(s) can be found in the “Railroad Documents” folder in the Reference Information Documents as of the Effective Date. Modifications to the Preliminary Exhibit A(s), the 30% submittal(s), and final plans submittal(s) shall be subject to TxDOT review and approval before submitting to the railroad. DB Contractor shall be responsible for addressing and resolving TxDOT and railroad review comments necessary for TxDOT to obtain the C&M Agreement(s). Upon execution of the C&M Agreement(s) between the railroad and TxDOT, TxDOT shall deliver a copy of the C&M Agreement(s) to DB Contractor. DB Contractor may not commence construction work within any part of the railroad ROW until execution of the C&M Agreement(s) covering the work for the applicable portion of railroad ROW. The C&M Agreement shall provide for each party’s access to the applicable facilities for regular inspection, and maintenance, as well as emergency repairs as required;

- Railroad’s Contractor ROE Agreements (Texas-approved versions only) – In order to enter the railroad’s ROW to perform the Work, DB Contractor or its Subcontractor shall secure a railroad ROE agreement and shall coordinate the arrangements of the agreement directly with the railroad. Railroad insurance requirements will be outlined within the railroad’s contractor ROE agreement and shall be incorporated into the Railroad Protective Liability Insurance described in Section 3.5.4.8 of the General Conditions. DB Contractor shall be responsible for reimbursing the railroad company for all right of entry fees, inspection and flagging costs, unless otherwise covered through the C&M Agreement(s);

- Temporary Haul Road Approval – If the DB Contractor desires a temporary haul road across the railroad track(s), the DB Contractor will be solely responsible for acquiring the railroad approval including any and all fees;
- Joint Use Agreement - Typically used for constructing and maintaining a common ditch or other drainage work that benefits both the railroad company and TxDOT. This agreement shall be between TxDOT and the railroad. TxDOT shall be responsible for all of the costs associated with this agreement; and
- Pipe/ Wireline License Agreement: Used to allow for the installation and maintenance of TxDOT utilities such as storm drains, wireline crossings for lighting, intelligent transportation systems (ITS) or preemption, etc. This agreement shall be between TxDOT and the railroad. TxDOT shall be responsible for all of the costs associated with this agreement.

DB Contractor shall comply with all terms of the executed C&M agreement(s) and/or ROE agreements. No changes to the final plans submittal applicable to the Work within the railroad ROW shall be made without the prior written approval of such changes by both TxDOT and the railroad.

All executed agreements shall be submitted to TxDOT in their entirety as part of the Record Documents.

#### 22.2.2 **DB Contractor ROE Agreement**

DB Contractor shall cooperate and coordinate with all operating railroads for access by the operating railroad and/or their agents to the railroad ROW as necessary for rail maintenance and operations activities, inspection, repair and emergency responses.

#### 22.2.3 **Additional Insurance Requirements**

If any railroad impacted by the Project requires insurance in addition to that required by the Contract Documents, as described in Section 3.5.4 of the General Conditions, DB Contractor shall procure such additional insurance at its own cost and submit copies of insurance policies to TxDOT prior to any entry upon operating railroad property and shall remain in effect until Final Acceptance and through any CMC Term.

#### 22.3 **Design Requirements**

DB Contractor shall avoid placement of temporary or permanent Project components inside railroad ROW to the extent possible, unless covered by an approved C&M Agreement. Any such placements inside railroad ROW require approval of the operating railroad. DB Contractor shall be responsible for obtaining required approvals.

DB Contractor shall prepare and submit all railroad required documentation and final plans submittal applicable to Work within the railroad ROW for approval by TxDOT and the railroad prior to performing any Work within the affected railroad ROW. DB Contractor shall make all Submittals to TxDOT for transmittal to the railroad. TxDOT shall have the opportunity to comment on any Submittals, and DB Contractor shall respond to all comments in writing. TxDOT will not transmit Submittals to the railroad until all comments have been incorporated and satisfactorily resolved.

#### 22.3.1 **Railroad Design Standards**

The design for all railroad elements of the Project shall be based on the *AREMA Manual for Railway Engineering* and the requirements of the operating railroad. DB Contractor's design shall minimize service interruptions to existing rail lines.

All Work involving railroad companies, Work on railroad ROW, and the development and execution of railroad programs shall be in accordance with the respective railroad requirements, including, but not limited to:

- State and federal Law; and
- The practices, guidelines, procedures, and methods contained in TxDOT *Rail-Highway Operations Manual*.

Additionally, the requirements of the owner of each facility crossed shall be compared to the requirements in the TxDOT *Rail-Highway Operations Manual* and the most restrictive criteria shall be utilized. DB Contractor shall comply with the TxDOT railroad requirement sheets and railroad scope of work sheets, which can be found here: <https://www.txdot.gov/inside-txdot/division/rail/requirements.html>

At highway-rail grade crossings, the roadway and drainage design parameters shall be maintained at the crossing with exception for the cross slope of the pavement, which may be transitioned to match the grade across the railroad tracks.

The structural design of any Utilities and drainage structures installed by DB Contractor and crossing a railroad ROW, shall be in accordance with the operating railroad's design criteria. DB Contractor shall coordinate with the operating railroad the design and construction of the construction staging, including any shooflies.

#### 22.4 **Construction Requirements**

DB Contractor shall comply with all construction requirements and specifications set forth by the operating railroad and shall invite the appropriate railroad company to pre-construction meetings for work to be performed within the railroad's ROW.

DB Contractor shall be responsible for scheduling the work to be completed by the operating railroad, as well as the work to be completed by its own forces. DB Contractor shall be responsible for all costs associated with its performance of the obligations in the railroad agreements, including any amendments, change orders, or force account work under such agreements.

The operation of the railroad and the affiliated railroads (those running through the railroad property in particular), and the operations of the lessees, licensees, and other lawful occupants of the railroad property, shall have absolute priority over the performance of construction for the Project. DB Contractor shall coordinate with the railroads to coordinate the Work with the operations of the railroads.

DB Contractor shall comply with the TxDOT Engineering Standard Sheets for railroad work found at the following link:

<https://www.txdot.gov/inside-txdot/division/rail/requirements.html>

#### 22.4.1 **Operation Safety**

DB Contractor shall arrange with the operating railroad for railroad flagging as required, to ensure the safe passage of rail traffic throughout the Project limits. DB Contractor shall comply with the operating railroad's requirements for contractor safety training prior to performing Work or other activities on the operating railroad's property and shall maintain current registration prior to working on railroad property.

If not detailed in the respective railroad's contractor ROE Agreement, C&M agreement, or if not directed otherwise by the respective railroad, DB Contractor shall notify the respective railroad representative at least ten Business Days in advance of DB Contractor commencing its Work and at least 30 Business Days in advance of any Work by DB Contractor in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension such as, but not limited to, a crane boom will reach within 25 feet of any track. No Work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any track(s) unless authorized by the railroad. Upon receipt of such 30-Business Day notice, the railroad representative will determine and inform DB Contractor whether a flagman need be present and whether DB Contractor needs to implement any special protective or safety measures.

#### 22.5 **Submittals**

All Submittals described in this Item 22 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 22-2. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 22-2: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Modifications to Preliminary Exhibit A(s)	Prior to TxDOT submitting 30% plans submittal to railroad	Approval	22.2.1
30% submittal for TxDOT to obtain the C&M Agreement(s)	Prior to TxDOT submitting 30% plans submittal to railroad	Approval	22.2.1
Final plans submittal for TxDOT to obtain the C&M Agreement(s)	Prior to TxDOT submitting final plans submittal to railroad for execution of the C&M Agreement(s)	Approval	22.2.1
Fully executed railroad agreements	As part of the Records Documents	For information	22.2.1
Copies of all additional or modified insurance policies	Prior to any entry upon operating railroad property	For Information	22.2.3

# Item 23

## Aesthetics and Landscaping



### 23.1 General Requirements

This Item 23 defines requirements with which DB Contractor shall design and construct treatments for the roadway, structures, drainage, and landscaping elements of the Project. Aesthetic treatments shall be designed to harmonize with the local landscape and architecture, as well as the developed themes of the local settings.

This Item 23 presents minimum aesthetics and landscape design requirements for Project designs. For purposes of this Item 23, the following list of items will be considered the aesthetics elements of the Project design:

- Material, finish, color, shape, and texture of bridge elements;
- Materials, finish, and color of barriers and railings;
- Paved slope treatments;
- Finish, color, and texture of retaining and noise walls;
- Contour grading, slope rounding, channel treatments, and drainage;
- Sculptural and artistic features of other structures;
- Sidewalks, medians, or pedestrian specialty paving, including material, finish, and color;
- Hardscape at interchanges and intersections;
- Gateway and wayfinding markers;
- Fencing;
- Signage – overhead, attached, and ground-mounted;
- Any permanent building construction within the Project, including ancillary and operational support; and
- Light fixtures, ambient light colors, and general layout conditions.

#### 23.1.1 Aesthetics Concepts

Aesthetic elements shall be designed as corridor-wide enhancements. To the extent practicable, the aesthetic elements shall remain consistent in form, materials, and design throughout the length of the Project where applied.

It shall be understood that, with TxDOT approval, the aesthetic concepts for components of the Project corridor may need to be adapted to the site-specific conditions of the Project.

DB Contractor shall adhere to the approved San Antonio District Urban Design Themes for Bexar and Outlying Counties dated December 2005 presented in the RIDs, which are hereby incorporated by this reference in preparing the preliminary Aesthetics Concept and subsequent Aesthetics and Landscaping Plan.

DB Contractor shall prepare a preliminary Aesthetics Concept of the Project that incorporates the design intent of the San Antonio District Urban Design Themes for Bexar and Outlying Counties for review and comment by TxDOT. The preliminary Aesthetics Concept shall incorporate the proposed transition from the Mission Region Theme to the Hill County Region Theme as presented in Attachment 23-1: I-35 NEX Urban Design Theme Transition.

The preliminary Aesthetics Concept shall also use San Antonio District Standards:

- Hill Country Theme Cantilever Overhead Sign Bridge (COSB) and Overhead Sign Bridge (OSB), and
- Mission Theme COSB and OSB

which supersede the design details for overhead sign bridges included in the San Antonio District Urban Design Themes for Bexar and Outlying Counties.

The preliminary Aesthetic Concept shall incorporate the logo/seal for the Cities of Live Oak, Schertz, and Selma as described in RID Exhibit "Cities of Live Oak, Schertz, and Selma Aesthetic Concepts".

DB Contractor shall prepare a final Aesthetics Concept and submit it to TxDOT for approval within 60 Days of issuance of NTP2. The approved Aesthetics Concept shall be incorporated into the Aesthetics and Landscaping Plan.

### 23.1.2 **Aesthetics and Landscaping Plan**

DB Contractor shall prepare an Aesthetics and Landscaping Plan in conformance with the Project's approved final Aesthetics Concept which provides guidelines and requirements for the aesthetics and landscaping design of the Project. DB Contractor shall submit the Aesthetics and Landscaping Plan to TxDOT for review and approval within 120 Days of issuance of NTP2. The Aesthetics and Landscaping Plan shall provide guidelines and requirements for the aesthetics and landscaping design of the Project.

The Aesthetics and Landscaping Plan shall include all elements to fully describe the aesthetic and landscaping treatment that will apply to each element of the Project, shall meet the requirements of all standards and documents identified or otherwise specified within this Item 23, and shall address the following requirements.

#### 23.1.2.1 **Aesthetics**

The Aesthetics and Landscaping Plan shall include:

- A master plan that will convey the layout of the various roadway conditions (i.e., depressed sections, elevated sections, at-grade roadways, bridges, cantilevered structural sections);
- All plans, sections, elevations, perspectives, isometrics, etc., as needed to fully communicate the aesthetic treatment and approach to aesthetic elements, including walls, noise walls, bridges, traffic rail, landscape pavers, and signage structures;
- Drawings showing locations of site-specific elements (i.e., fences, signage, colored lighting, potential locations of TxDOT approved community improvement opportunity areas, gate way markers, bridge enhancements, and landscaping); and
- Drawings showing color schemes and identifying the locations where such color schemes will be applied throughout the Project.

#### 23.1.2.2 **Landscaping**

This section is omitted since this Project does not include landscape planting. Sheets HC40 through HC46, M27 through M31, and DT27 through DT31 of the San Antonio District Urban Design Themes for Bexar and Outlying Counties are omitted from use on the Project.

#### 23.1.3 **Personnel**

DB Contractor shall provide a landscape architect, registered in the State of Texas, with experience in designing aesthetics and landscaping elements for roadway projects of similar scope and size to develop the Aesthetics Concept and the Aesthetics and Landscaping Plan.

Prior to commencing DB Contractor's aesthetics concept and aesthetics and landscape design, DB Contractor's landscape architect shall request and participate in a "kick-off" meeting at the District offices with the District's landscape architect, or District-appointed designee. DB Contractor's landscape architect shall coordinate with the District's landscape architect, or the District-appointed designee, throughout the design process to ensure compliance with the plans, guidelines, and standards set forth in this Item 23. DB Contractor's landscape architect shall coordinate in advance with the District landscape architect, or the District-appointed designee, the scheduling of design reviews of the Aesthetics and Landscaping Plan and subsequent aesthetic and landscape construction activities.

### 23.2 **Design Requirements**

#### 23.2.1 **Aesthetics Principles and Strategies**

DB Contractor shall follow the guidelines and requirements of the approved Aesthetics and Landscaping Plan, as well as the aesthetics principles, requirements, and strategies established by TxDOT for the Project design, including the following:

- Aesthetics shall not interfere with safety, constructability, or maintenance requirements;

- The Project design shall minimize impact on the existing natural environment to the extent possible;
- The Project design shall emphasize and enhance the existing natural context and landscape to the fullest extent possible;
- Simple geometric shapes for structures shall be used to the extent possible for continuity along the entire length of the Project;
- All bridges and other structures shall be simplified in their design, and to the greatest extent possible, kept small in size, bulk, and mass;
- All structures shall be carefully detailed so as to achieve the greatest level of aesthetic quality and conform to the approved Aesthetics and Landscaping Plan;
- Color, texture, and form shall be used appropriately for all structures;
- Graphics, signage, and lighting shall be consistent along the entire length of the Project;
- Existing native trees and established naturalized trees and natural features shall be preserved to the greatest extent possible;
- Tree pruning and removal shall be consistent with San Antonio District Standard for Tree Pruning and Removal;
- TxDOT consent will be required in order to use a natural feature for erosion control;
- All unpaved areas and areas not covered by permanent structures shall be sodded;
- Aesthetic elements shall be fully integrated with the overall structure and landscape design;
- Aesthetic elements shall be easy to maintain and resistant to vandalism and graffiti; and
- Aesthetic elements shall conform to the approved Aesthetics and Landscaping Plan.

### 23.2.2

#### **Walls and Sign Columns**

DB Contractor shall design noise walls to be similar in color, texture, style, and aesthetic treatment to retaining walls consistent with the approved Aesthetics and Landscaping Plan. DB Contractor shall apply aesthetic treatments to the vertical surfaces of retaining and noise walls where the surface is visible from the roadway or adjacent residential dwelling units. Consistent aesthetic treatments that reflect the established design themes shall be used for retaining and noise walls and exposed concrete column sign support structures. T-mount sign support structures for DMS shall be exempt from aesthetic requirements herein. DB Contractor shall clearly detail and identify how wall patterns shall be incorporated into the chosen design solution in the Aesthetics and Landscaping Plan.

The roadside face of noise walls shall have a consistent appearance throughout their length. The side of the noise walls facing away from the roadway may vary based the approved Aesthetics and Landscaping Plan and, if so directed by TxDOT, community input gathered by DB Contractor.

### 23.2.3

#### **Bridges and Other Structures**

All aesthetic treatments for structural elements shall be coordinated with DB Contractor's structural design team to facilitate constructability and maintain safety requirements. All substructure columns, abutments, bridge rails, and other structures shall be consistent in form and texture with similar shapes and details used for all bridges and shall be designed in accordance with the approved Aesthetics and Landscaping Plan.

DB Contractor may use SSTR at Cross-over #1 in lieu of TxDOT Type T411 Traffic Railing (Texas Classic) required under the Mission Region Theme for mainlanes under a cross street.

DB Contractor shall ensure that an appearance of constant superstructure depth is maintained throughout each length of bridge consisting entirely of steel girders or concrete beams. To maintain this appearance of constant superstructure depth, DB Contractor shall maintain a constant superstructure depth for bridge units of at least four consecutive spans with no more than a two-step increase in beam type (i.e. TX40 to TX54) between bridge units of differing superstructure depth. For superstructures where both steel girders and concrete beams are used, the transition from concrete beams to steel girders may be accomplished by dapped end girders.

### 23.2.4

#### **Trees, Shrubs, and Other Plant Materials**

This section is omitted since this project does not include landscaping.

### 23.2.5 **Riprap, Paving, and Pavers**

Concrete paving, landscape pavers, and/or rock riprap shall be used in areas that are not accessible to tractor mowing equipment, are hard-to-reach mowing areas (typically less than two foot in width), or are adjacent to or under structures where areas of low light will not permit vegetation to be established and maintained. These areas include, but are not limited to, areas of low sunlight, areas between, near, or next to guard fence posts, bent columns, retaining walls, freeway ramp gores, paved ditches, flumes, and ditch inlets. Concrete paving, landscape pavers, and/or rock riprap are to be used to improve roadway appearance and maintenance. Landscape pavers shall be used in accordance with San Antonio District Standards for Colored Textured Concrete and Landscape Pavers for the Mission/Downtown Theme and the Hill Country Theme. Rock Riprap (Special) (Dry) and Rock Riprap (Special) (Grout) shall be used in accordance with the Miscellaneous Paving Details for both Hill Country and Mission Themes.

Concrete paving, landscape pavers, and rock riprap shall be applied per the approved Aesthetics and Landscaping Plan.

### 23.2.6 **Color Palette**

DB Contractor shall submit a plan that indicates where each color is to be applied to elements throughout the Project in the Aesthetics Concept. This plan can be diagrammatic in nature but shall list each element and its colors. In addition to integrated colors, painting, and staining, DB Contractor may use colored lighting in selected areas to add color.

Newly constructed or modified concrete surfaces shall be painted or stained in accordance with the San Antonio District Urban Design Themes for Bexar and Outlying Counties. Anti-graffiti coating will not be required for painted or stained surfaces.

### 23.2.7 **Lighting Aesthetics**

This section is omitted since this Project is using standard lighting.

### 23.3 **Construction Requirements**

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 23 in accordance with the requirements of this Item 23 and the TxDOT Standard Specifications.

DB Contractor shall submit to TxDOT for review and approval, sample panels 30 days in advance of starting construction of textured concrete surfaces and landscape pavers. DB Contractor shall construct sample panels in accordance with Section 427.4.3.5 of the TxDOT Standard Specifications that comply with the principles, requirements, and strategies established by TxDOT and the approved Aesthetics and Landscaping Plan and San Antonio District standards. The sample panels must be reviewed and approved by TxDOT before any construction form liners, paint, or landscape pavers may be ordered, obtained, or used. DB Contractor shall provide sample panels equivalent to the size of the panels that will be installed when constructed with a representative un-textured surrounding surface. The approved sample panel shall be the standard of comparison for the production concrete surface texture.

For textured panels or concrete surfaces to be finished with a coating of paint or stain, DB Contractor shall prepare a corresponding coated panel or coat the surface area of an in-place element for TxDOT approval prior to the coating operation.

All sample panels shall be representative of the actual panel that will be placed. Primary, secondary, and accent colors shall be displayed on the sample panel.

### 23.4 **Aesthetic and Landscaping Enhancements**

If requested by TxDOT, DB Contractor shall provide adjacent Governmental Entities the opportunity to enhance aesthetic and landscaping features consistent with the requirements herein. The capital and maintenance costs of any TxDOT approved adjacent Governmental Entity improvements (“aesthetic and landscaping enhancements”) shall be the responsibility of the adjacent Governmental Entity. At TxDOT’s request, DB Contractor shall coordinate the necessary arrangements directly with the appropriate local Governmental Entity for aesthetic and landscaping enhancements within the local Governmental Entity’s jurisdiction. DB Contractor shall coordinate with the Utility Owner(s) and ensure power service is initiated and provided/maintained for all irrigation controllers and aesthetic lighting within the Project during the Term.

Aesthetic and landscaping enhancements shall be incorporated into the Aesthetics Concept.



23.5

**Submittals**

All Submittals described in this Item 23 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 23-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 23-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Preliminary Aesthetic Concept	Prior to developing the Aesthetics and Landscaping Plan	Approval	23.1.1
Final Aesthetic Concept	Within 60 days of NTP2	Approval	23.1.1
Aesthetics and Landscaping Plan	Within 120 days of NTP2	Approval	23.1.2
Panel samples	30 days prior to starting construction of textured concrete surfaces and landscape pavers	Approval	23.3

# Item 24

## Signing, Delineation, Pavement Marking, Signalization, and Lighting



### 24.1 General Requirements

This Item 24 includes requirements with which DB Contractor shall design, construct, and maintain, all signs, delineation, pavement markings, signals, and lighting for the Project.

### 24.2 Administrative Requirements

#### 24.2.1 Meetings

DB Contractor shall arrange and coordinate all meetings with local Governmental Entities that will assume responsibility for maintaining and operating traffic signals and roadway lighting. DB Contractor shall provide TxDOT with notification of such meetings a minimum of 48 hours prior to the start of the meeting. TxDOT may attend such meetings.

DB Contractor shall arrange and coordinate all meetings with Governmental Entities or other Persons requesting special signs.

### 24.3 Design Requirements

DB Contractor shall design all signing, delineation, pavement marking, and signalization in accordance with the TMUTCD and TxDOT SHSD, TxDOT *Freeway Signing Handbook*, TxDOT *Sign Crew Field Book*, TxDOT *Traffic Signals Manual*, TxDOT Engineering Standard Sheets, TxDOT Standard Specifications, and Good Industry Practice. DB Contractor shall design all illumination (lighting) in accordance with the TxDOT *Highway Illumination Manual*, NEC, AASHTO *Roadway Lighting Design Guide*, TxDOT Engineering Standard Sheets, TxDOT Standard Specifications, TxDOT Departmental Material Specifications, and Good Industry Practice.

DB Contractor shall also comply with the TxDOT *Sign Guidelines and Applications Manual*, the TxDOT *Pavement Marking Handbook*, and all applicable standards and forms published by the TxDOT San Antonio District at <https://www.txdot.gov/inside-txdot/district/san-antonio/specinfo.html>.

DB Contractor shall not use the wedge anchor system shown on TxDOT Statewide Standard SMD(TWT)-08.

DB Contractor shall only use approved products on TxDOT's Material Producer List (MPL) for "Triangular Slipbase Systems." Refer to "Crashworthy Small Roadside Sign Supports" category at <https://www.txdot.gov/business/resources/producer-list.html>.

#### 24.3.1 Preliminary Layouts

DB Contractor shall submit, for TxDOT approval, a preliminary operational signing schematic prior to commencing Final Design. Design of the signing, delineation, pavement marking, signalization, and lighting shall be based on the approved preliminary operational signing schematic. Before placing any signs, delineation, non-standard sign structures, pavement markings, traffic signals, and lighting, DB Contractor shall provide TxDOT a schematic layout indicating the proposed location of such items. DB Contractor shall provide TxDOT advance notice of changes or revisions to sign locations included in the preliminary operational signing schematic. DB Contractor shall prepare a preliminary lighting layout, in a roll type format with photometric curves, and submit this to TxDOT for approval prior to commencing Final Design.

#### 24.3.2 Signing and Delineation

DB Contractor shall design and install all signs as shown on the Released for Construction Documents. The term "signs" as used in this Item 24 includes new sign panels and structures, as well as modifications to existing sign panels and sign structures.

The use of existing sign structures with new or modified sign panels shall be subject to TxDOT approval. DB Contractor shall perform an in-depth inspection in accordance with Section 8.0 of FHWA *Guidelines for the Installation, Inspection, Maintenance and Repair of Structural for Highway Signs, Luminaires, and Traffic Signals* and submit documentation of the inspection to TxDOT for review. DB Contractor shall confirm the

suitability, structural sufficiency and vertical clearance, of existing sign structures with new or modified sign panels. If an existing sign structure with new or modified sign panels exceeds the limits of the original design and published standards, the existing sign structure may be reused only if the components of the existing sign structure are structurally evaluated and sufficient to carry the loads using the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*. Existing sign structures with no new or modified sign panels will not require structural evaluation. DB Contractor shall verify that the required minimum vertical clearance is satisfied for existing structures with new or modified sign panels.

DB Contractor's design shall include the locations of ground-mounted and overhead signs, graphic representation of all signs, proposed pavement markings, delineation placement, guide sign and special sign details, and structural and foundation requirements. Signs shall be located in a manner that avoids conflicts with other signs, vegetation, DMS, lighting, and structures.

DB Contractor shall ensure that signs are located in a manner to provide adequate sight distance for legibility and proper response, provide clear direction and information for users, and comply with all applicable TMUTCD requirements.

Subject to Section 24.3.4, DB Contractor shall review with TxDOT all requests for new signs, including traffic generators, or modifications of existing sign legend. Such requests are subject to TxDOT approval.

DB Contractor's design and placement of delineators and object markers shall comply with the requirements of the TMUTCD, TxDOT SHSD, and TxDOT Engineering Standard sheets.

Signs on rails shall comply with TxDOT San Antonio District Standard, Special Sign Mount Details (1) (MOD).

DB Contractor shall replace signs, including school signs and flashers, affected by any local street improvements.

DB Contractor shall ensure all existing street name signs for cross streets are replaced or relocated and proposed street name signs are installed according to TMUTCD requirements.

### 24.3.3 **Project Signs – Outside the Project ROW**

For signs located outside the Project ROW but within a public ROW, DB Contractor shall install the signs in existing ROW controlled by local Governmental Entities or other State Governmental Entities. DB Contractor shall coordinate with appropriate Governmental Entities for DB Contractor's design and installation of such signs.

### 24.3.4 **Third-Party Signs**

TxDOT or Governmental Entities may request that third-party signs, including logo signs, be installed by a third party. DB Contractor shall coordinate and cooperate with any third party performing such work. TxDOT may solicit input from DB Contractor in reviewing applications for new third-party signs, but will retain sole authority for approving installation of these signs. All costs associated with fabricating and installing these signs will be borne by the sign applicant. If approved by TxDOT, TxDOT may require DB Contractor to fabricate and/or install these signs as a TxDOT-Directed Change.

DB Contractor shall maintain existing third-party signs and shall not remove, adjust, or relocate third-party signs without approval of the third party and TxDOT.

The company currently under contract with TxDOT for logo signs only is LoneStar Logos (512) 462-1310.

### 24.3.5 **Sign Support Structures**

DB Contractor shall determine foundation types and design sign foundations based upon geotechnical surveys/tests using Good Industry Practice. Designs for sign supports shall also comply with requirements in Item 21 and Item 23.

DB Contractor shall design sign support structures to provide a vertical clearance of not less than 25 feet from the highest point of the roadway to the centerline of the truss. Additionally, there shall be a vertical clearance of not less than 19 feet 6 inches between any point on the roadway and the bottom of the sign.

DB Contractor shall design all overhead sign structures for Zone 3, 80 mph wind zone, as shown in the TxDOT Wind Velocity and Ice Zones Standard.

Guide signs, except supplemental and traffic generator signs, shall not be ground-mounted alongside roadways with more than two lanes in a given direction.

If multiple signs are placed on a sign support structure and the vertical size difference among the signs is two feet or less, DB Contractor shall bottom justify the signs.

#### 24.3.6

##### **Pavement Markings**

DB Contractor shall ensure that the design and installation of all pavement markings comply with applicable TMUTCD requirements, Item 666 of the TxDOT Standard Specifications, and TxDOT Engineering Standard Sheets.

DB Contractor shall use shadow markings for skip lines on the controlled access mainlanes where light-colored pavement does not provide sufficient contrast with the markings. Shadow markings consist of black background in combination with standard TMUTCD marking colors as indicated in the TxDOT Contrast and Shadow Pavement Markings Standard CPM (1)-14.

DB Contractor shall design all pavement markings according to TxDOT San Antonio District Typical Pavement Marking Standard Details TPMD (1-3)-18, HSPM-08, and PMSD(1-2)-08, and Statewide Standards PM (1-3)-12 and FPM (1-4)-12.

#### 24.3.7

##### **Signalization**

Traffic signal designs and modifications to existing traffic signals shall be completed in accordance with TxDOT Standard Specifications, the TMUTCD, the TxDOT San Antonio District Standards, including Miscellaneous Traffic Signal Details MTS-18, and the requirements of the appropriate Governmental Entity.

#### 24.3.7.1

##### **Traffic Signal Requirements**

DB Contractor shall design and install new or modified existing fully actuated temporary and permanent traffic signals at all TxDOT-authorized intersections within Project limits that are impacted by the Traffic Control Plans and/or Final Design. DB Contractor shall coordinate with TxDOT and the appropriate Governmental Entities to define appropriate traffic signal design requirements, local agency oversight of DB Contractor's Work, and final acceptance of traffic signals. DB Contractor shall coordinate with the appropriate Governmental Entities for synchronization of traffic signal networks. DB Contractor shall comply with TxDOT *Traffic Signals Manual*, TxDOT Standards and TxDOT San Antonio District Standards for the design and installation of all traffic signals. If the City of San Antonio is responsible for maintaining the signal, the design shall meet the standards of the City of San Antonio.

DB Contractor shall provide both vehicle detection and pedestrian detection at all traffic signals within the Project. Pedestrian signals and detection shall comply with TxDOT's Traffic Signals Manual: Accessible Pedestrian Signal Guidelines. The pedestrian push button shall be raised or flush and a minimum of two inches in the smallest dimension. The force to activate the control shall be no greater than 5 lb/f. The button placement shall be coordinated with the concrete pad to access the button.

DB Contractor's design shall also incorporate the following requirements:

- Design mast arms, poles, heads and foundations in accordance with TxDOT Engineering Standard Sheets and TxDOT Standard Specifications;
- Use yellow polycarbonate signal heads (no fewer than one signal head per lane) with LED signal indications and black, non-vented backplates. All signal heads shall be from the same manufacturer;
- Use timber poles and span wire only for temporary signals;
- Install radar presence and advance detection systems, with advance detection only required for approaches with posted speed limits greater than or equal to 45 mph and presence detection required for all approaches;
- Comply with the UAR and 2014 TxDOT Standard Specification Item 618 for proper cover of conduit;
- Comply with Electrical Detail (ED) sheets of the TxDOT Engineering Standard Sheets;
- Use LED illumination on traffic signal poles. All illumination mounted on traffic signal poles shall be from the same manufacturer;

- Comply with TxDOT San Antonio District Standard 'MTS-18' for traffic signal controller foundation details. DB Contractor shall not build traffic signal controller foundations per TxDOT San Antonio District Standard 'TS-CF-04'.
- For TxDOT operated and maintained signals, DB Contractor shall provide an extra ten feet for each cable terminating in the controller cabinet. All cables shall be continuous without splices from terminal point to terminal point. All proposed signal cable shall be #12 AWG stranded copper for vehicular signal heads and #14 AWG stranded copper for pedestrian APS buttons.
- All pedestrian signal faces shall be single section LED type and from the same manufacturer. Die cast polycarbonate is acceptable in lieu of die cast aluminum. All mounting attachments shall be constructed of steel pipe; and
- DB Contractor shall provide CCTV cameras at all proposed and modified signals on the Project. CCTV cameras shall comply with the requirements set forth in Item 25.

DB Contractor shall purchase and install traffic signals that meet the requirements of TxDOT and the City of San Antonio, as appropriate. DB Contractor shall furnish and install controller cabinets, controller cabinet assemblies, cellular modems, radar detection panels, and power supplies. For signals maintained by the City of San Antonio, DB Contractor shall include battery backup units. DB Contractor shall purchase and install any additional signal equipment necessary for traffic signal operation. DB Contractor shall use conduits and conductors for electrical and communications as required by design and recommended by TxDOT and the City of San Antonio Transportation and Capital Improvements.

- TxDOT intersections requiring new (or full replacement) permanent traffic signals are:
  - IH-35 Frontage Road and O'Connor Road
  - IH-35 Frontage Road and Judson Road
  - IH-35 Frontage Road and Topperwein Road
  - Loop 1604 and Lookout Road
- City of San Antonio intersections requiring new (or full replacement) permanent traffic signals are:
  - IH-35 Frontage Road and Thousand Oaks/Starlight Terrace
  - IH-35 Frontage Road and N. Weidner Road
- DB Contractor shall modify existing signals including the addition of pedestrian signals, when appropriate and as necessitated by the Project. New or modified traffic signal equipment shall be compatible with existing equipment currently used by TxDOT and the City of San Antonio, as appropriate;
- TxDOT intersections requiring modifications to include pedestrian signals are:
  - IH-35 Frontage Road North and Pat Booker Road (SH 218)
  - IH-35 Frontage Road South and Pat Booker Road (SH 218)
  - IH-35 Frontage Road and Forum Parkway
  - IH-35 Frontage Road and N. Evans Road
  - IH-35 Frontage Road and FM 1518/Corporate Drive
  - IH-35 Frontage Road and Schertz Parkway
  - IH-35 Frontage Road and FM 3009/Roy Richard Drive

#### 24.3.7.2

#### **Traffic Signal Timing Plans**

DB Contractor shall design signal timing plans for all new and modified traffic signals. DB Contractor shall coordinate and implement signal timing plans that optimize traffic flows and provide signal coordination with adjacent intersections and arterials for all new and modified signals. Unless timing maintenance is otherwise provided by a Governmental Entity pursuant to a Third Party Agreement, DB Contractor shall be responsible for updating signal timing as necessary to maintain optimized flow. Signal timing and phasing plans at diamond interchanges shall conform to the coordinated signal phasing and timing of the corridor. DB Contractor shall submit its signal timing plan design for all new and modified traffic signals to TxDOT or the City of San Antonio, as appropriate, for review.

DB Contractor shall provide copies of all final implemented signal timing plans to TxDOT, the City of San Antonio, or the appropriate Governmental Entity responsible for maintaining the signal, as appropriate.

### 24.3.7.3 **Traffic Signal Warrants**

As part of the Final Design process, DB Contractor shall collect traffic data and prepare traffic warrant studies for proposed signalized intersections not signalized at the time of NTP1, including all intersections requiring new (or full replacement) permanent traffic signals listed in Section 24.3.7.1 and shall submit these signal warrant studies to TxDOT for review. The warrant studies shall address all signal warrant criteria in the TMUTCD. DB Contractor shall make recommendations for new signal installations based on these warrant studies in consultation with TxDOT and the appropriate Governmental Entities. TxDOT will reasonably determine if a signal or signal modification is required, based upon the warrant study.

All requests for signals within the Project ROW throughout the Term shall be subject to TxDOT approval. Requests for signals shall include supporting signal warrant studies and traffic signal plans prepared in accordance with the TMUTCD, TxDOT Engineering Standard Sheets and TxDOT Standard Specifications.

Signal warrant studies shall be based on actual traffic and/or opening year traffic projections. If actual traffic volumes are not available, but opening year traffic is available, DB Contractor shall use the procedure in Chapter 3 of the TxDOT *Traffic Signals Manual* to determine the volumes to be analyzed. If additional signals or modifications to existing signals are warranted, based on the traffic volumes obtained through these studies, DB Contractor shall be responsible for installation of additional traffic signals or modification of previously-installed traffic signals. If, based on the above traffic counts, the need for a signal or signal modification is unclear, TxDOT will reasonably determine if the new signal or signal modification is required.

### 24.3.7.4 **Traffic Signal Support Structures**

DB Contractor shall coordinate with TxDOT and the appropriate Governmental Entities to determine the type of traffic signal support structures. DB Contractor shall obtain TxDOT's or the appropriate Governmental Entities' approval of traffic signal support structures to be used on new and modified signal installations.

Designs for traffic signal support structures shall also comply with the requirements in Item 21.

### 24.3.7.5 **Traffic Signal Systems**

DB Contractor shall provide interconnection systems between any new or modified signals and any other signal system within the Project meeting the requirements of TxDOT or the maintaining local Governmental Entity, as appropriate. DB Contractor shall make existing signal systems compatible with proposed interconnections. DB Contractor shall ensure continuous communication of the traffic signal system within the Project and shall provide all communication hardware/equipment necessary for TxDOT or the appropriate local Governmental Entity to communicate with the signal systems on the Project. For TxDOT signals, DB Contractor shall ensure that all Traffic Management System (TMS) equipment furnished and installed is completely compatible with the existing hardware and software located within the TransGuide operations center (i.e. TransGuide central software). DB Contractor shall contact TransGuide's traffic management engineer for details on the system network architecture. Traffic signals shall connect to the ITS duct bank via 12-strand single mode fiber optic cable. DB Contractor shall be responsible for integrating and testing all new TMS equipment and any existing TMS equipment that is relocated into the existing network management system. DB Contractor shall be responsible for maintaining all TMS equipment furnished and installed on this Project until Final Acceptance."

For all TxDOT maintained signals, DB Contractor shall furnish and install a new eight-phase NEMA TS2 Type 2 controller and cabinet, meeting the requirements of Departmental Materials Specifications DMS-11170. DB Contractor shall provide detector panel toggle switches that additionally permit the user to disconnect the detector. For both ground and pole-mount cabinets, DB Contractor shall provide cabinet configurations with a 16 position load bay.

DB Contractor shall integrate the proposed TxDOT maintained traffic signal(s) into the existing Advanced Traffic Management System (ATMS). Centrac's ATMS software, which utilizes Econolite controllers, is currently in use in the San Antonio District. DB Contractor shall provide controllers on this Project that fully communicate with the existing ATMS software.

DB Contractor shall provide at least two weeks advance notice to the TxDOT San Antonio District Signal Shop prior to installing any cabinet equipment.

City of San Antonio signals are connected wirelessly to the City of San Antonio's Traffic Management Center (TMC). The City of San Antonio or one of its contractors will provide a wireless modem, antenna, and Ethernet switch for each cabinet on the Project maintained by the City of San Antonio. The DB Contractor

shall coordinate signal installations with the City of San Antonio. Any existing signal controllers and supporting equipment shall be returned to the City of San Antonio in its documented existing condition.

DB Contractor shall provide to TxDOT an ATP for all traffic signals as part of the Final Design Submittal. The ATP shall include demonstration of cellular modem functionality and connectivity/the ability to operate and monitor TxDOT maintained signals from TransGuide and City of San Antonio maintained signals from the City of San Antonio's TMC. This ATP shall also be submitted to the appropriate Governmental Entity. DB Contractor shall conduct testing in accordance with the ATP and document those results to show conformance.

#### 24.3.8

#### **Lighting**

DB Contractor shall provide new continuous illumination, including new conduit and copper wiring, throughout the Project utilizing conventional or high mast lighting as appropriate. Conventional lighting shall be used on cross streets impacted by the Project.

DB Contractor shall provide illumination to both the upper deck (proposed elevated section) and lower deck (existing mainlanes) of the Project. Illumination fixtures used to provide lighting to the lower deck of the project shall be mounted to the upper deck and subject to the requirements set forth in Item 21 and Item 23.

DB Contractor shall provide new LED fixtures at all locations throughout the Project. Underpass lighting will be limited to locations with existing underpass lighting or to locations with new structures (or widened structures) greater than or equal to 100 feet in width.

DB Contractor shall design the lighting, where necessary, throughout the Project to prevent measurable spillage outside the Project ROW and onto the adjacent properties by designing for appropriate mounting height and using either cut-off shields or tightly-controlled photometrics. DB Contractor shall submit a lighting plan including light spillage measurements and a photometric study for high mast lighting for the entire Project to TxDOT for review and approval as part of the Final Design Submittal. In addition, the overflow of light onto any surface area outside of the Project ROW shall not exceed 10 percent of the average horizontal illumination as defined in the TxDOT Highway Illumination Manual.

DB Contractor shall prepare lighting plans that consider illumination levels, uniformity, and sources for the roadways, interchanges, and special areas. DB Contractor shall maintain an average horizontal luminance on the roadways as described below. DB Contractor shall submit the photometric data results for all lighted areas within the Project limits to TxDOT for review and approval as part of the Final Design Submittal. The Submittal shall include all input data. DB Contractor shall fulfill the responsibilities of TxDOT as depicted in the RID entitled, "TxDOT Lights to CoSA Workflow". These responsibilities include, but are not limited to, providing plans for lighting within the City of San Antonio to the City of San Antonio for its review and approval prior to the Final Design Submittal, constructing lights per the approved lighting plan, and obtaining City of San Antonio acceptance of the constructed lights.

New lighting along cross streets shall be provided in locations where lighting systems are currently provided within the Project limits. All third-party requests for lighting within the Project limits shall be subject to the requirements of Item 13 and TxDOT approval, including lighting agreements covering responsibilities for operation and maintenance of the finished lighting.

DB Contractor shall provide lighting designs that meet the criteria listed in Table 3-5a of the AASHTO *Roadway Lighting Design Guide* on all traveled roadways to be illuminated. Traveled roadways include: mainlanes, interchanges, ramps, ramp terminals, and frontage road intersections with cross streets.

DB Contractor shall design lighting systems, including safety lighting where warranted, in accordance with the TxDOT *Highway Illumination Manual*. All design and construction shall comply with the latest TxDOT Engineering Standard Sheets, TxDOT Departmental Material Specifications, and TxDOT Standard Specifications. Should nonstandard illumination fixtures and support structures be required to be mounted to the upper deck to provide illumination to the lower deck of the Project, DB Contractor shall design such fixtures and support structures in accordance with AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*, NEC, and the requirements set forth in Item 21 and Item 23. At all times between NTP2 and Final Acceptance, DB Contractor shall maintain safe lighting conditions along the Project roadway.

Conventional luminaire poles and breakaway bases shall be designed in accordance with AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*, and TxDOT Engineering Standard Sheets. For all poles located within the clear zone of the roadways, DB Contractor's

design shall incorporate breakaway devices that are pre-qualified by TxDOT. Any high mast lighting poles shall meet the requirements of TxDOT Engineering Standard Sheets and TxDOT Standard Specifications. Existing high mast poles at IH-35 and State Loop 1604 may be reused/relocated provided they have passed internal and external inspection conducted by the DB Contractor, with documentation of such inspection submitted to TxDOT. DB Contractor shall provide inspection criteria to TxDOT for review and comment prior to conducting such inspections.

DB Contractor shall place all understructure lighting in a configuration that minimizes the need for Lane Closures during maintenance.

DB Contractor shall determine and design appropriate foundation types and lengths for permanent lighting structures.

DB Contractor shall not place ITS cables, fiber-optic lines, traffic signal conductors, or any other non-lighting related cables or conductors in the lighting conduit, ground boxes, or junction boxes.

DB Contractor shall minimize the potential hazards of lighting poles through the careful consideration of mounting options and pole placements, including the following options:

- Placing luminaire mast arms on traffic signal poles
- Placing pole bases on existing or proposed concrete traffic barrier
- Placing poles behind existing or proposed concrete traffic barrier or metal beam fence
- Placing high mast lighting outside the clear zone, especially in roadway horizontal curves

DB Contractor shall ensure that lighting structures comply with Federal Aviation Administration (FAA) height restrictions near airport facilities. In the event that proposed or existing luminaires, mast arms, or poles infringe into an airport's or heliport's base surface, DB Contractor shall coordinate with the FAA and TxDOT to permit or relocate such structures. If FAA restrictions prohibit lighting structures from being placed in certain areas near an airport facility, DB Contractor shall find alternative ways of providing the required level of lighting. DB Contractor must coordinate with the FAA regarding the installation of obstruction lights, if any, on a case-by-case basis.

DB Contractor shall provide to TxDOT an ATP for all illumination as part of the Final Design Submittal. This ATP shall also be submitted to the appropriate Governmental Entity. DB Contractor shall conduct testing in accordance with the ATP and Item 616 of the TxDOT Standard Specifications and document those results to TxDOT to show conformance with the requirements of the ATP.

#### 24.3.8.1

##### **Lighting Infrastructure**

At a minimum, all underground conduit shall be a minimum two inches in diameter. Schedule 80 PVC shall be used in bore locations and Schedule 40 PVC shall be used in trench locations. The conduit depth for illumination conduit under the City of San Antonio streets is 36 inches. Aboveground conduit used to provide service to the illumination fixtures mounted on the upper deck shall be placed inside of the upper deck concrete railing.

The minimum conductor size shall be #8 AWG copper on roadway and #12 AWG on underpass lights. DB Contractor shall not use duct cable for illumination purposes. DB Contractor shall design illumination circuits in a manner that confines the circuit within the limits of the local Governmental Entity in which it originates; circuits shall not cross city limits.

DB Contractor shall place bridge lighting brackets no more than ten feet from abutments or bents; however, in special circumstances, the bridge lighting brackets may be placed a maximum of 20 feet from abutments and piers.

Non-standard light pole design shall be submitted to TxDOT for approval as a part of Final Design. For light poles with a base 25 feet above the elevation of surrounding terrain, DB Contractor shall electronically submit design calculations and shop drawings to TxDOT San Antonio District and Bridge Division.

Minimum dimensions for ground boxes shall be as shown on TxDOT Engineering Standard Sheet ED(4)-14.

Ground box covers shall be 2-inch-thick (nominal), made of non-conducting material and labeled "Danger High Voltage Illumination".

Riprap aprons shall be provided around all ground boxes and high mast light poles not otherwise protected with concrete.



Lights shall have an identification tag denoting a contact person or office in case of emergency or for maintenance, and the address and telephone number.

Lighting infrastructure shall be designed and installed in conformance with the NEC, TxDOT Standard Specifications, and TxDOT Engineering Standard Sheets.

DB Contractor shall seal all conduit ends with lighting circuits with at least three feet of polyurethane foam approved by the Engineer that will not adversely affect other plastic materials or corrode metals. DB Contractor may submit alternate methods of wire theft prevention for TxDOT approval.

DB Contractor shall seal ground boxes for lighting circuits with polyurethane foam approved by the Engineer that will not adversely affect other plastic materials or corrode metal. DB Contractor may submit alternate methods of wire theft prevention for TxDOT approval.

#### 24.3.9 **Visual Quality**

Notwithstanding the requirements of Section 24.3.8, DB Contractor shall provide luminaires of equal height along the roadway.

DB Contractor shall not use timber poles for permanent installation.

DB Contractor shall re-sod or re-seed areas of construction disturbed by the installation of signs, traffic signal systems, or lighting systems after final installation.

#### 24.4 **Construction Requirements**

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 24 in accordance with the requirements of this Item 24 and the TxDOT Standard Specifications.

DB Contractor shall properly dispose unsalvageable materials in accordance with local, state, and federal regulations.

##### 24.4.1 **Maintenance of Existing Signals During Construction**

DB Contractor shall operate and maintain all signals modified by DB Contractor from the time at which the signal is modified through Final Acceptance. Any temporary signals, if required by the Project, shall be installed, operated, and maintained according to the standards of the Governmental Entity responsible for the signal. Temporary signals shall be subject to the same requirements of minimum vertical clearance as permanent signals. All existing signal interconnections shall be maintained during construction. Temporary wireless connections to achieve maintenance of existing signal connections or existing connectivity to TransGuide are acceptable.

As a part of maintenance responsibilities during construction, DB Contractor shall assume responsibility for signal phasing and timing during construction for traffic signals within the Project. DB Contractor shall coordinate with TxDOT and the City of San Antonio according to which jurisdiction is responsible for operations and maintenance of the signal. DB Contractor shall provide a minimum of 30 days advance notice to each entity prior to assuming responsibility for signal phasing and timing during construction.

DB Contractor shall coordinate with TxDOT and the City of San Antonio, and provide a minimum of 30 days advance notice to each entity prior to relinquishing responsibility for signal phasing and timing at Final Acceptance.

If at any time TxDOT determines in its discretion that signal phasing or timing plans need to be modified, DB Contractor shall use revised signal phasing or timing plans as determined by TxDOT.

All maintenance activities requiring traffic control are subject to the requirements set forth in Item 26.

##### 24.4.2 **Maintenance of Existing Lighting During Construction**

DB Contractor shall be responsible for the operations and maintenance of all illumination infrastructure within the Project limits from NTP2 until Final Acceptance, regardless of whether or not the infrastructure is impacted by the Project. DB Contractor may survey and document existing lighting conditions prior to assuming responsibility for lighting on the Project. DB Contractor may use existing lighting as temporary lighting during construction. Operations and maintenance responsibilities include all activities necessary to maintain a functional lighting system on the Project, such as coordination with Utility Owners to provide electrical service, fixture replacement, and wire replacement as needed. All maintenance activities requiring traffic control are subject to the requirements set forth in Item 26.

If LED fixtures currently maintained by CPS Energy are replaced during the period between NTP2 and Final Acceptance, DB Contractor shall return the replaced fixtures to CPS Energy.

#### 24.4.3

##### **Permanent Signing and Delineation**

DB Contractor shall use established industry and utility safety practices to erect and remove signs located near any overhead or underground Utilities, and shall consult with the appropriate Utility Owner(s) prior to beginning such Work. DB Contractor shall stake each sign location in the field and provide TxDOT 72 hours' notice prior to the installation of any overhead sign structure.

DB Contractor shall leave all applicable advance guide signs and/or exit direction signs in place at all times and shall not obstruct the view of the signs to motorists. DB Contractor shall replace any other removed signs before the end of the work day.

DB Contractor shall affix a sign identification decal to the back of all signs for inventory purposes and shall submit inventory information (sign identification record) to TxDOT in a TxDOT-compatible format for inclusion into the MMS.

All installed signs are required to meet the minimum retroreflectivity values specified in TMUTCD Table 2A-3 (Minimum Maintained Retroreflectivity Levels). Signs located adjacent to the existing frontage roads are not subject to the minimum retro-reflectivity values specified in TMUTCD Table 2A-3 (Minimum Maintained Retroreflectivity Levels) unless they are impacted by construction.

DB Contractor shall deface and dispose of all signs removed from the Project such that they are not reused as roadway signs.

#### 24.4.4

##### **Permanent Pavement Marking**

DB Contractor shall meet the following minimum retroreflectivity values for edge line markings, centerline/no passing barrier line markings, and lane line markings when measured any time after three (3) days, but not later than 10 days, after application:

- Type I, thermoplastic pavement markings
  - White markings: 250 millicandelas per square meter per lux (mcd/m<sup>2</sup>/lx)
  - Yellow markings: 175 mcd/m<sup>2</sup>/lx
- Type II, paint and beads
  - White markings: 175 mcd/m<sup>2</sup>/lx
  - Yellow markings: 125 mcd/m<sup>2</sup>/lx

DB Contractor shall use TY II markings as the sealer for TY I markings. DB Contractor shall allow at least 14 Days of cure time prior to placing the TY I markings. DB Contractor shall not be permitted to use acrylic or epoxy pavement markings.

DB Contractor shall place all adhesive materials for raised pavement markers directly from the heated dispenser to the pavement. DB Contractor shall not use portable or non-heated containers unless pre-approved by TxDOT. DB Contractor shall ensure that a minimum of 1/8 inch of adhesive will remain under 100% of the raised pavement marker. The adhesive shall extend beyond the perimeter of the marker within the following range: between 1/2 inch and 1 - 1/2 inch.

#### 24.4.5

##### **Permanent Signalization**

DB Contractor shall coordinate with the Utility Owner(s) and ensure necessary power service is initiated and maintained for permanent signal systems. DB Contractor shall ensure power is provided to all DB Contractor-installed signals.

DB Contractor shall provide TxDOT with copies of all signal warrant studies as required in this Item 24. DB Contractor shall also provide copies of all final signal timing.

Before placing any permanent traffic signals, DB Contractor shall provide TxDOT a layout indicating the proposed location of such items. DB Contractor shall stake each traffic signal pole location in the field and provide TxDOT 72 hours' notice prior to the installation of any traffic signal drilled shaft. DB Contractor shall use Class C Concrete for drilled shafts.

DB Contractor shall provide all signal poles from the same manufacturer; pedestrian poles may be from a different manufacturer.

DB Contractor shall provide conduit and cable from material producers listed in TxDOT's Construction Division web site under the category, "Roadway Illumination and Electrical Supplies."

DB Contractor shall use LED lamps from the prequalified material producer lists as shown on the Texas Department of Transportation (TxDOT) – Construction Division's material producer list:  
<https://www.txdot.gov/business/resources/producer-list.html>.

For signals operated and maintained by TxDOT, the following wiring sequence shall be used when connecting the signal sections to the cabinet:

No.	Color	Stripe Color	Signal Face
1	Black		Yellow Ball
2	White		Neutral
3	Red		Red Ball
4	Green		Green Ball
5	Orange		Yellow Arrow
6	Blue		Green Arrow
7	White	Black	Spare

DB Contractor shall provide at least two weeks advance notice to TxDOT San Antonio District Signal Shop prior to installing any cabinet equipment. DB Contractor shall cover all signal faces until placed in operation. DB Contractor shall set any new signal to flashing operations for a minimum of seven days prior to full operation. During the test period, DB Contractor must provide a contact that can handle emergency calls 24 hours/day for all new signals.

#### 24.4.6

##### **Permanent Lighting**

DB Contractor shall coordinate with the Utility Owner(s) and ensure power service is initiated and maintained for permanent lighting systems. Where the Work impacts existing lighting, DB Contractor shall provide temporary lighting. DB Contractor may maintain existing lighting as temporary lighting during construction and replace the existing lighting prior to Substantial Completion. At all times during the period between NTP2 and Final Acceptance, safe lighting conditions shall be maintained along the Project roadway.

DB Contractor shall provide conduit and cable from material producers listed in TxDOT's Construction Division web site under the category, "Roadway Illumination and Electrical Supplies." Refer to  
<https://www.txdot.gov/business/resources/producer-list.html>.

DB Contractor shall remove and dispose of all existing illumination-related cable and conduit that is not in use. DB Contractor may abandon in place any existing illumination-related conduit not in use that is under the existing pavement or within the median barrier.

DB Contractor shall place all bore pits safely away from traffic, provide positive barrier protection, and provide necessary signs to warn of the construction area.

DB Contractor shall contact Utility Owners regarding their specific required working clearance requirements.

DB Contractor shall affix an identification decal on each electrical service indicating service address as well as all required information shown on the Electrical Detail (ED) sheets of the TxDOT Engineering Standard Sheets.

DB Contractor shall be responsible for proper disposal of any high-pressure sodium lamps removed on the Project. DB Contractor shall refer to Item 12 and comply with all Federal, State, and local laws, ordinances, and regulations regarding the management of these high-pressure sodium lamps. DB Contractor shall prevent the breakage of the high-pressure sodium lamps and at a minimum package all high-pressure sodium lamps removed from the Project in a container that minimizes breakage. DB Contractor shall store any broken high-pressure sodium lamps in a resealable plastic bag in a separate container from unbroken

lamps. DB Contractor shall furnish a suitable container labeled "Universal Waste Lamp" in a conspicuous location on the container.

DB Contractor shall stencil each new illumination assembly with the service circuit number and pole number as referenced on the plans in black paint on the roadway side of the pole at a 45 degree angle. The numbers shall be 3" tall and begin 6' from the top of the foundation.

## 24.4.7

**Reference Markers and Reference Location Signs**

DB Contractor shall place reference markers at approximately one mile apart in accordance with the TRM system and Texas Reference Marker System Manual. DB Contractor shall set reference markers according to the TMUTCD. DB Contractor shall install intermediate reference location signs at approximately one-half mile increments on the upper and lower levels of I-35 designed and placed in accordance with the TMUTCD Section 2H.05. The sign design shall be non-standard and sign panels shall be identified by upper level (UL) and lower level (LL) designations. DB Contractor shall place the UL or LL legend above the word MILE and UL, LL, and MILE shall be clearview-6W font and be the same size. DB Contractor shall mount all reference markers on the right side of roadway. Once placed, DB Contractor shall inventory and record reference markers with GPS. DB Contractor shall provide this information to TxDOT in Microsoft Excel format.

## 24.5

**Submittals**

All Submittals described in this Item 24 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in Table 24-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 24-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Notification of meetings with local Governmental Entities	48 hours prior to the start of Governmental Entity meeting	For information	24.2.1
Preliminary operational signing schematic	Prior to commencing Final Design	Approval	24.3.1
Preliminary lighting layout	Prior to commencing Final Design	Approval	24.3.1
Copies of all final implemented signal timing plans	With Record Drawings	For information	24.4.5
Signal warrant studies	As part of the Final Design Submittal	Review and comment	24.3.7.3
ATP for all traffic signals	As part of the Final Design Submittal	Review and comment	24.3.7.5
Lighting plan and photometric study with light spillage measurements	As part of the Final Design Submittal	Approval	24.3.8
Third Party requests for lighting within Project limits, including lighting agreements for operations and maintenance	As part of the Final Design Submittal	Approval	24.3.8
Inspection criteria and results for existing high mast poles	As part of the Final Design Submittal	Review and comment	24.3.8
ATP for all illumination	As part of the Final Design Submittal	Review and comment	24.3.8
Non-standard light pole design	As part of the Final Design Submittal	Approval	24.3.8.1
Electronic design calculations for light poles with a base 25 feet above the elevation of surrounding terrain to TxDOT, Bridge Division	As part of the Final Design Submittal	Approval	24.3.8.1

**Table 24-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Electronic shop drawings for light poles with a base 25 feet above the elevation of surrounding terrain to TxDOT, Bridge Division	Prior to construction	Approval	24.3.8.1
Alternate methods of wire theft prevention	As part of the Final Design Submittal	Approval	24.3.8.1
Sign identification record	After placement of all signs	For information	24.4.3
Reference marker record	After placement of all markers	For information	24.4.7

## Item 25

# Intelligent Transportation Systems



25.1

### General Requirements

An ITS is necessary for monitoring the Project's traffic flow and performance both temporarily during construction and as a permanent installation after roadway opening to traffic. The Project ITS must accurately detect traffic and traffic operational conditions throughout the Project limits, and clearly communicate relevant and useful travel information to the Users.

DB Contractor shall connect the Project ITS that it provides to the existing ITS network while fulfilling all requirements herein. The Project ITS must be compatible with such in-place system(s) that TxDOT and other entities (government or private) are currently operating. DB Contractor shall coordinate the ITS planning and implementation with TxDOT and other Governmental Entities that have roadways within or intersecting the Project.

DB Contractor shall maintain and protect any existing ITS functionality, including communications networks within the Project, until Final Acceptance, except during Force Majeure Events, periods of system maintenance or system crossovers, or other periods approved by TxDOT.

The functionality of the ITS shall be such that command and control of appropriate field devices is shared and exchanged with appropriate Governmental Entities.

DB Contractor shall be responsible for the planning, design, installation, testing, and operations support of safe and functional ITS for the Project using Good Industry Practice in compliance with TxDOT Standard Specifications and the TxDOT Engineering Standard Sheets. All components of the ITS shall conform to the provisions of the NTCIP, and the TxDOT Transportation Systems Management and Operations (TSMO) Strategic Plan, available at <https://www.txdot.gov/inside-txdot/division/traffic/tsmo.html>.

The Project ITS shall operate under the San Antonio Regional ITS Architecture, including the Regional Data and Video Communications System, and have physical connections with the existing TxDOT ITS communications network on major freeways. TransGuide shall be the main Traffic Management Center (TMC) for this Project, and DB Contractor shall maintain ITS interoperability with the TMC and other Governmental Entities from NTP2 to Final Acceptance. DB Contractor shall perform all hardware integration work in the field and at TransGuide as necessary to achieve field device operations from the TMC, including but not limited to the installation and configuration of CCTV encoders, device switches, and other integration activities typical of an ITS project. Communication and interoperability shall be achieved with other TMCs in the region, such that with appropriate privileges, access to data, command, control, and information sharing can occur among centers. Any integration activities between TransGuide and other TMCs in the region shall be the responsibility of TxDOT. All communication and access of information shall occur in near real-time (within logistical constraints).

DB Contractor shall furnish and install ITS equipment in conformance with Attachment 25-1, ITS Equipment Specifications. DB Contractor shall design and construct the Project ITS subject to TxDOT Standard Specifications and applicable special specifications (SS) and special provisions, including, but not limited to, ITS elements with the most recent special specifications and their associated special provisions:

- ITS System Support Equipment – SS6003;
- Networking Intelligent Transportation Systems (ITS) Communications Cable – SS6004;
- Testing, Training Documentation, Final Acceptance, and Warranty – SS6005;
- Electronic Components – SS6006;
- Intelligent Transportation System (ITS) Fiber Optic Cable – SS6007;
- Intelligent Transportation System (ITS) Ground Mounted Cabinet – SS6008;
- Rack Mounted Electronic Equipment Cabinets – SS6009;
- Closed Circuit Television (CCTV) Field Equipment – SS6010;
- Multi-Duct Conduit System – SS6016;

- Preparation of Existing Conduits, Ground Boxes, or Manholes – SS6027;
- Dynamic Message Sign System – SS6028;
- Radar Vehicle Sensing Device – SS6304;
- ITS Pole with Cabinet – SS6064;
- High Bandwidth Coaxial Cable – SS6181;
- Low Loss Coaxial Cable – SS 6182;
- ITS Media Converter – SS6183;
- Fiber Optic Transceiver – SS6184;
- Intelligent Transportation System (ITS) Ground Box - SS6186;
- Temporary Travel Time System – SS6344; and
- Temporary Incident Detection and Surveillance System – SS6348.

## 25.2

**Design Requirements**

DB Contractor shall provide a complete and operational ITS network throughout the Project that is expandable as capacity is increased along the Project roadways and utilizes hardware and software components that are consistent and compatible with the systems of TxDOT and those of other affected Governmental Entities. The ITS network shall be resistant to weather encountered in the Project area, and place components in locations that are not hazardous to Users. Design shall conform to the *San Antonio District Intelligent Transportation Systems (ITS) Planning Guidance Document, General ITS Guidelines* provided within the RIDs.

Prior to beginning ITS efforts, DB Contractor shall conduct an ITS workshop with TxDOT and affected Governmental Entities (per TxDOT's direction) within 120 Days of NTP 2 to:

- Confirm TxDOT's operational requirements;
- Review DB Contractor's survey of existing ITS infrastructure and condition assessment;
- Discuss concepts and identify potential resolutions for Site-specific issues (as identified by DB Contractor);
- Determine communication requirements;
- Determine requirements for design;
- Determine requirements for construction including security considerations (burying of ground boxes, welding ground boxes shut, etc.);
- Determine requirements for construction and coordination of activities with adjacent roadways;
- Confirm requirements of other affected parties and Governmental Entities; and
- Address other topics as needed to ensure the design meets all requirements herein.

Following the ITS workshop and prior to submitting the Preliminary Design Submittal package, DB Contractor shall prepare preliminary ITS layouts for TxDOT review and comment to ensure adequate planning of the ITS implementation. DB Contractor's preliminary ITS layout shall include temporary ITS during construction and permanent ITS installations on separate roll-plots. Subject to the specific requirements of this Item 25, DB Contractor shall determine the number and specific locations of all ITS components. The ITS shall consist of all equipment necessary to implement the ITS described in this Section 25.2.

DB Contractor shall provide safe ingress/egress areas and structures to accommodate authorized personnel access to ITS components for maintenance and operation activities. Unless approved by TxDOT, ITS components shall be placed in locations that allow maintenance without a Lane Closure.

All components of the ITS shall conform to the provisions of the NTCIP and be compatible with the latest version of TxDOT's Lonestar software and any other software that is operational at TransGuide.

DB Contractor shall not make any recommended modifications to the specifications without TxDOT's approval.

DB Contractor is responsible for designing and constructing lightning protection, grounding, and surge suppression for each ITS structure and equipment cabinet.

DB Contractor shall be responsible for the design, installation, and provision of power required to operate the ITS devices, including all utility costs, until Final Acceptance by TxDOT. DB Contractor shall provide metered service to ITS field devices and cabinets consistent with TxDOT's Engineering Standard Sheets and TxDOT Standard Specifications.

All ITS devices and associated mountings, with the exception of CCTV cameras, shall meet the 90-mph wind load design standards as shown in the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, 6<sup>th</sup> edition*, and the TxDOT Engineering Standard Sheet WV & IZ(LTS2013)-14. Refer to Section 25.2.3.4 for CCTV camera requirements. ITS devices may be co-located on the same ITS pole, provided that they can function independently for the portion of the facility for which they are intended (i.e. existing mainlanes or proposed elevated structure).

The installed ITS equipment shall provide TxDOT accurate and reliable data, quality video images, and accurate control of field devices from TransGuide on a real-time basis 24 hours a day, 7 days a week. Real-time is defined as correct data being available at TransGuide within 30 seconds of being processed or the correct response of a field component within one millisecond of the command being sent.

DB Contractor shall be responsible for ensuring the CCTV, DMS, and vehicle detection systems meet the reliability requirements specified in the TxDOT Standard Specifications, special specifications, as well as any standard publications provided by TxDOT. The Item 25 design and construction requirements, together with the ITS design criteria presented in the most current TxDOT statewide and/or TxDOT San Antonio District specifications, as well as any standard publications provided by TxDOT, define the minimum standards and scope for the ITS that must be met by DB Contractor.

## 25.2.1

### **DB Contractor ITS Communications Requirements**

The communications network shall serve the highway ITS components along the highway Elements of the Project. Where necessary, as determined by TxDOT, DB Contractor shall provide communication node HUBs/cabinets to support the communications network.

Each field network switch shall provide a primary and secondary fiber path of two fibers each from the field cabinet to a fiber HUB. The maximum number of Layer 2 field network switches forming a network path between an end device (TxDOT ITS) and a HUB-based data aggregating Layer 3 network switch shall not exceed 12. The calculated data throughput assigned to any sub-network path shall not exceed 50% of the path's throughput capacity. DB Contractor shall provide calculations for bandwidth usage as a part of the Preliminary Design Submittal.

New devices and any existing devices interconnected during Project implementation shall not be assigned within the same network path or otherwise daisy-chained to avoid possible inconsistencies in communication protocols.

DB Contractor shall install a 144-strand single mode fiber optic cable in the duct bank. The ITS duct bank fiber shall connect communication between HUB/ITS control cabinets. The ITS duct bank fiber connection shall be a home-run connection with no splices with the exception of necessary backbone splices (reel to reel). Field devices shall be connected with 12-strand single mode fiber optic cable at the communication HUB/ITS to control cabinet(s); this connection shall also be a home-run connection with no splices. DB Contractor shall provide 100 feet of fiber optic cable slack at each HUB/ITS control cabinet and 50 feet of fiber optic cable slack at each ITS ground box. DB Contractor is responsible for confirming that 144 strands of fiber can support the proposed ITS deployment and providing additional fiber at no cost to TxDOT, as needed, to ensure that no more than 50% of the throughput capacity of a sub-network path is exceeded.

Pull boxes shall be placed at each ITS device location, local HUB/ITS cabinet, and spaced at a maximum of every 700 feet along the Project corridor. DB Contractor shall provide Type 1 or Type 2 ground boxes as appropriate along the ITS duct bank to accommodate bend radius and slack requirements. At locations where the Project trunk line terminates, at IH-35 and CR 3009 and at Loop 1604 and Nacogdoches, DB Contractor shall provide a TY 2 Ground Box with a 60-inch depth. Interchanges on the Project shall serve as system aggregation points to provide the physical network redundancy consistent with TransGuide installations. The following locations will serve as system aggregation points: 1) IH-35 and Loop 1604; 2) IH-35 and IH-410. DB Contractor shall use Type A or Type D ground boxes for lateral runs to ITS field devices. DB Contractor shall provide closed-bottom ground boxes for all ITS ground boxes on the Project.

DB Contractor shall provide terminal servers, video encoders, media converters, Ethernet switches and modems to establish communications as required. Video encoding shall meet MPEG-4 standards and be compatible with TxDOT's traffic management system software requirements for TxDOT CCTV.



DB Contractor shall submit proposed fiber termination charts to TxDOT for approval.

## 25.2.2

### **Conduit**

DB Contractor shall submit, for TxDOT's approval, the type, quantity, and design of the conduit above and below ground, ground boxes, all communication cables, and electrical conductors to support the ITS network and operations as part of the Final Design Submittal. Except as specifically cited within this Item 25, conduit design shall be consistent with *San Antonio District Intelligent Transportation Systems (ITS) Planning Guidance Document, General ITS Guidelines*. ITS devices shall be powered by dedicated metered services that are separate from traffic signals, illumination, or other devices. Conduit for ITS power shall be separate from the ITS duct bank. No exposed conduit sections will be permitted. ITS duct bank conduit shall be concrete encased. All sections shall have a minimum cover consistent with TxDOT Engineering Standard Sheets except:

- Where boring is required to cross under intersections; and
- In the case of large bridge crossings, conduit built into the bridge structure.

DB Contractor shall install bored conduit below the base layer of pavement structure. TxDOT approval will be required for any placement of conduit on existing structures.

ITS duct bank conduit shall consist of two three-inch diameter concrete encased conduits installed on one side of the corridor. A #14 insulated electrical conductor wire for detection shall be placed in trunk lines. All conduit shall have end to end pull tape.

Within the proposed concrete encased ITS duct bank, the ITS conduit shall support a minimum of 144-strand fiber optic cable. DB Contractor shall maintain separation between proposed conduits and any existing TxDOT or other entity's installation for construction, maintenance, and repair as depicted in the TxDOT Engineering Standard Sheets.

DB Contractor shall provide materials and use construction methodology for conduit installation that, at a minimum, meets the most current or applicable TxDOT Standard Specifications, TxDOT Engineering Standard Sheets, and TxDOT San Antonio District Standards, including placement of a trace wire within the conduit, placing locator tape and installing above ground markers, and providing the required 42 inches or more of cover. DB Contractor may provide alternatives to TxDOT that improve upon TxDOT's current practices for securing ground box lids. DB Contractor's use of any such alternatives are subject to TxDOT approval.

## 25.2.3

### **CCTV Cameras**

DB Contractor shall provide CCTV cameras for Incident or Emergency verification and traffic management. The system of cameras shall accurately identify all vehicle(s) involved in an Incident or Emergency, the extent of vehicle(s) damage, and if applicable, the likelihood of personal injury. Operation of the cameras shall result in no visual delay in response by the camera to a user's command to pan/tilt/zoom.

### 25.2.3.1

#### **Equipment**

DB Contractor shall provide all necessary CCTV equipment, including cameras, camera controls, cables, and connections. DB Contractor shall provide all the equipment necessary for TxDOT control of all CCTV cameras. The method of control shall be in accordance with TxDOT Engineering Standard Sheets and TxDOT Standard Specifications.

DB Contractor shall provide a digital video format and communications protocol at all connections compatible with existing TxDOT systems.

### 25.2.3.2

#### **Placement**

DB Contractor shall provide overlapping roadway coverage by CCTV cameras for all highway lanes and intersecting cross streets within the Project limits to provide redundant camera fields of view. CCTV cameras shall be placed to enable TxDOT to monitor traffic conditions on highway lanes, access roads, connecting facilities, entrance and exit ramps, and messages displayed on any DMS in the Project area. To provide a stable video image, DB Contractor shall mount cameras on ITS poles unless otherwise approved by TxDOT.

Distance between CCTV cameras shall not exceed 1 mile for the upper deck of the Project and 0.75 miles for the lower deck; however, DB Contractor is responsible for placing cameras to ensure 100% coverage. 100% coverage shall be defined as no blind spots for any reason, including, but not limited to: trees, bridge structures, horizontal or vertical alignment, and overhead or side mounted sign structures. Additionally, each

CCTV camera shall be able to view the CCTV camera immediately upstream and downstream from itself unless otherwise approved by TxDOT. CCTV cameras shall not share coverage of the lower deck (existing IH-35 mainlanes) and the upper deck (proposed elevated section).

CCTV camera poles shall be placed as close as possible to the high point of overpasses. CCTV camera poles along the existing mainlanes (i.e. "lower deck") shall be at least 55 feet in height when no elevated section is present and as high as practical when proposed elevated section is present and conform to TxDOT Standards. CCTVs for monitoring the proposed upper deck shall be located at least 40 feet above the proposed pavement.

#### 25.2.3.3 **Video Requirements**

DB Contractor shall provide CCTV cameras that meet the requirements of the applicable TxDOT Engineering Standard Sheets, TxDOT Standard Specifications, TransGuide operating requirements, or other requirements in this Item 25. If at any time prior to Final Acceptance, should any CCTV cameras fail to meet the latest TxDOT Engineering Standard Sheets, TxDOT Standard Specifications or TransGuide operational requirements in effect as of the Proposal Due Date or any other requirements identified in this Item 25, DB Contractor shall replace such cameras within 24 hours of discovery of lack of compliance.

#### 25.2.3.4 **Operating Requirements**

DB Contractor shall provide cameras with built-in heaters, mounting structure, and related equipment capable of operating within the following weather conditions:

- Wind load of 100 mph without permanent damage to mechanical and electrical equipment;
- Ambient temperature range of -35 degrees Fahrenheit to +140 degrees Fahrenheit;
- Relative humidity range not to exceed 95 percent within the temperature range of +40 degrees Fahrenheit to +110 degrees Fahrenheit; and
- Humidity range of 0 to 100 percent condensing.

#### 25.2.3.5 **Control Requirements**

DB Contractor shall supply CCTV equipment on this Project which is fully compatible with the existing CCTV control systems operated from TransGuide. DB Contractor shall provide CCTV equipment specifications as a part of the Final Design Submittal. The equipment will be interconnected to the existing CCTV control system and must be fully operational using that system. No modifications to the existing CCTV control system will be made to accommodate the submitted CCTV equipment. To be considered fully operational, the equipment must, at a minimum, correctly respond to the following commands:

- Pan left
- Pan right
- Focus near
- Focus far
- Tilt up
- Tilt down
- Iris open
- Iris close
- Iris override
- Zoom in
- Zoom out
- Camera power (latching)
- Pan tilt position preset

Upon completion of installation, DB Contractor shall test the communications link installed between the satellite building and the CCTV field equipment locations. DB Contractor shall perform the test at all CCTV locations on the Project.

DB Contractor shall use a test signal generator and a video monitor to demonstrate the ability of the video signal link to transmit a National Television System Committee compliant video signal from the CCTV cabinet to the satellite building. After completion of testing with the signal generator, DB Contractor shall connect the

CCTV camera to the link and use a video monitor at the satellite building to verify the presence of a National Television System Committee compliant video signal. No degradation of the video signal shall be discernible using the video monitor.

DB Contractor shall connect a laptop computer containing TxDOT-supplied CCTV control software on the link and use the laptop to demonstrate the ability to control all CCTV functions outlined in the specifications.

DB Contractor shall supply all test equipment, cabling, and connectors necessary for performing the tests by DB Contractor.

The equipment must be fully operational using the existing control system from TransGuide. Equipment which in any manner is not fully operational with the control system will be considered as not passing the test. DB Contractor shall be permitted one opportunity to retest equipment that does not pass the initial test. The retest must occur within 30 days after the initial test. All issues of non-compliance and all discrepancies shall be resolved prior to commencing the second test. Equipment that is not able to be retested within 30 days, or which does not pass the second test, shall not be used on the Project. DB Contractor shall not be entitled to additional time or compensation on account of the testing of the CCTV equipment. Successful testing of the CCTV equipment must be completed prior to any construction activities at the CCTV locations. No camera poles, cabinets, or any other CCTV related equipment shall be installed until CCTV equipment testing is successfully completed.

DB Contractor shall submit the CCTV secondary control equipment, which includes all hardware and related equipment required to operate the CCTV, and design to TxDOT for approval a minimum of six months prior to Substantial Completion.

#### 25.2.4

##### **Vehicle Detection**

DB Contractor shall provide permanent, high definition microwave radar detection in each highway lane of the Project that measures vehicle classification, vehicular volume, lane occupancy, and vehicle speed information on the roadway. The detectors shall be non-intrusive to the roadway users. Spacing for the permanent vehicle detection shall be no greater than two miles in each highway lane in the Project, and, at a minimum, provide detection for all highway lanes at one location between interchanges. DB Contractor shall locate the devices on the side of the Project nearest the largest shoulder so as to limit the potential interference by the concrete traffic barrier on detecting vehicles and collecting information. Vehicle detection devices are not required for the frontage roads.

Vehicle detection sensors shall determine vehicle speed for each vehicle passing the sensor. The sensors shall provide raw speed data (volume, speed, lane occupancy, and vehicle classification counts) and direction of travel for all lanes. Additionally, the sensors (or the software controlling the sensors) shall be capable of determining vehicles traveling in the wrong direction. For sensors that collect data across multiple lanes of traffic, data shall be collected and provided by lane. In areas where a sensor would have to collect data on more than 12 lanes of traffic, including shoulders or over distances/widths greater than 250 feet, DB Contractor shall provide additional detectors as required. DB Contractor shall provide detectors that allow TxDOT to adjust the frequency rates that the data files are provided by device.

DB Contractor shall also install Bluetooth readers every one mile on both the upper and lower decks of the Project, and/or at locations the DB Contractor may propose if approved by TxDOT. These readers will be used to determine average speeds and travel times. The Bluetooth readers must be compatible with existing systems at TransGuide. DB Contractor shall place Bluetooth readers and microwave radar detection on the Project such that TransGuide staff will have the ability to distinguish between the traffic volumes between the upper and lower decks of the Project.

DB Contractor may attach detection units to existing sign structures or ITS structures with prior approval by TxDOT. Where an existing structure is not available, or in lieu of attaching the detection unit to an existing structure, DB Contractor shall install a mounting pole solely for the vehicle detector. Any mounting poles placed specifically for ITS items shall conform to the TxDOT Standard Specifications and Good Industry Practice for CCTV mounting poles and must adhere to minimum clear zone requirements. DB Contractor shall provide all necessary support structures and equipment, including, but not limited to, vehicle detection system devices, controls, cables, and connections.

#### 25.2.5

##### **DMS**

DB Contractor shall provide a comprehensive network of electronic DMS as needed to satisfy the operational requirements using only LED display technology. DB Contractor shall replace all existing DMS within the

Project with the exception of entrance ramp DMS (Type 3) systems, which the DB Contractor shall remove. The DMS shall operate as part of an overall regional system. DB Contractor shall provide TxDOT with full control of DMS messaging prior to Final Acceptance.

DB Contractor shall position each DMS to allow motorists to safely view the messages being displayed. DB Contractor shall locate the DMS to comply with the large guide sign spacing requirements set forth in the TMUTCD.

Location and placement of DMS shall be approved by TxDOT. A preliminary concept with DMS locations has been provided in the RID, ITS Schematic Layout. DB Contractor shall note that this concept is preliminary and the DB Contractor shall meet all requirements within Item 25, including the requirement to replace all existing DMS.

DMS may be mounted using T-mount or OSB. On elevated sections, a catwalk shall be provided on DMS structures for maintenance access. DMS sites shall be accessible in all weather conditions. Access pads shall be provided, if necessary, to support DMS and cabinet maintenance. DMS on elevated sections shall be walk-in DMS with the controller located within the sign. DB Contractor shall provide full color DMS that use LED display technology and support full matrix graphics. DMS used shall conform to the NTCIP and TxDOT special specifications for DMS and DB Contractor shall demonstrate compliance to TxDOT therewith prior to installation of DMS by DB Contractor.

DB Contractor shall provide all necessary DMS, support structures and equipment, including, but not limited to, DMS devices, controls, cables, and connections.

DB Contractor shall maintain any existing DMS functionality within the Project during construction and shall not impact the operation of any existing DMS within the Project during construction absent approval from TxDOT.

All DMS shall be visible and legible via CCTV cameras.

DMS shall have the ability to be controlled using the latest TxDOT DMS operating system being used at TransGuide.

#### 25.2.6

##### **Communications Hub Enclosures and Communications Cabinets**

DB Contractor shall coordinate with TxDOT the connection of all new ITS components to any existing ITS HUB, communication enclosures, and communication cabinets covering the Project.

DB Contractor shall provide new ITS HUBs/ITS control cabinets as needed to accommodate field devices. Cabinets shall be ground mounted Type 4, 5, or 6 as needed to accommodate design and allow for future expansion of at least two additional field devices. Ground mounted ITS cabinets shall include both front and back doors. For elevated field devices, all cabinets shall be ground mounted or pole mounted, provided that the following conditions for pole mounted cabinets are met: 1) it is attached using a unistrut-type connection to the bridge columns; 2) it is 3 feet off the ground/above grade; 3) it is hidden from traffic flow (refer to ITS Equipment Cabinet Mounting Detail provided in the RID). For all other field devices, pole mounted cabinets may be used, provided that access to the cabinet can be provided at finished grade on foot without requiring a mainlane Lane Closure. The bottom of the pole mounted cabinet shall not be placed in excess of three feet above the base plate of the device. DB Contractor shall not place cabinets within locations with slopes in excess of 4:1. DB Contractor shall provide a level pad for maintenance access at all ITS cabinet locations.

#### 25.2.7

##### **Wrong Way Detection System (WWDS)**

DB Contractor shall design, furnish, install and test wrong way detection systems at all ramps on the Project.

Before installation of any equipment, DB Contractor shall perform a site survey of the proposed locations to determine the optimal positioning of the wrong way driver thermal imaging camera and equipment to achieve proper operation based on the manufacturer's recommendations. DB Contractor shall test wireless links to assure they provide optimal communication between transmitters and receivers and shall adjust locations if necessary.

DB Contractor shall ensure the mechanical execution of work complies with NEC, Article 110.12.

DB Contractor shall provide a thermal imaging camera for each ramp, two LED signs per ramp (one at each side of the ramp), and all mounting hardware and cabling necessary to install and make operational all WWDS equipment. DB Contractor shall provide only new and corrosion resistant materials.

DB Contractor shall design all elements of the WWDS as an integral part of the overall ITS and shall ultimately connect the WWDS via the ITS duct bank to TransGuide. The WWDS shall operate using line

power; solar power is not permitted. Additional sign attachment hardware, mounting components and hardware for wrong way driver thermal imaging cameras and equipment, support brackets, and appurtenances, such as conduit, etc., and or adjustments to said items may be necessary for compatibility with specified positioning recommended by the manufacturer.

DB Contractor shall have the manufacturer's representative on site to assist with the installation of all equipment before any work begins.

Once installation is complete, DB Contractor shall coordinate with the equipment manufacturer to ensure the wrong way driver thermal imaging camera and equipment are properly positioned and the wrong way driver detection zones are accurate. DB Contractor shall ensure that all equipment is functioning properly and communicating with manufacturer's equipment software and compatible with the Lonestar system. DB Contractor shall begin testing once proper system functionality is proven.

25.2.8

### **Flood Stations**

DB Contractor shall provide all infrastructure and communications interconnects necessary to replace existing flood stations impacted by the Project. For reference, existing flood stations are located at:

- IH-410 and Salado Creek

25.2.9

### **Access Control System (ACS)**

DB Contractor shall design and construct an access control system (ACS) on the elevated section (upper deck) of the Project. The intent of the ACS is to limit access to emergency vehicle turn-arounds on the Project to emergency vehicles only. The ACS shall be connected to the ITS duct bank and TransGuide and shall have the ability to be controlled from TransGuide. The ACS shall also provide an option for on-site manual control for opening/closing. ACS shall be in full view via a dedicated CCTV so that it can be monitored by TransGuide staff. DB Contractor shall be responsible for ensuring the ACS meets the requirements outlined in Attachment 25-1, ITS Equipment Specifications.

25.3

## **Construction Requirements**

25.3.1

### **General**

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 25 in accordance with the requirements of this Item 25 and the TxDOT Standard Specifications.

DB Contractor shall notify TxDOT 30 days in advance of making connections to the existing TxDOT ITS system.

DB Contractor shall maintain any existing ITS communications functionality during construction activities. Required functionality can be accomplished by phasing construction to establish new equipment locations prior to removal of equipment at existing locations, or by use of portable equivalents for ITS devices, such as trailer mounted DMS, sensors or CCTV cameras, positioned to allow removal of devices while new locations are constructed, allowing minimal service interruption of no more than four hours for any disruption associated with communications and 72 hours for any disruption associated with the transfer of devices from existing to new locations..

DB Contractor shall repair each existing communication cable, wireless communications functionality, or electrical conductor that is severed or otherwise rendered not usable within:

- 4 hours if it is a major backbone/trunkline
- 8 hours if it is a minor cable/fiber drop line

DB Contractor shall coordinate with Utility Owner(s) and ensure that power service is available for permanent ITS systems.

DB Contractor shall contact TxDOT TransGuide to coordinate the salvage of any existing ITS equipment removed during construction of the Project, and deliver such equipment to the TxDOT TransGuide facility if requested, or stockpile the equipment as requested by TxDOT. Salvaged equipment shall be delivered in its documented existing condition.

### 25.3.2 Maintenance of Existing ITS During Construction

DB Contractor shall be responsible for maintenance of the ITS during construction. DB Contractor shall perform testing of all field devices and equipment prior to assuming responsibility of the existing ITS. DB Contractor shall allow TxDOT TransGuide staff to be present and shall provide 48 hours' notice prior to testing. DB Contractor shall submit all testing documentation to TxDOT. DB Contractor shall perform all activities necessary to maintain system operations during construction, including installing new ITS items, relocating or replacing existing ITS items, and connecting such ITS items to the existing network. Any activities performed by the DB Contractor to maintain existing ITS connectivity during construction are subject to the requirements set forth in Item 26, Traffic Control.

Temporary fiber, splices, and wireless connections may be used for interim ITS to maintain existing connectivity during construction provided that the requirements for permanent ITS contained within this Item 25 are met. TxDOT has provided within the RIDs the ITS Schematic Layout to provide the DB Contractor a preliminary concept for maintenance of existing ITS during construction while phasing in any proposed ITS. DB Contractor shall note that the referenced schematic is preliminary and the DB Contractor shall be responsible for meeting requirements set forth in Item 25.

### 25.3.3 Existing ITS Relocation

DB Contractor shall relocate any existing ITS components, including hubs, satellite buildings, CCTV cameras, DMSs, detection devices, and fiber-links, as required to continue service from the existing components. DB Contractor shall remove and dispose of existing lane control signals (LCS) on the Project, disconnecting and isolating all power supplies to the LCS prior to removal. DB Contractor shall refer to TxDOT Special Specification 6305 for requirements concerning LCS removal. DB Contractor shall also phase out the use of existing loop detection traffic monitoring equipment in favor of the radar and Bluetooth vehicle detection equipment noted in Section 25.2.4. DB Contractor shall also remove and dispose of existing entrance ramp DMS (Type 3) systems. DB Contractor shall perform such removals and relocations as needed in a manner that prevents damage to existing overhead structures to be reused. DB Contractor shall sequence construction and relocation of existing ITS components, facilities, and systems to prevent lapses in TxDOT's receipt of video or data within the Project area. The existing physical links and the proposed physical links shall be in separate physical conduits.

Before removing existing ITS items and before beginning construction of segments without existing ITS, DB Contractor shall perform all activities necessary to maintain system operations during construction, including installing new ITS items, relocating or replacing existing ITS items, and connecting such ITS items to the existing network.

### 25.3.4 ITS Implementation Plan

DB Contractor shall provide an ITS Implementation Plan for approval as part of the Final Design Submittal to demonstrate system interoperability with other TMCs in the region, as well as compatibility with the operational procedures for command and control of devices, sharing of data, and priority control that various parties will assume under different operating conditions of the corridor and surrounding roadway system. The ITS Implementation Plan shall include the following:

- Functional design plan;
- Communications analysis report;
- Operational and requirements report;
- Applicable updates to the regional ITS architecture; and
- ATP.

The functional design plan shall show each device's relationship in the overall functional design of the ITS and proposed roadway system. This functional design plan shall include the location of devices, technology and functional specifications of devices, and any unique design elements that are necessary to achieve the desired functionality or address space restrictions.

The communications analysis report shall document the communications design. This report shall show all ITS field devices, their flow through all communications mediums, and throughput within the ITS. This shall include communications between any involved Governmental Entities. The report shall contain a narrative describing the information to be transmitted, as well as a high-level plan for its use. Communications diagrams shall be provided showing the location of any communication hubs (existing or proposed), any

planned fibers (source as well as identification tag), modem/transceiver equipment planned at field equipment cabinets, and other equipment deemed necessary to functionally operate the ITS.

The operational and requirements report for the ITS shall describe the functional capability of the system and the method and level of integration. The document shall describe in detail the design of the system, hardware and software to be utilized, functional capabilities, command and control, data sharing capabilities, and priority use of devices by multiple agencies. In developing the operational and requirements report, DB Contractor is required to hold scoping meetings with TxDOT, such that requirements are defined to achieve interoperability with other TMCs, and priority logic and information for command, control, and data sharing is created to enable effective management and Incident response along the corridor, as well as regionally.

The DB Contractor shall document the existing regional ITS architecture and document applicable updates to the regional ITS architecture within the ITS Implementation Plan. The DB Contractor, as a part of Final Design, shall update the regional ITS architecture in the format used by TxDOT (such as turbo architecture) for this Project.

For each component of the ITS, an ATP shall assure proper operation, control, and response of each device meeting the functional requirements. DB Contractor shall implement the ATPs and provide certified documentation that each component meets the requirements prior to operational use of the ITS.

As part of each ATP, DB Contractor shall prepare a system acceptance procedure prior to the start of construction to assure proper operation, control, and response of each device as part of the overall ITS, including the overall operating system and software. DB Contractor shall conduct the procedure and provide certification that the ITS effectively meets the required functional requirements. DB Contractor shall submit this certification to TxDOT prior to Substantial Completion.

### 25.3.5

#### **End-to-End Testing**

DB Contractor shall provide notice and coordinate with TxDOT, including TransGuide, to allow for end-to-end testing of the ITS. Testing will occur during the 21 Day period prior to Substantial Completion. During the testing period, DB Contractor shall provide TxDOT and TransGuide staff the opportunity to conduct full system tests and daily operations tests to confirm operation plans and standard operating procedures, and to otherwise prepare for operational use of the facility. End-to-end testing shall only occur after hours and on weekends.

DB Contractor shall not commence end-to-end testing until the following conditions have been met: DB Contractor and TxDOT shall have successfully completed all their ATP testing, DB Contractor has completed training of all relevant TxDOT staff, and DB Contractor has met all acceptance requirements for DB Contractor installed ITS devices, satellite buildings, communication and electrical networks, and generators.

DB Contractor shall be responsible, at a minimum, for the following:

- Coordinating the end-to-end testing with TxDOT to ensure that there will be no schedule conflicts among TxDOT, its affiliated contractors, and DB Contractor's staff;
- Providing temporary advance signing (if needed) stating that the facility is closed and testing is occurring;
- Providing MOT/traffic control at all necessary locations for a maximum of five (5) full days, which could include evenings and weekends and are not required to be consecutive;
- Providing access to the facility for authorized TxDOT staff and contractors; and
- Repairing any issues found with DB Contractor's work within one (1) day unless otherwise approved by TxDOT.

DB Contractor shall not expect to have access to, nor conduct Work within, the Project during the end-to-end testing, with the exception of providing the services as described above. TxDOT may, at its sole discretion, provide DB Contractor access to the Project to conduct Work outside the services described above.

DB Contractor shall compile and provide the results of the end-to-end testing to TxDOT as a submittal within 10 Days of completing the end-to-end testing.

### 25.3.6

#### **Record Documents**

The Record Documents shall include the construction drawings in digital format (pdf and dgn), as-built drawings with GIS locates, documentation of end-to-end testing as well as catalog sheets for all equipment and components. The DB Contractor shall also submit a complete ITS record, in Microsoft Excel format,

containing the following information: location description, device type, roadway, direction of travel, device latitude, device longitude, device HUB, device make, device model, device serial number, device IP address, and device installation date. An example of the requested format, ITS Record Document Example for Design Build, is provided in the RID.

DB Contractor shall maintain until Final Acceptance records of all updates and modifications to the system.

For each component of the ITS, all computer codes and software shall be available to TxDOT.

#### 25.4 Additional Requirements

DB Contractor shall refer to Attachment 25-1, ITS Equipment Specifications, for ITS device and cabinet equipment requirements for the Project.

#### 25.5 Submittals

All Submittals described in this Item 25 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth on Table 25-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise required.

**Table 25-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Preliminary ITS Layouts	As a part of the Preliminary Design Submittal package	Review and comment	25.2
Bandwidth Usage Calculations	As a part of the Preliminary Design Submittal package	Review and comment	25.2.1
Fiber termination charts	Prior to implementation	Approval	25.2.1
Type, quantity, and design of the conduit above and below ground, ground boxes, all communication cables, and electrical conductors to support the ITS network and operations	As part of the Final Design Submittal	Review and comment	25.2.2
CCTV equipment specifications	As part of the Final Design Submittal	Approval	25.2.3.5
CCTV secondary control equipment and design	Six months prior to Substantial Completion	Approval	25.2.3.5
ITS Testing Documentation for DB Contractor Maintenance During Construction	Prior to DB Contractor assuming responsibility for the project	For information	25.3.2
ITS Implementation Plan	As part of the Final Design Submittal	Approval	25.3.4
Certification that the ITS effectively meets the required functional requirements	Prior to Substantial Completion	For information	25.3.4
Notice of end-to-end testing	Prior to implementation	For information	25.3.5
Documentation of end-to-end testing	10 days after testing is completed	For information	25.3.5
ITS Record Documents	Prior to Final Acceptance	Approval	25.3.6



## Item 26

### Traffic Control



#### 26.1 General Requirements

DB Contractor shall design, construct, and maintain the Project, in conformance with the requirements stated in this Item 26, to provide for the safe and efficient movement of people, goods, and services through and around the Project, while minimizing negative impacts to Users, residents, and businesses. In addition, DB Contractor shall maintain safe travelling conditions of all roadways used outside the Project limits including routes to fabrication facilities, plants and haul roads.

DB Contractor is responsible for gaining approval from TxDOT, the appropriate Governmental Entity and property owner for each intersecting street or driveway closure.

During all phases, temporary, new and existing ITS equipment, street lights, and traffic signals shall be interconnected and interoperable per District and local governmental requirements and practices.

DB Contractor shall provide and maintain temporary illumination throughout the duration of construction for all roadways and intersections that have existing illumination. All temporary illumination shall meet or exceed existing illumination levels.

DB Contractor shall install permanent illumination during construction as soon as practicable to enhance safety and benefit the traveling public but in no event later than opening to traffic.

DB Contractor shall phase construction of the Work in such a way as to install and utilize, to the greatest extent possible, permanent drainage facilities to address drainage needs during construction; otherwise temporary drainage facilities shall be provided until the permanent facilities are available for use. All temporary and permanent drainage utilized during construction shall be in accordance with Item 20.

#### 26.1.1 Lead MOT Design Engineer

DB Contractor shall employ a Lead MOT Design Engineer responsible for ensuring the Traffic Control Plans (TCPs) are prepared in accordance with the Contract Documents. The Lead MOT Design Engineer shall be a PE with relevant experience overseeing the development of TCPs during the design and construction phase of highway projects similar in size and scope as the Project. The Lead MOT Design Engineer shall be responsible for signing and sealing the TCPs, including details, and all revisions to the TCPs in accordance with the plan submittal requirements. The Lead MOT Design Engineer shall be available through the duration of the Project and work with the Lead MOT Implementation Manager to coordinate implementation of the MOT plans with TxDOT, DB Contractor, and appropriate Governmental Entities.

#### 26.1.2 Lead MOT Implementation Manager

DB Contractor shall employ a Lead MOT Implementation Manager responsible for: ensuring the TCPs are adhered to during their implementation, supervising the MOT QC personnel, and working closely with the Lead MOT Design Engineer to implement and manage Project MOT, including identifying and coordinating design changes to the MOT plans. The Lead MOT Implementation Manager shall be available through the duration of the Project and report jointly to TxDOT and the Construction Manager. The Lead MOT Implementation Manager shall have the authority to stop Work. The Lead MOT Implementation Manager shall have relevant experience overseeing the implementation of TCPs during the construction phase of highway projects similar in size and scope as the Project. The Lead MOT Implementation Manager shall coordinate with TxDOT, DB Contractor, and appropriate Governmental Entities. Refer to Section 2 of Attachment 4-2 of the General Conditions for a detailed description of the responsibilities of the Lead MOT Implementation Manager.

#### 26.2 Design Requirements

##### 26.2.1 Traffic Control Plans

DB Contractor shall use the procedures in the TMP, TxDOT Engineering Standard Sheets, and TMUTCD requirements to develop detailed TCPs that provide for all construction phasing, as well as all required switching procedures. TCPs are required for the Work during the Term and for the duration of the Warranty Term. Diamond grinding on concrete pavements is only allowed for correction of localized areas.

DB Contractor shall provide to TxDOT for approval a TCP concept presentation at or near 30% design status prior to TCP plan sheet development. DB Contractor shall utilize Microsoft PowerPoint and roll plots to convey this concept at the TCP concept presentation meeting. Approval of the concept does not indicate automatic approval of the subsequent plan sheets, nor does it authorize DB Contractor to implement the concept in the field.

DB Contractor shall produce a TCP for every phase of Work that impacts traffic and shall coordinate with appropriate Governmental Entities on the development of the plan. DB Contractor is responsible for obtaining all necessary permits required to implement the plans. TCPs shall be designed, signed, sealed, and dated by the Lead MOT Design Engineer, or designee.

#### 26.2.1.1

##### **Traffic Control Plan Requirements and Restrictions**

Each TCP shall be submitted to TxDOT for review and approval a minimum of 14 days prior to implementation. This requirement is increased to 21 days for Full Roadway Closures. The TCP shall include details for allowable time and duration of Lane Closures, all detours, traffic control devices, striping, and signage applicable to each phase of construction.

Information included in the TCPs shall be of sufficient detail to allow verification of design criteria and safety requirements, including typical sections showing lane width, concrete traffic barrier and barrel placement, alignment, striping layout, drop off conditions, clear zone, and temporary drainage.

DB Contractor shall design an entrance and departure lane for work-zone traffic to enter and leave the work-zone in accordance with Section 26.2.1.2 and TxDOT Standards.

The TCPs shall clearly designate all temporary reductions in speed limits. Changes to posted speed limits will not be allowed unless specific prior approval is granted by TxDOT. DB Contractor should have no expectation that speed limit reductions will be granted and should design the Project in such a way as to allow for existing posted speed limits to remain in place during construction, except as allowed by Section 26.2.1.2. DB Contractor shall use advisory speed plaques as appropriate.

DB Contractor shall utilize appropriate traffic control devices to ensure that opposing traffic on a divided roadway is separated with appropriate traffic control devices in accordance with Good Industry Practice and the TMUTCD based on roadway Design Speed. Approved traffic control devices can be found in the TxDOT *Compliant Work Zone Traffic Control Device List*. Traffic control that involves the physical separation of contiguous lanes of the same roadway component (i.e., general purpose or access road lanes) traveling in the same direction will not be allowed.

DB Contractor shall identify a designated route for trucks/hazardous cargo.

DB Contractor shall maintain signing and striping continuity on all active roadways within or intersecting the Project at all times. DB Contractor shall maintain existing overhead signing within the Project throughout the Term. DB Contractor may use temporary ground mounted sign structures if either existing or proposed overhead signing cannot be maintained during construction.

Throughout the Term, DB Contractor shall ensure that all streets and intersections remain open to traffic to the greatest extent possible by constructing the Work in phases except as shown on a pre-approved TCP. DB Contractor shall maintain access to all adjacent streets and shall provide for ingress and egress to public and private properties, including the Park and Ride facilities, at all times during the Term. DB Contractor shall maintain access to all existing VIA Metropolitan Transit (VIA) bus stop facilities, VIA-maintained Park and Ride facilities, and TxDOT-maintained Park and Ride facilities except when temporary closure or detours are approved by TxDOT. DB Contractor shall provide a minimum of half the proposed parking capacity for TxDOT-maintained Park and Ride facilities during the Term except when temporary closure is approved by TxDOT. DB Contractor must submit a TCP to TxDOT for review and approval prior to implementation of detours or closures impacting any VIA bus stop facility, VIA-maintained Park and Ride facility, or TxDOT-maintained Park and Ride facility.

DB Contractor shall notify adjacent neighborhoods and adjacent property owners of anticipated traffic delays. DB Contractor shall coordinate with the respective landowners and tenants and also secure written permission prior to disrupting access to parking facilities, unless the written permission is previously provided by TxDOT.

DB Contractor shall prepare Lane Closure Notices (LCNs) in accordance with Exhibit 15 of the DBA in advance of the implementation of any Lane Closures, detours, or traffic switches. The PIO shall coordinate these notices with city and local public safety officials. DB Contractor shall also notify the traveling public by

placing changeable message signs a minimum of seven (7) days in advance of any roadway closure or major traffic modifications. Where available and when possible, DB Contractor shall coordinate and utilize DMS on the regional ITS system.

DB Contractor shall utilize uniformed police officers with jurisdiction in the area to effect Lane Closures. DB Contractor is responsible for noting the requirement for uniformed police officers in the TCPs. DB Contractor is responsible for the costs associated with the use of uniformed police officers.

DB Contractor shall provide VIA a minimum of 30 days notice prior to performing construction operations that will impact existing VIA bus stops.

#### 26.2.1.2 **Design Parameters for Traffic Control Plans**

**Design Vehicle.** Turning movements on all local streets and driveways shall, at a minimum, provide the same operational characteristics as their existing conditions or better.

**Design Speed.** On Interstate and US Highways, the minimum Design Speed shall be 10 miles per hour (mph) under the existing posted speed limit, except for major alignment transitions utilizing existing alignment geometry, where the Design Speed may match that of the existing alignment geometry. TCPs meeting this Design Speed standard do not require a change in the posted speed limit.

**Number of Lanes.** See Exhibit 15 of the Design Build Agreement for the minimum number of lanes and allowable roadway closure requirements for each facility.

**Lane Widths.** During construction, the minimum lane width for the mainlanes, ramps, direct connectors, frontage roads and crossing streets shall be 11 feet. For locations where the existing lane width is less than 11 feet, DB Contractor may use the existing lane width.

**Shoulders.** A minimum 1-foot offset from the edge of travel way to the edge of pavement or traffic barrier is required. Work on shoulder without positive protective barriers during peak hours, including setting of barrier during peak hours, constitutes a Lane Closure and requires TxDOT approval.

**Minimum Vertical Clearance.** The temporary minimum vertical clearance during construction for new construction activities shall be 16'-6" unless otherwise approved by TxDOT. DB Contractor may maintain the existing vertical clearances for existing structures not impacted by the Work.

#### 26.2.2 **Traffic Modeling Requirements**

DB Contractor shall analyze the anticipated impact on traffic flow as a result of construction activities. TxDOT has developed calibrated VISSIM base models for the Project. DB Contractor shall update the base concept in the models using VISSIM to reflect DB Contractor's design and assess impacts to the traffic operations as a result of the proposed traffic control.

DB Contractor shall analyze proposed Lane Closures in VISSIM and summarize the results in a technical memo submitted with the applicable TCP package. The technical memo should include a comparison of the existing and proposed traffic conditions and operations, and a summary of the traffic control impacts that clearly demonstrates how the impacts were determined by providing appropriate model input and output parameters including, but not limited to, travel time, speed, delay and queue data, as applicable, to assess the impacts to a particular facility.

#### 26.3 **Construction Requirements**

DB Contractor shall ensure construction of the traffic control Elements is in accordance with DB Contractor's TMP, the manufacturer's directions or recommendations where applicable, and the applicable provisions of the TMUTCD.

DB Contractor shall ensure traffic control elements are inspected, maintained and replaced in accordance with the TMP and the CQMP.

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 26 in accordance with the requirements of this Item 26 and TxDOT Standard Specifications.

See Item 24, "Signing, Delineation, Pavement Marking, Signalization, and Lighting" for additional lighting and signal requirements during construction.

See Item 25, "Intelligent Transportation Systems" for additional ITS requirements during construction.

**26.3.1 DB Contractor Responsibility**

If at any time TxDOT determines DB Contractor's traffic control operations do not meet the intent of the TMP or the specific TCP, DB Contractor shall immediately revise or discontinue such operations to correct the deficient conditions.

DB Contractor shall provide TxDOT the names of the Lead MOT Implementation Manager and support personnel, including a backup coordinator in the event the primary coordinator is unavailable, and the phone number(s) where they can be reached 24 hours per day, seven (7) days per week.

**26.3.2 IQF Responsibility**

The IQF shall designate a qualified individual to be responsible for inspecting, documenting and reporting on the placement, maintenance, and application of traffic control devices. The individual shall oversee QC inspections and the implementation of MOT plans by the DB Contractor, identifying and reporting on any instances of nonconformance with contract requirements, and ensuring that the DB Contractor's MOT activities, including implementation of design changes during construction, are performed in accordance with the Contract Documents. The individual shall have relevant experience overseeing inspections or implementation of MOT plans during the construction phase of highway projects similar in size and scope as the Project. The individual shall be available through the duration of the Project and shall report to the IQFM. The IQFM shall have the authority to stop Work. Refer to Section 3 of Attachment 4-2 of the General Conditions for a detailed description of the responsibilities of the IQF for MOT.

**26.3.3 Bicycle and Pedestrian Access**

DB Contractor shall maintain existing bicycle and pedestrian access and mobility. DB Contractor shall address any impacts to existing bicycle and pedestrian facilities in each TCP in accordance with Item 28. The TCP designs must account for potential increases in pedestrian traffic due to adjacent development in the area. DB Contractor shall maintain access to existing transit stop locations during construction or shall coordinate with transit operators for their approval of reasonable alternative locations.

**26.3.4 Detours**

DB Contractor shall maintain all detours in a safe and traversable condition. DB Contractor shall provide a pavement transition, suitable for the posted speed and accounting for the vertical and horizontal geometry of the section at all detour interfaces. Transition pavements shall be hot mix, not seal coat.

DB Contractor shall use State routes for detour routes, wherever applicable. If State routes are unavailable, DB Contractor shall use local streets provided that DB Contractor has obtained the necessary permits from the Governmental Entity having jurisdiction. DB Contractor shall take necessary action to restore or rebuild all detour routes to as good as or better than pre-construction condition in accordance with the requirements of TxDOT or the Governmental Entity having jurisdiction, as applicable.

DB Contractor shall provide detour signs to guide the traffic around the construction, detouring around specific construction sites, and traveling through the construction areas. This shall include the installation and maintenance of temporary regional signs and changeable message signs to divert traffic around the Project. Motorist guidance to and along detour routes shall be provided, together with regional guidance.

**26.3.5 Local Approvals**

DB Contractor shall communicate all roadway and ramp closures and staging analyses with each Governmental Entity having jurisdiction for roads that may be affected by the Project. When roadway and ramp movements are diverted or detoured along existing roads, DB Contractor shall be responsible for any and all costs and schedule risk. This may include traffic operation analysis, temporary traffic control devices, and road user costs. DB Contractor is responsible for obtaining the necessary approvals from any Governmental Entity having jurisdiction over the routes used. At DB Contractors request, TxDOT will reasonably assist the DB Contractor in meetings with a Governmental Entity to coordinate closures or detours that are necessary along existing roads for completion of the Work.

**26.3.6 Traffic Signals**

DB Contractor shall assume responsibility for signal phasing and timing during construction for traffic signals within the Project limits as further described in Section 24.3.7.2.

## 26.3.7

**Temporary Traffic Barrier**

DB Contractor shall meet the requirements of Item 512 for Portable Traffic Barrier and the TxDOT Engineering Standard Sheets for providing portable traffic barrier, in addition to the following requirements:

- DB Contractor shall pin portable traffic barrier if the Work Zone (WZ) is less than 2 ft behind barrier (if applicable).
- DB Contractor shall avoid mixing portable steel traffic barrier with portable concrete traffic barrier due to connection issues
- Single Slope CTB (SSCTB) shall be used on the inside shoulder and inside median of the interstate main lanes. In all other areas, either SSCTB or F-Shape CTB may be used. CTB meeting NCHRP 350 TL3 requirements may also be used as approved by TxDOT.
- Moveable barrier may be used as portable traffic barrier. The barrier must be unanchored and capable of being moved on or off the road daily. Barrier must meet NCHRP 350 TL3 with deflection of 24" or less, or MASH TL3 with deflection of 39" or less.
- Low profile concrete traffic barrier may be used on facilities with posted speeds of 45 mph or less.
- Temporary traffic barrier shall be installed across the back of all gore stub-outs where the bridge ends to protect drop offs. Temporary barrier shall also be pinned across the front of gore stub-outs in the direction of travel at the following locations. The barrier shall be pinned adjacent to the travel way in order to maintain a constant shoulder width to prevent vehicles from entering the gore area:
  - ELSB to N410 direct connector ramp
  - N410-ELNB to N410-ELSB connector ramp
  - ELSB to 1604WB direct connector ramp
  - ELNB to 1604EB direct connector ramp
  - ELNB to future ELNB

## 26.3.8

**Pavement Markings and Signing**

DB Contractor shall remove existing pavement markings and/or signs that conflict with temporary or permanent pavement markings. These pavement markings and signs shall be removed by any method that does not materially damage the existing elements or facilities. Pavement marking removal by over-painting is prohibited. DB Contractor shall not use temporary tape at any time during the Term.

DB Contractor is responsible for temporary signing, both within the Project limits and outside of the Project limits as required for the Project.

DB Contractor shall utilize existing, temporary, or proposed overhead sign structures to mount temporary or proposed guide signs above freeway main lanes where there are at least three main lanes in a given direction, per TMUTCD requirements. DB Contractor shall maintain existing overhead signing within the Project throughout the construction duration.

For major traffic switches, DB Contractor is responsible for providing temporary guide and trailblazing signage of the same type and size, including font size, to replace the existing permanent signage.

## 26.3.9

**Smart Work Zone Technology and Traffic Management System Requirements**

DB Contractor shall implement smart WZ technologies and traffic management systems to assist with traffic management and operations during construction, including dynamic lane management and incident management technologies, and speed monitoring systems.

DB Contractor shall implement the following:

- A "Work Zone Intelligent Transportation System" in accordance with Standard Specification 6254, Work Zone Intelligent Transportation System, provided in the RIDs, and Work Zone Intelligent Transportation Systems (ITS) Standard Sheets - Temporary Queue Detection Systems (WZ-ITS(1)-19, WZ-ITS(2)-19 and WZ-ITS(3)-19).
- A "Temporary Queue Detection System" in accordance with Standard Specification 6302, Temporary Queue Detection System, provided in the RIDs.

- A “Truck Entering Highway Warning System” in accordance with Special Specification 6297, Truck Entering Highway Warning System. The Truck Entering Highway Warning Systems is a portable, automated, real-time intelligent traffic system that warns oncoming traffic of trucks re-entering the highway.

DB Contractor shall describe the technologies and systems intended for use during construction in order to meet the requirements of this Section 26.3.9 in the Traffic Management Plan (TMP) submitted as part of the PMP.

#### 26.3.10 **Reinstatement of Utility Cuts**

After installation of drainage structures, storm sewers, or any other public or private Utility facility by open cut beneath existing pavements carrying traffic during construction, DB Contractor shall restore the pavement to a structure acceptable to TxDOT or the Governmental Entity having jurisdiction over the affected area and restore it to a riding surface equal to or better than the existing surface.

#### 26.3.11 **Hauling Equipment**

DB Contractor shall keep traveled surfaces used in its hauling operations clear and free of dirt or other debris that would hinder the safe operation of roadway traffic.

DB Contractor shall use rubber-tired equipment for moving dirt or other materials along or across paved surfaces. Excess dirt or debris shall be swept or removed from the job site with regular cleaning and sweeping at least twice a day.

In the event that DB Contractor moves any equipment not licensed for operation on public highways on or across any pavement, DB Contractor shall protect the pavement from all damage caused by such movement. Damage caused by DB Contractor shall be repaired at the expense of DB Contractor.

DB Contractor shall only use haul routes utilizing any street of an adjacent Governmental Entity after coordinating with the appropriate Governmental Entity.

#### 26.3.12 **Final Clean-Up**

DB Contractor shall clear and remove from the Project all surplus and discarded materials and debris of every kind and leave the entire Project in a clean, smooth, and neat condition after each construction process.

#### 26.3.13 **Stockpiles**

DB Contractor shall place barricades and warning signs at stockpiles to adequately warn motorists of a hazard in accordance with TxDOT Engineering Standard Sheets and the TMUTCD. DB Contractor shall not locate any material stockpiles within the clear zone of any traveled lane, unless positive protection is provided.

#### 26.4 **Submittals**

All Submittals described in this Item 26 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth in [Table 26-1](#). Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise indicated.

**Table 26-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
TCP concept presentation (meeting)	Prior to TCP plan sheet development	Approval	26.2.1
Traffic Control Plans (TCP)	Minimum 14 days prior to implementation (21 days for Full Roadway Closures)	Approval	26.2.1, 26.2.1.1
Lane Closure VISSIM analysis technical memo	Concurrent with submittal of applicable TCP	For information	26.2.2

**Table 26-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Names and phone numbers of the Lead MOT Implementation Manager and support personnel, including a backup coordinator	Prior to start of any construction activities	For information	26.3.1

## Item 27

### Maintenance



#### 27.1 General Requirements

##### 27.1.1 General Maintenance Obligations

Throughout the period between NTP2 and Final Acceptance, DB Contractor shall be responsible for and shall carry out the Maintenance Work as set forth in this Section 27.1.1 within the Maintenance Limits. DB Contractor shall conduct all Maintenance Work necessary to meet the requirements for this Item 27 in accordance with the requirements of this Item 27 and TxDOT Standard Specifications.

DB Contractor shall establish and maintain an organization that effectively manages all Maintenance Work in a manner set forth in the approved Maintenance Management Plan (MMP) and the requirements of the Contract Documents. DB Contractor shall:

- coordinate activities of other entities with interests or activities within the Maintenance Limits;
- conduct daily patrols of all lanes of the Project within the Maintenance Limits to identify conditions that are unsafe or have the potential to become unsafe, and conditions that could threaten the infrastructure, and to attend to existing or changing conditions;
- minimize delay and inconvenience to Users and, to the extent DB Contractor is able to control, users of related transportation facilities;
- develop, maintain and implement a Maintenance Management System to record the category, status, intended action and repair for all Defects;
- facilitate access to the Maintenance Management System by TxDOT to allow the notification and categorization by TxDOT of Defects that TxDOT identifies in the course of its maintenance inspections;
- mitigate hazards and permanently repair all Defects, including those identified by TxDOT, the DB Contractor and third parties within the specified periods;
- identify and correct all Defects and damages from Incidents;
- monitor and observe weather and weather forecasts to proactively deploy resources to minimize delays and safety hazards due to high winds, severe thunderstorms, tornadoes, heavy rainfall and flooding, hail, snow, ice, or other severe weather events;
- remove debris, including litter, graffiti, animals, and abandoned vehicles and equipment from the Project ROW;
- minimize the risk of damage, disturbance, or destruction of third-party property during the performance of Maintenance Work;
- report to TxDOT the status of its Maintenance Work including Nonconforming Work;
- coordinate with and enable TxDOT and others with statutory duties or functions in relation to the Project or related transportation facilities to perform such duties and functions;
- perform Maintenance Work, including inspections, Incident response, traffic control, and routine maintenance in accordance with the MMP and the Contract Documents; and
- promptly investigate reports or complaints received from all sources.

Subject to approval by TxDOT, alternate material specifications and construction requirements may be proposed by the DB Contractor provided the objectives of the Project are met and equivalent requirements to this Item 27 are provided.

##### 27.1.2 Scope of Maintenance Work and Interfaces with TxDOT and Third Parties

The Maintenance Work shall apply to all Elements as identified in Attachment 27-1 (Baseline Performance and Measurement Table During Construction). TxDOT will retain maintenance responsibilities for Elements in place or operating prior to the Proposal Due Date within the Maintenance Limits (the "existing Elements") until NTP2.



TxDOT's maintenance responsibilities from the Proposal Due Date until NTP2 will be limited to routine maintenance of each existing Element and will not include preventive maintenance or major maintenance as such items are defined in TxDOT *Maintenance Management Manual*.

DB Contractor shall coordinate with TxDOT to achieve a smooth transition of maintenance activities from TxDOT in the period between NTP1 and NTP2. Starting at NTP2, DB Contractor shall perform all necessary Maintenance Work to comply with the Performance Requirements.

DB Contractor shall coordinate Maintenance Work with TxDOT and other Governmental Entities having adjacent maintenance responsibilities to minimize disruption to Users. DB Contractor shall coordinate with TxDOT to ensure a smooth transition of the maintenance responsibilities to relevant parties after Final Acceptance.

### 27.1.3

#### **Maintenance Limits**

DB Contractor shall prepare and submit Maintenance Limits drawings consistent with DB Contractor's then-current design as part of the MMP. The Maintenance Limits drawings shall be consistent with the principles and extents shown in Attachment 27-3 (Maintenance Limits). DB Contractor shall periodically validate that the Maintenance Limits are correctly and clearly identified by physical delineation and shall liaise with TxDOT and Governmental Entities as necessary to review the Maintenance Limits, identify any jurisdictional gaps or inefficiencies and recommend solutions to TxDOT. Within the Maintenance Limits, DB Contractor shall allow adjacent landowners to cross under bridges at breaks in control of access.

### 27.2

#### **Maintenance Management**

#### 27.2.1

##### **Maintenance Management Plan**

DB Contractor shall prepare and submit the MMP in accordance with Section 4.2.11 of the General Conditions, update the MMP as required, and shall submit it to TxDOT for approval in TxDOT's discretion. The requirements for the MMP are set forth in Attachment 27-4 (MMP Template).

#### 27.2.2

**Reserved.**

#### 27.2.3

##### **Maintenance Manager**

DB Contractor shall assign a Maintenance Manager who shall be responsible for:

- implementing the maintenance obligations in this Item 27 and the MMP;
- causing the Maintenance Work to be performed in accordance with the Contract Documents;
- causing all maintenance personnel and resources performing Maintenance Work to be available and properly trained;
- the health and safety of personnel delivering the Maintenance Services and the general public affected by the Project; and
- coordinating with TxDOT and other entities during Incidents and Emergencies

The Maintenance Manager shall meet or exceed the qualifications and experience established in the Contract Documents, and:

- must have experience on maintenance projects; and
- must have managerial experience in design, construction, or maintenance on any road project of similar size, scope and complexity.

The Maintenance Manager shall have an active role in the review of Design Work to ensure that maintenance activities can be safely and efficiently performed for the Project and that necessary life cycle activities have been taken into consideration. The Maintenance Manager shall be available whenever Maintenance Work is performed.

### 27.3

#### **Performance Requirements**

#### 27.3.1

##### **Performance and Measurement Table**

DB Contractor's performance of the Maintenance Work shall be governed by the Performance and Measurement Table as it may be updated in accordance with Section 27.3.4. The Performance and Measurement Table shows for each Element:

- Performance Objectives that each Element is required to meet or exceed;

- the Defect Repair Periods for each Defect;
- Inspection and Measurement Methods that DB Contractor shall use to determine compliance; and
- Measurement Records that DB Contractor shall establish and maintain based upon inspections and measurements.

DB Contractor shall record a separate Defect upon failure to achieve any of the requirements set forth in the Performance Objective or Measurement Record. DB Contractor shall address each Defect within the specified Defect Repair Period as further described in this Item 27.

## 27.3.2 Defect Identification, Recording and Categorization

### 27.3.2.1 Definitions

For Defects shown on the Performance and Measurement Table:

- hazard mitigation is an action taken by DB Contractor with respect to a Category 1 Defect to mitigate a hazard to Users or imminent risk of damage or deterioration to property or the environment such that the Category 1 Defect no longer exists; and
- permanent repair is an action taken by DB Contractor with respect to any Defect to restore the condition of an Element to a condition such that no Defect exists.

### 27.3.2.2 Sources of Defects and Status

DB Contractor shall identify and record Defects through inspections described in Section 27.4 and reports or complaints by third parties. DB Contractor shall accurately record the status of Defects from all sources in the MMS. Where multiple instances of Defects exist in an Element (for example simultaneous failure to repair damaged guardrail in multiple locations), a separate Defect shall be recorded for each instance where the Performance Objective or Measurement Record requirements for the applicable Element are not achieved.

Where Defects are identified in the field during the course of any inspection that DB Contractor is required to attend, DB Contractor shall upload information related to such Defects from handheld devices to a storage system accessible by TxDOT. Information shall include the description, date-time of identification and categorization for each identified Defect. Any such upload of Defect information with Category 1 Defect status shall trigger immediate automatic e-mail notification to TxDOT and the Maintenance Manager.

### 27.3.2.3 Defects Identified by DB Contractor, TxDOT or Third Party

Whenever DB Contractor identifies, becomes aware of or is notified by TxDOT or a third party of a Defect, DB Contractor shall create within the MMS a Maintenance Record containing details of the associated Element, the nature and categorization of the Defect and the proposed timing and details of hazard mitigation and permanent repair of the Defect. DB Contractor shall categorize each Defect, based upon its determination as to whether:

- it represents an immediate or imminent health or safety hazard to Users or road workers;
- there is a risk of immediate or imminent structural failure or deterioration;
- there is an immediate or imminent risk of damage to a third party's property; or
- there is an immediate or imminent risk of damage to the environment.

Should a Defect meet any of the above criteria, DB Contractor shall record it as a Category 1 Defect. DB Contractor shall provide training to all relevant personnel on the categorization of Defects. DB Contractor shall maintain a record of the circumstances of the Defect and how it was categorized. DB Contractor shall facilitate the review by TxDOT of Maintenance Records in the MMS associated with DB Contractor-categorized Defects and shall enable TxDOT to flag any Defect where TxDOT disagrees with any attribute or categorization assigned by DB Contractor.

## 27.3.3 Baseline Inspections and Performance and Measurement Table

### 27.3.3.1 Baseline Inspections

DB Contractor shall perform inspections and / or tests to determine the condition of each Element (the "Baseline Inspections") and the preparation of the Baseline Element Condition Report (BECR). DB Contractor shall perform the inspections and/or tests in accordance with Attachment 27-2 (Baseline Inspection Requirements).

DB Contractor shall submit to TxDOT for approval the proposed scope of Baseline Inspections and the methodology proposed for the inspections and/or tests.

Upon TxDOT approval of the scope of the Baseline Inspections, DB Contractor shall provide to TxDOT a minimum of 14 Days' notice to witness the inspections and/or tests.

#### 27.3.3.2 **Baseline Element Condition Report**

DB Contractor shall prepare the BECR and shall submit it to TxDOT for approval as part of the MMP no later than 60 days prior to NTP2. The BECR shall comply with the following requirements:

- The BECR shall include a record of the condition of each Element shown in Attachment 27-2 (Baseline Inspection Requirements).
- Each photographic record and /or measurement shall be associated with a location accurate to the nearest 10 feet.
- The condition of each Element shall be recorded such that there is a minimum of one record for each Performance Section within which the Element is represented.
- Where the condition of an Element varies within a Performance Section, the BECR shall include sufficient records to demonstrate the range of conditions and a reference condition for the Element shall be recorded for each Performance Section.

DB Contractor shall cause the BECR to include the results of the most recent specialist inspections undertaken by TxDOT, including the results of the annual survey of pavement condition for the entire Project, including main lanes, ramps, frontage roads, cross streets and direct connectors as applicable undertaken using automated condition survey equipment.

#### 27.3.3.3 **Use of BECR to Establish Performance and Measurement Table Requirements**

The results of the BECR shall be used to establish the Performance Objective and Measurement Record for each Element in Attachment 27-1 (Baseline Performance and Measurement Table During Construction). The use of the BECR to establish these requirements is demonstrated in the following example: Referring to Element Ref. 1.2 "edge drop-off," the Performance Objective is that "all roadways shall be free from edge drop-offs exceeding the measurement record thresholds". Measurement Record 1.2.1 requires no edge drop off greater than the reference condition (on a location-specific basis) in the BECR." If, within a given Performance Section, the maximum edge drop-off recorded in the BECR is 2.5" and an edge drop-off of 3.0" is measured within the same Performance Section after NTP2, the requirement of the Measurement Record would not be achieved, resulting in a Defect. If the Defect is a Category 1 Defect, this would trigger a 24-hour hazard mitigation period and a 28-day permanent repair period.

#### 27.3.3.4 **Defects between Baseline Inspections and NTP2**

No later than 14 days after NTP2, DB Contractor shall submit details (if any) of instances of damage or deterioration that, in the opinion of DB Contractor, occurred between the completion of the Baseline Inspections and NTP2. DB Contractor shall identify the Maintenance Work required to cause each such Element to be in compliance with the applicable Performance Objective and Measurement Record, including an estimate of the cost of performing such Maintenance Work. TxDOT may implement one or more of the following: (a) cause Elements to be in compliance with the requirements using its own forces; (b) instruct DB Contractor to perform Maintenance Work that would cause Elements to be in compliance with applicable requirements by means of a Change Order; or (c) agree to a revision to certain Performance Objectives or Measurement Records in Attachment 27-1 (Baseline Performance and Measurement Table During Construction).

#### 27.3.4 **Updates of Baseline Performance and Measurement Table During Construction**

DB Contractor may propose changes to the Baseline Performance and Measurement Table During Construction for TxDOT approval. DB Contractor shall propose for TxDOT approval amendments to the Inspection and Measurement Methods and Measurement Records as necessary to cause such items to comply with Good Industry Practice and this Item 27. TxDOT may, at any time, require DB Contractor to adopt amendments to the Inspection and Measurement Method and Measurement Record where such updates are required to comply with Good Industry Practice and this Item 27. In this case, the new Inspection and Measurement Method or Measurement Record shall be determined using the principle that it shall achieve no less than the standard of maintenance that would have been achieved through DB Contractor's compliance with the original Inspection and Measurement Method and Measurement Record.

### 27.3.5 **Permanent Repair of Defects**

Where action is proposed to repair any Defect, DB Contractor shall promptly create a Maintenance Record that identifies the nature of the proposed repair.

The Defect Repair Period set forth in the Performance and Measurement Table shall commence upon the earlier of: (i) the date and time DB Contractor became aware of the Defect; or (ii) the date and time DB Contractor should have known of the Defect. DB Contractor shall take necessary action to prevent any recorded Defect that is not currently a Category 1 Defect from becoming a Category 1 Defect. DB Contractor shall monitor all Defects to verify the condition of the affected Element prior to permanent repair and shall inform TxDOT immediately should any such Defect deteriorate to a Category 1 Defect.

For all Defects not recorded as Category 1 Defects, DB Contractor shall complete the permanent repair within the Defect Repair Period unless an earlier repair is required to prevent deterioration to a Category 1 Defect.

### 27.3.6 **Hazard Mitigation of Category 1 Defects**

DB Contractor shall immediately implement hazard mitigation of any Category 1 Defect in an Element of which it is aware through its own inspections, from a third party or through notification by TxDOT to DB Contractor (through the MMS or by other means) that TxDOT requires DB Contractor to perform hazard mitigation for a Category 1 Defect.

For Category 1 Defects, DB Contractor shall take necessary action such that any hazard to Users is mitigated within the Defect Repair Periods specified in the Performance and Measurement Table. DB Contractor shall continue hazard mitigation until a permanent repair has been completed.

## 27.4 **Inspections**

### 27.4.1 **General Inspections by DB Contractor**

DB Contractor shall establish inspection procedures and frequency as well as a plan to implement a program of inspections necessary for the Maintenance Work. Inspection procedures shall ensure:

- the Project is safe for Users;
- Category 1 Defects are identified and repaired such that the hazard to Users is mitigated within the applicable Defect Repair Period; and
- all Defects are identified and permanently repaired within the applicable Defect Repair Period.

In performing inspections to identify Defects, DB Contractor shall ensure that each Element at a minimum complies with the inspection standards set forth for that Element in the column entitled "Inspection and Measurement Method" in Attachment 27-1 (Baseline Performance and Measurement Table During Construction).

DB Contractor shall perform general inspections in accordance with the MMP so that the repairs of all Defects are included in planned programs of work.

DB Contractor shall record details of the manner of inspection (e.g. center Lane Closure or shoulder), the weather conditions, and any other unusual features of the inspection on inspection records in respect of general inspections.

DB Contractor shall submit to TxDOT Nonconformance Reports within seven Days of issuance and shall notify TxDOT of Nonconforming Work within two Days of discovering the Nonconforming Work. TxDOT will issue a Nonconformance Report if TxDOT discovers any Nonconforming Work. DB Contractor's responsibility to correct Nonconforming Work is set forth in the Contract Documents.

### 27.4.2 **Performance Sections**

As part of the MMP, DB Contractor shall prepare drawings identifying the Performance Sections and shall submit and update these drawings with the applicable part of the MMP. The drawings shall identify the boundaries of each Performance Section and shall cross reference to an inventory describing each Element of the Project contained within each Performance Section. Where Performance Sections need to be revised to take into consideration the progression from an existing facility to the then-current design, DB Contractor shall phase in the new Performance Sections in a logical manner so that new Performance Sections are in place as the Work progresses.

DB Contractor shall implement the Texas Reference Marker (TRM) system used by TxDOT to establish Performance Sections for inspection and maintenance records in accordance with the MMP. DB Contractor shall use the existing TRM system established on existing sections of the Project. DB Contractor shall coordinate with TxDOT to establish the TRM system on newly constructed sections of roadway.

## 27.4.3

**Inspections by TxDOT**

TxDOT may undertake specialist inspections as follows during the Term and if such inspections are performed will make the results available to DB Contractor.

- Annual survey of pavement condition for the entire Project, including main lanes, ramps, and frontage roads, undertaken using automated condition survey equipment to measure all necessary criteria including: ruts, skid resistance and ride quality according to the "Inspection and Measurement Method" set forth in the Performance and Measurement Table.
- Routine biennial inspections, to the extent required, for all structures within the Maintenance Limits in compliance with the latest FHWA / NBIS and TxDOT requirements.

Upon receipt of TxDOT specialist inspections, DB Contractor shall use the results of specialist inspections to prioritize Maintenance Work and immediately identify all Defects within each Performance Section established by the inspections and enter these Defects in the MMS with the appropriate Defect Repair Period.

## 27.5

**Maintenance Management System (MMS)**

## 27.5.1

**MMS Attributes**

DB Contractor shall implement an MMS to store all the following Maintenance Records:

- description, location, date-time of identification and categorization of Defects;
- planned actions and date-time for permanent repair of all Defects;
- details including date-time of actual repairs performed;
- complaints and reports received from TxDOT and third parties; and
- accidents and incidents relating to the Maintenance Work.

Maintenance Records shall be organized by Performance Section. When an Element is constructed, installed, maintained, inspected, modified, replaced or removed, DB Contractor shall create and store a Maintenance Record no later than three days after completion of such Work. Category 1 Defects shall be recorded in the MMS immediately upon the DB Contractor becoming aware of the Defect either by direct upload to the MMS by DB Contractor's inspection personnel in the field or by upload of the information to the MMS when TxDOT or a third party notifies DB Contractor of a Category 1 Defect. All other Defects shall be recorded in the MMS after coming to the attention of DB Contractor. All other recording requirements shall be recorded on the MMS within 15 days of completion or occurrence of the relevant activity.

## 27.5.2

**MMS Interfaces with TxDOT**

DB Contractor shall provide TxDOT real-time, remote access to the Maintenance Records for the duration of the Term.

DB Contractor shall hand over the Maintenance Records to TxDOT, or other entity as directed by TxDOT.

Requirements for the storage, retention and transfer to TxDOT of Maintenance Records are provided in Section 27.6.4.

## 27.6

**Maintenance Obligations**

## 27.6.1

**Incident and Emergency Management**

As part of the MMP for Maintenance Work, DB Contractor shall prepare and implement an Incident and Emergency Management Plan (IEMP). Refer to Attachment 27-4 (MMP Template) for the required contents of the IEMP.

Where an Incident or Emergency has an effect on the operation of the Project, DB Contractor shall clear obstructions and repair damage to the Project under the supervision of the relevant Emergency Services if necessary, such that the Project is returned to normal operating standards and safe conditions as quickly as possible in accordance with the requirements of Section 4.2.3 of the General Conditions.

Where liquid or soluble material spills are involved, DB Contractor shall take all necessary measures to minimize pollution of watercourses or groundwater. Where structural damage to structures is suspected, DB Contractor shall ensure that a suitably qualified bridge engineer or specialist inspector is available to evaluate the structure and to advise on temporary repairs and shoring needed to provide safe clearance of the Incident or Emergency. Where such an Incident or Emergency involves a personal injury, DB Contractor shall not remove any vehicle or other item that may assist a potential investigation by Emergency Services until authorized to do so by such agency or agencies.

27.6.2 **Snow and Ice Control**

DB Contractor shall report to TxDOT information on weather-related events which may cause unsafe driving conditions such as ice, sleet, snow, floods or high winds.

27.6.3 **Severe Weather Evacuation**

DB Contractor shall prepare and train its staff for evacuation and shall assist TxDOT in the event that an evacuation is implemented, in accordance with the Severe Weather Evacuation Plan (SWEP). Requirements for the SWEP are contained in Attachment 27-4 (MMP Template).

27.6.4 **Maintenance Document Management**

For all Maintenance Records, DB Contractor shall follow the document storage and retrieval requirements set forth in Section 4.2.1.2 of the General Conditions. DB Contractor's document management system shall be compatible with SharePoint.

DB Contractor shall cause all Maintenance Records and Project-related documents to be stored, along with accurate information, on the location consistent with reference markers in accordance with the TRM system, so that all data and records can be retrieved by reference marker and Performance Section.

Maintenance Records shall be kept throughout the Term. Such records shall be provided to TxDOT upon Final Acceptance. All records obtained during the Warranty Term shall be kept and provided to TxDOT at the end of the Warranty Term.

Unless otherwise directed by TxDOT, DB Contractor's record retention shall comply with the requirements of the Texas State Records Retention Schedule.

27.6.5 **Safety**

DB Contractor shall establish and implement safety and health procedures for Maintenance Work in compliance with Section 4.2.3 of the General Conditions and in accordance with the Maintenance Safety Plan. Refer to Attachment 27-4 (MMP Template) for the required contents of the Maintenance Safety Plan.

27.6.6 **Communication**

DB Contractor shall establish and implement communication procedures for Maintenance Work in compliance with Sections 4.2.5 of the General Conditions, Item 11 and Item 26.

27.6.7 **Hazardous Materials Management**

DB Contractor shall establish and implement Hazardous Materials Management procedures for Maintenance Work in compliance with Section 4.2.4.4 of the General Conditions and in accordance with the Hazardous Materials Management Plan (HMMP). Refer to Attachment 27-4 (MMP Template) for the required contents of the HMMP.

27.6.8 **Environmental Compliance and Mitigation**

DB Contractor shall establish and implement environmental compliance and mitigation procedures for Maintenance Work in compliance with Section 4.2.4.2 of the General Conditions and Item 12 and shall follow the requirements described in Attachment 27-4 (MMP Template).

27.6.9 **Traffic Management**

DB Contractor shall establish and implement traffic management procedures for Maintenance Work in compliance with Item 26 and shall follow the requirements described in Attachment 27-4 (MMP Template).

## 27.7

**Submittals**

All Submittals described in this Item 27 shall be in accordance with the schedule and for the purpose (approval, review and comment, for information) set forth on Table 27-1. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat files, unless otherwise required.

**Table 27-1: Submittals to TxDOT**

Submittals	Submittal Schedule	TxDOT Action	Reference Section
Maintenance Limits Drawings	After NTP1	Review and Comment	27.1.3
Maintenance Management Plan (MMP)	After NTP1	Approval	27.2.1
MMP Updates	As required	Approval	27.2.1
Proposal scope and methodology of Baseline Inspections	Prior to the Baseline Inspections	Approval	27.3.3.1
Notice of Baseline Inspections and/or tests	14 days prior to the Baseline Inspections	For information	27.3.3.1
BECR	60 days prior to NTP2	Approval	27.3.3.2
Details of the Maintenance Work to cause each Element to be in compliance with applicable requirements	No later than 14 days after NTP2	Review and comment	27.3.3.4
Updates to Performance and Measurement Table	As required	Approval	27.3.4
Notification of Nonconforming Work	Within 2 Days of discovering the Nonconforming Work	For information	27.4.1
Nonconformance Report	Within seven Days of notification issuance	Review and comment	27.4.1
Performance Section Drawings	After NTP1	Review and comment	27.4.2
Incident and Emergency Management Plan	After NTP1	Approval	27.6.1
Information on weather-related events	As required	For information	27.6.2
Maintenance Records kept throughout the Term	Upon Final Acceptance	For information	27.6.4
Maintenance Records during Warranty Term	At end of Warranty Term	For information	27.6.4

## Item 28

# Bicycle and Pedestrian Facilities



### 28.1 General Requirements

This Item 28 includes requirements pursuant to which DB Contractor shall design and construct all bicycle and pedestrian facilities for the Project as shown on the Schematic Design. DB Contractor shall design and construct all bicycle and pedestrian facilities consistent with TxDOT policies and guidelines described in this Item 28. DB Contractor shall coordinate the Elements of this Project with the existing and planned trails and other facilities of local and county administrations for pedestrians and cyclists.

### 28.2 Administrative Requirements

DB Contractor shall maintain connectivity equivalent to existing conditions on all bicycle and pedestrian facilities during construction and throughout the Term.

### 28.3 Design Requirements

#### 28.3.1 Bicycle Facilities

DB Contractor shall design bicycle facilities to be consistent with TxDOT's and Governmental Entities' bicycle requirements and accommodate existing bicycle paths and crossings, and on-street bicycle facilities. DB Contractor shall coordinate with Governmental Entities and TxDOT to ensure the bicycle facility design results in consistency between existing and proposed bicycle facilities. A five-foot shoulder on the new construction LP 1604 frontage roads as depicted on the Schematic Design shall be provided to accommodate bicycles.

Facilities shall meet the requirements of the AASHTO *Guide for the Development of Bicycle Facilities* and shall incorporate the following elements, where applicable, relating to bicycle facilities into the design:

- Alignment, profile, cross-section, and materials;
- Points of connection to existing and proposed bicycle facilities;
- Crosswalk and pedestrian ramp locations and details;
- Signing, signalization, and pavement markings;
- Separation between bicycle facilities and the nearest travel lane;
- Methods of illumination indicating light fixture locations and types;
- Methods of separation, including barrier and/or fence type and height; and
- Requirements of the Aesthetics and Landscaping Plans.

#### 28.3.2 Pedestrian Facilities

DB Contractor shall design, construct, and maintain pedestrian facilities where required by state and federal regulations. Sidewalks and pedestrian facilities shall comply with ADA, the *Public Right-of-Way Accessibility Guidelines* (PROWAG), and TDLR. DB Contractor's Work shall also include any necessary modifications to existing driveways along the frontage roads for the sidewalks to comply with ADA, PROWAG, and TDLR, including but not limited to the locations shown on the Schematic Design. DB Contractor shall coordinate with Governmental Entities and TxDOT to ensure the pedestrian facility design results in consistency between existing and proposed pedestrian facilities.

DB Contractor shall design and construct new concrete sidewalks or remove and replace existing concrete sidewalks, as applicable, along frontage roads and cross streets, including but not limited to the locations shown on the Schematic Design; and where any existing sidewalk is not in compliance with ADA, PROWAG, and TDLR.

DB Contractor shall install pedestrian signals and curb ramps at new (or full replacement) signalized intersections and intersections requiring modification within Project limits as identified in Section 24.3.7.1. In areas along the frontage road or cross streets where only mill and overlay is required, DB Contractor shall remove and replace any pedestrian signals and curb ramps not in compliance with ADA, PROWAG, and



TDLR. DB Contractor shall coordinate with Governmental Entities and TxDOT to ensure consistency with existing and proposed pedestrian facilities.

DB Contractor shall provide a box crosswalk wherever feasible (except at diamonds or T intersections) and shall provide channelized right turn median islands for pedestrian refuge. DB Contractor shall not utilize yield triangles for pedestrian crossings except for high-intensity activated crosswalk (HAWKS) beacon or pedestrian hybrid beacon (PHB) crossings.

DB Contractor's facilities shall meet the requirements of the AASHTO *Guide for the Planning, Design, and Operation of Pedestrian Facilities*, and shall include the following elements, where applicable, relating to pedestrian facilities:

- Alignment, profile, cross-section, and materials;
- Points of connection to existing and proposed pedestrian facilities;
- Crosswalk and pedestrian ramp locations and details;
- Signing, signalization, and pavement markings;
- Separation between pedestrian facilities and the nearest travel lane;
- Methods of illumination indicating light fixture locations and types;
- Methods of separation, including barrier and/or fence type and height; and
- Requirements of the Aesthetics and Landscaping Plans.

In addition, all facilities shall be designed and constructed in accordance with TxDOT San Antonio District Standards. TxDOT San Antonio District standards can be found at <https://www.txdot.gov/inside-txdot/district/san-antonio/specinfo.html>. The six-foot usual sidewalk width may be reduced only in areas where ROW is insufficient or where a six-foot sidewalk would require widening of an existing structure not otherwise impacted by the Work, so long as ADA, PROWAG, and TDLR requirements are still met.

DB Contractor is responsible for obtaining TDLR reviews and approvals of pedestrian facility design and construction.

28.4

#### **Construction Requirements**

DB Contractor shall conduct all Work necessary to meet the requirements for this Item 28 in accordance with the requirements of this Item 28 and TxDOT Standard Specifications.

In areas of conflict between pedestrians and construction, DB Contractor shall provide for the installation, maintenance, and removal of temporary sidewalk along alternate routes during construction in accordance with TxDOT Standard Specification *Item 531*. The temporary sidewalk along the alternate route shall be ADA compliant with a minimum width of 36" and have 60" x 60" passing zones every 200 feet. Temporary sidewalks shall be constructed with 3 in. thick Type B concrete (unreinforced, any class) or Type D hot mix. All material testing requirements are waived for temporary sidewalk construction. Orange construction fence along the edge of the sidewalk is required if a drop-off condition exists adjacent to the path. DB Contractor shall provide a box crosswalk wherever feasible (except at diamonds or T intersections) and shall provide channelized right turn median islands for pedestrian refuge. DB Contractor shall not utilize yield triangles for pedestrian crossings (except for HAWKS or PHB crossings).



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 12-1 Environmental Permits, Issues, and Commitments (EPIC Sheets)

## Attachment 12-1: I-35 NEX Central - Environmental Permits, Issues and Commitments (EPICs)

Environmental Discipline	NEPA Commitments	Contract References
Waters of the U.S. (Section 404)	<ul style="list-style-type: none"> <li>- Evaluate Section 404 impacts per Final Design</li> <li>- Obtain/comply with necessary Section 404 permit</li> <li>- Deliver, monitor, maintain all required mitigation</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2.2</li> <li>- DB Specifications 12.2.5.1</li> </ul>
Archeological Resources	<ul style="list-style-type: none"> <li>- Cease Work in immediate area, secure site from further intrusion, and notify TxDOT immediately if archeological materials are discovered</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2.9</li> </ul>
State Threatened & Endangered (T&E) Species & Species of Greatest Conservation Need (SGCN)	<ul style="list-style-type: none"> <li>- Review T&amp;E species lists for species/habitat changes since authorization of Environmental Approvals</li> <li>- Implement &amp; maintain the following Section 1 BMPs of the TxDOT/TPWD MOU: <ul style="list-style-type: none"> <li>- Texas horned lizard</li> <li>- Texas garter snake</li> <li>- Spot-tailed earless lizard</li> <li>- Plains spotted skunk</li> <li>- Texas tortoise</li> <li>- Freshwater mussel</li> <li>- Terrestrial reptile</li> <li>- Fish</li> <li>- Bat</li> <li>- Bird</li> <li>- Water quality</li> </ul> </li> <li>- Implement &amp; maintain the following Section 2 BMPs of the TxDOT/TPWD MOU: <ul style="list-style-type: none"> <li>- Bat</li> </ul> </li> <li>- If T&amp;E species are found during construction, cease Work in immediate area, do not harm species nor its habitat, and notify TxDOT immediately</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2.5</li> <li>- General Conditions 4.2.4.2.5.1</li> </ul>
Federal Threatened & Endangered Species	<ul style="list-style-type: none"> <li>- Review T&amp;E species lists for species/habitat changes since authorization of Environmental Approvals</li> <li>- Survey discovered karst features for listed invertebrates prior to continuing Work in immediate area</li> <li>- Comply with USFWS void discovery protocols and conservation measures</li> <li>- If T&amp;E species are found during construction, cease Work in immediate area, do not harm species nor its habitat, and notify TxDOT immediately</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2.6.1</li> </ul>
Karst Features	<ul style="list-style-type: none"> <li>- Survey discovered karst features for listed invertebrates prior to continuing Work in immediate area</li> <li>- Comply with with USFWS conservation measures</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 12.2.5.6</li> </ul>
Water Quality	<ul style="list-style-type: none"> <li>- Comply with Sections 401 &amp; 402 of the Clean Water Act</li> <li>- Comply with TCEQ TPDES Construction General Permit</li> <li>- Design, install, &amp; maintain SWPPP BMPs</li> <li>- Implement &amp; maintain the Section 1 Water Quality BMPs of the TxDOT/TPWD MOU</li> <li>- Submit Notice of Intent (NOI) &amp; Notice of Termination (NOT) to TCEQ</li> <li>- Limit and/or phase clearing of vegetation</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2.2</li> <li>- General Conditions 4.2.4.2.3</li> <li>- DB Specifications 12.2.5.1</li> </ul>
Noise	<ul style="list-style-type: none"> <li>- Construct noise barriers as required</li> <li>- Minimize construction noise</li> <li>- Minimize night-time construction noise through appropriate mitigation practices</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2</li> <li>- General Conditions 4.2.4.2.7</li> <li>- DB Specifications 21.2.8</li> </ul>
Hazardous Materials	<ul style="list-style-type: none"> <li>- Conduct additional Hazardous Materials investigations of "high risk sites", as necessary, to identify if construction activities will encounter contaminants</li> <li>- Inspect, identify, test, notify, amend notifications as necessary, pay notification fees, and abate for any Hazardous Materials encountered within the project limits</li> <li>- Coordinate with utility companies prior to utility relocations</li> <li>- Complete ACM &amp; LBP surveys for existing bridges and buildings to be demolished &amp; abate in accordance with state &amp; federal regulations</li> <li>- Notify Department of State Health Services 10 days prior to abatement and/or demolition activities</li> <li>- Notify TxDOT of any unanticipated Hazardous Materials discovered</li> <li>- Prevent, minimize, control, &amp; abate the spill of hazardous materials</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.3.3</li> <li>- General Conditions 4.2.4.2.11</li> <li>- General Conditions 4.2.4.3.1</li> <li>- General Conditions 4.8</li> <li>- DB Specifications 12.2.5.4</li> <li>- DB Specifications 12.2.5.5</li> </ul>
VIA Transit	<ul style="list-style-type: none"> <li>- Provide VIA a minimum of 30 days notice prior to impacting existing VIA bus stops</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 26.2.1.1</li> </ul>
Road Closures/Detours/Traffic Delays	<ul style="list-style-type: none"> <li>- Notify city and local public safety officials of proposed road closures and/or detours</li> <li>- Notify adjacent neighborhoods and property owners of anticipated traffic delays</li> <li>- Notify traveling public of traffic modifications utilizing informative signage</li> <li>- Design road closures &amp; detours in compliance with Texas Manual on Uniform Traffic Control Devices</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 26.2.1</li> <li>- DB Specifications 26.2.1.1</li> </ul>
Air Quality	<ul style="list-style-type: none"> <li>- Implement dust control measures</li> <li>- Prevent, control, &amp; mitigate fugitive noxious/toxic vapors</li> <li>- Utilize TERP to the fullest extent practicable</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 12.2.5.3</li> </ul>
Property Access	<ul style="list-style-type: none"> <li>- Maintain access to adjacent properties at all times during and after construction</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 12.2.5.2</li> </ul>
Migratory Bird Treaty Act	<ul style="list-style-type: none"> <li>- Remove old nests from structures between October 1 &amp; February 15</li> <li>- Prevent migratory birds from nesting between February 15 &amp; October 1</li> <li>- Avoid adverse impacts on protected migratory birds, active nests, eggs, and/or young discovered on Site</li> <li>- If species are present, cease Work in immediate area and notify TxDOT</li> </ul>	<ul style="list-style-type: none"> <li>- General Conditions 4.2.4.2.6.1</li> </ul>
Vegetation	<ul style="list-style-type: none"> <li>- Use minimization &amp; avoidance to preserve vegetation to the greatest extent possible</li> <li>- Make efforts to protect trees that are not in conflict with construction, especially those trees located near the edge of construction areas</li> <li>- PSLs shall avoid riparian areas</li> <li>- Reseed/revegetate in accordance with TxDOT Specifications, TCEQ CGP, Executive Order 13112 on Invasive Species, &amp; Executive Memorandum on Beneficial Landscaping</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 12.2.5.7</li> <li>- DB Specifications 12.2.5.9</li> <li>- General Conditions 4.2.4.2.5.1</li> </ul>
ROW Acquisition	<ul style="list-style-type: none"> <li>- Acquire ROW in accordance with: <ul style="list-style-type: none"> <li>- Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970, amended in 1987</li> <li>- TxDOT's Right-of-Way Acquisition and Relocation Assistance Program</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 15.2.1</li> </ul>

Floodplains	<ul style="list-style-type: none"> <li>- Hydraulic design shall be in accordance with current FHWA &amp; TxDOT design policies</li> <li>- Hydraulic design shall comply with 23 CFR 650</li> <li>- Comply with Executive Order 11988</li> <li>- Design shall permit conveyance of 100-year flood without causing significant damage to the facility, stream or other property</li> <li>- Design would not increase base flood elevation to a level that would violate floodplain ordinances</li> <li>- Coordinate with local floodplain administrator</li> </ul>	<ul style="list-style-type: none"> <li>-DB Specifications 20.2.2</li> <li>-DB Specifications 20.3.5.1</li> <li>-DB Specifications 20.3.5.4.2</li> </ul>
Federal Aviation Administration (FAA)	<ul style="list-style-type: none"> <li>- Coordinate with FAA to obtain airway highway clearance no later than 45 days prior to start of construction</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 12.2.5.8</li> </ul>
Project Specific Locations (PSLs)	<ul style="list-style-type: none"> <li>- Ensure regulatory compliance of all PSLs</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 12.2.5.9</li> </ul>
Aesthetics	<ul style="list-style-type: none"> <li>- Design aesthetic components in adherence with the December 2005 San Antonio District Urban Design Themes for Bexar and Outlying Counties</li> </ul>	<ul style="list-style-type: none"> <li>- DB Specifications 23.1.1</li> </ul>



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 14-1 Utility Adjustment Forms



Texas Department of Transportation  
Form DB-ROW-U-AdjCheck  
REV 07/2018

### UTILITY ADJUSTMENT CHECKLIST

(To be included with Utility Assembly Submittal)

U-No.: \_\_\_\_\_

District: \_\_\_\_\_

Utility Owner: \_\_\_\_\_

County(ies): \_\_\_\_\_

CSJ No(s).: R-\_\_\_\_\_ C-\_\_\_\_\_

Project Limits: \_\_\_\_\_ to \_\_\_\_\_

Federal ROW Project No.: \_\_\_\_\_

Reimbursement (*check one (1) box*): Actual Cost  Lump Sum  Non-Reimbursable

Alternate Procedure Approval Date: \_\_\_\_\_

Description of Work (*Approximate from/to stationing and line type*):

Estimated Start Date: \_\_\_\_\_, 20\_\_\_\_

Estimated Completion or Duration: \_\_\_\_\_, 20\_\_\_\_

Estimated Total Adjustment Costs: \$0.00

Estimated Betterment (*in dollars and calculated %*): \$0.00     0%

Estimated Accrued Depreciation: \$0.00

Estimated Salvage: \$0.00

Credits and Vouchers: \$0.00

Eligibility Ratio (*calculated and supported %*) \$0.00     0%

Noteworthy Issues/Items: \_\_\_\_\_



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**ASSEMBLY PACKAGE**

1. Have the required number of Utility Adjustment Assemblies of which the TxDOT Copy is color coded, been submitted?

Yes  No  N/A

2. Have the following forms been submitted?

PUAA/UAAA:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
UJUA:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Statement - Contract Work:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
U-1 Affidavit:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Quitclaim Deed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
UM/UDC Sign Off:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

3. Are all forms submitted complete and correct for the situation/circumstance of the Utility Adjustment?

Yes  No  N/A

**TRANSMITTAL MEMO**

4. If the Adjustment has unique characteristics, does the transmittal include explanations and clarifications?

Yes  No  N/A

5. Has a recommendation for approval been stated?

Yes  No  N/A

6. If the Utility Adjustment is in more than one (1) RCSJ (Local Jurisdictional Boundary), have the percentages in each jurisdiction been detailed?

Yes  No  N/A



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### UTILITY ADJUSTMENT AGREEMENT

7. Have language modifications to the utility agreement been approved by TxDOT?  
Yes  No  N/A
8. Has the Utility consultant-engineering contract been reviewed and approved by the Developer's Utility Manager (UM)?  
Yes  No  N/A

### UTILITY ADJUSTMENT PLANS AND SPECIFICATIONS

9. Plans folded so as to fit into 8.5" x 11" file?  
Yes  No  N/A
10. Have the Utility Adjustments been designed for the Proposed Configuration?  
Yes  No  N/A
11. Project or vicinity plan provided?  
Yes  No  N/A
12. Have the plans for the Utility Adjustment been sealed by a Registered Professional Engineer (PE)?  
Yes  No  N/A
13. Has the Utility Owner signed the cover sheet of the plans verifying review and approval, if Developer is responsible for Engineering on either Owner Managed or Developer Managed Agreement?  
Yes  No  N/A
14. Backfill requirements met (item 400 referenced)?  
Yes  No  N/A
15. If excavation is required, do the plans included a note on OSHA trench excavation protection?  
Yes  No  N/A
16. Is a note provided in the plans that the adjustment will conform with the TMUTCD?





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17.                    Yes                     No                     N/A   
If the adjustment involves a plastic water, sanitary sewer, or gas line, has a metal detection wire been included in the estimate or with detailed in the plans?
18.                    Yes                     No                     N/A   
Has Barlow's Formula information been submitted for un-encased high pressure pipelines? (The Barlow's calculation must be provided by the utility owner. The following information is required to complete Barlow's formula.  $S = \text{Yield Strength}$ ,  $t = \text{Wall thickness}$ ,  $D = \text{Outside Diameter}$ ,  $F = \text{Design Factor}$ . Maximum Operating Pressure must also be given and compared to the pressure calculated with Barlow's. The Barlow calculation must be shown with the submission.)
19.                    Yes                     No                     N/A   
If the pipeline is un-encased, is there adequate coating, wrapping and cathodic protection?
20.                    Information on plans sufficient and adequate to:  
Determine necessity and justification of proposed work?  
Yes                     No                     N/A   
Demonstrate Utility Accommodation Rules compliance?  
Yes                     No                     N/A   
Indicate highway stationing, existing and proposed ROW, offsets from proposed ROW, existing and proposed grades, and edge of pavement lines?  
Yes                     No                     N/A   
Provide any other necessary or essential information such as pressure, flow, offset, type, condition, wall thickness, specifications etc.?  
Yes                     No                     N/A
21.                    Yes                     No                     N/A   
Is this Utility Adjustment within ROW project limits or directly related to work required within project limits?
22.                    Yes                     No                     N/A   
Are any of the proposed utility facilities installed longitudinally within a control of access?



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**COST ESTIMATE**

23. Has the Developer's Utility Design Coordinator located on the plans the major items of material listed on the estimate by scaling or stationing?

Yes  No  N/A

24. If the agreed sum method has been marked, has a detailed, itemized estimate and matching plans been provided?

Yes  No  N/A

25. Is the estimate properly and adequately itemized and detailed?

Yes  No  N/A

26. Are overheads and loadings checked for reasonableness?

Yes  No  N/A

27. Replacement utility ROW charges justified and supported?

Yes  No  N/A

28. Eligibility ratio calculated and recommended?

Yes  No  N/A

29. Betterment credit applicable?

Yes  No  N/A

If yes, is credit calculated and applied properly?

Yes  No  N/A

30. Accrued Depreciation credit applicable?

Yes  No  N/A

If yes, is credit calculated and applied properly?



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31.            Yes                       No                       N/A   
Salvage credit applicable?

Yes                       No                       N/A

If yes, is credit applied properly?

Yes                       No                       N/A

32.    Estimate extensions checked?

Yes                       No                       N/A

**AFFIDAVIT OF PROPERTY INTEREST**

33.    Proof of compensable property interest established by utility where applicable?

Yes                       No                       N/A

If yes, according to the “**Real Property Interest**” paragraph of the PUA:

Does the estimate detail reimbursement for “New Property” interest?

Yes                       No                       N/A

Does the estimate detail compensation for relinquishing “Existing Property” interest?

Yes                       No                       N/A

Did the utility owner provide a letter stating that they will quitclaim their property interest at no costs or an agreed sum if new utility property interests are not being acquired?

Yes                       No                       N/A

34.    Have the parcel ID numbers to be Quitclaimed been identified?

Yes                       No                       N/A

35.    Has the owner provided a signed letter of intent to Quitclaim, and has a copy of the correct Quitclaim Deed(s) been submitted?

Yes                       No                       N/A



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**R.O.W. MAPS**

36. Approved and current ROW Maps on file with project office?

Yes

No

N/A

37. Have the existing and proposed utility facilities been plotted on the ROW map and attached to this assembly?

Yes

No

N/A

**COMMENTS:** \_\_\_\_\_

Prepared by: \_\_\_\_\_  
Utility Design Coordinator

\_\_\_\_\_  
Date

Recommended for  
Approval by: \_\_\_\_\_  
Quality Control

\_\_\_\_\_  
Date

Approved by: \_\_\_\_\_  
Utility Manager

\_\_\_\_\_  
Date



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County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**PROJECT UTILITY ADJUSTMENT AGREEMENT  
(DB Contractor-Managed)**

Agreement No.: \_\_\_\_\_ -U- \_\_\_\_\_

**THIS AGREEMENT**, by and between [DB Contractor], hereinafter identified as the “**DB Contractor**” and [Utility Owner], hereinafter identified as the “**Owner**”, is as follows:

**WITNESSETH**

**WHEREAS**, the STATE OF TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as “TxDOT”, is authorized to design, construct, operate, maintain, and improve projects as part of the state highway system throughout the State of Texas, all in conformance with the applicable provisions of Chapters 201, 203, 222, 223, 224 and 228 of the Texas Transportation Code, as amended; and

**WHEREAS**, TxDOT proposes to construct a project identified as [Project Name] (the “Project”) and classified as either Interstate, Toll or Traditional (meaning eligibility based on existing compensable interest in the land occupied by the facility to be relocated within the proposed highway right of way limits) as indicated below (*check one (1) box*). Reimbursement will be authorized by the type of project selected below in conformance with §203.092 of the Transportation Code,

- Interstate
- Toll
- Traditional

; and

**WHEREAS**, pursuant to that certain Design-Build Contract (“DBC”) by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, finance, operate and maintain the Project and adhere to all requirements in the DBC; and

**WHEREAS**, the DB Contractor’s duties pursuant to the DBC include causing the relocation, removal or other necessary adjustment of existing Utilities impacted by the Project (collectively, “Adjustment”), subject to the provisions herein; and

**WHEREAS**, the Project may receive Federal funding, financing and/or credit assistance; and



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Form DB-ROW-U-PUAA-DM  
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**WHEREAS**, the DB Contractor has notified the Owner that certain of its facilities and appurtenances (the “Owner Utilities”) are in locational conflict with the Project (and/or with the Ultimate Configuration of the Project), and the Owner has requested that the DB Contractor undertake the Adjustment of the Owner Utilities as necessary to accommodate the Project (and the Ultimate Configuration) and the Owner agrees that the “Project” will be constructed in accordance with §203.092 of the Texas Transportation Code, as amended, and 23 CFR 645 Subpart A (Utility Relocations, Adjustments and Reimbursement); and

**WHEREAS**, the Owner Utilities and the proposed Adjustment of the Owner Utilities are described as follows *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., “adjust 12” waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00)]*:

\_\_\_\_\_; and

**WHEREAS**, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

**WHEREAS**, the DB Contractor and the Owner desire to implement the Adjustment of the Owner Utilities by entering into this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the DB Contractor and the Owner agree as follows:

1. **Preparation of Plans.** *[Check one (1) box that applies:]*

- The DB Contractor has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Exhibit A (collectively, the “Plans”), for the proposed Adjustment of the Owner Utilities. The DB Contractor represents and warrants that the Plans conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation (“TxDOT”), as set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C, *et seq.* (the “UAR”). By its execution of this Agreement or by the signing of the Plans, the Owner hereby approves and confirms that the Plans are in compliance with the “standards” described in Paragraph 3(a)(4).
- The Owner has provided plans, required specifications and cost estimates, attached hereto as Exhibit A (collectively, the “Plans”), for the proposed Adjustment of the Owner Utilities. The Owner represents and warrants that the Plans conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation (“TxDOT”), as set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C, *et seq.* (the “UAR”). By its execution of this Agreement, the DB Contractor and the Owner hereby approve the Plans. The Owner also has provided to the DB Contractor a Utility plan view map illustrating the location of existing and proposed Utility facilities on the DB Contractor’s right of way map of the Project. With regard to its preparation of the Plans, the Owner represents as follows *[check one (1) box that applies]*:



- The Owner's employees were utilized to prepare the Plans, and the charges therefore do not exceed the Owner's typical costs for such work.
- The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner Utilities described herein, and do not include fees for work done on any other project. The fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. **Review by TxDOT.** The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by the DB Contractor and the Owner, the DB Contractor will submit this Agreement, together with the attached Plans, to TxDOT for its review and approval as part of a package referred to as a "Utility Assembly". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to all parties, to respond to any comments made by TxDOT thereon. Without limiting the generality of the foregoing:
  - (1) The Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the DB Contractor in response to TxDOT comments within **14 Business Days** after receipt of such modifications; and
  - (2) If the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to TxDOT comments and to submit such modified Plans to the DB Contractor for its comment and/or approval (and re-submittal to TxDOT for its comment and/or approval) within **14 Business Days** after receipt of TxDOT's comments.

The Owner's failure to timely respond to any modified Plans submitted by the DB Contractor pursuant to this paragraph shall be deemed the Owner's approval of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the DB Contractor shall have the right to modify the Plans for the Owner's approval as if the DB Contractor had originally prepared the Plans. The process set forth in this paragraph will be repeated until the Owner, the DB Contractor and TxDOT have all approved this Agreement and the Plans.

- (b) The parties hereto acknowledge and agree that TxDOT's review, comments and approval of a Utility Assembly or any component thereof shall constitute TxDOT's approval of the location and manner in which a Utility Assembly will be installed, adjusted, or relocated within the State Highway right of way (the "ROW"), subject to the DB Contractor and the Owner's satisfactory performance of the Adjustment work in accordance with the approved Plans. TxDOT has no duty to review Owner Utilities or components for their quality or adequacy to provide the intended Utility service.



3. **Design and Construction Standards.**

- (a) All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:
- (1) All applicable local and State Laws, regulations, decrees, ordinances and policies, including the UAR, the *Utility Manual* issued by TxDOT (to the extent its requirements are mandatory for the Utility Adjustment necessitated by the Project, as communicated to the Owner by the DB Contractor or TxDOT), the requirements of the DBC, and the policies of TxDOT;
  - (2) All Federal Laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation, 23 CFR 645 Subpart A and B; and the Buy America provisions of 23 U.S.C. §313 and 23 CFR 635.410. The Utility Owner shall supply, upon request by the DB Contractor or TxDOT, proof of compliance with the aforementioned Laws, rules and regulations prior to the commencement of construction;
  - (3) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
  - (4) The standard specifications, standards of practice, and construction methods (collectively, "standards") which the Owner customarily applies to Utility facilities comparable to the Owner Utilities that are constructed by the Owner or for the Owner by its contractors at the Owner's expense, which standards are current at the time this Agreement is signed by the Owner, and which the Owner has submitted to the DB Contractor in writing; and
  - (5) Owner agrees that all service matters must be placed outside of the State ROW.
- (b) Such design and construction also shall be consistent and compatible with:
- (1) The DB Contractor's current design and construction of the Project;
  - (2) The Ultimate Configuration for the Project; and
  - (3) Any other Utilities being installed in the same vicinity.

The Owner acknowledges receipt of Project plans and Ultimate Configuration documents from the DB Contractor as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

- (c) The plans, specifications, and cost estimates contained in Exhibit A shall identify and detail all Utility facilities that the Owner intends to abandon in place rather than remove, including material type, quantity, size, age and condition. No facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically





identified and removed in accordance with the requirements of subparagraph (a). It is understood and agreed that the DB Contractor shall not pay for the assessment and remediation or other corrective action relating to soil and ground water contamination caused by the Utility facility prior to the removal.

4. **Responsibility for Costs of Adjustment Work.** With the exception of any Betterment (hereinafter defined), the parties shall allocate the cost of any Adjustment between themselves as identified in Exhibit A and in accordance with §203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A.

5. **Construction by the DB Contractor.**

- (a) The Owner hereby requests that the DB Contractor perform the construction necessary to adjust the Owner Utilities and the DB Contractor hereby agrees to perform such construction. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except as modified pursuant to Paragraph 16).
- (b) The DB Contractor shall retain such contractor or contractors as are necessary to adjust the Owner Utilities.
- (c) The DB Contractor shall obtain all permits necessary for the construction to be performed by the DB Contractor hereunder, and the Owner shall cooperate in that process as needed.

6. **Reimbursement of Owner's Indirect Costs.**

- (a) DB Contractor agrees to reimburse the Owner its share, if applicable, of the Owner's indirect costs (e.g., engineering, inspection, testing, ROW) as identified in Exhibit A. When requested by the Owner, monthly progress payments will be made. The monthly payment will not exceed 90% of the estimated indirect work done to date. Once the indirect work is complete, final payment of the eligible indirect costs will be made. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.
- (b) The Owner's indirect costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below [*check only one (1) box*]:

- (1) Actual related indirect costs accumulated in accordance with:
  - (i) A work order accounting procedure prescribed by the applicable Federal or State regulatory body, or
  - (ii) Established accounting procedure developed by the Owner and which the Owner uses in its regular operations

(*either (i) or (ii) referred to as "Actual Cost"*), OR



(2) The agreed sum of \$\_\_\_\_\_ (“**Agreed Sum**”) as supported by the analysis of the Owner’s estimated costs attached hereto as part of Exhibit A.

(c) All indirect costs charged to the DB Contractor by the Owner shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for the Owner at the Owner’s expense. The DB Contractor’s performance of the Adjustment work hereunder and payment of the DB Contractor’s share of the Owner’s costs pursuant to this Agreement, if applicable, shall be full compensation to the Owner for all costs incurred by the Owner in adjusting the Owner Utilities (including without limitation, costs of relinquishing and/or acquiring right of way).

7. **Advancement of Funds by Owner for Construction Costs.**

(a) Advancement of Owner’s share, if any, of estimated costs, Exhibit A shall identify all estimated engineering and construction-related costs, including labor, material, equipment and other miscellaneous construction items. Exhibit A shall also identify the Owner’s and DB Contractor’s respective shares of the estimated costs. The Owner shall advance to the DB Contractor its allocated share, if any, of the estimated costs for construction and engineering work to be performed by the DB Contractor, in accordance with the following terms:

The Adjustment of the Owner’s Utilities does not require advancement of funds.

The Adjustment of the Owner’s Utilities does require advancement of funds and the terms agreed to between the DB Contractor and the Owner are listed below.

[Insert terms of advance funding to be agreed between DB Contractor and Owner]

\_\_\_\_\_

(b) Adjustment Based on Actual Costs or Agreed Sum

[Check the one (1) appropriate provision, if advancement of funds is required]:

The Owner is responsible for its share of the DB Contractor’s actual cost for the Adjustment, including the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the DB Contractor the amount, if any, by which the actual cost of the Betterment (as determined in Paragraph 9(b)) *plus* the actual cost of Owner’s share of the Adjustment (based on the allocation set forth in Exhibit A) exceeds the estimated cost advanced by the Owner, or (ii) the DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable.

The Agreed Sum is the agreed and final amount due for the Adjustment, including any Betterment, under this Agreement. Accordingly, no adjustment (either up or down) of such amount shall be made based on actual costs.



8. **Invoices.** On invoices prepared by either the Owner or the DB Contractor, all costs developed using the “**Actual Cost**” method described in Paragraph 6(b)(1) shall be itemized in a format allowing for comparisons to the approved estimates, including listing each of the services performed, the amount of time spent and the date on which the service was performed. The original and three (3) copies of each invoice, together with (i) such supporting information to substantiate all invoices as reasonably requested, and (ii) such waivers and releases of liens as the other party may reasonably require, shall be submitted to the other party at the address for notices stated in Paragraph 21, unless otherwise directed pursuant to Paragraph 22.

The Owner and the DB Contractor shall make commercially reasonable efforts to submit final invoices no later than 120 days after completion of work. The Owner and the DB Contractor hereby acknowledge and agree that any costs submitted to the other party within 12 months following completion of all Adjustment work to be performed by the parties pursuant to this Agreement shall be deemed to have been abandoned and waived.

9. **Betterment and Salvage.**

- (a) For purposes of this Agreement, the term “Betterment” means any upgrading of an Owner Utility being adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted Utility over that provided by the existing Utility or an expansion of the existing Utility; *provided, however*, that the following are not considered Betterments:

- (1) Any upgrading which is required for accommodation of the Project;
- (2) Replacement devices or materials that are of equivalent standards although not identical;
- (3) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- (4) Any upgrading required by applicable Laws, regulations or ordinances;
- (5) Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items that may be uneconomical to purchase); or
- (6) Any upgrading required by the Owner’s written “standards” meeting the requirements of Paragraph 3(a)(4) and deemed to be of direct benefit to the Project.

*[Include the following for fiber optic Owner Utilities only:]* Extension of an adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Owner in order to maintain its written telephony standards.

- (b) It is understood and agreed that the DB Contractor shall not pay for any Betterments and that the Owner shall be solely responsible therefor. No Betterment may be performed hereunder which is incompatible with the Project or the Ultimate Configuration or which



cannot be performed within the other constraints of applicable Law, any applicable governmental approvals, including without limitation the scheduling requirements thereunder.

Accordingly, the parties agree as follows [*check the one (1) box that applies, and complete if appropriate*]:

- The Adjustment of the Owner Utilities pursuant to the Plans does not include any Betterment.
- The Adjustment of the Owner Utilities pursuant to the Plans includes a Betterment to the Owner Utilities by reason of [*Insert explanation, e.g. "replacing 12" pipe with 24" pipe*]: \_\_\_\_\_.

The DB Contractor has provided to the Owner comparative estimates for (i) all work to be performed by the DB Contractor pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated cost of the DB Contractor's work hereunder which is attributable to Betterment is \$\_\_\_\_\_, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the DB Contractor's work hereunder which is attributable to Betterment is \_\_\_\_\_%, calculated by *subtracting* (ii) from (i), which remainder is *divided* by (i).

- (c) If Paragraph 9(b) identifies Betterment, the Owner shall advance to the DB Contractor, at least **14 Business Days** prior to the date scheduled for commencement of construction for Adjustment of the Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 9(b). Should the Owner fail to advance payment to the DB Contractor **14 Business Days** prior to commencement of the Adjustment construction, the DB Contractor shall have the option of commencing and completing (without delay) the Adjustment work without installation of the applicable Betterment. [*If Paragraph 9(b) identifies Betterment, check the one (1) appropriate provision*]:

- The estimated cost stated in Paragraph 9(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.
- The Owner is responsible for the DB Contractor's actual cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the DB Contractor the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the Owner shall be due within **60 calendar days** after the Owner's receipt of the DB Contractor's invoice therefor, together with supporting documentation; any refund shall be due within **60 calendar days** after completion of the Adjustment work hereunder. The actual cost of Betterment incurred by the DB Contractor shall be calculated by *multiplying* (i) the



Betterment percentage stated in Paragraph 9(b), by (ii) the actual cost of all work performed by the DB Contractor pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the DB Contractor to the Owner.

- (d) If Paragraph 9(b) identifies Betterment, the amount allocable to Betterment in the Owner's indirect costs shall be determined by applying the percentage of the Betterment calculated in Paragraph 9(b) to the Owner's indirect costs. The Owner's invoice to the DB Contractor for the DB Contractor's share of the Owner's indirect costs, shall credit the DB Contractor with any Betterment amount determined pursuant to this Paragraph 9(d).
  - (e) For any Adjustment from which the Owner recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the Owner's invoice to the DB Contractor for its costs shall credit the DB Contractor with the salvage value for such materials and/or parts.
  - (f) The determinations and calculations of Betterment described in this Paragraph 9 shall exclude right of way acquisition costs. Betterment in connection with right of way acquisition is addressed in Paragraph 15.
10. **Management of the Adjustment Work.** The DB Contractor will provide project management during the Adjustment of the Owner Utilities.
11. **Utility Investigations.** At the DB Contractor's request, the Owner shall assist the DB Contractor in locating any Utilities (including appurtenances) which are owned and/or operated by the Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the adjusted Owner Utilities nor existing, unadjusted Utilities owned or operated by the Utility Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such Utilities horizontally on the ground in advance of Project construction in the immediate area of such Utilities.
12. **Inspection and Acceptance by the Owner.**
- (a) Throughout the Adjustment construction hereunder, the Owner shall provide adequate inspectors for such construction. The work shall be inspected by the Owner's inspector(s) at least once each working day, and more often if such inspections are deemed necessary by Owner. Further, upon request by the DB Contractor or its Subcontractors, the Owner shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual 40 hour work week and at such other times as reasonably required. The Owner agrees to promptly notify the DB Contractor of any concerns resulting from any such inspection.
  - (b) The Owner shall perform a final inspection of the adjusted Owner Utilities, including conducting any tests as are necessary or appropriate, within **five (5) Business Days** after completion of construction hereunder. The Owner shall accept such construction if it is consistent with the performance standards described in Paragraph 3, by giving written notice of such acceptance to the DB Contractor within said **five (5) day** period. If the Owner does not accept the construction, then the Owner shall, not later than the



expiration of said **five (5) day** period, notify the DB Contractor in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the DB Contractor will comply. The Owner shall re-inspect any revised construction (and retest if appropriate) and give notice of acceptance, no later than **five (5) Business Days** after completion of corrective work. The Owner's failure to inspect and to give any required notice of acceptance or non-acceptance within the specified time period shall be deemed accepted.

- (c) From and after the Owner's acceptance (or deemed acceptance) of an adjusted Owner Utility, the Owner agrees to accept ownership of, and full operation and maintenance responsibility for, such Owner Utility.
13. **Design Changes.** The DB Contractor will be responsible for additional Adjustment design and construction costs necessitated by design changes to the Project, upon the terms specified herein.
14. **Field Modifications.** The DB Contractor shall provide the Owner with documentation of any field modifications, including Utility Adjustment Field Modifications as well as minor changes described in Paragraph 16(b), occurring in the Adjustment of the Owner Utilities.
15. **Real Property Interests.**
- (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the DB Contractor, documentation acceptable to TxDOT indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to TxDOT's approval as part of its review of the DB Contractor Utility Assembly as described in Paragraph 2. Claims approved by TxDOT as to rights or interests are referred to herein as "**Existing Utility Property Interests**".
- (b) If acquisition of any new easement or other interest in real property ("**Replacement Utility Property Interest**") is necessary for the Adjustment of any Owner Utilities, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the DB Contractor's Project schedules. The DB Contractor shall be responsible for its share (as specified in Paragraph 4) of the actual and reasonable acquisition costs of any such Replacement Utility Property Interest (including without limitation the Owner's reasonable overhead charges and reasonable legal costs as well as compensation paid to the landowner), excluding any costs attributable to Betterment as described in Paragraph 15(c), and subject to the provisions of Paragraph 15(e); *provided, however*, that all acquisition costs shall be subject to the DB Contractor's prior written approval. Eligible acquisition costs shall be segregated from other costs on the Owner's estimates and invoices. Any such Replacement Utility Property Interest shall have a written valuation and shall be acquired in accordance with applicable Law.
- (c) The DB Contractor shall pay its share only for a replacement in kind of an Existing Utility Property Interest (e.g., in width and type), unless a Replacement Utility Property Interest exceeding such standard:



- (1) Is required in order to accommodate the Project or by compliance with applicable Law; or
- (2) Is called for by the DB Contractor in the interest of overall Project economy.

Any Replacement Utility Property Interest which is not the DB Contractor's responsibility pursuant to the preceding sentence shall be considered Betterment to the extent that it upgrades the Existing Utility Property Interest which it replaces, or in its entirety if the related Owner Utility was not installed pursuant to an Existing Utility Property Interest. Betterment costs shall be solely the Owner's responsibility.

- (d) For each Existing Utility Property Interest located within the Project right of way, upon completion of the related Adjustment work and its acceptance by the Owner, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Utility Property Interest to TxDOT, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Utility Property Interest. If the Owner's facilities are remaining within the existing property interest, a Utility Joint Use Acknowledgement will be required. All quitclaim deeds or other relinquishment documents shall be subject to TxDOT's approval as part of its review of the Utility Assembly as described in Paragraph 2. For each such Existing Utility Property Interest relinquished by the Owner, the DB Contractor shall do one (1) of the following to compensate the Owner for such Existing Utility Property Interest, as appropriate:

- (1) If the Owner acquires a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall reimburse the Owner for the DB Contractor's share of the Owner's actual and reasonable acquisition costs in accordance with Paragraph 15(b), subject to Paragraph 15(c); or
- (2) If the Owner does not acquire a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall compensate the Owner for the DB Contractor's share of the market value of such relinquished Existing Utility Property Interest, as mutually agreed between the Owner and the DB Contractor and supported by a written valuation.

The compensation, if any, provided to the Owner pursuant to either subparagraph (i) or (ii) above shall constitute complete compensation to the Owner for the relinquished Existing Utility Property Interest and any Replacement Utility Property Interest, and not further compensation shall be due to the Owner from the DB Contractor or TxDOT on account of such Existing Utility Property Interest or Replacement Utility Property Interest.

- (e) All Utility Joint Use Acknowledgments (UJUA) or Utility Installation Requests, Form 1082 shall be subject to TxDOT approval as part of its review of the Utility Assembly as described in Paragraph 2. A Utility Joint Use Acknowledgment is required where an Existing Utility Property Interest exists and the existing or proposed Utility will remain or be adjusted within the boundaries of the Existing Utility Property Interest. All other accommodations not located on Existing Utility Property Interests will require a Utility Installation Request, Form 1082.



16. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 16(a) or Paragraph 16(b) below:
- (a) Except as otherwise provided in Paragraph 16(b), any amendment or modification to this Agreement or the Plans attached hereto shall be implemented by a Utility Adjustment Agreement Amendment (“UAAA”) in the form of Exhibit B hereto (DB-ROW-U-UAAA-DM). The UAAA form can be used for a new scope of work with concurrence of the DB Contractor and TxDOT as long as the design and construction responsibilities have not changed. Each UAAA is subject to the review and approval of TxDOT, prior to its becoming effective for any purpose and prior to any work being initiated thereunder. The Owner agrees to keep and track costs for each UAAA separately from other work being performed.
  - (b) For purposes of this Paragraph 16(b), “**Utility Adjustment Field Modification**” shall mean any horizontal or vertical design change from the Plans included in a Utility Assembly previously approved by TxDOT, due either to design of the Project or to conditions not accurately reflected in the approved Utility Assembly (e.g., shifting the alignment of an 8 inch water line to miss a modified or new roadway drainage structure). A Utility Adjustment Field Modification agreed upon by the DB Contractor and the Owner does not require a UAAA, provided that the modified Plans have been submitted to TxDOT for its review and comment. A minor change (e.g., an additional water valve, an added Utility marker at a ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification and will not require a UAAA, but shall be shown in the documentation required pursuant to Paragraph 14.
  - (c) This Agreement does not alter and shall not be construed in any way to alter the obligations, responsibilities, benefits, rights, remedies, and claims between the DB Contractor and TxDOT to design and construct the Project, including the Adjustment.
17. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
18. **Assignment; Binding Effect; TxDOT as Third-Party Beneficiary.** Neither the Owner nor the DB Contractor may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party and of TxDOT, which consent may not be unreasonably withheld or delayed; *provided, however*, that the DB Contractor may assign any of its rights and/or delegate any of its duties to TxDOT or to any other entity engaged by TxDOT to fulfill the DB Contractor’s obligations, at any time without the prior consent of the Owner.

This Agreement shall bind the Owner, the DB Contractor and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by any party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general; *provided, however*, that the Owner and the DB Contractor agree that although TxDOT is not a party to this Agreement, TxDOT is intended to be a third-party beneficiary to this Agreement.







A party sending notice of default of this Agreement to another party shall also send a copy of such notice to TxDOT at the following address:

Texas Department of Transportation  
Attention: Project Finance, Debt & Strategic Contracts Division  
125 E 11<sup>th</sup> Street  
Austin, TX 78701-2483

Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, or (c) by reliable messenger or overnight courier to the appropriate address set forth above. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Any party may designate any other address for this purpose by written notice to all other parties; TxDOT may designate another address by written notice to all parties.

22. **Approvals.** Any acceptance, approval, or any other like action (collectively "**Approval**") required or permitted to be given by the DB Contractor, the Owner or TxDOT pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto);
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and
- (c) Except for approvals by TxDOT, and except as may be specifically provided otherwise in this Agreement, shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then **14 calendar days**), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 21.

23. **Time.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) No party shall be liable to another party for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("**Force Majeure**"), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.



24. **Continuing Performance.** In the event of a dispute, the Owner and the DB Contractor agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.
25. **Equitable Relief.** The DB Contractor and the Owner acknowledge and agree that delays in Adjustment of the Owner Utilities will impact the public convenience, safety and welfare, and that (without limiting the parties' remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto (and TxDOT as well, as a third-party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; *provided, however*, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.
26. **Authority.** The Owner and the DB Contractor each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.
27. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner (and its contractors) and the DB Contractor to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the DB Contractor agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the DB Contractor's current and future construction schedules for the Project.
28. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the DB Contractor shall notify the Owner in writing and the DB Contractor reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.
29. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
30. **Applicable Law, Jurisdiction and Venue.** This Agreement shall be governed by the Laws of the State of Texas, without regard to the Conflict of Laws principles thereof. Venue for any action brought to enforce this Agreement or relating to the relationship between any of the parties shall be the District Court of \_\_\_\_\_ County, Texas [or the United States District Court for the Western District of Texas (Austin)].



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31. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the DB Contractor be considered as or represent itself to be an agent of the other.
32. **Waiver of Consequential Damages.** No party hereto shall be liable to any other party to this Agreement, whether in contract, tort, equity, or otherwise (including negligence, warranty, indemnity, strict liability, or otherwise) for any punitive, exemplary, special, indirect, incidental, or consequential damages, including, without limitation, loss of profits or revenues, loss of use, claims of customers, or loss of business opportunity.
33. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.
34. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
35. **Effective Date.** This Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or DB Contractor) signing this Agreement, and (b) the date of TxDOT's approval as indicated by the signature of TxDOT's representative below.



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APPROVED BY:

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
[Printed Name]

By: \_\_\_\_\_  
Authorized Signature  
  
District Engineer (or designee)

Date: \_\_\_\_\_

**OWNER**

By: \_\_\_\_\_  
[Print Owner Name]

By: \_\_\_\_\_  
Duly Authorized Representative  
  
[Title]  
[Company]

Date: \_\_\_\_\_

**DB CONTRACTOR**

By: \_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Duly Authorized Representative  
  
[Title]  
[Company]

Date: \_\_\_\_\_

County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**EXHIBIT A**

**PLANS, SPECIFICATIONS, COST ESTIMATES AND ALLOCATION**

County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**EXHIBIT B**

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT  
(DB-ROW-U-UAAA-DM)**



County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT  
(DB Contractor-Managed)**

**(Amendment No. \_\_\_\_\_ to Agreement No.: \_\_\_\_\_ -U-\_\_\_\_\_)**

**THIS AMENDMENT TO PROJECT UTILITY ADJUSTMENT AGREEMENT** (this “Amendment”), by and between, [DB Contractor] hereinafter identified as the “**DB Contractor**” and [Utility Owner], hereinafter identified as the “**Owner**”, is as follows:

**WITNESSETH**

**WHEREAS**, the STATE of TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as “**TxDOT**”, proposes to construct the project identified above (the “Project”, as more particularly described in the “Original Agreement”, defined below); and

**WHEREAS**, pursuant to that certain Design-Build Contract (“DBC”) by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, and potentially maintain the Project, including causing the removal, relocation, or other necessary adjustment of existing Utilities impacted by the Project (collectively, “Adjustment”); and

**WHEREAS**, the Owner and DB Contractor are parties to that certain executed Project Utility Adjustment Agreement (PUAA) designated by the “Agreement No.” indicated above, as amended by previous amendments, if any (the “Original Agreement”), which provides for the Adjustment of certain Utilities owned and/or operated by the Owner (the “Owner Utilities”); and

**WHEREAS**, the parties are required to utilize this Amendment form in order to modify the Original Agreement to add the Adjustment of Owner Utilities facilities not covered by the Original Agreement; and

**WHEREAS**, the parties desire to amend the Original Agreement to add additional Owner Utility facility(ies), on the terms and conditions hereinafter set forth.





**NOW, THEREFORE**, in consideration of the agreements contained herein, the parties hereto agree as follows:

1. **Amendment.** The Original Agreement is hereby amended as follows:

1.1 **Plans.**

- (a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities in the Original Agreement is hereby amended to add the following Utility facility(ies) (“**Additional Owner Utilities**”) and proposed Adjustment(s) to the Owner Utilities described in the Original Agreement *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., “adjust 12” waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00)]*: \_\_\_\_\_.
- (b) The Plans, as defined in Paragraph 1 of the Original Agreement, are hereby amended to add thereto the Plans, specifications and cost estimates attached hereto as Exhibit A; and
- (c) The Plans attached hereto as Exhibit A, along with this Amendment, shall be submitted upon execution to TxDOT in accordance with Paragraph 2 of the Original Agreement, and Paragraph 2 shall apply to this Amendment and the Plans attached hereto in the same manner as if this Amendment were the Original Agreement. If the Owner claims an Existing Utility Property Interest for any of the Additional Owner Utilities, documentation with respect to such claim shall be submitted to TxDOT as part of this Amendment and the attached Plans, in accordance with Paragraph 15(a) of the Original Agreement.

1.2 **Reimbursement of Owner’s Indirect Costs.** For purposes of Paragraph 6 of the Original Agreement, the following terms apply to the Additional Owner Utilities and proposed Adjustment:

- (a) DB Contractor agrees to reimburse the Owner its share of the Owner’s indirect costs (e.g., engineering, inspection, testing, ROW) as identified in Exhibit A. When requested by the Owner, monthly progress payments will be made. The monthly payment will not exceed 90% of the estimated indirect work done to date. Once the indirect work is complete, final payment of the eligible indirect costs will be made. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.
- (b) The Owner’s indirect costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below *[check only one (1) box]*:
  - (1) Actual related indirect costs accumulated in accordance with:
    - (i) A work order accounting procedure prescribed by the applicable Federal or State regulatory body; or



- (ii) Established accounting procedure developed by the Owner and which the Owner uses in its regular operations;

*(either (i) or (ii) referred to as “Actual Cost”), or*

- (2) The agreed sum of \$\_\_\_\_\_ (“**Agreed Sum**”) as supported by the analysis of the Owner's estimated costs attached hereto as part of Exhibit A.

1.3 **Advancement of Funds by Owner for Construction Costs.**

- (a) Advancement of Owner's share, if any, of estimated costs. Exhibit A shall identify all estimated engineering and construction-related costs, including labor, material, equipment and other miscellaneous construction items. Exhibit A shall also identify the Owner's and DB Contractor's respective shares of the estimated costs.

The Owner shall advance to the DB Contractor its allocated share, if any, of the estimated costs for construction and engineering work to be performed by DB Contractor, in accordance with the following terms:

- The Adjustment of the Owner's Utilities does not require advancement of funds.
- The Adjustment of the Owner's Utilities does require advancement of funds and the terms agreed to between the DB Contractor and Owner are listed below.

*[Insert terms of advance funding to be agreed between DB Contractor and Owner.]*

- (b) Adjustment Based on Actual Costs or Agreed Sum.

*[Check the one (1) appropriate provision, if advancement of funds is required]:*

- The Owner is responsible for its share of the DB Contractor Actual Cost for the Adjustment, including the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Amendment:
- (i) The Owner shall pay to the DB Contractor the amount, if any, by which the Actual Cost of the Betterment (as determined in Paragraph 9(b)) *plus* the Actual Cost of Owner's share of the Adjustment (based on the allocation set forth in Exhibit A) exceeds the estimated cost advanced by the Owner; or



(ii) The DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such Actual Cost, as applicable.

The Agreed Sum is the agreed and final amount due for the Adjustment, including any Betterment, under this Amendment. Accordingly, no adjustment (either up or down) of such amount shall be made based on Actual Costs.

1.4 **Responsibility for Costs of Adjustment Work.** For purposes of Paragraph 4 of the Original Agreement, responsibility for the Agreed Sum or Actual Cost, as applicable, of all Adjustment work to be performed pursuant to this Amendment shall be allocated between the DB Contractor and the Owner as identified in Exhibit A hereto and in accordance with §203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A; *provided however*, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 9 of the Original Agreement.

1.5 **Betterment.**

(a) Paragraph 9(b) (Betterment and Salvage) of the Original Agreement is hereby amended to add the following [*Check the one (1) box that applies, and complete if appropriate*]:

The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, does not include any Betterment.

The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, includes Betterment to the Additional Owner Utilities by reason of [*insert explanation, e.g. "replacing 12" pipe with 24" pipe*]: \_\_\_\_\_.

The DB Contractor has provided to the Owner comparative estimates for (i) all work to be performed by the DB Contractor pursuant to this Amendment, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated cost of the DB Contractor work under this Amendment which is attributable to Betterment is \$\_\_\_\_\_, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the DB Contractor work under this Amendment which is attributable to Betterment is \_\_\_\_\_%, calculated by *subtracting* (ii) from (i), which remainder is *divided* by (i).

(b) If the above Paragraph 1.5(a) identifies Betterment, the Owner shall advance to the DB Contractor, at least **14 days** prior to the date scheduled for commencement of construction for Adjustment of the Additional Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 1.5(a) of this Amendment. If the Owner fails to advance payment to the DB Contractor on



or before the foregoing deadline, the DB Contractor shall have the option of commencing and completing (without delay) the Adjustment work without installation of the applicable Betterment. *[Check the one (1) appropriate provision]:*

- The estimated cost stated in Paragraph 1.5(a) of this Amendment is the agreed and final amount due for Betterment under this Amendment, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.
- The Owner is responsible for the DB Contractor Actual Cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Amendment, (i) the Owner shall pay to the DB Contractor the amount, if any, by which the Actual Cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the DB Contractor shall refund to the Owner the amount, if any, by which such advance exceeds such Actual Cost, as applicable. Any additional payment by the Owner shall be due within **60 days** after the Owner's receipt of the DB Contractors invoice therefor, together with supporting documentation; any refund shall be due within **60 days** after completion of the Adjustment work under this Amendment. The Actual Cost of Betterment incurred by the DB Contractor shall be calculated by *multiplying* (i) the Betterment percentage stated in Paragraph 1.5(a) of this Amendment, by (ii) the Actual Cost of all work performed by the DB Contractor pursuant to this Amendment (including work attributable to the Betterment), as invoiced by the DB Contractor to the Owner.
- (c) The determinations and calculations of Betterment described in this Amendment shall exclude right of way acquisition costs. Betterment in connection with right of way acquisition is addressed in Paragraph 15 of the Original Agreement.

1.6 **Miscellaneous.**

- (a) The Owner and the DB Contractor agree to refer to this Amendment, designated by the "Amendment No." and "Agreement Number" indicated on page 1 above, on all future correspondence regarding the Adjustment work that is the subject of this Amendment and to track separately all costs relating to this Amendment and the Adjustment work described herein.
- (b) *[Include any other proposed amendments allowed by applicable Law.]*
- \_\_\_\_\_

2. **General.**

- (a) All capitalized terms used in this Amendment shall have the meanings assigned to them in the Original Agreement, except as otherwise stated herein.



- (b) This Amendment may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
- (c) Except as amended hereby, the Original Agreement shall remain in full force and effect. In no event shall the responsibility, as between the Owner and the DB Contractor, for the preparation of the Plans and the Adjustment of the Owner Utilities be deemed to be amended hereby.
- (d) This Amendment shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the DB Contractor) signing this Amendment, and (b) the completion of TxDOT's review and approval as indicated by the signature of TxDOT's representative below.

APPROVED BY:

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

**OWNER**

By: \_\_\_\_\_  
[Printed Name]

By: \_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Duly Authorized Representative Signature

District Engineer (or designee)

[Title]

[Company]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**DB CONTRACTOR**

By: \_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Duly Authorized Representative

[Title]

[Company]

Date: \_\_\_\_\_



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County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**PROJECT UTILITY ADJUSTMENT AGREEMENT  
(Owner-Managed)**

Agreement No.: \_\_\_\_\_-U-\_\_\_\_\_

**THIS AGREEMENT**, by and between [DB Contractor], hereinafter identified as the "**DB Contractor**" and [Utility Owner], hereinafter identified as the "**Owner**", is as follows:

**WITNESSETH**

**WHEREAS**, the STATE OF TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as "TxDOT", is authorized to design, construct, operate, maintain, and improve projects as part of the state highway system throughout the State of Texas, all in conformance with the applicable provisions of Chapters 201, 203, 222, 223, 224 and 228 of the Texas Transportation Code, as amended; and

**WHEREAS**, TxDOT proposes to construct a project identified as the [Project Name] (the "Project") and classified as either Interstate, Toll or Traditional (meaning eligibility based on existing compensable interest in the land occupied by the facility to be relocated within the proposed highway right of way limits) as indicated below (*check one (1) box*). Reimbursement will be authorized by the type of project selected below in conformance with Transportation Code 203.092,

- Interstate
- Toll
- Traditional

;and

**WHEREAS**, pursuant to that certain Design-Build Contract ("DBC") by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, finance, operate and maintain the Project and adhere to all requirements in the DBC; and

**WHEREAS**, the DB Contractor's duties pursuant to the DBC include causing the relocation, removal, or other necessary adjustment of existing Utilities impacted by the Project (collectively, "Adjustment"), subject to the provisions herein; and

**WHEREAS**, the Project may receive Federal funding, financing and/or credit assistance; and

**WHEREAS**, the DB Contractor has notified the Owner that certain of its facilities and appurtenances (the "Owner Utilities") are in locational conflict with the Project (and/or the Ultimate Configuration of the



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Project), and the Owner has decided to undertake the Adjustment of the Owner Utilities and agrees that the "Project" will be constructed in accordance with §203.092 of the Texas Transportation Code, as amended, and 23 CFR 645 Subpart A (Utility Relocations, Adjustments and Reimbursement); and

**WHEREAS**, the Owner Utilities and the proposed Adjustment of the Owner Utilities are described as follows *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., "adjust 12" waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00")]*:

\_\_\_\_\_; and

**WHEREAS**, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

**WHEREAS**, the DB Contractor and the Owner desire to implement the Adjustment of the Owner Utilities by entering into this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the DB Contractor and the Owner agree as follows:

1. **Preparation of Plans.** *[Check one (1) box that applies:]*

- The DB Contractor has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Exhibit A (collectively, the "Plans"), for the proposed Adjustment of the Owner Utilities. The DB Contractor represents and warrants that the Plans conform to the most recent Utility Accommodation Rules issued by the Texas Department of Transportation ("TxDOT"), set forth in 43 Texas Administrative Code, Part 1, Chapter 21, Subchapter C, *et seq.* (the "UAR"). By its execution of this Agreement or by the signing of the Plans, the Owner hereby approves and confirms that the Plans are in compliance with the "standards" described in Paragraph 3(a)(4).
- The Owner has provided plans, required specifications and cost estimates, attached hereto as Exhibit A (collectively, the "Plans"), for the proposed Adjustment of the Owner Utilities. The Owner represents and warrants that the Plans conform to the Utility Accommodation Rules issued by the Texas Department of Transportation ("TxDOT"), as set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C, *et seq.* (the "UAR"). By its execution of this Agreement, the DB Contractor and the Owner hereby approve the Plans. The Owner also has provided to the DB Contractor a Utility plan view map illustrating the location of existing and proposed Utility facilities on the DB Contractor's right of way map of the Project. With regard to its preparation of the Plans, the Owner represents as follows *[check one (1) box that applies]*:



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- The Owner's employees were utilized to prepare the Plans, and the charges therefore do not exceed the Owner's typical costs for such work.
- The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner Utilities described herein, and do not include fees for work done on any other project. The fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. **Review by TxDOT.** The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by the DB Contractor and the Owner, the DB Contractor will submit this Agreement, together with the attached Plans, to TxDOT for its review and approval as part of a package referred to as a "Utility Assembly". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to all parties, to respond to any comments made by TxDOT thereon. Without limiting the generality of the foregoing:
  - (1) The Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the DB Contractor in response to TxDOT comments within **14 business days** after receipt of such modifications; and
  - (2) If the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to TxDOT comments and to submit such modified Plans to the DB Contractor for its comment and/or approval (and resubmit to TxDOT for its comment and/or approval) within **14 business days** after receipt of TxDOT's comments.

The Owner's failure to timely respond to any modified Plans submitted by the DB Contractor pursuant to this paragraph shall be deemed the Owner's approval of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the DB Contractor shall have the right to modify the Plans for the Owner's approval as if the DB Contractor had originally prepared the Plans. The DB Contractor shall be responsible for providing Plans to and obtaining comments on and approval of the Plans from the DB Contractor. The process set forth in this paragraph will be repeated until the Owner, the DB Contractor and TxDOT have all approved this Agreement and the Plans.

- (b) The parties hereto acknowledge and agree that TxDOT's review, comments, and/or approval of a Utility Assembly or any component thereof shall constitute TxDOT's approval of the location and manner in which a Utility Assembly will be installed, adjusted, or relocated within the State Highway right of way (the "ROW"), subject to the DB Contractor and Owner's satisfactory performance of the Adjustment work in accordance with the approved Plans. TxDOT has no duty to review Owner facilities or components for their quality or adequacy to provide the intended Utility service.





3. **Design and Construction Standards.**

- (a) All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:
- (1) All applicable local and State Laws, regulations, decrees, ordinances and policies, including the UAR, the Utility Manual issued by TxDOT (to the extent its requirements are mandatory for the Utility Adjustment necessitated by the Project, communicated to the Owner by the DB Contractor or TxDOT), the requirements of the DBC, and the policies of TxDOT;
  - (2) All Federal Laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B and the Buy America provisions of 23 U.S.C § 313 and 23 CFR 635.410. The Utility Owner shall supply, upon request by the DB Contractor or TxDOT, proof of compliance with the aforementioned Laws, rules and regulations prior to the commencement of construction;
  - (3) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
  - (4) The standard specifications, standards of practice, and construction methods (collectively, "standards") which the Owner customarily applies to facilities comparable to the Owner Utilities that are constructed by the Owner or for the Owner by its contractors at the Owner's expense, which standards are current at the time this Agreement is signed by the Owner, and which the Owner has submitted to the DB Contractor in writing; and
  - (5) Owner agrees that all service meters must be placed outside of the State ROW.
- (b) Such design and construction also shall be consistent and compatible with:
- (1) The DB Contractor's current design and construction of the Project;
  - (2) The Ultimate Configuration for the Project; and
  - (3) Any other utilities being installed in the same vicinity.

The Owner acknowledges receipt from the DB Contractor of Project plans and Ultimate Configuration documents as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

- (c) The plans, specifications, and cost estimates contained in Exhibit A shall identify and detail all Utility facilities that the Owner intends to abandon in place rather than remove, including material type, quantity, size, age, and condition. No facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically identified and removed in accordance with the requirements of subparagraph (a). It is understood and agreed that the DB Contractor shall not pay for the assessment and



remediation or other corrective action relating to soil and ground water contamination caused by the utility facility prior to the removal.

4. **Construction by the Owner; Scheduling.**

- (a) The Owner hereby agrees to perform the construction necessary to adjust the Owner Utilities. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except as modified pursuant to Paragraph 17). The Owner agrees that during the Adjustment of the Owner Utilities, the Owner and its contractors will coordinate their work with the DB Contractor so as not to interfere with the performance of work on the Project by the DB Contractor or by any other party. "Interfere" means any action or inaction that interrupts, interferes, delays or damages Project work.
- (b) The Owner may utilize its own employees or may retain such contractor or contractors as are necessary to adjust the Owner Utilities, through the procedures set forth in Form "Statement Covering Contract Work" attached hereto as Exhibit C. If the Owner utilizes its own employees for the Construction work portion of the Adjustment of Owner Utilities, this form is not required.
- (c) The Owner shall obtain all permits necessary for the construction to be performed by the Owner hereunder, and the DB Contractor shall cooperate in that process as needed. The Owner shall submit a traffic control plan to the DB Contractor as required for Adjustment work to be performed on existing road rights of way.
- (d) The Owner shall commence its construction for Adjustment of each Owner Utility hereunder promptly after (i) receiving written notice to proceed therewith from the DB Contractor, and (ii) any Project right of way necessary for such Adjustment has been acquired either by DB Contractor (for adjusted facilities to be located within the Project right of way) or by the Owner (for adjusted facilities to be located outside of the Project right of way), or a right-of-entry permitting Owner's construction has been obtained from the landowner by the DB Contractor or by the Owner with the DB Contractor's prior approval. The Owner shall notify the DB Contractor at least 72 hours prior to commencing construction for the Adjustment of each Owner Utility hereunder.
- (e) The Owner shall expeditiously stake the survey of the proposed locations of the Owner Utilities being adjusted, on the basis of the final approved Plans. The DB Contractor shall verify that the Owner's Utilities, whether moving to a new location or remaining in place, clear the planned construction of the Project as staked in the field as well as the Ultimate Configuration.
- (f) The Owner shall complete all of the Utility reconstruction and relocation work, including final testing and acceptance thereof [*check one (1) box that applies*]:
- On or before **[Month] [Day], 20[XX]**.
- A duration not to exceed \_\_\_\_\_ calendar days upon notice to proceed by the DB Contractor.



- (g) The amount of reimbursement due to the Owner pursuant to this Agreement for the affected Adjustment(s) shall be reduced by 10% for each 30-day period (and by a pro rata amount of said 10% for any portion of a 30-day period) by which the final completion and acceptance date for the affected Adjustment(s) exceeds the applicable deadline. The provisions of this Paragraph 4(g) shall not limit any other remedy available to the DB Contractor at Law or in equity as a result of the Owner's failure to meet any deadline hereunder.

The above reduction applies except to the extent due to:

- (1) Force Majeure as described in Paragraph 24(c);
- (2) Any act or omission of the DB Contractor, if the Owner fails to meet any deadline established pursuant to Paragraph 4(f); or
- (3) If the DB Contractor and/or TxDOT determine, in their sole discretion, that a delay in the relocation work is the result of circumstances beyond the control of the Owner or Owner's contractor and the DB Contractor will not reduce the reimbursement.

5. **Costs of the Work.**

- (a) The Owner's costs for Adjustment of each Owner Utility shall be derived from:
- (1) The accumulated total of costs incurred by the Owner for design and construction of such Adjustment, *plus*
  - (2) The Owner's other related costs to the extent permitted pursuant to Paragraph 5(b) (including without limitation the eligible engineering costs incurred by the Owner for design prior to execution of this Agreement), *plus*
  - (3) The Owner's right of way acquisition costs, if any, which are reimbursable pursuant to Paragraph 16.
- (b) The Owner's costs associated with Adjustment of the Owner Utilities shall be developed pursuant to the method checked and described below [*check only one (1) box*]:
- (1) Actual costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body ("**Actual Cost**");
  - (2) Actual costs accumulated in accordance with an established accounting procedure developed by the Owner and which the Owner uses in its regular operations ("**Actual Cost**"); or
  - (3) The agreed sum of \$\_\_\_\_\_ ("**Agreed Sum**"), as supported by the analysis of estimated costs attached hereto as part of Exhibit A.



6. **Responsibility for Costs of Adjustment Work.** The Agreed Sum or Actual Cost, as applicable, of all work to be performed pursuant to this Agreement shall be allocated between the DB Contractor and the Owner as identified in Exhibit A and in accordance with § 203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio, if appropriate, as detailed in Exhibit A; *provided, however*, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 10. All costs charged to the DB Contractor by the Owner shall be reasonable and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for the Owner at the Owner's expense. Payment of the costs allocated to the DB Contractor pursuant to this Agreement (if any) shall be full compensation to the Owner for all costs incurred by the Owner in Adjusting the Owner Utilities (including without limitation costs of relinquishing and/or acquiring right of way).
7. **Billing, Payment, Records and Audits: Actual Cost Method.** The following provisions apply if the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b):
- (a) After (i) completion of all Adjustment work to be performed pursuant to this Agreement, (ii) the DB Contractor's final inspection of the Adjustment work by Owner hereunder (and resolution of any deficiencies found), and (iii) receipt of an invoice complying with the applicable requirements of Paragraph 9, the DB Contractor shall pay to the Owner an amount equal to 90% of the DB Contractor's share of the Owner's costs as shown in such final invoice (less amounts previously paid, and applicable credits). After completion of the DB Contractor's audit referenced in Paragraph 7(c) and the parties' mutual determination of any necessary adjustment to the final invoice resulting therefrom, the DB Contractor shall make any final payment due so that total payments will equal the total amount of the DB Contractor's share reflected on such final invoice (as adjusted, if applicable).
  - (b) When requested by the Owner and properly invoiced in accordance with Paragraph 9, the DB Contractor shall make intermediate payments to the Owner based upon the progress of the work completed at not more than monthly intervals, and such payments shall not exceed 90% of the DB Contractor's share of the Owner's eligible costs as shown in each such invoice (less applicable credits). Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.
  - (c) The Owner shall maintain complete and accurate cost records for all work performed pursuant to this Agreement. The Owner shall maintain such records for four (4) years after receipt of final payment hereunder. The DB Contractor and their respective representatives shall be allowed to audit such records during the Owner's regular business hours. Unsupported charges will not be considered eligible for reimbursement. The parties shall mutually agree upon (and shall promptly implement by payment or refund, as applicable) any financial adjustment found necessary by the DB Contractor's audit. TxDOT, the Federal Highway Administration (FHWA), and their respective representatives also shall be allowed to audit such records upon reasonable notice to the Owner, during the Owner's regular business hours.



8. **Billing and Payment: Agreed Sum Method.** If the Owner's costs are developed under procedure (3) described in Paragraph 5(b), then the DB Contractor shall pay its share of the Agreed Sum to the Owner after completion of:
- (a) All Adjustment work to be performed pursuant to this Agreement;
  - (b) The DB Contractor's final inspection of the Adjustment work by Owner hereunder (and resolution of any deficiencies found); and
  - (c) The receipt of an invoice complying with the applicable requirements of Paragraph 9.
9. **Invoices.** If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b), then Owner shall list each of the services performed, the amount of time spent and the date on which the service was performed. The original and three (3) copies of each invoice shall be submitted to the DB Contractor at the address for notices stated in Paragraph 22, unless otherwise directed by the DB Contractor pursuant to Paragraph 23, together with:
- (a) Such supporting information to substantiate all invoices as reasonably requested by the DB Contractor; and
  - (b) Such waivers or releases of liens as the DB Contractor may reasonably require.

The Owner shall make commercially reasonable efforts to submit final invoices not later than 120 days after completion of work. Final invoices shall include any necessary quitclaim deeds pursuant to Paragraph 16, and all applicable record drawings accurately representing the Adjustment as installed. The Owner hereby acknowledges and agrees that any right it may have for reimbursement of any of its costs not submitted to the DB Contractor within 12 months following completion of all Adjustment work to be performed by both parties pursuant to this Agreement shall be deemed to have been abandoned and waived. Invoices shall clearly delineate total costs and those costs that are reimbursable pursuant to the terms of this Agreement.

10. **Betterment.**
- (a) For purposes of this Agreement, the term "Betterment" means any upgrading of an Owner Utility being adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted Utility over that provided by the existing Utility facility or an expansion of the existing Utility facility; provided, however, that the following are not considered Betterments:
    - (1) Any upgrading which is required for accommodation of the Project;
    - (2) Replacement devices or materials that are of equivalent standards although not identical;
    - (3) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
    - (4) Any upgrading required by applicable Laws, regulations or ordinances;



- (5) Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); or
- (6) Any upgrading required by the Owner's written "standards" meeting the requirements of Paragraph 3(a)(4) and deemed to be of direct benefit to the Project.

*[Include the following for fiber optic Owner Utilities only:]* Extension of an Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Owner in order to maintain its written telephony standards.

- (b) It is understood and agreed that the DB Contractor will not pay for any Betterments and that the Owner shall not be entitled to payment therefor. No Betterment may be performed in connection with the Adjustment of the Owner Utilities which is incompatible with the Project or the Ultimate Configuration or which cannot be performed within the other constraints of applicable Law and any applicable governmental approvals, including without limitation the scheduling requirements thereunder. Accordingly, the parties agree as follows *[check the one (1) box that applies and complete if appropriate]*:

- The Adjustment of the Owner Utilities pursuant to the Plans does not include any Betterment.
- The Adjustment of the Owner Utilities pursuant to the Plans includes Betterment to the Owner Utilities by reason of *[insert explanation, e.g. "replacing 12" pipe with 24" pipe]*: \_\_\_\_\_. The Owner has provided to the DB Contractor comparative estimates for (i) all costs for work to be performed by the Owner pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the DB Contractor. The estimated amount of the Owner's costs for work hereunder which is attributable to Betterment is \$\_\_\_\_\_, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the Owner's work hereunder which is attributable to Betterment is \_\_\_\_\_%, calculated by *subtracting* (ii) from (i), which remainder shall be *divided* by (i).

- (c) If Paragraph 10(b) identifies Betterment, then the following shall apply:

- (1) If the Owner's costs are developed under procedure (3) described in Paragraph 5(b), then the Agreed Sum stated in that Paragraph includes any credits due to the DB Contractor on account of the identified Betterment, and no further adjustment shall be made on account of same.
- (2) If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b), the parties agree as follows *[If Paragraph 10(b) identifies Betterment and the Owner's costs are developed under procedure (1) or (2), check the one (1) appropriate provision]*:

- The estimated cost stated in Paragraph 10(b) is the agreed and final amount due for Betterment hereunder. Accordingly, each intermediate invoice submitted pursuant to Paragraph 7(b) shall include a credit for an



appropriate percentage of the agreed Betterment amount, proportionate to the percentage of completion reflected in such invoice. The final invoice submitted pursuant to Paragraph 7(a) shall reflect the full amount of the agreed Betterment credit. For each invoice described in this paragraph, the credit for Betterment shall be applied before calculating the DB Contractor's share (pursuant to Paragraph 6) of the cost of the Adjustment work. No other adjustment (either up or down) shall be made based on actual Betterment costs.

- The Owner is responsible for the actual cost of the identified Betterment, determined by *multiplying* (a) the Betterment percentage stated in Paragraph 10(b), by (b) the actual cost of all work performed by the Owner pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the Owner to the DB Contractor. Accordingly, each invoice submitted pursuant to either Paragraph 7(a) or Paragraph 7(b) shall credit the DB Contractor with an amount calculated by *multiplying* (x) the Betterment percentage stated in Paragraph 10(b), by (y) the amount billed on such invoice.

- (d) The determinations and calculations of Betterment described in this Paragraph 10 shall exclude right of way acquisition costs. Betterment in connection with right of way acquisition is addressed in Paragraph 16.

11. **Salvage.** For any Adjustment from which the Owner recovers any materials and/or parts and retains or sells the same, after application of any applicable Betterment credit, the DB Contractor is entitled to a credit for the salvage value of such materials and/or parts. If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 5(b), then the final invoice submitted pursuant to Paragraph 7(a) shall credit the DB Contractor with the full salvage value. If the Owner's costs are developed under procedure (3) described in Paragraph 5(b), then the Agreed Sum includes any credit due to the DB Contractor on account of salvage.

12. **Utility Investigations.** At the DB Contractor's request, the Owner shall assist the DB Contractor in locating any Utilities (including appurtenances) which are owned and/or operated by Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the adjusted Owner Utilities nor existing, unadjusted Utilities owned or operated by the Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such Utilities horizontally on the ground in advance of Project construction in the immediate area of such Utilities.

13. **Inspection and Ownership of Owner Utilities.**

- (a) The DB Contractor shall have the right, at its own expense, to inspect the Adjustment work performed by the Owner or its contractors, during and upon completion of construction. All inspections of work shall be completed and any comment provided within **five (5) business days** after request for inspection is received.
- (b) The Owner shall accept full responsibility for all future repairs and maintenance of said Owner Utilities. In no event shall the DB Contractor or TxDOT become responsible for making any repairs or maintenance, or for discharging the cost of same. The provisions of this Paragraph 13(b) shall not limit any rights which the Owner may have against the DB



Contractor if either party respectively damages any Owner Utility as a result of its respective Project activities.

14. **Design Changes.** The DB Contractor will be responsible for additional Adjustment design and responsible for additional construction costs necessitated by design changes to the Project made after approval of the Plans, upon the terms specified herein.
15. **Field Modifications.** The Owner shall provide the DB Contractor with documentation of any field modifications, including Utility Adjustment Field Modifications as well as minor changes as described in Paragraph 17(b), occurring in the Adjustment of the Owner Utilities.
16. **Real Property Interests.**
  - (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the DB Contractor, documentation acceptable to TxDOT indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to TxDOT's approval as part of its review of the DB Contractor's Utility Assembly as described in Paragraph 2. Claims approved by TxDOT as to rights or interests are referred to herein as "**Existing Utility Property Interests**".
  - (b) If acquisition of any new easement or other interest in real property ("**Replacement Utility Property Interest**") is necessary for the Adjustment of any Owner Utilities, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the DB Contractor's Project schedules. The DB Contractor shall be responsible for its share (if any, as specified in Paragraph 6) of the actual and reasonable acquisition costs of any such Replacement Utility Property Interest (including without limitation the Owner's reasonable overhead charges and reasonable legal costs as well as compensation paid to the landowner), excluding any costs attributable to Betterment as described in Paragraph 16(c), and subject to the provisions of Paragraph 16(e); *provided, however*, that all acquisition costs shall be subject to the DB Contractor's prior written approval. Eligible acquisition costs shall be segregated from other costs on the Owner's estimates and invoices. Any such Replacement Utility Property Interest shall have a written valuation and shall be acquired in accordance with applicable Law.
  - (c) The DB Contractor shall pay its share only for a replacement in kind of an Existing Utility Property Interest (e.g., in width and type), unless a Replacement Utility Property Interest exceeding such standard:
    - (1) Is required in order to accommodate the Project or by compliance with applicable Law; or
    - (2) Is called for by the DB Contractor in the interest of overall Project economy.

Any Replacement Utility Property Interest which is not the DB Contractor's cost responsibility pursuant to the preceding sentence shall be considered a Betterment to the extent that it upgrades the Existing Utility Property Interest which it replaces, or in its





entirety if the related Owner Utility was not installed pursuant to an Existing Utility Property Interest. Betterment costs shall be solely the Owner's responsibility.

- (d) For each Existing Utility Property Interest located within the Project right of way, upon completion of the related Adjustment work and its acceptance by the Owner, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Utility Property Interest to TxDOT, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Utility Property Interest. All quitclaim deeds or other relinquishment documents shall be subject to TxDOT's approval as part of its review of the Utility Assembly as described in Paragraph 2. For each Existing Utility Property Interest relinquished by the Owner, the DB Contractor shall do one (1) of the following to compensate the Owner for such Existing Utility Property Interest, as appropriate:
- (1) If the Owner acquires a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall reimburse the Owner for the DB Contractor's share of the Owner's actual and reasonable acquisition costs in accordance with Paragraph 16(b) and subject to Paragraph 16(c); or
  - (2) If the Owner does not acquire a Replacement Utility Property Interest for the affected Owner Utility, the DB Contractor shall compensate the Owner for the DB Contractor's share of the market value of such relinquished Existing Utility Property Interest, as mutually agreed between the Owner and the DB Contractor and supported by a written valuation.

The compensation, if any, provided to the Owner pursuant to either subparagraph (i) or subparagraph (ii) above shall constitute complete compensation to the Owner for the relinquished Existing Utility Property Interest and any Replacement Utility Property Interest, and no further compensation shall be due to the Owner from the DB Contractor or TxDOT on account of such Existing Utility Property Interest or Replacement Utility Property Interest.

- (e) All Utility Joint Use Acknowledgments (UJUA) or Utility Installation Requests (UIR), Form 1082 shall be subject to TxDOT approval as part of its review of the Utility Assembly as described in Paragraph 2. A Utility Joint Use Acknowledgment is required where an Existing Utility Property Interest exists and the existing or proposed Utility will remain or be adjusted within the boundaries of the Existing Utility Property Interest. All other accommodations not located on Existing Utility Property Interests will require a Utility Installation Request, Form 1082.

17. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 17(a) or Paragraph 17(b) below:

- (a) Except as otherwise provided in Paragraph 17(b), any amendment or modification to this Agreement or the Plans attached hereto shall be implemented by a Utility Adjustment Agreement Amendment ("UAAA") in the form of Exhibit B hereto (DB-ROW-U-PUAA-OM). The UAAA form can be used for a new scope of work with concurrence of the DB Contractor and TxDOT as long as the Design and Construction responsibilities have not changed. Each UAAA is subject to the review and approval of TxDOT, prior to



its becoming effective for any purpose and prior to any work being initiated thereunder. The Owner agrees to keep and track costs for each UAAA separately from other work being performed.

- (b) For purposes of this Paragraph 17(b), "**Utility Adjustment Field Modification**" shall mean any horizontal or vertical design change from the Plans included in a Utility Assembly previously approved by TxDOT, due either to design of the Project or to conditions not accurately reflected in the approved Utility Assembly (e.g., shifting the alignment of an 8 inch water line to miss a modified or new roadway drainage structure). A Utility Adjustment Field Modification agreed upon by the DB Contractor and the Owner does not require a UAAA, provided that the modified Plans have been submitted to TxDOT for its review and comment. A minor change (e.g., an additional water valve, an added Utility marker at a ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification and will not require a UAAA, but shall be shown in the documentation required pursuant to Paragraph 15.
18. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
19. **Assignment; Binding Effect; TxDOT as Third Party Beneficiary.** The Owner and the DB Contractor may not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties and of TxDOT, which consent may not be unreasonably withheld or delayed; *provided, however*, that the DB Contractor may assign any of its rights and/or delegate any of its duties to TxDOT or to any other entity with which TxDOT contracts to fulfill the DB Contractor's obligations at any time without the prior consent of the Owner.

This Agreement shall bind the Owner, the DB Contractor and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by any party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general; *provided, however*, that the Owner and the DB Contractor agree that although TxDOT is not a party to this Agreement, TxDOT is intended to be a third-party beneficiary to this Agreement.

20. **Breach by the Parties.**
- (a) If the Owner claims that the DB Contractor has breached any of its obligations under this Agreement, the Owner will notify the DB Contractor and TxDOT in writing of such breach, and the DB Contractor shall have **30 days** following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach; *provided, however*, that both during and after such period TxDOT shall have the right, but not the obligation, to cure any breach by the DB Contractor. Without limiting the generality of the foregoing:
- (1) TxDOT shall have no liability to the Owner for any act or omission committed by the DB Contractor in connection with this Agreement; and





23. **Approvals.** Any acceptance, approval, or any other like action (collectively "**Approval**") required or permitted to be given by either the DB Contractor or the Owner pursuant to this Agreement:
- (a) Must be in writing to be effective (except if deemed granted pursuant hereto);
  - (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and
  - (c) Except for approvals by TxDOT, and except as may be specifically provided otherwise in this Agreement, shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then **14 calendar days**), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 22.
24. **Time; Force Majeure.**
- (a) Time is of the essence in the performance of this Agreement.
  - (b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.
  - (c) No party shall be liable to another party for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("**Force Majeure**"), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts. If any such event of Force Majeure occurs, the Owner agrees, if requested by the DB Contractor, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as the DB Contractor agrees to reimburse the Owner for the reasonable and actual costs of such efforts.
25. **Continuing Performance.** In the event of a dispute, the Owner and the DB Contractor agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.
26. **Equitable Relief.** The DB Contractor and the Owner acknowledge and agree that delays in Adjustment of the Owner Utilities will impact the public convenience, safety and welfare, and that (without limiting the parties' remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto (and TxDOT as well, as a third party beneficiary) shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; *provided, however*, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.



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27. **Authority**. The Owner and the DB Contractor each represent and warrant to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.
28. **Cooperation**. The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner (and its contractors) and the DB Contractor to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the DB Contractor agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the DB Contractor's current and future construction schedules for the Project. The Owner further agrees to require its contractors to coordinate their respective work hereunder with the DB Contractor.
29. **Termination**. If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the DB Contractor shall notify the Owner in writing and the DB Contractor reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.
30. **Nondiscrimination**. Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
31. **Applicable Law, Jurisdiction and Venue**. This Agreement shall be governed by the Laws of the State of Texas, without regard to the conflict of laws principles thereof. Venue for any action brought to enforce this Agreement or relating to the relationship between any of the parties shall be the District Court of \_\_\_\_\_ County, Texas [or the United States District Court for the Western District of Texas (Austin)].
32. **Relationship of the Parties**. This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the DB Contractor be considered as or represent itself to be an agent of the other.
33. **Waiver of Consequential Damages**. No party hereto shall be liable to any other party to this Agreement, whether in contract, tort, equity, or otherwise (including negligence, warranty, indemnity, strict liability, or otherwise), for any punitive, exemplary, special, indirect, incidental, or consequential damages, including, without limitation, loss of profits or revenues, loss of use, claims of customers, or loss of business opportunity.
34. **Captions**. The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.



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35. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
  
36. **Effective Date.** This Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the DB Contractor) signing this Agreement, and (b) the date of TxDOT's approval as indicated by the signature of TxDOT's representative below.



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APPROVED BY:

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
[Printed Name]

By: \_\_\_\_\_  
Authorized Signature

District Engineer (or designee)

Date: \_\_\_\_\_

**OWNER**

By: \_\_\_\_\_  
[Print Owner Name]

By: \_\_\_\_\_  
Duly Authorized Representative

[Title]

[Company]

Date: \_\_\_\_\_

**DB CONTRACTOR**

By: \_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Duly Authorized Representative

[Title]

[Company]

Date: \_\_\_\_\_

County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**EXHIBIT A**

**PLANS, SPECIFICATIONS, COST ESTIMATES AND ALLOCATION**



County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**EXHIBIT B**

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT  
(DB-ROW-U-UAAA-OM)**



County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**UTILITY ADJUSTMENT AGREEMENT AMENDMENT  
(Owner-Managed)**

(Amendment No. \_\_\_\_\_ to Agreement No.: \_\_\_\_\_ - U - \_\_\_\_\_)

**THIS AMENDMENT TO PROJECT UTILITY ADJUSTMENT AGREEMENT** (this “Amendment”), by and between, [DB Contractor] hereinafter identified as the “**DB Contractor**” and [Utility Owner], hereinafter identified as the “**Owner**”, is as follows:

**WITNESSETH**

**WHEREAS**, the STATE of TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as “**TxDOT**”, proposes to construct the project identified above (the “Project”, as more particularly described in the “Original Agreement”, defined below); and

**WHEREAS**, pursuant to that certain Design-Build Contract (“DBC”) by and between TxDOT and the DB Contractor with respect to the Project, the DB Contractor has undertaken the obligation to design, construct, and potentially maintain the Project, including causing the removal, relocation, or other necessary adjustment of existing Utilities impacted by the Project (collectively, “Adjustment”); and

**WHEREAS**, the Owner and DB Contractor are parties to that certain executed Project Utility Adjustment Agreement (PUAA) designated by the “Agreement No.” indicated above, as amended by previous amendments, if any (the “Original Agreement”), which provides for the Adjustment of certain Utilities owned and/or operated by the Owner (the “Owner Utilities”); and

**WHEREAS**, the parties are required to utilize this Amendment form in order to modify the Original Agreement to add the Adjustment of Owner Utilities facilities not covered by the Original Agreement; and

**WHEREAS**, the parties desire to amend the Original Agreement to add additional Owner Utility facility(ies), on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the agreements contained herein, the parties hereto agree as follows:

- 1. **Amendment.** The Original Agreement is hereby amended as follows:

**Plans.**

- (a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities in the Original Agreement is hereby amended to add the following Utility facility(ies) (“**Additional Owner Utilities**”) and proposed Adjustment(s) *[insert below a*



*description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., “adjust 12” waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00”)]:* \_\_\_\_\_.

- (b) The Plans, as defined in Paragraph 1 of the Original Agreement, are hereby amended to add thereto the Plans, specifications and cost estimates attached hereto as Exhibit A.
- (c) The Plans attached hereto as Exhibit A, along with this Amendment, shall be submitted upon execution to TxDOT in accordance with Paragraph 2 of the Original Agreement, and Paragraph 2 shall apply to this Amendment and the Plans attached hereto in the same manner as if this Amendment were the Original Agreement. If the Owner claims an Existing Utility Property Interest for any of the Additional Owner Utilities, documentation with respect to such claim shall be submitted to TxDOT as part of this Amendment and the attached Plans, in accordance with Paragraph 16(a) of the Original Agreement.
- (d) Paragraph 4(f) of the Original Agreement is hereby amended to add the following deadline for the Adjustment of the Additional Owner Utilities [*check one (1) box that applies*]:
- Owner shall complete all of the Utility reconstruction and relocation work, including final testing and acceptance thereof, on or before [Month] [Day], 20[XX].
- Owner shall complete all of the Utility reconstruction and relocation work, including final testing and acceptance thereof, within \_\_\_\_\_ **calendar days** after delivery to Owner of a notice to proceed by DB Contractor;
- (e) For purposes of Paragraph 5(b) of the Original Agreement, the Owner’s costs associated with Adjustment of the Additional Owner Utilities shall be developed pursuant to the method checked and described below [*check only one (1) box*]:
- (1) Actual costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body (“**Actual Cost**”);
- (2) Actual costs accumulated in accordance with an established accounting procedure developed by the Owner and which the Owner uses in its regular operations (“**Actual Cost**”); or
- (3) The agreed sum of \$\_\_\_\_\_ (“**Agreed Sum**”), as supported by the analysis of estimated costs attached hereto as part of Exhibit A.
- (f) For purposes of Paragraph 6 of the Original Agreement, responsibility for the Agreed Sum or Actual Cost, as applicable, of all Adjustment work to be performed pursuant to this Amendment shall be allocated between the DB Contractor and the Owner as identified in Exhibit A and in accordance with §203.092 of the Texas Transportation Code. An allocation percentage may be determined by application of an eligibility ratio,



if appropriate, as detailed in Exhibit A; *provided, however*, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 10 of the Original Agreement.

(g) Paragraph 10(b) of the Original Agreement is hereby amended to add the following [*Check the one (1) box that applies*]:

- The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, does not include any Betterment.
- The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, includes Betterment to the Additional Owner Utilities by reason of [*insert explanation, e.g. "replacing 12" pipe with 24" pipe*]: \_\_\_\_\_.

The Owner has provided to the DB Contractor comparative estimates for (i) all costs for work to be performed by the Owner pursuant to this Amendment, including work attributable to the Betterment, and (ii) the cost to perform such work without Betterment, which estimates are hereby approved by the DB Contractor. The estimated amount of the Owner's costs for work under this Agreement which is attributable to Betterment is \$\_\_\_\_\_, calculated by *subtracting* (ii) from (i). The percentage of the total cost of the Owner's work hereunder which is attributable to Betterment is \_\_\_\_\_%, calculated by *subtracting* (ii) from (i) which remainder shall be *divided* by (i).

(h) The following shall apply to any Betterment described in Paragraph 1(g) of this Amendment:

- (i) If the Owner's costs are developed under procedure (3) described in Paragraph 1(e) of this Amendment, then the Agreed Sum stated in that Paragraph includes any credits due to the DB Contractor on account of the identified Betterment, and no further adjustment shall be made on account of same.
- (ii) If the Owner's costs are developed under procedure (1) or (2) described in Paragraph 1(e) of this Amendment, the parties agree as follows [*check the one (1) appropriate provision*]:

- The estimated cost stated in Paragraph 1(g) of this Amendment is the agreed and final amount due for Betterment under this Amendment. Accordingly, each intermediate invoice submitted for Adjustment(s) of the Additional Owner Utilities pursuant to Paragraph 7(b) of the Original Agreement shall credit the DB Contractor with an appropriate amount of the agreed Betterment amount, proportionate to the percentage of completion reflected in such invoice. The final invoice submitted for Adjustment(s) of the Additional Owner Utilities pursuant to Paragraph 7(a) of the Original Agreement shall reflect the full amount of the agreed Betterment credit. For each invoice described in this paragraph, the credit for Betterment shall be applied before calculating the DB Contractor's share (pursuant to Paragraph 1(e) of this Amendment) of the cost of the Adjustment work. No other adjustment (either up or down) shall be made based on actual Betterment costs.



The Owner is responsible for the Actual Cost of the identified Betterment, determined by *multiplying* (a) the Betterment percentage stated in Paragraph 1(g) of this Amendment, by (b) the actual cost of all work performed by the Owner pursuant to this Amendment (including work attributable to the Betterment), as invoiced by the Owner to the DB Contractor. Accordingly, each invoice submitted for Adjustment of the Additional Owner Utilities pursuant to either Paragraph 7(a) or Paragraph 7(b) of the Original Agreement shall credit the DB Contractor with an amount calculated by *multiplying* (x) the Betterment percentage stated in Paragraph 1(g) of this Amendment, by (y) the amount billed on such invoice.

- (i) The determinations and calculations of Betterment described in this Amendment shall exclude right of way acquisition costs. Betterment in connection with ROW acquisition is addressed in Paragraph 16 of the Original Agreement.
- (j) Owner and the DB Contractor agree to refer to this Amendment, designated by the "Amendment No." and "Agreement number" indicated on page 1 above, on all future correspondence regarding the Adjustment work that is the subject of this Amendment and to track separately all costs relating to this Amendment and the Adjustment work described herein.
- (k) *[Include any other proposed amendments in compliance with the applicable Law.]*

2. **General.**

- (a) All capitalized terms used in this Amendment shall have the meanings assigned to them in the Original Agreement, except as otherwise stated herein.
- (b) This Amendment may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one (1) and the same instrument.
- (c) Except as amended hereby, the Original Agreement shall remain in full force and effect. In no event shall the responsibility, as between the Owner and the DB Contractor, for the preparation of the Plans and the Adjustment of the Owner Utilities be deemed to be amended hereby.
- (d) This Amendment shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the DB Contractor) signing this Amendment, and (b) the completion of TxDOT's review and approval as indicated by the signature of TxDOT's representative below.



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APPROVED BY:

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
[Printed Name]

By: \_\_\_\_\_  
Authorized Signature

District Engineer (or designee)

Date: \_\_\_\_\_

**OWNER**

By: \_\_\_\_\_  
[Print Owner Name]

By: \_\_\_\_\_  
Duly Authorized Representative

[Title]  
[Company]

Date: \_\_\_\_\_

**DB CONTRACTOR**

By: \_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Duly Authorized Representative

[Title]  
[Company]

Date: \_\_\_\_\_



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County: \_\_\_\_\_  
ROW CSJ No.: \_\_\_\_\_  
Const. CSJ No.: \_\_\_\_\_  
Highway: \_\_\_\_\_  
Fed. Proj. No.: \_\_\_\_\_  
Limits: \_\_\_\_\_ to \_\_\_\_\_

**EXHIBIT C**

**STATEMENT COVERING CONTRACT WORK**



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### STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK

(AS APPEARING IN ESTIMATE)

U-No. \_\_\_\_\_

District: \_\_\_\_\_

County: \_\_\_\_\_

ROW CSJ No.: \_\_\_\_\_

Federal Project No.: \_\_\_\_\_

Highway No.: \_\_\_\_\_

I, \_\_\_\_\_, a duly authorized and qualified representative of \_\_\_\_\_, hereinafter referred to as **Owner**, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as appears in the estimate to which this statement is attached.

It is more economical and/or expedient for **Owner** to contract this adjustment, or **Owner** is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicated on the estimate.

#### Procedure to be Used in Contracting Work

- A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.
- B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Such presently known contractors are listed below:
  - 1. \_\_\_\_\_
  - 2. \_\_\_\_\_
  - 3. \_\_\_\_\_
  - 4. \_\_\_\_\_
  - 5. \_\_\_\_\_
- C. The work is to be performed under an existing continuing contract under which certain work is regularly performed for **Owner** and under which the lowest available costs are developed. (If only part of the contract work is to be done under an existing contract, give detailed information by attachment hereto.)
- D. The utility proposes to contract outside the foregoing requirements and therefore evidence in





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support of its proposal is attached to the estimate in order to obtain the concurrence of the State, and the Federal Highway Administration Division Engineer where applicable, prior to taking action thereon (approval of the agreement shall be considered as approval of such proposal).

- E. The utility plans and specifications, with the consent of the State, will be included in the construction contract awarded by the State.

\_\_\_\_\_  
[Signature of Officer/Representative]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Title of Officer/Representative]



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### DB Contractor's Utility Design Coordinator

#### Utility No Conflict Sign-Off Form

Utility Design Coordinator: \_\_\_\_\_  
Date plans received: \_\_\_\_\_  
Utility Company: \_\_\_\_\_  
Assembly "U" number: \_\_\_\_\_  
Type of Utilities: \_\_\_\_\_  
Date on Utility's plans: \_\_\_\_\_ No. of sheets in Utility's plans: \_\_\_\_\_

---

I, \_\_\_\_\_, the Utility Design Coordinator (UDC) on behalf of the DB Contractor (\_\_\_\_\_) certify that a review of the above referenced Utility Plans concerning the proposed highway improvements on the \_\_\_\_\_ has been completed and have not identified any conflicts between the Utility's proposed relocation and any design features.

Design features include but are not limited to pavement structures, drainage facilities, bridges, retaining walls, traffic signals, illumination, signs, foundations, duct/conduit, ground boxes, erosion control facilities, water quality facilities and other DB Contractor-Managed Utilities.

Any design changes to the \_\_\_\_\_ after the signing of this form will be coordinated through the DB Contractor's Utility Manager and the affected Utility Owner.

Check box if any areas of concern and insert comments below:

Utility Design Coordinator: \_\_\_\_\_ (Signature) \_\_\_\_\_ Date  
(UDC)

\_\_\_\_\_  
(Print Name)

Utility Coordination Firm: \_\_\_\_\_ (Print Name)

**This form must be completed/signed and included in each Utility Assembly submitted to the Texas Department of Transportation.**



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### DB Contractor's Utility Manager

#### Utility No Conflict Sign-Off Form

Utility Manager: \_\_\_\_\_  
Date plans received: \_\_\_\_\_  
Utility Company: \_\_\_\_\_  
Assembly "U" number: \_\_\_\_\_  
Type of Utilities: \_\_\_\_\_  
Date on Utility's plans: \_\_\_\_\_ No. of sheets in Utility's plans: \_\_\_\_\_

---

I, \_\_\_\_\_, the Utility Manager (UM) working on behalf of the DB Contractor (\_\_\_\_\_) certify that a review of the above referenced Utility Plans concerning the proposed highway improvements on the \_\_\_\_\_ has been completed and have not identified any conflicts between the Utility's proposed relocation and any existing and/or proposed Utilities.

The proposed Utility Plans conform to Title 43 of the Texas Administrative Code, Section 21.31 – 21.56 of the Utility Accommodation Rules.

Check box if any areas of concern and insert comments below:

**Utility Manager:** \_\_\_\_\_  
(UM) (Signature) Date

\_\_\_\_\_  
(Print Name)

**Utility Design Coordinator:** \_\_\_\_\_  
(UDC) (Signature) Date

\_\_\_\_\_  
(Print Name)

**Utility Coordination Firm:** \_\_\_\_\_  
(Print Name)

**This form must be completed/signed and included in each Utility Assembly submitted to the Texas Department of Transportation.**



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## Utility Installation Request

<b>PERMIT NUMBER</b>		
<b>GLOBAL POSITIONING SYSTEM COORDINATES</b> (GPS) NORTH AMERICAN DATUM 1983, (1993 ADJUSTMENT) IN DECIMAL DEGREES(DD)		
	LATITUDE (DD)	LONGITUDE (DD)
<b>BEGIN</b>		
<b>END</b>		

To the Texas Transportation Commission

c/o District Engineer, Texas Department of Transportation

Date: \_\_\_\_\_

\_\_\_\_\_, Texas

Formal notice is hereby given that \_\_\_\_\_  
 proposes to place a \_\_\_\_\_  
 line within the right of way of \_\_\_\_\_, RM \_\_\_\_\_, Displ. \_\_\_\_\_, to RM \_\_\_\_\_, Displ. \_\_\_\_\_, in \_\_\_\_\_  
 \_\_\_\_\_ County Texas, MNT Sec. No. \_\_\_\_\_ as follows: (give location, length, general design, etc. Use  
 additional sheet as needed)

We will construct and maintain the line on the highway right of way as shown on the attached drawing and in accordance with the rules, regulations and policies of the Texas Department of Transportation (TxDOT), and all governing laws, including, but not limited to, the "Texas Engineering Practice Act," "Federal Clean Water Act," the "National Endangered Species Act," "Americans with Disabilities Act," and the "Federal Historic Preservation Act." Upon request by TxDOT at any time, we will submit to TxDOT proof of compliance with all governing laws, rules and regulations before commencement of construction. Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the facility based on the department's survey datum, the relationship to existing highway facilities and the right of way line, traffic safety and access procedures, and location of existing utilities that may be affected by the proposed utility facility. The location and description of the proposed line and appurtenances is more fully shown by a complete set of drawings attached to this Utility Installation Request (Request). We will give plans to TxDOT for each future proposed modification or expansion to our facility and TxDOT will have 30 days to review and approve the plans prior to commencement of the work. A new Request may be required as a condition of approval. Our organization will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "Revegetation Special Provisions." We will also ensure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained for the duration of this installation.

When installing, modifying or maintaining our utility on controlled access facilities, we shall conform to the Texas Transportation Code, Title 6 Roadways, Chapter 203, Subchapter C, Control of Access, §203.031 (<http://www.statutes.legis.state.tx.us/>). We shall limit access for servicing this installation to access via (a) frontage roads where provided, (b) nearby or adjacent public roads or streets, (c) trails along or near the highway right of way lines, connecting only to an intersecting road; from any one or all of which entry may be made to the outer portion of the highway right of way for normal service and maintenance operations. Our rights of access to the through traffic roadways and ramps shall be subject to the same rules and regulations that apply to the general public.

It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title or easement in or upon highway right of way. TxDOT may require us to relocate this line, subject to the provisions of governing laws, by giving us at least 30 days written notice. We understand a new Request will be required for the relocation. We will notify TxDOT prior to commencement of any operation which requires pruning of trees so that TxDOT may provide specifications to govern performance of work, including trimming, topping, tree balance, type of cuts, painting cuts and



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clean up. We understand that these specifications are intended to preserve TxDOT's considerable investment in highway beautification plantings and by reducing damage due to trimming and to protect known endangered species.

Our installation shall not damage any part of the roadway structure or associated appurtenances. We will make adequate provisions to cause minimum inconveniences to the traveling public and adjacent property owners. We will not open-cut driveways or intersecting roadways without specific written permission from the owner.

Following approval, we will begin construction on or after

\_\_\_\_\_  
Month / Day / Year

We understand TxDOT may place additional provisions and requirements as listed below, based upon, but not limited to, the type of utility being installed, local site conditions, soil types and traffic.

<b>Additional Provisions and Requirements (for TxDOT input only)</b>
<p><b>• General Special Provisions:</b></p> <p><input checked="" type="checkbox"/> Are attached.</p> <p><input type="checkbox"/> Are not attached.</p>
<p><b>• As-built Plans/Certifications of Construction:</b></p> <p><input type="checkbox"/> Are required and shall be certified as accurate by an authorized representative of the company.</p> <p><input type="checkbox"/> Are required and shall be signed and sealed by a State of Texas Licensed Professional Engineer.</p> <p><input type="checkbox"/> Are not required</p> <p><input type="checkbox"/> Certification that utility was installed as approved</p>
<p><b>• Re-vegetation Special Provisions:</b> In order to minimize erosion and sedimentation resulting from the proposed installation, the project area will be re-vegetated:</p> <p><input type="checkbox"/> In accordance with TxDOT's Standard Specification Item 164 which specifies the appropriate grass seed mix to be used; <b>or</b></p> <p><input type="checkbox"/> As indicated on the attachment.</p>
<p>TxDOT Representative to be notified 48 hours prior to beginning construction:</p>

If approved, we understand we will assume all risks associated with this installation within the TxDOT right of way. These risks include injuries to our workers, damage to contiguous utility lines that may be in the area and injuries or damage resulting from our failure to properly install and maintain the line.

If the character, use or function of our installation is materially changed from that approved under this Request, we will notify TxDOT within 30 days after the change. In the event of a voluntary or involuntary loss of public utility status, or other legal authority for longitudinal placement of the utility facility in the highway, or there is an abandonment of the facility without the approval of TxDOT, we will, at our expense, remove the unauthorized portion of the facility from the right of way.

If installation of the line is not begun prior to the 91st calendar day from date of issuance, we acknowledge that, unless otherwise extended, TxDOT's approval of this Request will automatically **expire**, and we will be required to resubmit our Request. All Request submissions, whether due to expiration of approval under this paragraph or new Requests for modifications and relocations shall be in accordance with the governing laws, rules, regulations and policies existing at the time of submission. In the event we fail to comply with any or all of the requirements as set forth in this Request, the State may take such action as it deems appropriate to compel our compliance.

By signing as/for the requestor below, I certify that I am authorized to represent the requestor, that I agree to the provisions and requirements included in this Utility Installation Request, and our commencement of construction will further attest to our review and acceptance of said additional provisions and requirements.



Texas Department of Transportation  
 Form DB-ROW-U-1082  
 Page 3 of 3 REV 07/2018

REQUESTOR	APPROVED BY TXDOT
Date:	Date:
By:	By:
Signature:	Signature:
Title:	Title: <b>District Engineer (or designee)</b>
Address:	Address:
City State Zip Code	City State Zip Code
( )	
Area Code Telephone Number	Area Code Telephone Number

**GENERAL SPECIAL PROVISION**

1. Requestor agrees to perform all project coordination, scheduling, notifications, permit requirements and submittals through TxDOT's designated design-build contractor or Developer listed below:

*[Insert contractors contact information]*



# UTILITY JOINT USE ACKNOWLEDGEMENT REIMBURSABLE UTILITY ADJUSTMENT

Form ROW-U-JUA  
Replaces ROW-U-JUAA  
(01/20)  
Page 1 of 2

U-Number: \_\_\_\_\_

ROW CSJ: _____	County: _____
District: _____	Highway: _____
Federal Project No.: _____	From: _____
Projected Highway Letting Date: _____	To: _____

**WHEREAS**, the State of Texas, ("**State**"), acting by and through the Texas Department of Transportation ("**TxDOT**"), proposes to make certain highway improvements on that section of the above-indicated highway; and

**WHEREAS**, the \_\_\_\_\_ ("**Utility**"), proposes to adjust or relocate certain of its facilities, if applicable, and retain title to any property rights it may have on, along or across, and within or over such limits of the highway right of way as indicated by the location map attached hereto.

**NOW, THEREFORE**, in consideration of the covenants and acknowledgements herein contained, the parties mutually agree as follows:

It is agreed that joint usage for both highway and utility purposes will be made of the area within the highway right of way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Nothing in this Acknowledgement shall serve to modify or extinguish any compensable property interest vested in the **Utility** within the above described area. If the facilities shown in the aforementioned plans need to be altered or modified or new facilities constructed to either accommodate the proposed highway improvements or as part of **Utility's** future proposed changes to its own facilities, **Utility** agrees to notify **TxDOT** at least 30 days prior thereto, and to furnish necessary plans showing location and type of construction, unless an emergency situation occurs and immediate action is required. If an emergency situation occurs and immediate action is required, **Utility** agrees to notify **TxDOT** promptly. If such alteration, modification or new construction is in conflict with the current highway or planned future highway improvements, or could endanger the traveling public using said highway, **TxDOT** shall have the right, after receipt of such notice, to prescribe such regulations as necessary for the protection of the highway facility and the traveling public using said highway. Such regulations shall not extend, however, to requiring the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

If **Utility's** facilities are located along a controlled access highway, **Utility** agrees that ingress and egress for servicing its facilities will be limited to frontage roads where provided, nearby or adjacent public roads and streets, or trails along or near the highway right of way lines which only connect to an intersecting road. Entry may be made to the outer portion of the highway right of way from any one or all access points. Where supports, manholes or other appurtenances of the **Utility's** facilities are located in medians or interchange areas, access from the through-traffic roadways or ramps will be allowed by permit issued by the **State** to the **Utility** setting forth the conditions for policing and other controls to protect highway users. In an emergency situation, if the means of access or service operations as herein provided will not permit emergency repairs as required for the safety and welfare of the public, the **Utility** shall have a temporary right of access to and from the through-traffic roadways and ramps as necessary to accomplish the required repairs, provided **TxDOT** is notified immediately when such repairs are initiated and adequate provision is made by **Utility** for the convenience and safety of highway traffic. Except as expressly provided herein, the **Utility's** rights of access to the through-traffic roadways and/or ramps shall be subject to the same rules and regulations as apply to the general public.

_____ Initial	_____ Date	_____ Initial	_____ Date
TxDOT		Utility	

If **Utility's** facilities are located along a non-controlled access highway, the **Utility's** rights of ingress and egress to the through-traffic roadways and/or ramps are subject to the same rules and regulations as apply to the general public.

**Participation in actual costs incurred by the Utility** for any future adjustment, removal or relocation of utility facilities required by highway construction shall be in accordance with applicable laws of the State of Texas.

**Utility** will, by written notice, advise **TxDOT** of the beginning and completion dates of the adjustment, removal, or relocation, and, thereafter, agrees to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **State** or any other party with **Utility's** ability to proceed with the relocation, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of **Utility**.

It is expressly understood that **Utility** conducts the new installation, adjustment, removal, and/or relocation at its own risk, and that **TxDOT** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

The **Utility** and the **State**, by execution of this Acknowledgement , do not waive or relinquish any right that they may have under the law.

The signatories to this Acknowledgement warrant that each has the authority to enter into this Acknowledgement on behalf of the party represented.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures.

**UTILITY**

Utility:

\_\_\_\_\_  
*Name of Utility*

By:

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Print or Type Name*

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

**EXECUTION RECOMMENDED:**

\_\_\_\_\_  
Director of TP&D:                      District

**THE STATE OF TEXAS**

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
District Engineer

Date: \_\_\_\_\_





# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 15-1 PUA for Transportation Purposes with Additional Payment of Independent Consideration



**POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES  
WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION**

<b>STATE OF TEXAS</b>	§	ROW CSJ:
	§	Parcel No.:
<b>COUNTY OF</b>	§	Project No.:

This Possession and Use Agreement For Transportation Purposes (the “Agreement”) between the State of Texas, acting by and through the Texas Department of Transportation (the “State”) , and (the “Grantor” whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor’s property for the purpose of constructing a portion of Highway No. (the “Highway Construction Project”). The property subject to this Agreement is described more fully in field notes and plat map (attached as “Exhibit A”) and made a part of this Agreement by reference (the “Property”).

- For the consideration paid by the State which is set forth in Paragraphs 2 and 3 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Possession and Use Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
- In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of Dollars (\$ ). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State’s determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners’ award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will promptly refund the overpayment to the State.

3. As additional consideration, the State will tender to the Grantor the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:
  - (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
  - (ii) will not be refunded to the State upon any acquisition of the Property by the State.
4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
5. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The State's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.
9. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Highway Construction Project, based upon claims that the condemning authority has no authority to

acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

10. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.
11. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes title to the Property.
12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.
13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
14. It is agreed the State will record this document.
15. Other conditions: .

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas and its assigns forever, for the purposes and subject to the limitations set forth above.

GRANTOR:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(if GRANTOR is an entity other than an individual person)

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(if GRANTOR is an entity other than an individual person)

Date: \_\_\_\_\_

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**Acknowledgement**

State of Texas  
County of

This instrument was acknowledged before me on \_\_\_\_\_

by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature

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**Corporate Acknowledgment**

State of Texas  
County of

This instrument was acknowledged before me on \_\_\_\_\_ by

\_\_\_\_\_, \_\_\_\_\_

of \_\_\_\_\_, a \_\_\_\_\_

corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public's Signature

**THE STATE OF TEXAS**

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Right of Way Manager

Date: \_\_\_\_\_



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 15-2 Possession and Use Agreement for Transportation Purposes



## POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

<b>STATE OF TEXAS</b>	§	ROW CSJ:
	§	Parcel No.:
<b>COUNTY OF</b>	§	Project No.:

This Possession and Use Agreement For Transportation Purposes (the “Agreement”) between the State of Texas, acting by and through the Texas Department of Transportation (the “State”) , and (the “Grantor” whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor’s property for the purpose of constructing a portion of Highway No. (the “Highway Construction Project”). The property subject to this Agreement is described more fully in field notes and plat map (attached as “Exhibit A”) and made a part of this Agreement by reference (the “Property”).

1. For the consideration paid by the State which is set forth in Paragraph 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Possession and Use Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
  
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of Dollars (\$ ). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State’s determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners’ award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will promptly refund the overpayment to the State.
  
3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above



was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the “Effective Date”).

4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
5. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
6. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor’s rights to receive full and just compensation as allowed by law for all of the Grantor’s interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor’s interest in any larger tract of which the Property is a part (the “Remainder”), if any; all as the Property exists on the Effective Date of this Agreement. The State’s removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor’s rights to any relocation benefits for which Grantor may be eligible.
7. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.
8. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State’s acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Highway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.
9. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.

- 10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes title to the Property.
- 11. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.
- 12. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
- 13. It is agreed the State will record this document.
- 14. Other conditions: \_\_\_\_\_ .

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas and its assigns forever, for the purposes and subject to the limitations set forth above.

GRANTOR:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(if GRANTOR is an entity other than an individual person)

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(if GRANTOR is an entity other than an individual person)

Date: \_\_\_\_\_

**THE STATE OF TEXAS**

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Right of Way Manager

Date: \_\_\_\_\_

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**Acknowledgement**

State of Texas  
County of

This instrument was acknowledged before me on \_\_\_\_\_

by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature

---

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**Corporate Acknowledgment**

State of Texas  
County of

This instrument was acknowledged before me on \_\_\_\_\_ by

\_\_\_\_\_, \_\_\_\_\_

of \_\_\_\_\_, a \_\_\_\_\_

corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public's Signature



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 21-1 San Antonio Karst Protocol for Structural Elements

### San Antonio Karst Protocol for Structural Elements

1. DB Contractor shall perform a geologic assessment within the project area. The location of known Karst Features shall be shown within the ROW limits and listed on the boring location layout sheets. Drilled shaft design and placement shall avoid known Karst Features.
2. Foundation design assumptions shall be verified during construction at each drilled shaft location by performing a core hole per TxDOT Standard Specification Item 416, Section 3.2. The minimum diameter of the core hole is 2 inches and shall extend from the top of rock to either 7 feet or one shaft diameter, whichever is greater, below the bottom of planned tip elevation. Should a Karst Feature or low strength strata be encountered within this depth, the core hole shall be extended to a depth recommended by the geotechnical engineer. Rock core hole photos and drill logs shall be provided to the geotechnical engineer for review. Final tip elevations for the drilled shafts will be provided by the geotechnical engineer and approved by TxDOT. When investigation is complete, core holes shall be grouted.
3. For Karst Features found to be in conflict with drilled shafts during construction, concrete used to fill the Karst Feature will be required to meet the project specifications or as directed by TxDOT. If grout is used, the length of the drilled shaft in contact with the grout will not be used for foundation design calculations that incorporate both skin friction and end bearing. The quantity of concrete will be based on the visual and video inspection provided by the DB Contractor. If unable to determine the size of the Karst Feature by these means, the quantity may be measured as the additional concrete placed beyond the amount needed for a clean drilled shaft plus 10 percent overrun.
4. If a large Karst Feature (a Karst Feature larger than 4 feet in any direction) is encountered during drilled shaft construction which is not capable of being filled with concrete, karst protocols established on the project will be followed. Permanent steel casing shall be installed from the top of the shaft to the bottom of the Karst Feature. The casing shall be new, smooth, free of dirt and accumulations, and have a minimum thickness of 1/4 inch. The geotechnical engineer shall provide a new recommended drilled shaft length.
5. If a large Karst Feature (a Karst Feature larger than 4 feet in any direction) is encountered during drilled shaft construction, a permanent casing in accordance with TxDOT Standard Specification Item 416 will be required. The outside diameter of this casing shall have a minimum dimension matching the plan diameter of the drilled shaft.
6. The contractor shall supply a digital picture / video documentation of all Karst Features. For Karst Features that cannot be safely explored, a drone or other device shall be provided to document the Karst Feature.

Karst Feature protocols apply, but are not limited to, the following:

1. Karst Features which blow air;
2. Karst Features which receive water during a rain event; and
3. Karst Features which have water flowing through or out of the Karst Feature.



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 21-2 Mechanically Stabilized Earth Retaining Wall Design Data





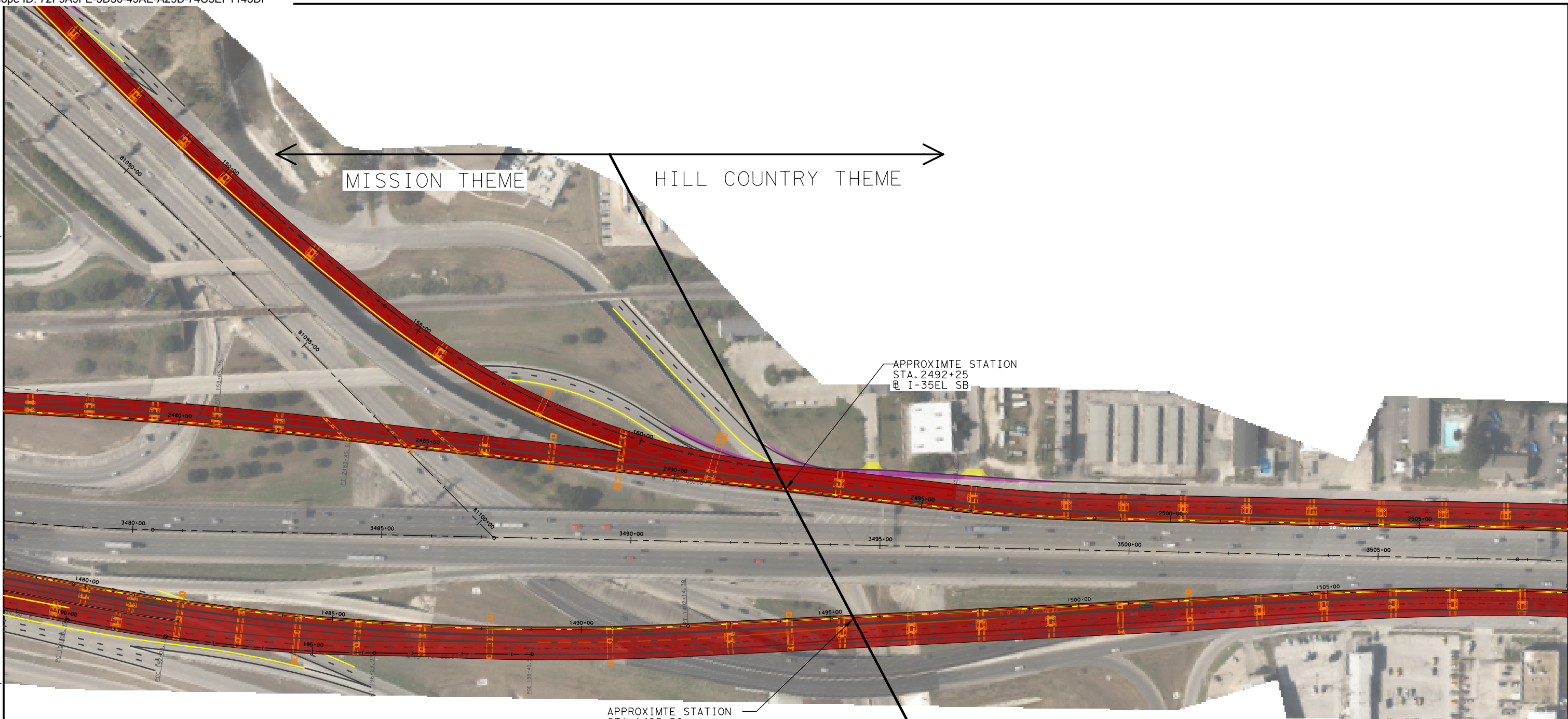
# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 23-1 I-35 NEX Urban Design Theme Transition



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USER:untf\red Workspace  
DATE:7/7/2021 6:20:29 PM  
PLOTDRIVER: TxDOT\_PDF\_Color\_Aerial.plt



MISSION THEME

HILL COUNTRY THEME

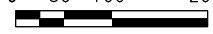
APPROXIMATE STATION  
STA. 2492+25  
@ I-35EL SB

APPROXIMATE STATION  
STA. 1495+50  
@ I-35EL NB

MISSION THEME

HILL COUNTRY THEME

HORZ 0' 50' 100' 200'



I-35 NEX CENTRAL PROJECT



ATTACHMENT 23-1: I-35 NEX URBAN DESIGN  
THEME TRANSITION  
EXECUTION VERSION



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 25-1 ITS Equipment Specifications

## Attachment 25-1

### ITS Equipment Specifications

#### 1. CCTV and Support Equipment

DB Contractor shall furnish, install, and test CCTV devices and supporting equipment in conformance with the requirements within TxDOT Statewide Special Specification 6010, Closed Circuit Television (CCTV) Field Equipment. CCTV device shall include a motorized wiper.

CCTV shall be supported by a camera interface panel that includes a surge suppressor and an RS422 to RS232 converter.

The surge suppressor shall provide 120 VAC, 60 Ampere service. It shall be solid-state in design and designed for outdoor cabinets; the unit shall be epoxy coated and flame retardant. The response time shall not exceed five nanoseconds and provide automatic recovery to the system in the event of a power surge and prevent follow currents by use of a primary stage gas discharge tube (GDT) and secondary stage Silicon Avalanche Diode (SAD).

#### 2. Vehicle Detection

##### a. Microwave Radar Vehicle Detection

DB Contractor shall furnish, install, and test microwave radar detection devices and supporting equipment in conformance with the requirements within TxDOT Statewide Special Specification 6304, Intelligent Transportation System (ITS) Radar Vehicle Sensing Device.

##### b. Bluetooth Vehicle Detection

The Detection System will consist of a UV-protected, IP65 housed sensor, 2 external antennas, a CAT5e cable for Power over Ethernet, and a non-corrosive fixing bracket.

DB Contractor shall provide documentation on the auto-configuration and auto-calibration processes.

DB Contractor shall provide a detection system that does not cause interference or alter the performance of any known equipment.

DB Contractor shall furnish all new equipment and component parts in an operable condition at the time of delivery and installation.

DB Contractor shall provide design to prevent reversed assembly or improper installation of connectors, fasteners, etc. DB Contractor shall design each item of equipment to protect personnel from exposure to high voltage during equipment operation, adjustments, and maintenance.

DB Contractor shall include licenses for all equipment, where required, for any software or hardware in the Detection System.

DB Contractor shall provide all Detection Systems from the same manufacturer.

DB Contractor shall provide Detection System firmware that is upgradeable by external local or remote download.

DB Contractor shall ensure the Detection System maintains accurate performance in all weather conditions, including rain, freezing rain, snow, wind, dust, fog and changes in temperature and light.

DB Contractor shall provide a Detection System that does not require cleaning or adjustment to maintain performance. DB Contractor shall ensure it does not rely on battery backup to store configuration information. DB Contractor shall ensure the Detection System, once calibrated, does not need recalibration to maintain performance over entire operational temperature range unless the roadway configuration changes. DB Contractor shall provide remote connectivity to the Detection System to allow operators to change the unit's configuration, update the unit's firmware programming and recalibrate the unit

automatically from a centralized facility. The sensor can be accessed remotely through both TCP/IP and GPRS (both dynamic and static).

The sensor must be configurable through a web browser and at TransGuide through the centralized traffic management software system (Lonestar).

DB Contractor shall supply the detection system with a connector cable of the appropriate length for each installation site. DB Contractor shall ensure that the detection system provides communication options that include RS-232, RS-485 or TCP/IP. The antennas must be connected with the sensor through standard SMA-connectors.

The detection system sensor must operate with two directional antennas for optimized detection of traffic in multiple lanes. The antennas must be optimized for detection across multiple lanes; they have a narrow vertical angle of 30°, and a wide horizontal (azimuth) angle of 110°, and have a 90° difference in the polarization to avoid interference. Each of the receiving channels must have the ability to capture signals as weak as -102dBm or more. The antennas are attached to the body of the sensor with stainless steel brackets.

The sensor must have an internal GPS for automatic clock synchronization and positioning. If a GPS signal is not available the sensor will capture its clock synchronization signal via NTP (Network Time Protocol). Once the clock signal has been captured it must start detecting devices automatically. It must be possible to view real time scans to verify operations. The sensor must have diagnostics data recording reboots, GPS reception, data transfers and error messages related with GPRS and TCP/IP. The GPRS antenna must be inside the sensor housing.

For security purposes the sensor must have a configurable firewall; and thereby only admit connections from computers that have pre-selected IP-addresses or a subnet of pre-selected IP-addresses. The operator must be able to upload new firmware into non-volatile memory of the detection system over any supported communication channel including TCP/IP networks. DB Contractor shall provide any and all programming and software required to support the detection system. Install the programming and software in the appropriate equipment prior to testing. DB Contractor shall complete and pass testing using a stable release of the programming and software provided. DB Contractor shall provide software update(s) free of charge during the warranty period.

DB Contractor shall furnish the detection system with bracket or band designed to mount directly to a CCTV pole or overhead mast-arm or signal/ITS cabinet. DB Contractor shall ensure the mounting assembly has all stainless steel, or aluminum construction, and supports the load of the detection system. DB Contractor shall incorporate for the mounting assembly a mechanism that can be tilted in three axes, and then locked into place, to provide the optimum area of coverage. DB Contractor shall ensure the mounting bracket is designed and installed to prevent sensor re-positioning during 80 mph wind conditions.

Proper placement, mounting height and orientation of the detection systems must conform to the manufacturer's published requirements for the system provided. Install the detection system units as shown on the plans. DB Contractor shall analyze each proposed pole location to assure that the detection system installation will comply with the manufacturer's published installation instructions. DB Contractor shall advise TxDOT, before any trenching or pole installation has taken place, of any need to move the pole from the location indicated in the plans in order to achieve the specified detector performance. DB Contractor shall confirm equipment placement with the manufacturer before installing any equipment.

DB Contractor shall ensure alignment, configuration and any calibration of the detection system takes less than 15 min. per lane once mounting hardware and other installation hardware are in place. DB Contractor shall install detection system units such that each unit operates independently and that detectors do not interfere with other detection system units or other equipment in the vicinity.

#### **i. Manufacturing Requirements**

DB Contractor shall provide a detection system capable of continuous operation over a temperature range of -22°F to +165°F and a humidity range of 5% to 95% (non-condensing).

DB Contractor shall ensure the assembly of the units adheres to industrial electronic assembly practices for handling and placement of components.

The detection system must undergo a rigorous sequence of operational testing to ensure product functionality and reliability. Include the following tests:

- functionality testing of all internal subassemblies,
- unit level burn-in testing of 24 hour duration or greater, and
- final unit functionality testing prior to shipment.

DB Contractor shall provide test results and all associated data for the above testing, for each purchased detection system by serial number. Additionally, DB Contractor shall maintain and make available manufacturing data for each purchased Bluetooth detection system by serial number.

Externally, the detection system must be modular in design to facilitate easy replacement in the field. DB Contractor shall ensure the total weight of the detection system does not exceed 5 lbs.

DB Contractor shall ensure all external parts are protected against corrosion, fungus growth and moisture deterioration.

## **ii. Power and Wiring Requirements**

DB Contractor shall provide the detection system that operates at 12 to 24 VDC from a separate power supply and ensure it does not draw more than 2W of power each.

DB Contractor shall provide the separate power supply or transformer that operates from 115 VAC  $\pm 10\%$ , 60 Hz  $\pm 3$  Hz.

DB Contractor shall provide equipment operations that are not affected by the transient voltages, surges and sags normally experienced on commercial power lines. DB Contractor shall check the local power service to determine if any special design is needed for the equipment.

DB Contractor shall provide wiring that meets the requirements of the National Electric Code. DB Contractor shall provide wires that are cut to proper length before assembly. DB Contractor shall provide cable slacks to facilitate removal and replacement of assemblies, panels, and modules. DB Contractor shall not double-back wire to take up slack. DB Contractor shall lace wires neatly into cable with nylon lacing or plastic straps, secure cables with clamps, and provide service loops at connections.

DB Contractor shall provide DC relays, solenoids and holding coils that have diodes or other protective devices across the coils for transient suppression.

DB Contractor shall provide equipment that contains readily accessible, manually re-settable or replaceable circuit protection devices (such as circuit breakers or fuses) for equipment and power source protection.

DB Contractor shall provide and size circuit breakers or fuses such that no wire, component, connector, PC board or assembly must be subjected to sustained current in excess of their respective design limits upon the failure of any single circuit element or wiring.

DB Contractor shall enclose the detection system in a rugged, water-tight NEMA 4X & IP 67 polycarbonate enclosure.

DB Contractor shall not use silicone gels or any other material for enclosure sealing that will deteriorate under prolonged exposure to UV rays. DB Contractor shall ensure the overall dimensions of the box, including fittings, do not exceed 8 in. x 8 in. x 6 in. DB Contractor shall ensure the overall weight of the box, including fittings, does not exceed 6.5 lbs.

DB Contractor shall coat all printed circuit boards with a clear-coat moisture and fungus resistant material (conformal coating).

DB Contractor shall ensure external connection for telecommunications and power be made by means of a single military style multi-pin connector, keyed to preclude improper connection.

DB Contractor shall provide external connections made by means of connectors. DB Contractor shall provide connectors that are keyed to preclude improper hookups. DB Contractor shall color code and appropriately mark wires to and from the connectors.

DB Contractor shall provide connecting harnesses of appropriate length and terminated with matching connectors for interconnection with the communications system equipment.

DB Contractor shall provide pins and mating connectors that are plated to improve conductivity and resist corrosion. DB Contractor shall cover connectors utilizing solder type connections by a piece of heat shrink tubing securely shrunk to insure that it protects the connection.

### 3. DMS

#### a. Front Access DMS

DB Contractor shall ensure the selected front access DMS meets the following requirements:

- DMS shall be full color with a full matrix display and include a matrix size of 27x125, with an 18" nominal character height. DMS matrix shall have a 1' offset minimum from the left and right edges of the panel.
- DMS shall consist of a full protective masked face panel.
- DMS shall consist of all aluminum construction.
- DMS housing must be designed, fabricated, welded and inspected in accordance with the latest revision of ANSI/AWS D1.2 Structural Welding Code-Aluminum.
- DMS shall support and include two 12" amber beacons, to be located at the top of the sign 2'-6" from each edge of the panel.
- Display panels shall have hinges to allow for access, and include door stops such that face panels will remain open at a 90-degree angle.
- DMS shall allow for two 1 ½" conduit hubs in the rear panel; one shall be dedicated for communications and the other shall be dedicated to power.
- DMS shall include a positive pressure ventilation system with multiple filtered air intake units and an equal number of air exhaust units.
- DMS shall provide monitoring information, including front panel and rear panel light sensors, ambient temperature and light sensors.
- DMS shall include controller to be installed in the TxDOT ITS Cabinet and all necessary communications cables to operate DMS equipment. DMS shall also include an uninterrupted power supply (UPS) capable of maintaining sign operations for a minimum of two hours.
- DMS Manufacturer shall have in-house Quality Management System in place and be ISO 9001 certified.

#### b. Walk-in DMS

DB Contractor shall ensure the selected DMS meets the following requirements:

- DMS shall include a matrix size of 96x432, with an 18" nominal character height across three lines with 27 characters per line. DMS shall also allow for a 12" character height across four lines at 36 characters per line and 8" height across six lines at 54 characters per line.
- DMS dimensions shall be 30'-7" x 8'-6".
- DMS weight shall not exceed 4400 lbs.
- DMS housing skin shall be constructed of aluminum alloy 5052-H32 which shall not be less than 0.125 inches thick. Framing structural members shall be made of aluminum alloys 6061-T6 and 6063-T5.
- All welding shall be by an inert gas process in accordance with the American Welding Society (AWS) Standards, AWS D1.2/D1.2M:2014 Structural Welding Code for Aluminum. The sign housing shall have a continuous, 24" wide walkway extending the full length of the sign. The walkway shall be made of 1/8" diamond tread 3003-H22 aluminum. All edges of the walkway grating must be finished to eliminate sharp edges or protrusions

- The sign housing shall be a minimum of three feet deep to allow adequate room inside the sign housing for maintenance personnel. There shall be 21" of clear area between all equipment along the length of the sign housing from the walkway up to a minimum of 70" above the walkway.
- DMS ventilation system shall be a positive-pressure, filtered, forced-air system which cools both the display modules and the sign housing interior. Signs with negative pressure systems that use exhaust fans are not acceptable
- The ventilation system shall provide a minimum of two (2) sign housing volume air changes per minute at the pressure drop developed throughout the entire ventilation system.
- DMS shall provide monitoring information, including internal and ambient temperature sensors, humidity sensor, and air flow sensor.
- DMS Controller and Battery Backup shall be housed within the sign. BBU shall be capable of maintaining sign operations for a minimum of eight hours. If additional battery locations are required, TxDOT would consider ground-mounted locations to support BBUs. These would be subject to the same requirements set forth in section 25.2.6.

#### 4. Infrared Thermal Detection for WWD Systems

As a part of the WWD System, DB Contractor shall provide a forward-looking infrared integrated camera and detector meeting the following requirements:

- Camera type shall be a Focal Plane Array (FPA), uncooled VOx microbolometer with long wave Infrared (7 – 14  $\mu\text{m}$ ).
- Resolution shall be Video Graphics Array (VGA), 640x480
- Shall allow for a frame rate of 30 fps
- Capable of Advanced Video Encoding/Compression: H.264, MPEG-4, MJPEG
- Functions on Real-Time Streaming Protocol (RTSP)
- Meets NEMA TS2 Specifications for shock and vibration
- Is weatherproof, UV resistant, waterproof to IP 67, and capable of operating within a temperature range of -34 degrees C to 74 degrees C

#### 5. Access Control System

DB Contractor shall provide an ACS for each emergency access turnaround consisting of a crashworthy retractable longitudinal barrier gate system, that is FHWA approved and MASH (Manual for Assessing Safety Hardware) tested. The length of the gate(s) must be a minimum of 42 feet when open and provide full control of access to the turnaround locations. Each ACS barrier gate shall operate independently of the other gates within the ACS. The primary means of control of the ACS barrier gates shall be the TransGuide TMC. The ACS shall include all components of the gate system such that is operable from TransGuide, including:

- all required structural supports to allow for barrier gate operations and incorporate it into the overall barrier system for the elevated lanes
- physical connectivity to the ITS fiber optic trunkline and the appropriate controller hardware and software allowing ability to operate the ACS from TransGuide
- NEMA 4 rated electrical control system equipped with electrically powered locking/unlocking and opening/closing barrier gate operations, mechanical overload protection, and hand crank manual override in the event of power or communications loss
- All electrical components and associated equipment that will allow for functioning on AC power, such as conduit, junction boxes, and controllers
- Battery back up
- Remote control assemblies, mechanical assemblies, barrier gate control box with electrical components, and an antenna assembly

Barrier gate operations to open or close the gates shall not exceed 90 seconds. Each ACS barrier gate shall include an infrared safety sensor capable of detecting blockage of the gate and reverse gate closure upon detecting a blockage.

Field personnel shall have the ability to operate the ACS barrier gate with pushbuttons or other remote control device. Manual/local operation of the gates shall be made possible at any time. The ACS shall allow the operator that performs a manual override to do so without changing the mechanical or electrical configuration of the modules.

**6. Managed Field Ethernet Switch (MFES)**

DB Contractor shall provide a Layer 2 MFES with ten ports, eight of which shall be local fast ethernet ports, and two shall be uplink ports.

**7. Small-form Pluggable (SFP) Transceiver Modules**

DB Contractor shall provide SFP modules for the project with two LC (dual fiber) connections, supporting single mode transmission at a wavelength of 1310 nanometers with a reach up to 40 km. Connectors shall be capable of operating at a temperature range of -40 degrees C to 85 degrees C.

**8. Power Supplies**

DB Contractor shall provide power supplies within ITS Cabinets. Power supplies shall be 12VDC and provide 115VAC, and include power cords of 12V/2.1A and capable of operating at a maximum temperature of 74 degrees C.

**9. Video Encoder**

DB Contractor shall provide an MPEG-4 video encoder to support CCTV equipment. The encoder shall have one CVBS input unit and four encoding profiles and five output streams per profile. Input impedance shall not exceed 75 ohms. Latency shall not exceed 150 ms when encoding/decoding.

**10. Port Server**

DB Contractor shall provide a field terminal port server with four RS-232/422/485 RJ-45 (switch-selectable) ports. The port server shall operate on the following protocols: UDP/TCP, DHCP/RARP/ARP-Ping for IP Address assignment, Extended Telnet RFC 2217, Telnet, Reverse Telnet, Modbus to Modbus/TCP protocol conversion support. The port server shall have SSHv2, SSL/TLS security. The port server's operating temperature range shall be between -35 degrees C and 74 degrees C.





# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 27-1 Performance and Measurement Baseline Table During Construction

ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

- Note 1. DB Contractor shall record a separate Defect upon failure to achieve any of the requirements set forth in a Measurement Record. DB Contractor shall repair each Defect within the specified Defect Repair Period.
- Note 2. DB Contractor shall conduct hazard mitigation with respect to a Category 1 Defect to mitigate the hazard to Users or imminent risk of damage or deterioration to property or the environment such that the Category 1 Defect no longer exists. For all physical Elements, DB Contractor shall monitor hazard mitigation and shall take action to prevent recurrence of the hazard prior to permanent repair.
- Note 3. DB Contractor shall conduct permanent repair of all Defects to restore the condition of an Element to a condition such that no Defect exists.
- Note 4. Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's Pavement Management Information System Rater's Manual, TxDOT Designation TEX-1001-S "Test Procedure for Operating Inertial Profilers and Evaluating Pavement Profiles" and TxDOT Specification No. TxDOT 968-62-65 "Pavement Condition Data Collection Services."
- Note 5. Unless stated otherwise, pavement performance measurement records relate to 0.1-mile Performance Sections.
- Note 6. Pavement distress data includes distresses identified directly by automated methods and distresses revealed by post-processing of visual images obtained during data collection by TxDOT certified visual distress raters for flexible and rigid pavements.

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>HAZARD MITIGATION AND PERMANENT REPAIR OF CATEGORY 1 DEFECTS</b>							
<b>A: CATEGORY 1 DEFECTS OF PHYSICAL ELEMENTS (GENERAL)</b>							
1) PAVEMENT	A1	All physical Elements	Provide Hazard Mitigation and Permanent Repair to any Category 1 Defect in a pavement Element.	24 hours Hazard Mitigation  28 days Permanent Repair	The inspection and measurement method for the identification of Category 1 Defects may include any of the methods in this Table.	A1.1	No Category 1 Defects, including but not limited to: any failure as defined in TxDOT PMIS System Rater's Manual.
2) DRAINAGE	A2		Provide Hazard Mitigation and Permanent Repair to any Category 1 Defect in a drainage system Element.			A2.1	No Category 1 Defects, including but not limited to: any failure of a drainage system that permits water to accumulate on the travel way to the extent that such water would represent a hazard because of its position or depth.
3) STRUCTURES	A3		Provide Hazard Mitigation and Permanent Repair to any Category 1 Defect in a structures Element.			A3.1	No Category 1 Defects, including but not limited to: any structural condition, loading event, deflection, crack or settlement that exceeds the design expectation for the Element.
4) EARTHWORK	A4		Provide Hazard Mitigation and Permanent Repair to any Category 1 Defect in an earthwork Element.			A4.1	No Category 1 Defects, including but not limited to: any settlement, earthwork instability or erosion event threatening user safety.
5) GENERAL	A5		Provide Hazard Mitigation and Permanent Repair to any Category 1 Defect in any other Element.			A5.1	No other Defects that meet the definition of a Category 1 Defect as defined in <u>Section 27.3.2.3</u> .  [The following criteria for a Category 1 Defect are included in Section 27.3.2.3: • Represents an immediate or imminent health or safety hazard to Users or road workers; • There is a risk of immediate or imminent structural failure or deterioration; • There is an immediate or imminent risk of damage to a third party's property; or • There is an immediate or imminent risk of damage to the environment.]

## ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>B: CATEGORY 1 DEFECTS OF PHYSICAL ELEMENTS (REQUIRE MORE RAPID DEFECT REPAIR)</b>							
<b>1) TRAFFIC SIGNS</b>	B1	Warning and regulatory signs ("Stop", "Yield", "Do Not Enter", "One Way", and "Wrong Way" signs)	Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects.	2 hours Hazard Mitigation  28 days Permanent Repair	Visual inspection	B1.1	No traffic sign Defects that represent an immediate or imminent health or safety hazard to Users or road workers.
<b>2) TRAFFIC SIGNALS</b>	B2	Traffic Signals	(i) Traffic signals and their associated equipment shall be: • clean and visible • correctly aligned and operational • free from damage caused by accident or vandalism • bulbs are not burned out (ii) Signal timing and operation is correct. (iii) Contingency plans are in place to rectify Category 1 Defects not immediately repairable to assure alternative traffic control is provided during a period of failure.	2 hours Hazard Mitigation  28 days Permanent Repair	Visual inspection	B2.1	No traffic signal Defects that represent an immediate or imminent health or safety hazard to Users or road workers.
<b>C. CATEGORY 1 DEFECTS OF OPERATIONAL ITEMS (HAZARD MITIGATION ONLY)</b>							
<b>1) AMENITY</b>	C1	Graffiti	Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces (i) Category 1 Defect – Obscene, apparent gang-related, or highly visible graffiti	24 hours Hazard Mitigation	Visual inspection	C1.1	Graffiti that is obscene, apparent gang-related, or highly visible is not present.
		Animals	All dead or injured animals are cleared from travel lanes and shoulders.	1 hour Hazard Mitigation	Visual inspection	C1.2	Dead or injured animals do not represent an immediate or imminent health or safety hazard to Users or road workers.
		Stalled or abandoned vehicles and equipment	Stalled or abandoned vehicles and equipment are cleared from travel lanes and shoulders.	1 hour Hazard Mitigation	Visual inspection	C1.3	Stalled or abandoned vehicles or equipment do not represent an immediate or imminent health or safety hazard to Users or road workers.
<b>2) SNOW AND ICE CONTROL (NOT USED)</b>							
<b>3) INCIDENT RESPONSE</b>	C3	General	(i) Monitor the Project and respond to Incidents in accordance with the Maintenance Management Plan (MMP). (ii) Monitor the Project and respond to Incidents involving Hazardous Materials in accordance with the Maintenance Management Plan. (iii) Evaluate structural damage to structures and liaise with emergency services to ensure safe working environment while clearing the Incident.	1 hour Hazard Mitigation	Records of all incident and emergency responses	C3.1	Response times are met for 98% of Incidents measured on a 1 year rolling basis and no unresolved complaints from Emergency Services.
<b>4) SWEEPING AND CLEANING</b>	C4	Obstructions and debris	Travel lanes and shoulders free from obstructions and debris including at a minimum objects, luminaire poles, and tires.	1 hour Hazard Mitigation	Visual inspection	C4.1	No obstructions and/or debris on travel lanes and shoulders that represent an immediate or imminent health or safety hazard to Users or road workers.

## ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>PERMANENT REPAIR OF ALL OTHER DEFECTS NOT CLASSIFIED AS CATEGORY 1 DEFECTS</b>							
<b>1) PAVEMENT GENERAL</b>							
	1.1	Ride quality	All roadways have a smooth surface course (including bridge decks, covers, gratings, frames and boxes).	28 days	10-ft straightedge used to measure discontinuities	1.1.1	No individual discontinuities greater than the reference condition (on a location-specific basis) in the BECR.
	1.2	Edge drop-offs	All roadways are free from edge drop-offs exceeding measurement record thresholds.	28 days	Physical measurement	1.2.1	No edge drop-off greater than the reference condition (on a location-specific basis) in the BECR.
<b>1a) PAVEMENT (ASPHALT)</b>							
	1a.1	Ruts	All roadways are free from surface depressions exceeding measurement record thresholds.	28 days	Physical measurement	1a.1.1	No depth of rut at any location greater than the reference condition (on a location-specific basis) in the BECR.
	1a.2	Cracking	All roadways are free from cracking exceeding measurement record thresholds.	28 days	Physical measurement	1a.2.1	No unsealed longitudinal cracking and/or transverse cracking in any Performance Section with a width greater than the reference condition (on a location-specific basis) in the BECR.
<b>1b) PAVEMENT (CRCP)</b>							
	1b.1	Spalled cracks	All roadways (including shoulders and ramps) are free from spalled cracks exceeding measurement thresholds.	28 days	Physical measurement	1b.1.1	No individual spalling of any crack greater than the reference condition (on a location-specific basis) in the BECR.
	1b.2	Popouts and punchouts	All roadways (including shoulders and ramps) are free from popouts and punchouts exceeding measurement thresholds.	28 days	Physical measurement	1b.2.1	No individual punchouts greater than the reference condition (on a location-specific basis) in the BECR.
	1b.3	Longitudinal cracking	All roadways (including shoulders and ramps) are free from longitudinal cracks exceeding measurement record thresholds.	28 days	Physical measurement	1b.3.1	No longitudinal cracks greater than the reference condition (on a location-specific basis) in the BECR.
<b>1c) PAVEMENT (JCP)</b>							
	1c.1	Damaged joints and cracks	All roadways (including shoulders and ramps) are free from damaged joints and cracks.	28 days	Physical measurement	1c.1.1	No individual spalling of joints or cracks greater than the reference condition (on a location-specific basis) in the BECR.
	1c.2	Slabs with cracks in multiple directions	All roadways (including shoulders and ramps) are free from potential shattered slabs.	28 days	Visual inspection	1c.2.1	No slabs separated into three or more pieces greater than the reference condition (on a location-specific basis) in the BECR.
	1c.3	Slabs with longitudinal cracks	All roadways (including shoulders and ramps) are free from slabs with longitudinal cracks.	28 days	Physical measurement	1c.3.1	No longitudinal cracks in any slab greater than the reference condition (on a location-specific basis) in the BECR.

ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>2) DRAINAGE</b>							
	2.1	Non-bridge class culverts, pipes, ditches, channels, catch basins, inlets, manholes and outfalls	Each element of the drainage system functions properly from the point at which water drains from the travel way to the outfall or drainage way and is free of: <ul style="list-style-type: none"> <li>defects in sealant at movement joints</li> <li>scour damage</li> <li>corrosion of rebar</li> </ul>	28 days	Visual inspection	2.1.1	Performance objective met.
	2.2	Drainage treatment devices	Drainage treatment and balancing systems, flow and spillage control devices function correctly, are free of silt and debris and their location and means of operation is recorded adequately to permit their correct operation in Emergency.	28 days	Visual inspection	2.2.1	Performance objective met.
	2.3	Discharge systems	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.	3 months	Visual inspection	2.3.1	Performance objective met.
	2.4	Erosion	Address erosion greater than 12" deep along ditches, swales, ponds, and channels.	28 days	Visual inspection	2.4.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	2.5	Channels and ditches – Permanent Erosion Control Measures	Where permanent erosion control measures such as rock or concrete riprap are utilized: free of undermined or damaged erosion control measures.	28 days	Visual inspection	2.5.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>3) STRUCTURES</b>							
	3.1	Structure components (Structures having an opening measured along the center of the roadway of more than 20 feet between faces of abutments or spring lines of arches or extreme ends of the openings for multiple box culverts or multiple pipes that are 60 inches or more in diameter and that have a clear distance between openings of less than half of the smallest pipe diameter)	(i) Substructures and superstructures are free of: <ul style="list-style-type: none"> <li>undesirable vegetation</li> <li>debris and bird droppings</li> <li>blocked drains, weep pipes, manholes and chambers</li> <li>blocked drainage holes in structural components</li> <li>defects in joint sealants</li> <li>defects in pedestrian protection measure</li> <li>scour damage</li> <li>corrosion of rebar</li> <li>paint system failures</li> <li>impact damage</li> </ul> (ii) Expansion joints free of: <ul style="list-style-type: none"> <li>dirt, debris and vegetation</li> <li>defects in drainage system</li> <li>loose nuts and bolts</li> <li>defects in gaskets and/or seals</li> </ul> (iii) The deck drainage system is free of all debris and operates as intended. (iv) Parapets free of: <ul style="list-style-type: none"> <li>loose nuts and bolts</li> <li>blockages of hollow section drain holes</li> <li>undesirable vegetation</li> <li>impact damage</li> <li>concrete spalling</li> </ul>	6 months	(a) The National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650  (b) The TxDOT Bridge Inspection Manual  (c) The Federal Highway Administration's Bridge Inspector's Reference Manual  (d) Visual Inspection	3.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR and records maintained as required in the TxDOT Bridge Inspection Manual.

ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
			(v) Bearings and bearing seats are: <ul style="list-style-type: none"> <li>properly aligned horizontally and vertically</li> <li>clean and in full contact with each other</li> </ul> (vi) Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the structure maintenance manual is followed. (vii) Special finishes are clean and perform to the appropriate standards. (viii) All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's recommendations and certification of lifting devices is maintained.			3.1.2	The condition rating is at least equal to the reference condition rating (on a location-specific basis) in the BECR.
	3.2	Load ratings	All structures maintain the design load capacity and no load restrictions for Texas legal loads (including legally permitted vehicles).	Not used	Not used	3.3.1	Not used
	3.3	Gantries and high-masts	Sign signal gantries, high-masts are structurally sound and free of: <ul style="list-style-type: none"> <li>loose nuts and bolts</li> <li>defects in surface protection systems</li> </ul>	6 months	Visual inspection	3.4.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	3.4	Access points	All hatches and points of access have fully operational and lockable entryways.	6 months	Visual inspection	3.5.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	3.5	Retaining walls	Retaining walls are free of: <ul style="list-style-type: none"> <li>undesirable vegetation</li> <li>defects in sealed joints</li> <li>defects in pedestrian protection</li> <li>scour damage</li> <li>corrosion of rebar</li> <li>paint system failure</li> <li>concrete spalling</li> <li>impact damage</li> <li>blocked weep holes</li> </ul> Parapets are free of: <ul style="list-style-type: none"> <li>loose nuts and bolts</li> <li>blockage of drain holes</li> <li>undesirable vegetation</li> <li>impact damage</li> <li>concrete spalling</li> </ul>	28 days	Visual inspection	3.6.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS</b>							
	4.1	Pavement markings	Pavement markings are: <ul style="list-style-type: none"> <li>clean and visible during the day and at night</li> <li>whole and complete and of the correct color, type, width and length</li> <li>placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets</li> </ul>	28 days	<b>a) Markings - General</b>		
					Visual inspection (to include a record of visibility of markings under low beam headlights)	4.1.1	Marking visibility condition meets or exceeds the reference condition (on a location-specific basis) in the BECR.
					Physical measurement	4.1.2	Length of pavement marking where the loss of pavement marking material is at least equal to the reference condition (on a location-specific basis) in the BECR.
					<b>b) Profile Markings</b>		
					Visual inspection	4.1.3	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.

## ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
	4.2	Raised reflective markers	Raised reflective pavement markers are: <ul style="list-style-type: none"> <li>• clean and clearly visible</li> <li>• of the correct color and type</li> <li>• reflective or retroreflective in accordance with TxDOT standards are: <ul style="list-style-type: none"> <li>• correctly located, aligned and at the correct level</li> <li>• firmly fixed</li> <li>• in a condition that will ensure that they remain at the correct level</li> </ul> </li> </ul>	6 months	Visual inspection	4.2.1	Raised reflective markers is at least equal to the reference condition for ineffectiveness in any 10 consecutive markers (on a location-specific basis) in the BECR. (Ineffective includes missing, damaged, settled or sunk).
	4.3	Delineators & markers	Object markers, mail box markers and delineators are: <ul style="list-style-type: none"> <li>• clean and visible</li> <li>• of the correct color and type</li> <li>• legible and reflective</li> <li>• straight and vertical</li> </ul>	28 days	Visual inspection	4.3.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>5) CURBS, GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS</b>							
	5.1	Curbs	Curbs are free of cracks, chips and separation and are in proper grade and alignment.	28 days	Visual inspection	5.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	5.2	Guardrails and safety barriers	All guardrails, safety barriers, and concrete barriers are maintained free of defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles.	28 days	Visual inspection	5.2.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	5.3	Impact attenuators	All impact attenuators are appropriately placed, correctly installed, and free of damage.	28 days	Visual inspection	5.3.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>6) TRAFFIC SIGNS</b>							
	6.1	General – All signs	(i) Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects. (ii) Identification markers are provided, correctly located, visible, clean and legible. (iii) Sign mounting posts are vertical, structurally sound and rust free. (iv) All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights. (v) Obsolete and redundant signs are removed or replaced as appropriate. (vi) Visibility distances meet the stated requirements. (vii) Sign information is of the correct size, location, type and wording to meet its intended purpose and any statutory requirements. (viii) All structures and elements of the signing system are kept clean and free from debris and have clear access provided. (ix) All replacement and repair materials and equipment are in accordance with the requirements of the TMUTCD.	28 days	Visual inspection	6.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.

ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>7) TRAFFIC SIGNALS</b>							
	7.1	General	(i) Traffic signals and their associated equipment shall be: <ul style="list-style-type: none"> <li>• clean and visible</li> <li>• correctly aligned and operational</li> <li>• free from damage caused by accident or vandalism</li> <li>• bulbs are not burned out</li> </ul> (ii) Signal timing and operation is correct. (iii) Comply with National Electric Code regulations. (iv) Traffic signals are structurally sound. (v) Signals have identification markers and the telephone number for reporting faults are correctly located, clearly visible, clean and legible.	28 days	Visual inspection	7.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	7.2	Pedestrian elements and vehicle detectors	All pedestrian elements and vehicle detectors are correctly positioned and fully functional.	28 days	Visual inspection	7.2.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>8) LIGHTING</b>							
	8.1	Roadway lighting – General	(i) All lighting is free from defects and provides acceptable uniform lighting quality. (ii) Lanterns are clean, clearly visible and correctly positioned. (iii) Lighting units are free from accidental damage or vandalism. (iv) Columns are upright, correctly founded, visually acceptable and structurally sound.	28 days	Night time inspection or automated logs	8.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	8.2	Sign lighting	Sign lighting is fully operational.	28 days	Night time inspection or automated logs	8.2.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	8.3	Aesthetic lighting	Aesthetic lighting is fully operational.	28 days	Night time inspection or automated logs	8.3.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	8.4	Electrical supply	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning.	28 days	Testing to meet National Electric Code regulations, visual inspection	8.4.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	8.5	Access panels	All access panels in place and secure at all times.	28 days	Visual inspection	8.5.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	8.6	High-mast lighting	(i) All high-mast luminaries functioning on each pole. (ii) All obstruction lights are present and working (if required). (iii) Compartment door is secure with all bolts in place. (iv) All winch and safety equipment are correctly functioning and maintained without rusting or corrosion. (for structural requirements refer to Element Category 3)	28 days	Night time inspections or automated logs	8.6.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>9) FENCES, WALLS AND SOUND ABATEMENT</b>							
	9.1	General	Integrity and structural condition of fences, walls and/or sound abatement elements are maintained and are free of: <ul style="list-style-type: none"> <li>• blocked weep holes</li> <li>• undesirable vegetation</li> <li>• defects in joint sealants</li> <li>• defects in pedestrian protection</li> <li>• scour damage</li> <li>• corrosion of rebar</li> <li>• paint system failure</li> <li>• concrete spalling</li> <li>• impact damage</li> </ul>	6 months	Visual inspection and structural assessment if visual inspection warrants	9.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.



ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>10) ROADSIDE MANAGEMENT (comply with specified minimum condition)</b>							
	10.1	Vegetated areas – Except landscaped areas – General	Vegetation is maintained so that: (i) Height of grass and weeds is kept within the limits described for rural or urban areas. Mowing begins before vegetation reaches the maximum height. (ii) Spot mowing at intersections, ramps or other areas maintains visibility of appurtenances and sight distance. (iii) Grass or vegetation does not encroach into or on paved shoulders, mainlanes, sidewalks, islands, riprap, traffic barrier or curbs. (iv) A herbicide program is undertaken in accordance with the TxDOT Roadside Vegetation Manual and the TxDOT Herbicide Operations Manual to control noxious weeds and to eliminate grass in pavement or concrete. (v) A full width mowing cycle is completed after the first frost. (vi) Wildflowers are preserved utilizing the guidelines in the mowing specifications and TxDOT Roadside Vegetation Management Manual.	28 days	Physical measurement	10.1.1	Urban Areas - Individual measurement areas have 95% of height of grass and weeds between 5" and 18".  Rural areas - Individual measurement areas have 95% of height of grass and weeds between 5" and 30".
					Visual inspection	10.1.2	Other performance objectives met.
	10.2	Landscaped areas	(i) All landscaped areas are maintained to their originally constructed condition. Landscaped areas are as designated in the Plans. (ii) Mowing, litter pickup, irrigation system maintenance and operation, plant maintenance, pruning, insect, disease and pest control, fertilization, mulching, bed maintenance, watering is undertaken as per Maintenance Management Plan. (iii) The height of grass and weeds is kept between 2" and 8". Mowing begins before vegetation reaches 8". (iv) Damaged or dead vegetation is replaced.	28 days	Visual inspection	10.2.1	Performance objective met.
	10.3	Fire hazards	Fire hazards are controlled.	28 days	Visual inspection	10.3.1	Performance objective met.
	10.4	Trees, brush and ornamentals	(i) Trees, brush and ornamentals on the right of way, except in established no mow areas, are trimmed in accordance with TxDOT standards. (ii) Trees, brush and ornamentals are trimmed to insure they do not interfere with vehicles or sight distance, or inhibit the visibility of signs. (iii) Dead trees, brush, ornamentals and branches are removed. Potentially dangerous trees or limbs are removed. (iv) All undesirable trees and vegetation are removed. Diseased trees or limbs are treated or removed by licensed contractors.	28 days	Visual inspection	10.4.1	Performance objective met.
	10.5	Wetlands	Wetlands are managed in accordance with the permit requirements.	28 days	Visual inspection and records of compliance	10.5.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	10.6	Sidewalks and pedestrian curb ramps	Compliance with TxDOT Design Standards and Americans with Disabilities Act (ADA) requirements and maintain at a standard to be free of defects as follows: (i) unsealed cracks or joints (ii) broken sections (iii) vertical displacement or misalignment	28 days	Visual inspection	10.6.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.

## ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>11) REST AREAS AND PICNIC AREAS (NOT USED)</b>							
<b>12) EARTHWORKS, EMBANKMENTS AND CUTTINGS</b>							
	12.1	Slope failure	No structural or natural failures of the embankment and cut slopes of the Project.	6 months	Visual inspection	12.1.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	12.2	Slopes - General	Slopes are in conformance to the original, as-designed, graded cross-sections (or any modifications to such cross sections needed to address erosion or instability).	6 months	Visual inspection	12.2.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	12.3	Slopes – Erosion	Slopes function properly with no erosion of a nature that may result in further deterioration. All necessary erosion prevention measures are in place, including landscaping materials, seeding, turf or other vegetation. The roadway, shoulders and ditches are free from all eroded materials.	3 months	Visual inspection	12.3.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
	12.4	Slopes - Permanent Erosion Control Measures	Where permanent erosion control measures such as rock or concrete riprap are utilized, erosion control measures are not damaged or undermined, function properly and concrete slope protection joints are sealed and free from vegetation affecting or having the potential to affect structural integrity.	3 months	Visual inspection	12.4.1	The general condition is at least equal to the reference condition (on a location-specific basis) in the BECR.
<b>13) ITS EQUIPMENT</b>							
	13.1	ITS Equipment - Maintenance	All ITS equipment is fully functional and housing is functioning and free of defects. (i) All equipment and cabinet identification numbers are visible, sites are well drained and access is clear. (ii) Steps, handrails and accesses are kept in a good condition. (iii) Access to all communication hubs, ground boxes, cabinets and sites is clear. (iv) All drainage is operational and all external fixtures and fittings are in a satisfactory condition. (v) All communications cable markers, cable joint markers and duct markers are visible and missing markers are replaced. (vi) Backup power supply system is available at all times.	28 days	Visual inspection and records of existing malfunctions	13.1.1	ITS equipment is fully functional and the general condition is at least equal to the reference condition in the BECR.
	13.2	Dynamic Message Sign Equipment	Dynamic Message Signs are free from faults such as: (i) Any signal displaying a message which is deemed to be a safety hazard. (ii) Failure of system to clear sign settings when appropriate. (iii) 2 or more contiguous sign failures that prevent control office setting strategic diversions. (iv) Signs displaying an incorrect message.	14 days	Visual inspection and records of existing malfunctions	13.2.1	Dynamic message sign is fully functional and the general condition is at least equal to the reference condition in the BECR.
	13.3	CCTV Equipment	CCTV Systems are free from serious faults that significantly limit the availability of the operators to monitor the area network, such as: (i) Failure of CCTV Systems to provide control offices with access and control of CCTV images. (ii) Failure of a CCTV camera or its video transmission system. (iii) Failure of a Pan / Tilt unit or its control system. (iv) Moisture ingress onto CCTV camera lens. (v) Faults that result in significant degradation of CCTV images.	14 days	Visual inspection and records of existing malfunctions	13.3.1	CCTV system is fully functional and the general condition is at least equal to the reference condition in the BECR.
	13.4	Vehicle Detection Equipment	All equipment free of defects and operational problems such as: (i) Inoperable loops (ii) Malfunctioning camera controllers	28 days	Visual inspection and records of existing malfunctions	13.4.1	Vehicle detection equipment is fully functional and the general condition is at least equal to the reference condition in the BECR.

## ATTACHMENT 27-1: BASELINE PERFORMANCE AND MEASUREMENT TABLE DURING CONSTRUCTION

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE OBJECTIVE	DEFECT REPAIR PERIOD (NOTE 2, 3)	INSPECTION AND MEASUREMENT METHOD (NOTE 4, 6)	REF	MEASUREMENT RECORD (NOTE 1,5)
<b>14) TOLLING FACILITIES AND BUILDINGS (NOT USED)</b>							
<b>15) AMENITY</b>							
	15.1	Graffiti	Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces (i) Category 2 Defect – Graffiti other than Category 1 Defect	28 days	Visual inspection	15.1.1	Graffiti is not present.
	15.2	Animals	All dead or injured animals are removed.	3 days	Visual inspection	15.2.1	Dead or injured animals are not present.
	15.3	Abandoned vehicles and equipment	All abandoned vehicles and equipment are removed.	3 days	Visual inspection	15.3.1	Abandoned vehicles or equipment are not present.
<b>16) SNOW AND ICE CONTROL (NOT USED)</b>							
<b>17) INCIDENT RESPONSE</b>							
	17.1	Temporary and permanent repair	(i) Propose and implement temporary measures or permanent repairs to Defects arising from the Incident. (ii) Ensure the structural safety of any structures affected by the Incident.	28 days	Review and inspection of the Incident site	17.1.1	Performance objective met.
<b>18) CUSTOMER RESPONSE</b>							
	18.1	Response to inquiries	Timely and effective response to customer inquiries and complaints: (i) Contact the customer within 48 hours following initial customer inquiry. (ii) All work resulting from customer requests is scheduled within 48 hours of customer contact. (iii) All customer concerns/requests are resolved to TxDOT's satisfaction within 2 weeks of the initial inquiry.	See Performance Objective  14 days	Records of all customer inquires and responses	18.1.1	Performance objective met.
	18.2	Customer contact line	Telephone line staffed during business hours and 24 hour availability of messaging system. Faults to telephone line or message system rectified.	48 hours	Availability of the customer contact line	18.2.1	No instances of line out of action or unstaffed.
<b>19) SWEEPING AND CLEANING</b>							
	19.1	Sweeping	(i) Keep all channels, hard shoulders, gore areas, ramps, intersections, islands and frontage roads swept clean. (ii) Clear and remove debris from traffic lanes, hard shoulders, medians, other paved areas, footways and cycle ways. (iii) Remove all sweepings without stockpiling in the right of way and dispose of at approved tip.	3 days	Visual inspection	19.1.1	No buildup of dirt, ice, rock, debris, etc. on roadways and bridges to accumulate greater than 18" wide or 1/2" deep.
	19.2	Litter	(i) Keep the right of way in a neat condition, remove litter regularly. (ii) Pick up large litter items before mowing operations. (iii) Dispose of all litter and debris collected at an approved solid waste site.	3 days	Visual inspection	19.2.1	No more than 30 pieces of litter (rural) and 50 pieces of litter (urban) per roadside mile shall be visible when traveling at highway speed.



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 27-2 Baseline Inspection Requirement

## ATTACHMENT 27-2: BASELINE INSPECTION REQUIREMENTS

Provide photographic records and physical measurements referenced by location to establish an agreed reference condition for each Performance Section as follows:				
ELEMENT CATEGORY	ELEMENT	INSPECTION/MEASUREMENT METHOD	MEASUREMENT REF*	MEASUREMENT RECORD
<b>1) PAVEMENT</b>				
1.1	Ride quality	Physical measurement	1.1.1	Location and depth of any individual discontinuity (e.g. bumps and depressions) that is greater than 3/4"
1.2	Edge drop-offs	Physical measurement	1.2.1	Location and depth of any individual edge drop-offs that is greater than 2" for more than 10 feet in length
<b>1a) PAVEMENT (ASPHALT)</b>				
1a.1	Ruts	Physical measurement	1a.1.1	Location and depth of any individual rut that is greater than 1/2"
1a.2	Cracking	Physical measurement	1a.2.1	Location and length of any unsealed cracking with a width greater than 1/4" and a length exceeding 5 feet.
<b>1b) PAVEMENT (CRCP)</b>				
1b.1	Spalled Cracks	Physical measurement	1b.1.1	Location and length of any individual spalling of any crack greater than 12" length
1b.2	Popouts and Punchouts	Physical measurement	1b.2.1	Location and number of any popouts greater than 4" wide or long exceeding a depth of 1"; Location and number of any punchout with a maximum dimension of 24" or more exceeding 1/4" vertical fault dimension compared to adjacent intact slab
1b.3	Longitudinal Cracking	Physical measurement	1b.3.1	Location and length of any longitudinal cracks with width exceeding 1/8"
<b>1c) PAVEMENT (JCP)</b>				
1c.1	Damaged Joints and Cracks	Physical measurement	1c.1.1	Location and length of any individual spalling of joints or cracks more than 3" in width and greater than 12" length
1c.2	Slabs with cracks in multiple directions	Visual Inspection	1c.2.1	Location and number of any slabs separated into three or more pieces by a combination of transverse cracks and longitudinal cracks of any width extending from edge to edge of the slab
1c.3	Slabs with Longitudinal Cracks	Physical measurement	1c.3.1	Location and length of any longitudinal cracks in any slab with width exceeding 1/8"
<b>2) DRAINAGE</b>				
2.1	Non-bridge class culverts, pipes, ditches, channels, catch basins, inlets, manholes and outfalls	Visual Inspection	2.1.1	General condition
2.2	Drainage treatment devices	Visual Inspection	2.2.1	General condition
2.4	Erosion	Visual inspection	2.4.1	Location and general condition of any erosion greater than 12" deep along ditches, swales, ponds, and channels
2.5	Channels and ditches - Permanent erosion control measures	Visual inspection	2.5.1	Location and general condition of any undermined or damaged erosion control measures
<b>3) STRUCTURES</b>				
3.1	Structures components	Visual inspection	3.1.1	General condition
		Physical measurement and records of previous inspection	3.1.2	Location of any individual deck, superstructure or substructure with condition rating less than seven (7)
3.3	Gantries and high-masts	Visual inspection	3.3.1	General condition
3.4	Access points	Visual inspection	3.4.1	General condition
3.5	Retaining walls	Visual inspection	3.5.1	General condition

## ATTACHMENT 27-2: BASELINE INSPECTION REQUIREMENTS

ELEMENT CATEGORY	ELEMENT	INSPECTION/MEASUREMENT METHOD	MEASUREMENT REF*	MEASUREMENT RECORD
<b>4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS</b>				
4.1	Pavement markings	<b>a) Markings - General</b> Visual inspection (to include a record of visibility of markings under low beam headlights.)	4.1.1	Marking visibility under low-beam headlight
		Physical measurement	4.1.2	Location and length of pavement marking where there is loss of material
		<b>b) Profile markings - visual inspection</b>	4.1.3	General condition
4.2	Raised reflective markers	Visual inspection	4.2.1	Location and number of raised reflective markers that are ineffective in any 10 consecutive markers. (Ineffective includes missing, damaged, settled or sunk).
4.3	Delineators & Markers	Visual inspection	4.3.1	General condition
<b>5) CURBS, GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS</b>				
5.1	Curbs	Visual inspection	5.1.1	General condition
5.2	Guardrails and safety barriers	Visual inspection	5.2.1	General condition
5.3	Impact attenuators	Visual inspection	5.3.1	General condition
<b>6) TRAFFIC SIGNS</b>				
6.1	General – All signs	Visual inspection	6.1.1	General condition
6.2	Warning and regulatory signs	Visual inspection	6.2.1	General condition
<b>7) TRAFFIC SIGNALS</b>				
7.1	General	Visual inspection	7.1.1	General condition
7.2	Pedestrian elements and vehicle detectors	Visual inspection	7.2.1	General condition
<b>8) LIGHTING</b>				
8.1	Roadway lighting - general	Visual inspection	8.1.1	General condition
8.2	Sign lighting	Visual inspection	8.2.1	General condition
8.3	Aesthetic lighting	Visual inspection	8.3.1	General condition
8.4	Electrical supply	Visual inspection	8.4.1	General condition
8.5	Access panels	Visual inspection	8.5.1	General condition
8.6	High-mast lighting	Visual inspection	8.6.1	General condition
<b>9) FENCES, WALLS AND SOUND ABATEMENT</b>				
9.1	General	Visual inspection	9.1.1	General condition
<b>10) ROADSIDE MANAGEMENT</b>				
10.6	Sidewalks and pedestrian curb ramps	Visual inspection	10.6.1	General condition
<b>11) REST AREAS AND PICNIC AREAS (NOT USED)</b>				
<b>12) EARTHWORKS, EMBANKMENTS AND CUTTINGS</b>				
12.1	Slope failure	Visual inspection	12.1.1	Location and severity of any slope failure
12.2	Slopes – General	Visual inspection	12.2.1	General condition
12.3	Slopes – Erosion	Visual inspection	12.3.1	Location and depth of any erosion greater than 6" deep
12.4	Slopes – Permanent Erosion Control Measures	Visual inspection	12.4.1	Location and general condition of any undermined or damaged erosion control measures
<b>13) ITS EQUIPMENT</b>				
13.1	ITS Equipment-Maintenance	Visual inspection and records of malfunction	13.1.1	General condition
13.2	Dynamic Message Sign Equipment	Visual inspection and records of malfunction	13.2.1	General condition
13.3	CCTV Equipment	Visual inspection and records of malfunction	13.3.1	General condition
13.4	Vehicle Detection Equipment	Visual inspection and records of malfunction	13.4.1	General condition

## Notes

\* Measurement ref to be cross-referenced with Attachment 27-1.



# Texas Department of Transportation




## DESIGN-BUILD SPECIFICATIONS Items 10-28

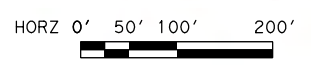
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**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS



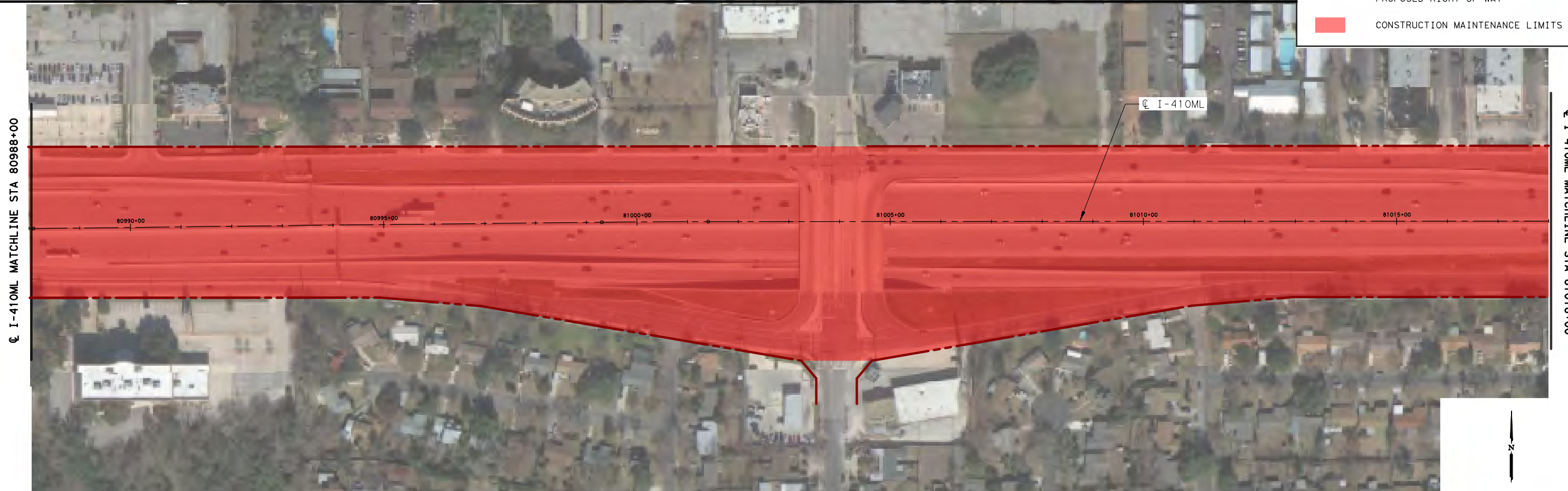
I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION



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**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS

HORZ 0' 50' 100' 200'

I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION




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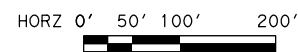
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Q I-410ML MATCHLINE STA 81048+00

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-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS

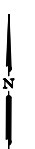
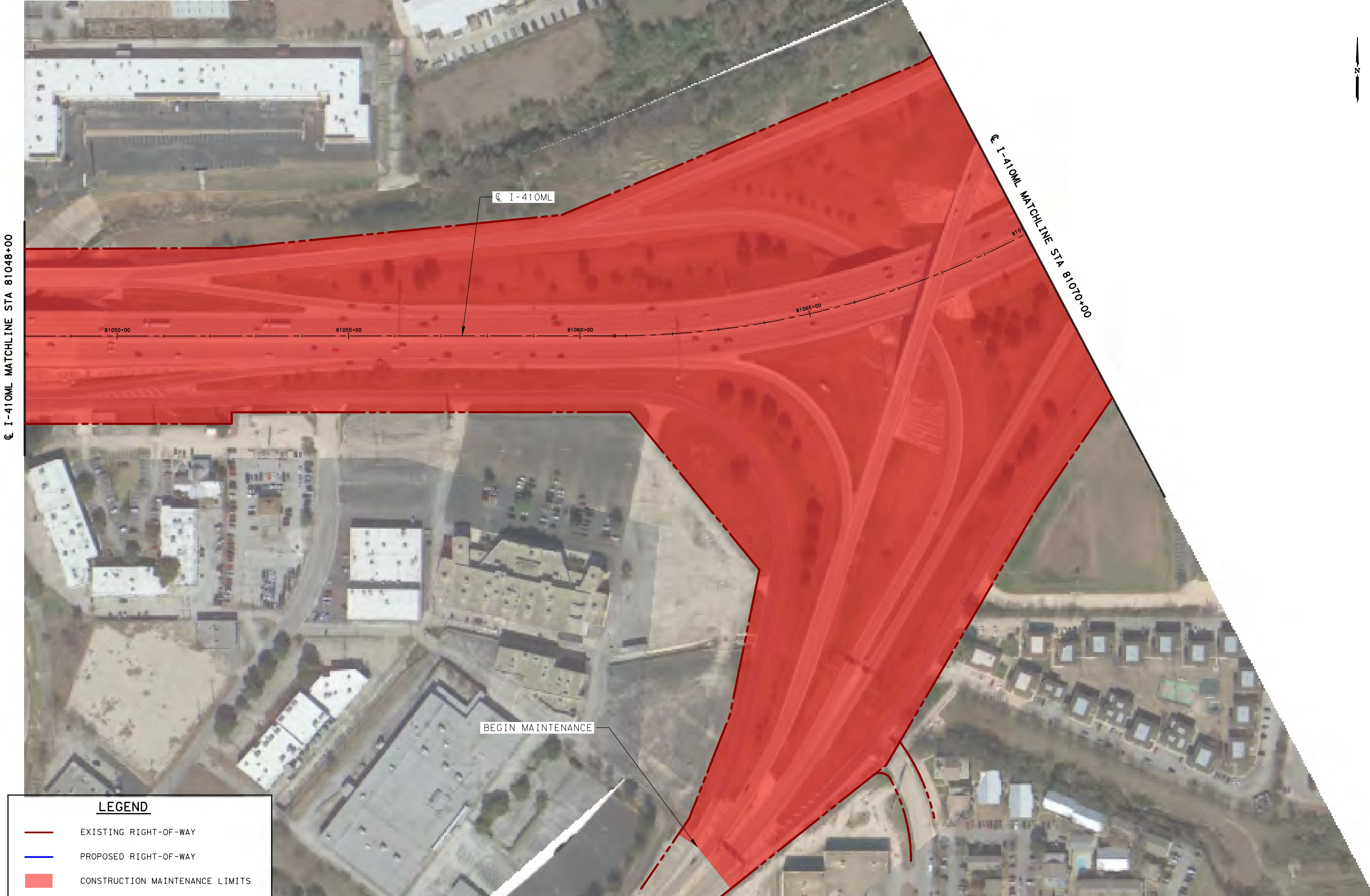





I-35 NEX CENTRAL PROJECT

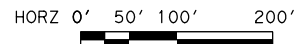


ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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LEGEND	
	EXISTING RIGHT-OF-WAY
	PROPOSED RIGHT-OF-WAY
	CONSTRUCTION MAINTENANCE LIMITS






I-35 NEX CENTRAL PROJECT

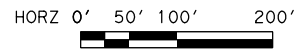


ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS

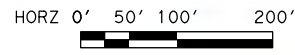
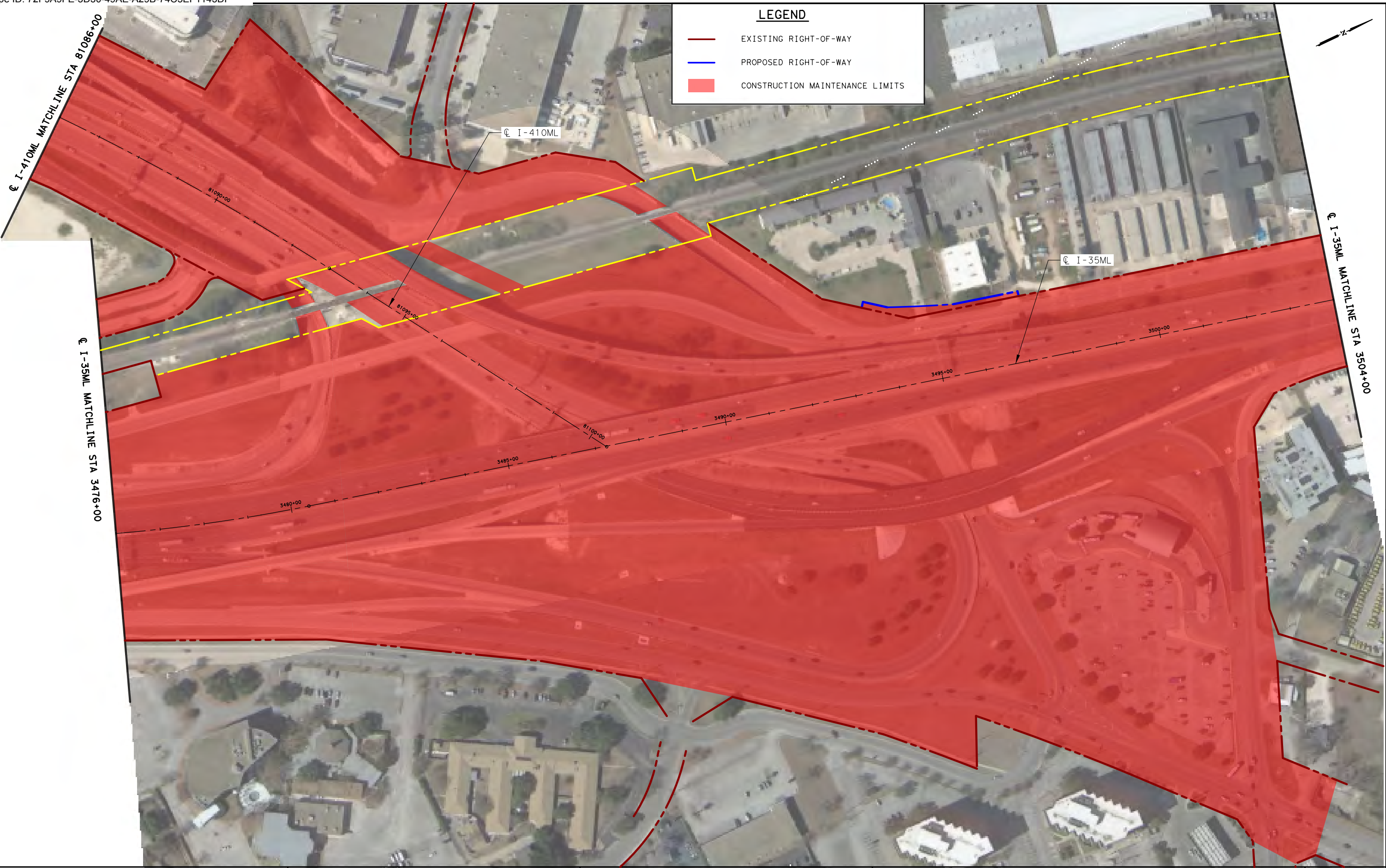


I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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I-35 NEX CENTRAL PROJECT



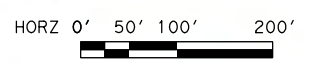
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS



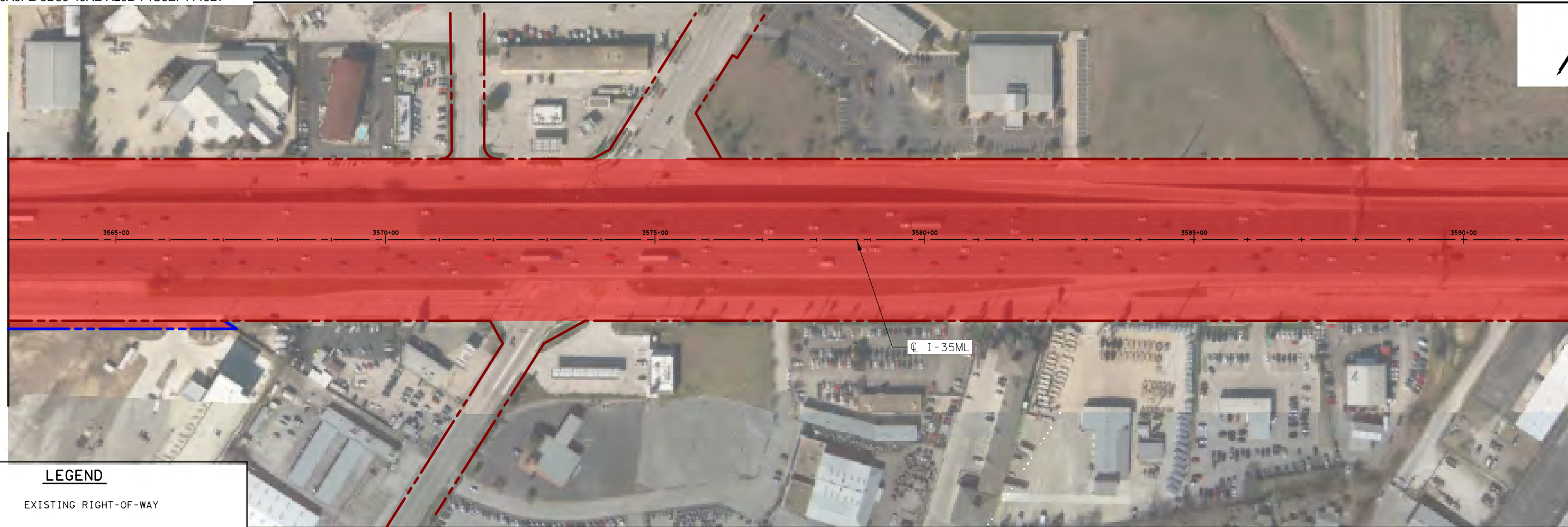
I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION




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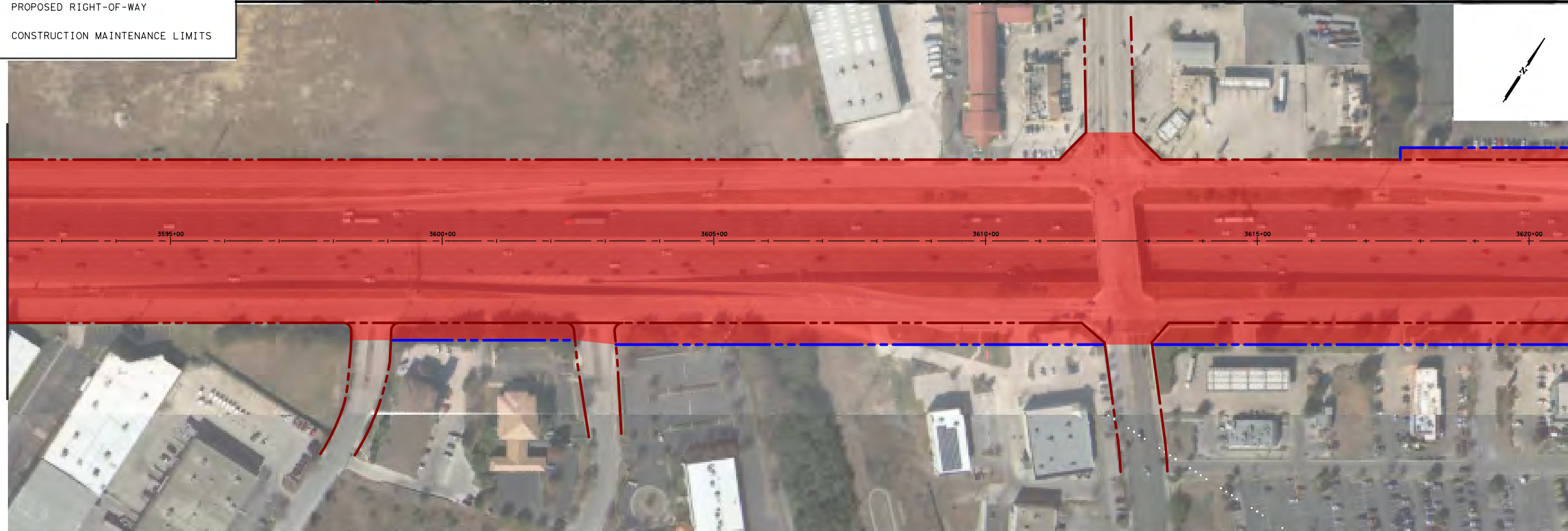


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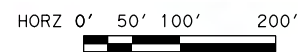
**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS

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Q I-35ML MATCHLINE STA 3621+00

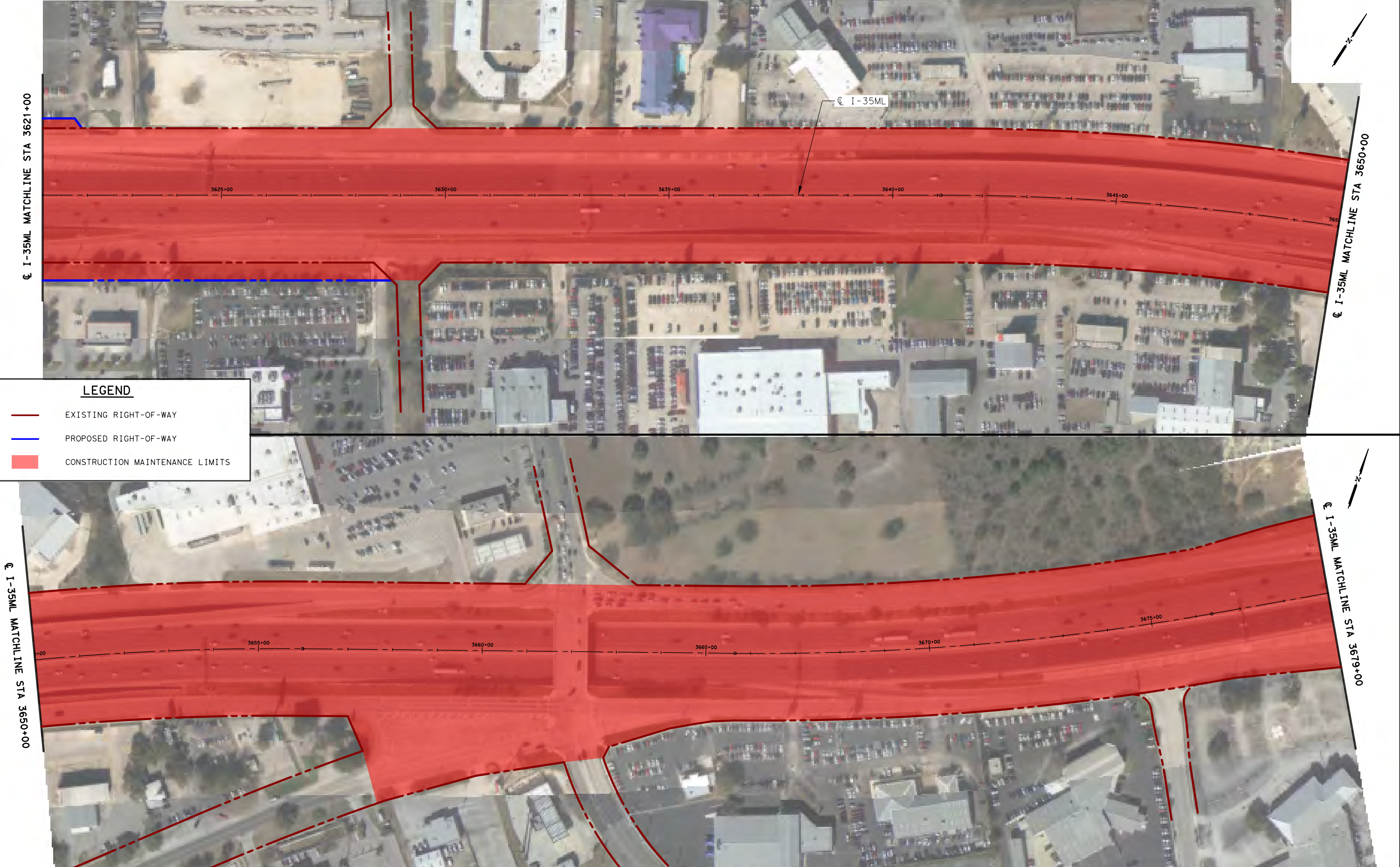


I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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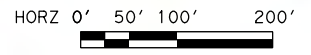
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Q I-35ML MATCHLINE STA 3650+00

Q I-35ML MATCHLINE STA 3679+00

**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS



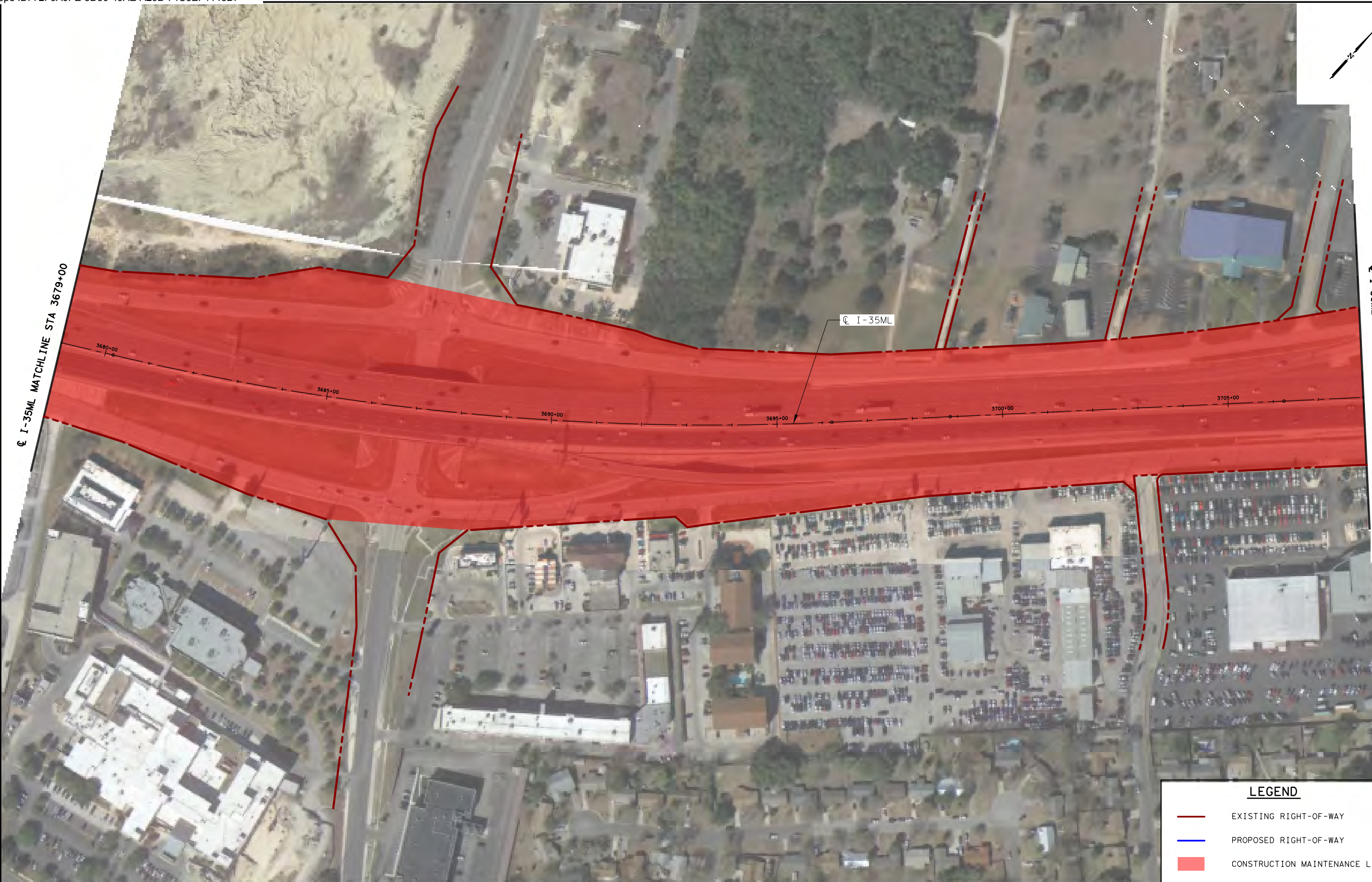
I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION



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☉ I-35ML MATCHLINE STA 3708+00

☉ I-35ML

3680+00




3685+00

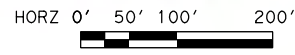
3690+00

3695+00

3700+00

3705+00

LEGEND	
	EXISTING RIGHT-OF-WAY
	PROPOSED RIGHT-OF-WAY
	CONSTRUCTION MAINTENANCE LIMITS



I-35 NEX CENTRAL PROJECT



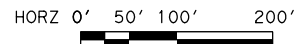
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EXECUTION VERSION

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**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS






I-35 NEX CENTRAL PROJECT

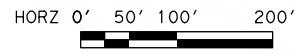
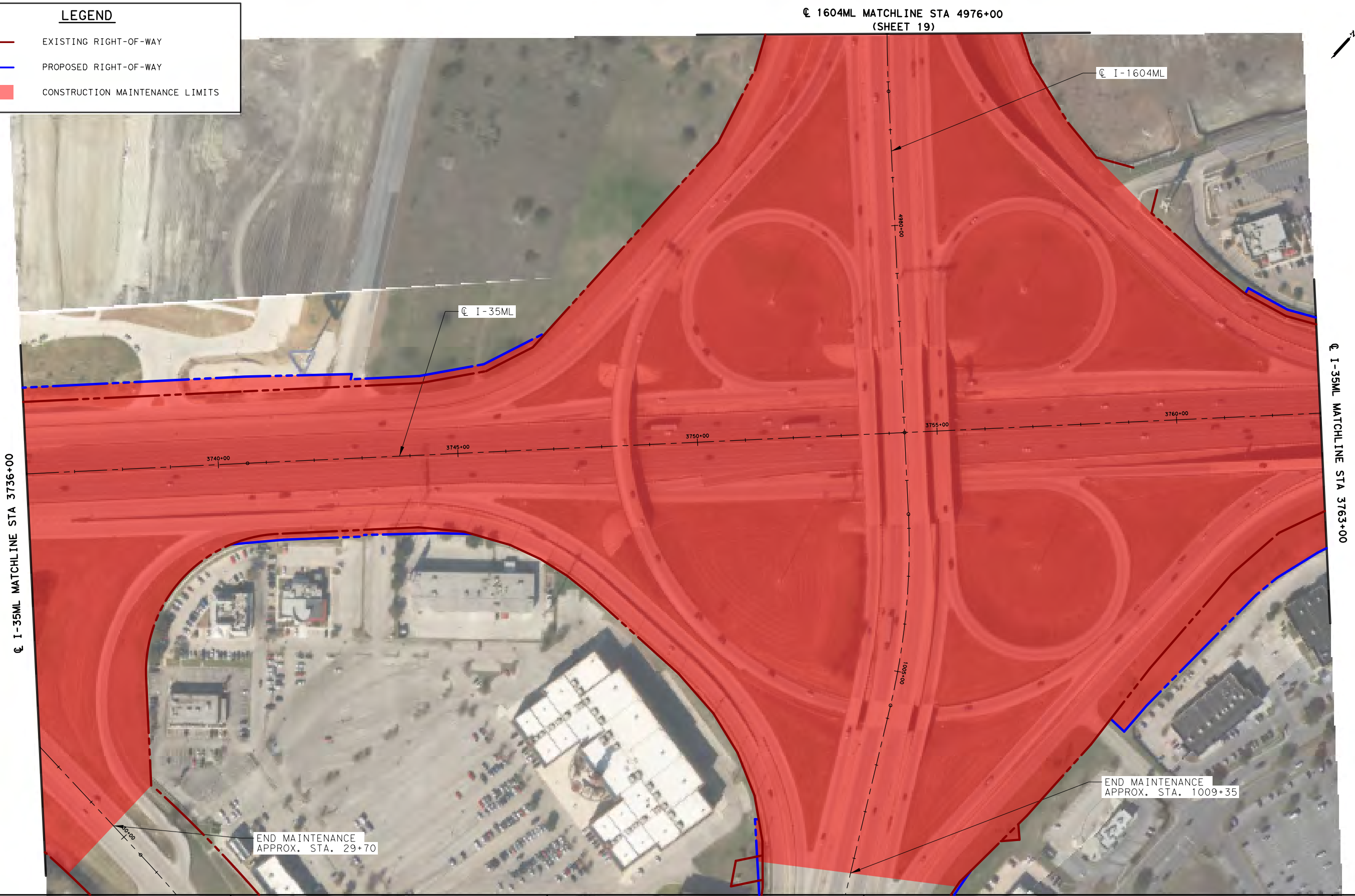


ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS

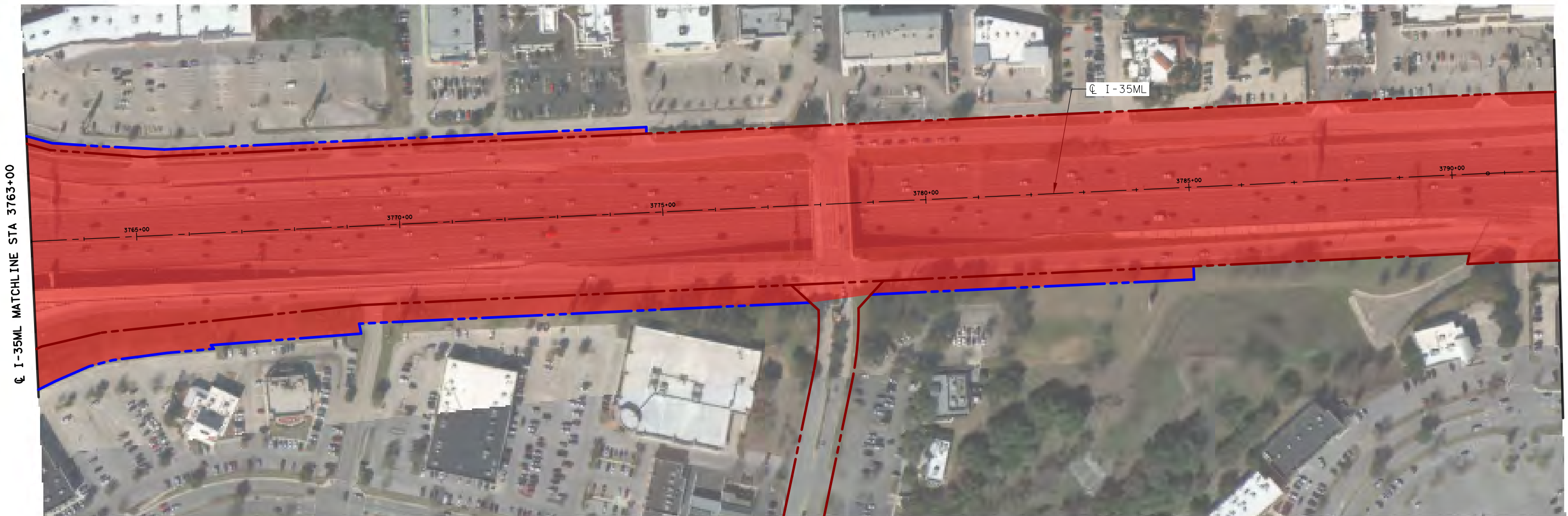
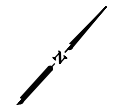


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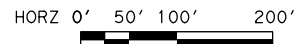
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS






I-35 NEX CENTRAL PROJECT



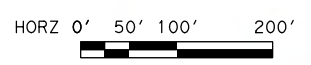
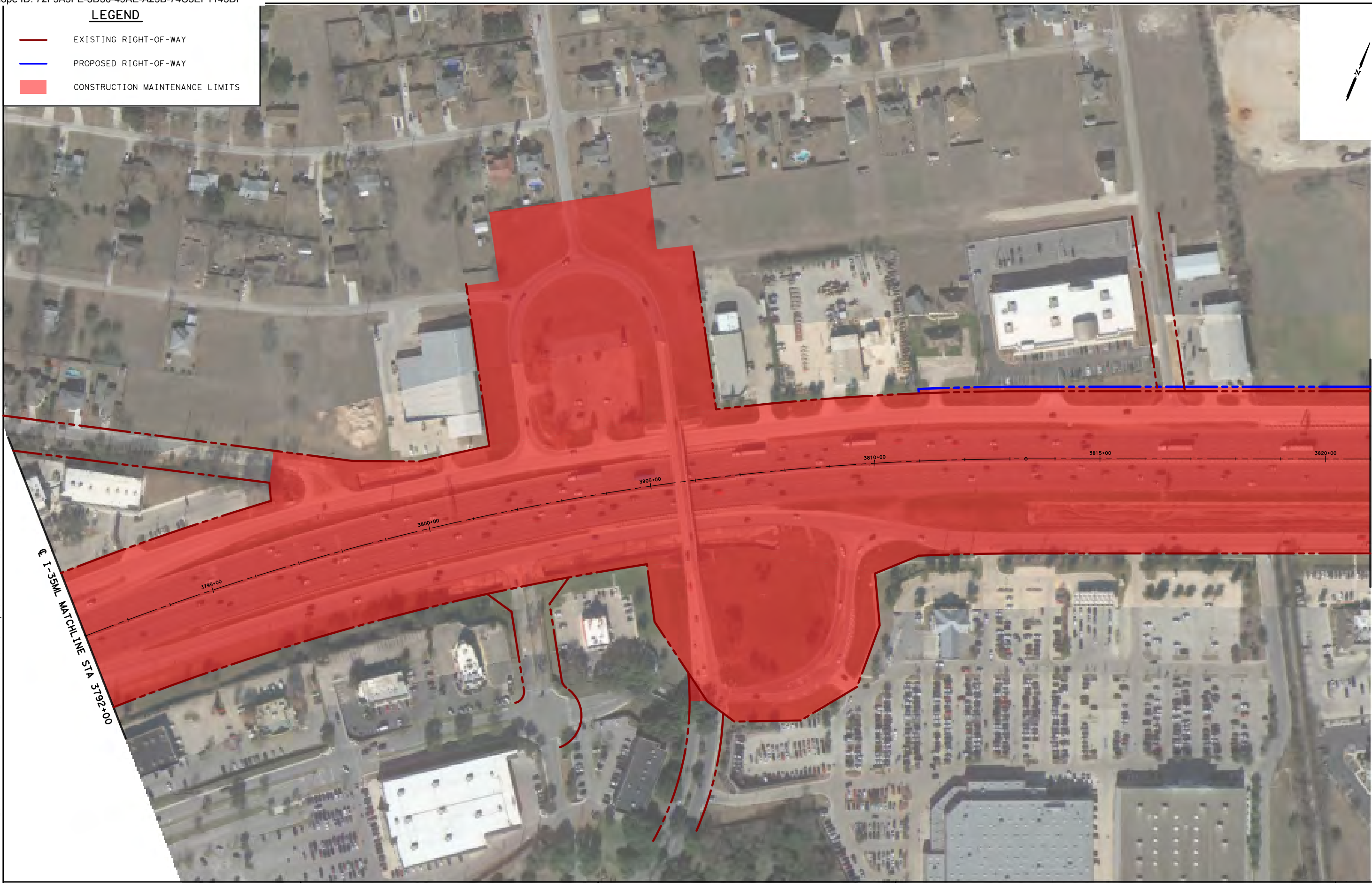
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS



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I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION




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☉ I-35ML MATCHLINE STA 3821+00

☉ I-35ML MATCHLINE STA 3850+00

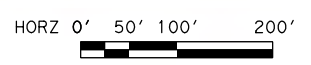
☉ I-35ML

**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS

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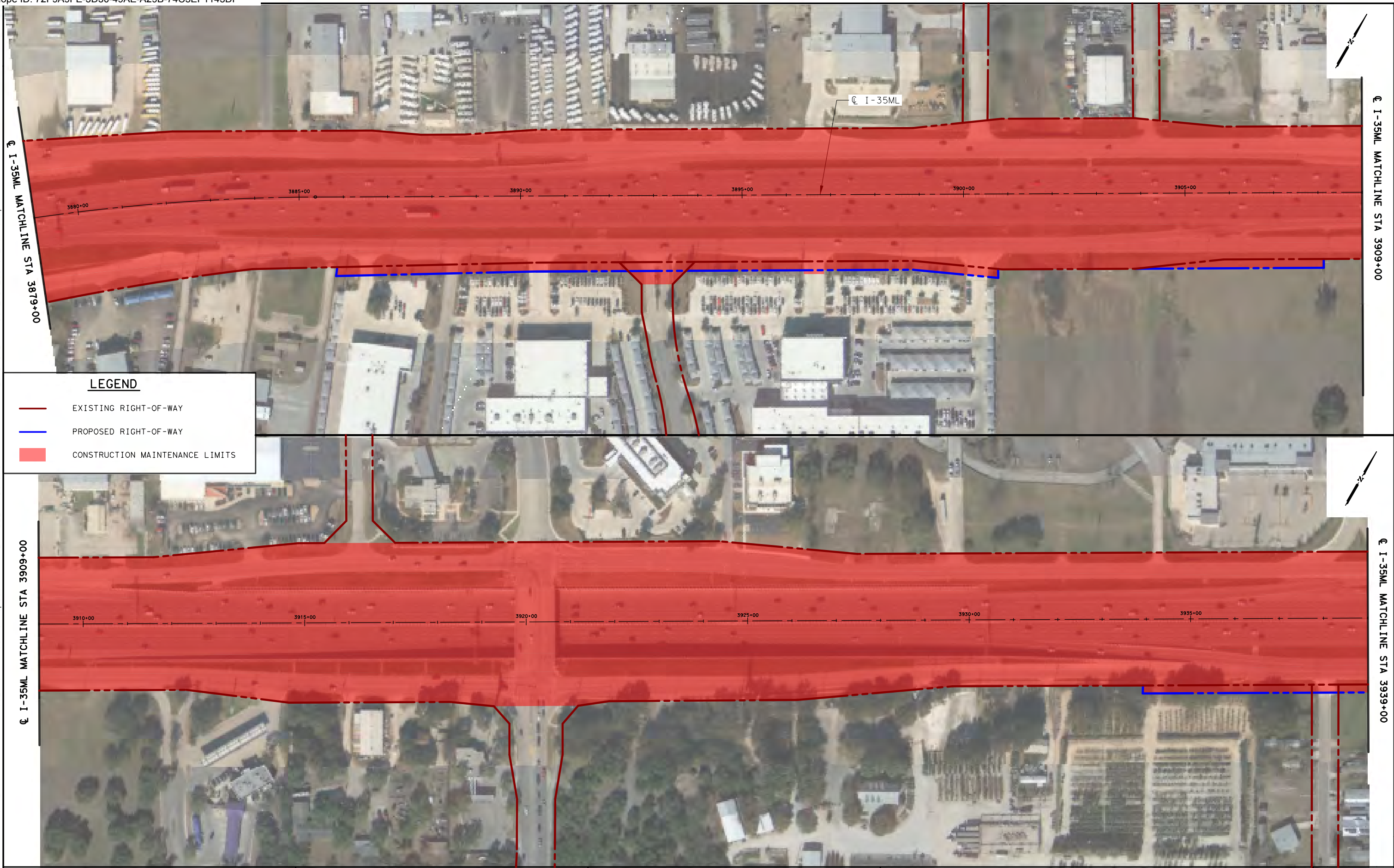


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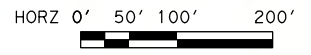
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS

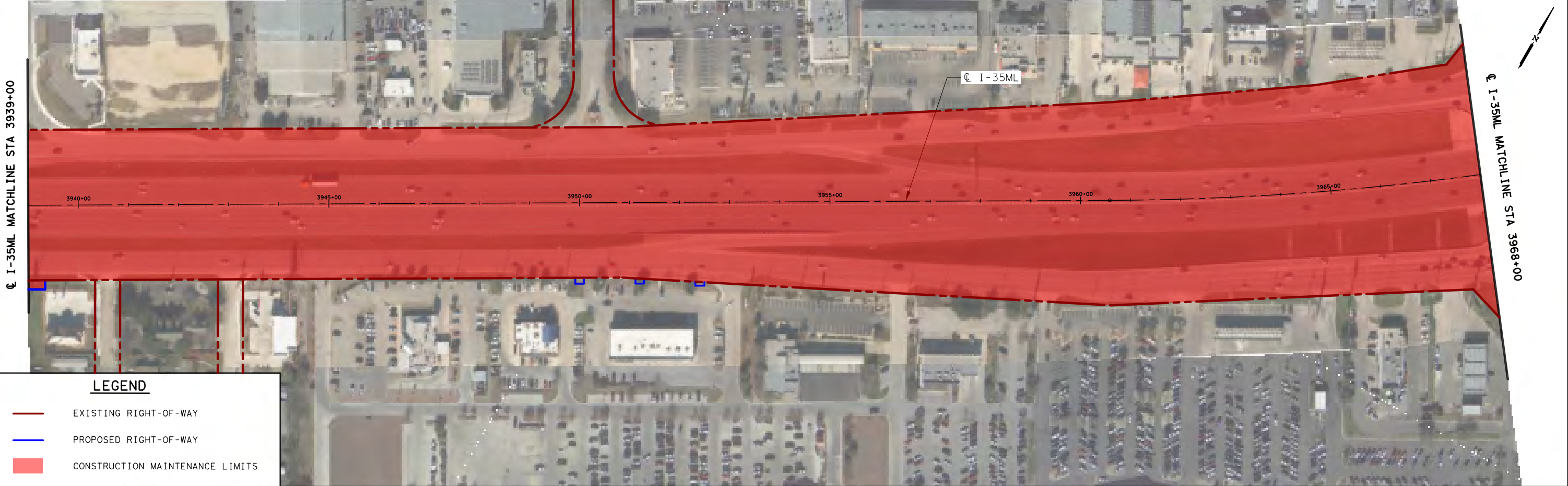


I-35 NEX CENTRAL PROJECT



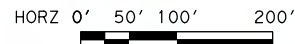
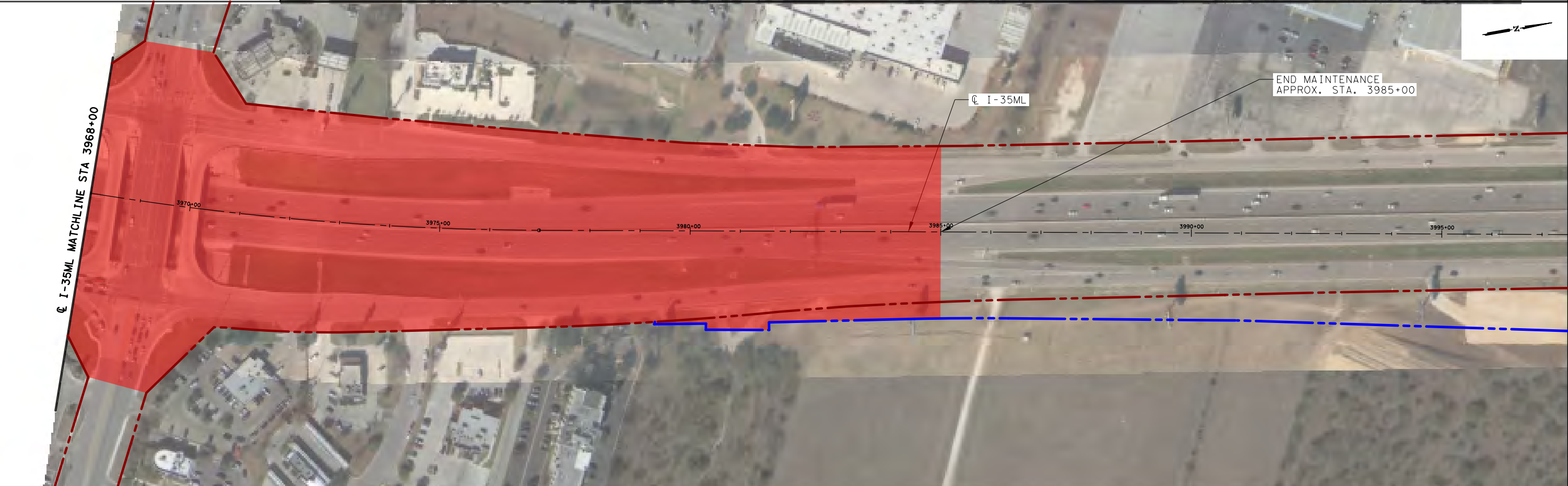
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS



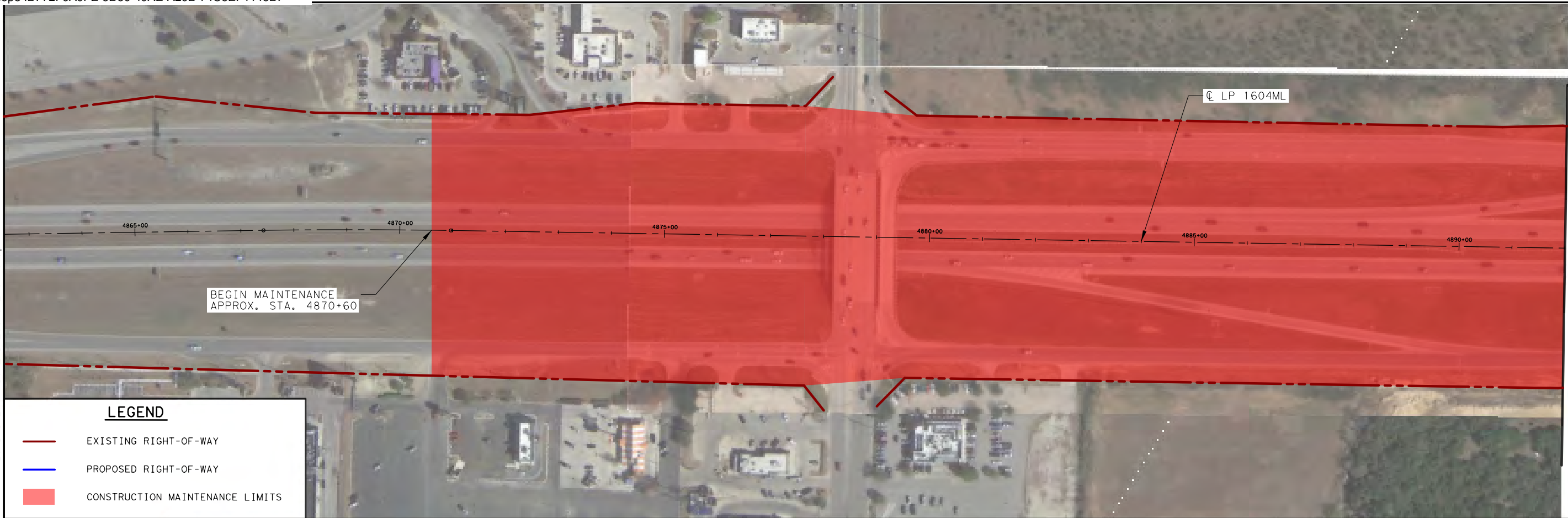
I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION



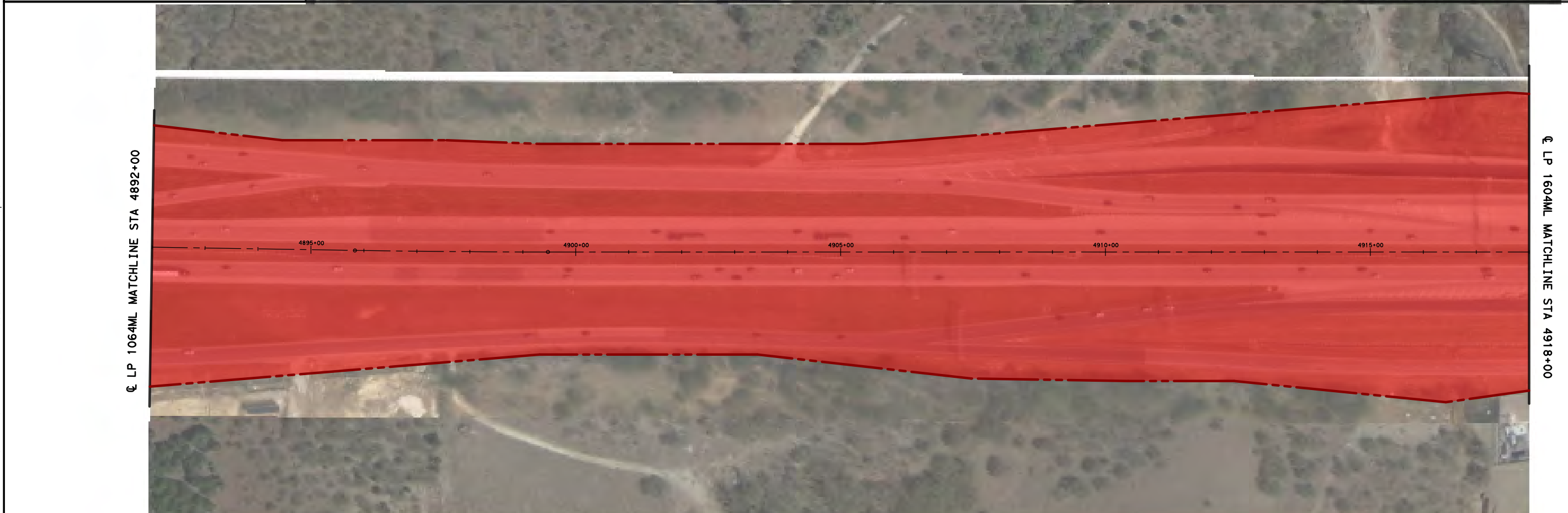
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LP 1604ML MATCHLINE STA 4892+00

**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS



LP 1064ML MATCHLINE STA 4892+00

LP 1604ML MATCHLINE STA 4918+00

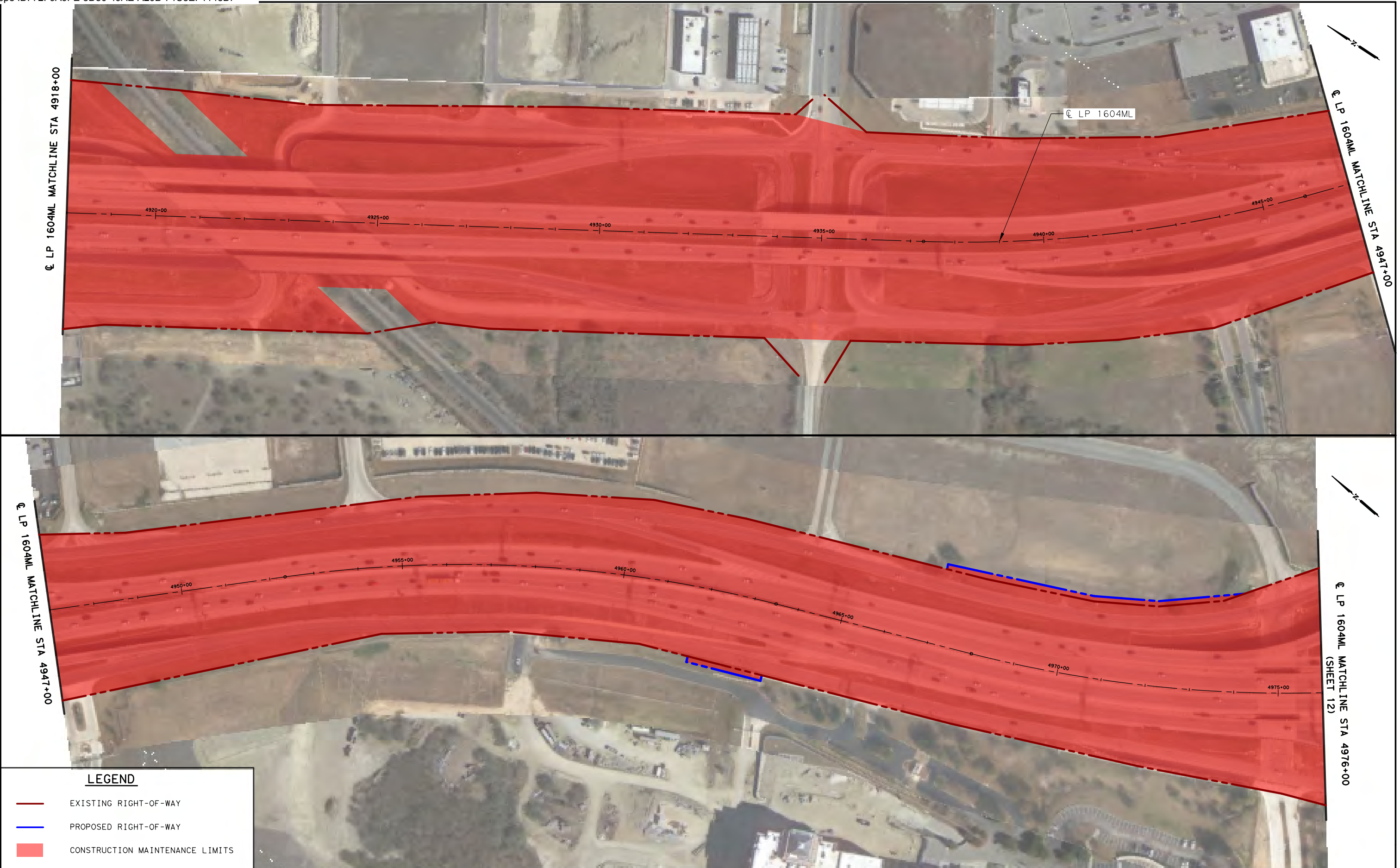
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I-35 NEX CENTRAL PROJECT






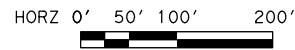
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

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**LEGEND**

-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY
-  CONSTRUCTION MAINTENANCE LIMITS



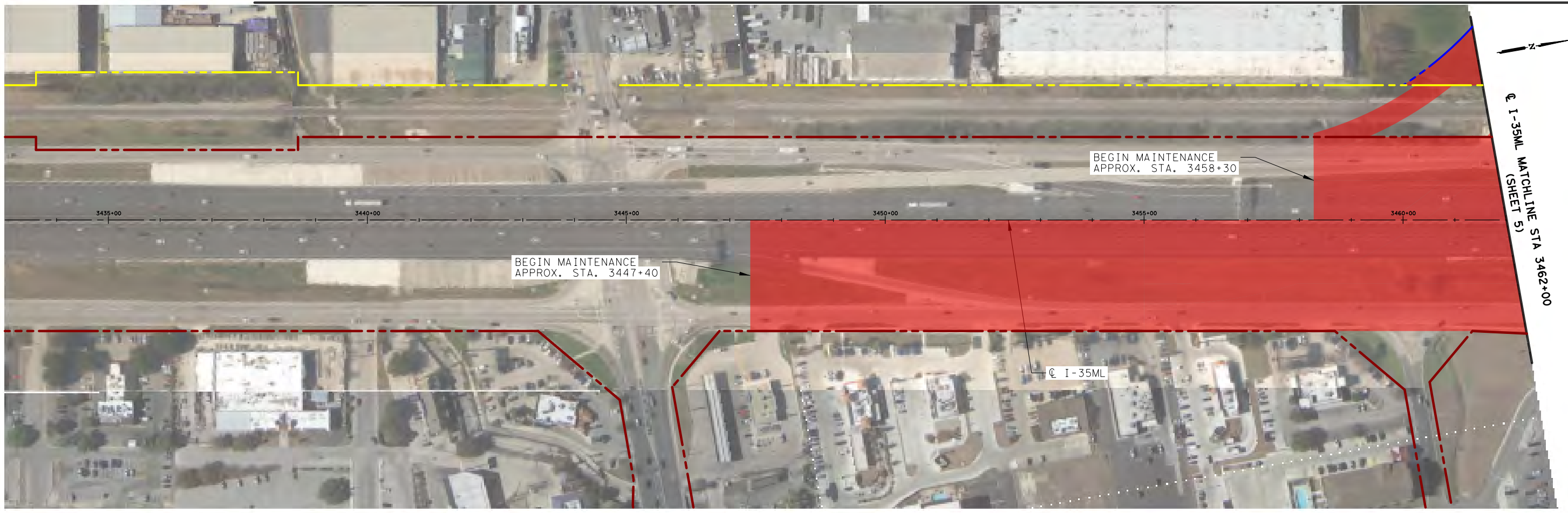
I-35 NEX CENTRAL PROJECT



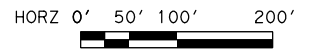
ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION

**LEGEND**

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- CONSTRUCTION MAINTENANCE LIMITS



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DATE:7/7/2021 5:51:02 PM



I-35 NEX CENTRAL PROJECT



ATTACHMENT 27-3: MAINTENANCE LIMITS  
DURING CONSTRUCTION  
EXECUTION VERSION



# Texas Department of Transportation

## DESIGN-BUILD SPECIFICATIONS Items 10-28

### Attachment 27-4 Maintenance Management Plan

# Maintenance Management Plan

---

**NAME OF PROJECT**  
**Contract #XXXXX**

**Day Month Year**

**Prepared By: DB Contractor's Name**  
**Street Address**  
**Suite XXX**  
**City Name, Texas XXXX**

Note: this MMP Template applies to Maintenance Work performed under the DBC prior to Final Acceptance.

# MAINTENANCE MANAGEMENT PLAN

For The

NAME OF PROJECT

**Approved By:**

\_\_\_\_\_  
**FirstName LastName**  
**Maintenance Manager (MM)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**FirstName LastName**  
**Maintenance Quality Manager (MQCM)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**FirstName LastName**  
**TxDOT's Authorized Representative**

\_\_\_\_\_  
**Date**

### Record of Revisions

Rev.	Date Issued	Pages Affected	Comments
0	XX/XX/XXXX	All	Initial Issue
1	XX/XX/XXXX	XX-XX	Add brief comment regarding revision

**Instructions to DB Contractor:**

*(These instructions to be removed from completed MMP)*

1. This Maintenance Management Plan (MMP) template defines the structure and required contents of the MMP. Use this template for each version and revision of the MMP submitted to TxDOT for approval.
2. Include the DB Contractor's processes to achieve compliance with the obligations in the Contract Documents including the Performance Requirements. Describe who is responsible for each activity.
3. Processes should be clear, auditable, measurable, and achievable. Include control points at which the DB Contractor causes its own personnel or independent parties to verify that the work is in compliance with the DBC. Identify points in the processes at which TxDOT is given the opportunity to witness or approve the Work.
4. Identify the procedures (i.e. detailed steps) that will be utilized (see Appendix 5 for a listing of procedures that are needed at a minimum).
5. The MMP shall apply to Maintenance Work before Final Acceptance and an updated version of this plan shall apply to the Capital Maintenance Contract (CMC).
6. Describe the MMP updating process so that TxDOT knows who will be performing what actions when.
7. The MMP is part of the Project Management Plan (PMP). Section 4.2 of the General Conditions sets forth TxDOT's approval rights and the conditions attached to its approval of the PMP.
8. Do not duplicate Item 27 of the Design-Build Specifications or the CMA General Conditions within the MMP. Where necessary, cross reference relevant parts of Item 27 of the Design-Build Specification or the CMA General Conditions.
9. Include within the MMP all Proposal Commitments related to the Maintenance Work and how TxDOT will be able to verify the Proposal Commitments have been fulfilled.
10. Instructions to the DB Contractor are shown in this template in parentheses and italics and shall be removed prior to submittal of the MMP to TxDOT.



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## 1. GENERAL MANAGEMENT AND ADMINISTRATION

*[Provide an overview of the approach to delivering Maintenance Work for the Project prior to Final Acceptance, identify the Project's maintenance objectives and reference applicable quality policies in Appendix 8. Identify Proposal Commitments applicable to the Maintenance Work. Show timeline for MMP versions and updates and MMP submittal milestones.]*

### 1.1 Organization and Personnel

#### 1.1.1 DB Contractor Maintenance Organization Chart

Figure 1.1 below shows the organization chart for Maintenance Work before Final Acceptance.

*[Describe the organizational structure and how it will enable the DB Contractor's obligations for Maintenance Work to be met. Describe the reporting lines to TxDOT and internally. Describe the roles and responsibilities assigned to each position. Identify Major Subcontractors and describe the Maintenance Work to be performed by them.]*

#### Figure 1.1: Organization Chart for Maintenance Work before Final Acceptance

*[Insert organization chart showing reporting lines to include at a minimum:*

- *TxDOT Project Manager*
- *DB Contractor corporate management team*
- *DB Contractor Project Manager\**
- *Maintenance Manager\**
- *Maintenance Quality Manager\**
- *Maintenance Safety Manager\**
- *Individual responsible for customer service\**
- *Individual responsible for training program\**
- *Individual responsible for ensuring maintenance and life cycle issues are captured in the design with link to design and construction teams\**

*For each individual (\*) identify the employing organization. Show positions and activities to be undertaken by Major Subcontractors.]*

#### 1.1.2 Qualifications, Experience necessary and training requirements for DB Contractor staff positions

Appendix 1 shows the individual(s) assigned to staff positions with their positions, contact information (email and mobile phone number), education/qualifications, role, and summary of previous experience.

*[Include at a minimum the individuals required to be identified on the organization chart and marked with (\*) above, including individuals employed by subcontractors]*

#### 1.1.3 Personnel Training and Certification

Table 1.1 defines responsibility for development and implementation of training programs, who will be conducting the training and certification process for each staff position, including maintenance personnel, subcontractors and maintenance crew members on the topics below.

**Table 1.1: Training Program Matrix**

<b>Training Program</b>	<b>Person responsible to develop and deliver</b>	<b>Staff positions requiring training</b>	<b>Frequency of training</b>	<b>Link to training program</b>
Maintenance Management Plan training				
Inspections, Defect identification and categorization of Defects				
Maintenance Safety Plan, equipment use, all safety-related activities and enforcement of safety operations				
CPR and first aid				
Work zone traffic control and flaggers in work zones				
<i>[Other training programs as appropriate (details to be added by DB Contractor)]</i>				

*[Include at a minimum training requirements for the individuals required to be identified on the organization chart, including individuals employed by subcontractors]*

## **1.2 Communication Protocols**

*[Insert the required information below and refer to appropriate chapter and section from the PMP for all sub-sections of 1.2 (1.2.1 – 1.2.4).*

### **1.2.1 Communications with TxDOT, Governmental Entities and Third Parties**

Refer to the following procedures in Appendix 6:

- MMP-001 –Submittals and Coordination with TxDOT, Governmental Entities and Third Parties

For processes on meetings, reporting, written updates and immediate notifications on priority issues refer to *[Chapter X, Section X]* of the PMP.

Contact details for TxDOT, Governmental Entities, third parties, other stakeholders and their consultant offices with whom the DB Contractor will communicate are listed in Appendix 2.

*[Within MMP-001 identify all adjacent highway agencies and address all interfaces with adjacent and connecting roadways.]*

### **1.2.2 Coordination during ITS integration and ITS operations**

For ITS integration before Final Acceptance refer to *[Chapter X, Section X]* of the PMP.

The following are maintenance interfaces with ITS:

*[List the points of interfaces and include reference to diagrams or drawings showing interface lines and demarcations of responsibility for each item of ITS equipment. Include updates consistent with progress of design].*

The contact details for other entities responsible for ITS are as follows:

*[List the contact details here]*

**1.2.3 Oversize / Overweight Permits**

The process for requests for permitting, issuance of permits and enforcement of permits through TxDOT is included in the following procedure in Appendix 6:

- MMP-002 –Agency Coordination for Oversize Loads

*[State how TxDMV will be notified of closures associated with permits and how updates for roadway clearances during construction will be provided.]*

**1.2.4 Coordination with Utilities, Stakeholders and other 3<sup>rd</sup> Parties**

Refer to the following procedures in Appendix 6:

- MMP-001 –Submittals and Coordination with TxDOT, Other Agencies and Third Parties

Table 1.2 below shows:

- Utilities, stakeholders and other third parties;
- In-house staff and specialized resources from the maintenance team responsible for coordination (including development and compliance with processes and the production of documentation) for each utility, stakeholder and other third party; and
- Reference to procedures contained in Appendix 6 specific to each named entity.

**Table 1.2: Coordination with Governmental Entities, Stakeholders, Utilities, and Third Parties**

Entity, Utility, stakeholder or third party	DB Contractor Personnel responsible for coordination	Reference to Procedure (specific to the named entity)

*[Insert Governmental Entity, utility and stakeholder or third party coordination responsibilities and processes for Maintenance Work before Final Acceptance. Include reference to individual procedures applicable to each entity, covering the following:*

- *Notification to entity of upcoming Maintenance Services that may affect the entity’s operations, e.g. Maintenance Services affecting adjacent business of utility interest*
- *Application by entity for access to inspect, repair, renew or replace its equipment within the Maintenance Limits.]*

**1.3 Project Meetings**

*[Refer to appropriate chapter and section from the PMP for meetings in connection with Maintenance Work.]*

The meeting types, topics, required participants and frequencies of meetings in connection with Maintenance Work shall be in accordance with Table 1.3.

**Table 1.3 Meetings in Connection with Maintenance Work**

Meeting Type	Frequency	Attendees
Maintenance Work review meeting	Quarterly or more frequently depending upon the Maintenance Work being performed	TxDOT, Maintenance Manager, other senior personnel

*[Insert details of all other meetings in connection with the Maintenance Work including mandatory meetings required by TxDOT.]*

**1.4 Document Control and Information Management**

*[Refer to appropriate chapter and section from the PMP for document control and information management in connection with Maintenance Work.]*

Document Control and information management for Maintenance Work shall be as identified in Table 1.4.

**Table 1.4: Document Control and Information Management**

Person responsible for compliance with TxDOT Maintenance and Inspection of Records requirements	<i>[Insert name of individual or staff position]</i>
Procedures applicable	<i>[Insert references to applicable procedures]</i>
Document management EDMS software system	<i>[Insert details of software and reference to manuals]</i>
Person responsible for the storage and retention of Maintenance Records	<i>[Insert name of individual or staff position]</i>
<i>[Insert other requirements applicable to document control and information management]</i>	

**1.5 Procurement and Subcontractors**

Maintenance Work activities that will be subcontracted are shown in Table 1.5 below.

**Table 1.5: Details of Subcontractors Performing Maintenance Work**

Name of Subcontractor and start date	Key contact details	Work responsibility


*[Add details of each subcontractor in accordance with the requirements of the DBC.]*

**1.6 Offices and Equipment**

Refer to the following procedure in Appendix 6:

- MMP-003 – Maintenance of Facilities, Vehicles and Equipment Plan

*[Provide location and map In Appendix 5 (if different than the Roadway Maintenance office) of the maintenance facility for equipment maintenance and storage and for the de-icing material storage, if applicable.]*

*[Provide spare parts, special tools and equipment list including an auditable parts and spares inventory adequate to address the maintenance obligations and compatible with the Maintenance Management System and a list of vendors for equipment and maintenance services. This information shall be included in Appendix 5]*

*[Provide current versions and procedures, functionality, software maintenance requirements and access protocols for all specialist software employed by DB Contractor in connection with the Maintenance Services.]*

The physical address is *[insert address]*

The 24-hour contact number is *[insert number]*.

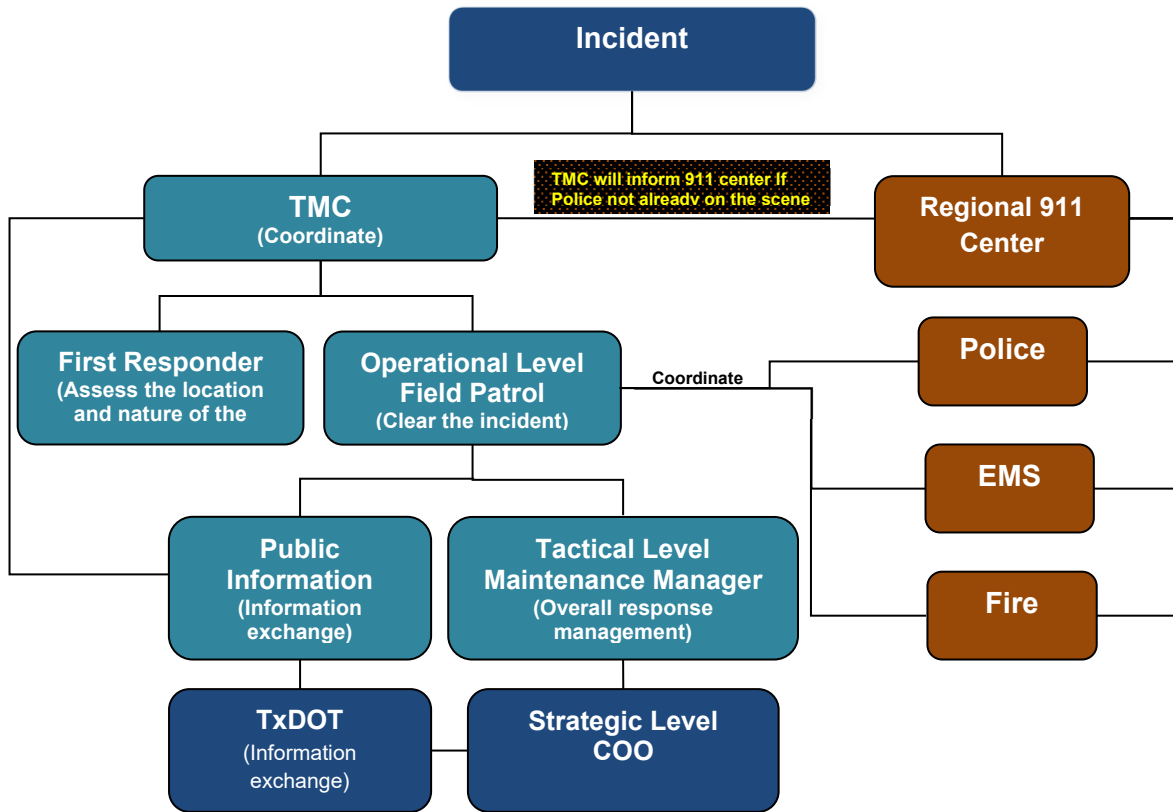
**2. EMERGENCY RESPONSE**

**2.1 Incident Management Plan**

The Incident Management Plan (IMP) contains the approach to Incident management consistent with *Section 27.6.1 of the Design-Build Specifications*, training requirements and staffing requirements for response to Incidents and Emergencies, and includes protocols, processes, and guidelines to mitigate the impacts, respond to and recover from all such events. The IMP has been prepared in coordination with and including input from the following organizations:

*[Insert Project-specific list of consultees, dates of consultation and evidence of actively seeking input and feedback, to include TxDOT, Emergency Services, owners of Related Transportation Facilities and applicable Governmental Entities.]*

The command structure for Incident Management is shown in Figure 2.1.

**Figure 2.1: Command Structure for Incident Management**

*[Replace example Command Structure by Project-specific chart of equivalent detail that includes Project-specific details of Emergency Services and TxDOT contacts]*

The following procedures in Appendix 6 are part of the IMP:

- MMP-004 –Emergency and Incident Management.
- MMP-005 – Incident Damage Reports, Third Party Claims and Repairs
- MMP-006 – Complaint Review and Response
- MMP-007 – Customer Satisfaction Data Collection System

*[Include within the IMP, processes and responsibilities for:*

- (i) Identification of Incidents of differing categories (minor, major, critical) and notification of Emergency Services providers*
- (ii) Rapid and reliable establishment of traffic control for Incident management*
- (iii) Removal by towing and recovery of stalled, broken down, wrecked or otherwise incapacitated vehicles from the travel lane, including coordination with Emergency Services/law enforcement*



- (iv) *Clearance of Incident and return affected lanes to normal use within the specified period of arriving at the Incident site*
- (v) *Cleanup of debris, oil, broken glass and other such objects foreign to the roadway surface*
- (v) *Notification of the public of traffic issues related to Incidents*
- (vi) *Seeking feedback from TxDOT, emergency services and law enforcement and improving processes to improve response times.*
- (vii) *contact methods, personnel available, and response times for any Emergency condition requiring attention during off-hours*
- (viii) *identification and containment of all Hazardous Material spills and appropriate disposal of such materials.]*

## **2.2 Snow and Ice Control Plan**

The Snow and Ice Control Plan (SICP) contains operational processes for performing snow and ice control work. The SICP complies with all applicable Law, codes, and regulations governing the operation of equipment on public highways. The SICP will be updated at least annually to incorporate any changes in strategy and equipment levels designed to rectify any noncompliances in snow and ice removal operations during the preceding winter season.

The following procedure contained in Appendix 6 is part of the Snow and Ice Control Plan (SICP).

- MMP-008 – Snow and Ice Control / Clean-up Plan.

*[Include within the SICP processes and responsibilities for:*

- (i) *Receiving weather forecasts and making decisions for snow and ice control and pretreatment based upon analysis of data received*
- (ii) *Advance preparation and call-out*
- (iii) *Training in connection with snow and ice control*
- (iv) *Record keeping/ reporting including maintaining records of compliance with the Performance Requirements*
- (v) *Environmental management and processes for using preventative measures, involving use of anti-icing and de-icing chemicals such as salt and alternative substances, including storage and application*
- (vi) *A list of the equipment and materials available for snow and ice control including its current location and methods to guarantee its availability for use.]*

## **2.3 Severe Weather Evacuation Plan**

The Severe Weather Evacuation Plan (SWEP) contains operational processes for evacuation. The SWEP complies with all applicable Law, codes, and regulations governing the operation of equipment on public highways. The SWEP will be updated at least annually to incorporate any changes in strategy and evacuation routes during the previous year.

The following procedure in Appendix 6 is part of the SWEP:

- MMP-009 – Severe Weather Evacuation Plan.

*[Include within the SWEP a process and the individual responsible for each of the following:*

- (i) Receiving weather forecasts and making decisions for evacuation based upon analysis of data received*
- (ii) Advance preparation and call-out*
- (iii) Training in connection with evacuation processes*
- (iv) Record keeping / reporting including maintaining records of compliance with the Performance Requirements*
- (v) Develop evacuations zones and evacuation guides with routes.]*

### **3. ENVIRONMENTAL COMPLIANCE**

#### **3.1 Hazardous Material Management Plan**

The Hazardous Materials Management Plan (HMMP) governs the safe handling, storage, treatment and/or disposal of Hazardous Materials, whether encountered at or brought onto the Project by the DB Contractor, encountered or brought onto the Project by a third party, or otherwise, spill prevention and countermeasures and pollution prevention measures.

The HMPP is at *[Chapter X, Section X]* of the PMP.

#### **3.2 SW3P Implementation**

Maintenance Work will be undertaken in compliance with the TCEQ Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit in accordance with the TxDOT Storm Water Management and Guidelines for Construction Activities Manual.

The SW3P is at *[Chapter X, Section X]* of the PMP.

#### **3.3 Truck Routes, Hazardous Material Routes and related Approvals**

Truck Routes, Haz-Mat Routes and associated approvals are at *[Chapter X, Section X]* of the PMP.

#### **3.4 Environmental Compliance and Mitigation Plan**

The Environmental Compliance and Mitigation Plan (ECMP) includes compliance strategies and processes to be employed in accordance with the requirements of applicable Environmental Laws and Environmental Approvals. Maintenance Work will be undertaken in compliance with the ECMP and the Environmental Commitments.

Refer to Section 1.1.3 for education and training requirements for all project personnel. The ECMP is at *[Chapter X, Section X]* of the PMP.

#### 4. MAINTENANCE LIMITS AND PERFORMANCE REQUIREMENTS AND MAINTENANCE SERVICES PROCEDURES

##### 4.1 Maintenance Limits, Layout and Limits of Performance Sections

Schematic Drawings showing the Maintenance Limits and the extents of the Performance Sections are included in Appendix 3, consistent with the requirements of *Section 27.1.3 of the Design-Build Specifications*.

*[Include processes and responsibilities for:*

- (i) Periodically validating that the Maintenance Limits are correctly and clearly identified in the field*
- (ii) Liaison with TxDOT and Governmental Entities at least annually to review the Maintenance Limits, identify any jurisdictional gaps or inefficiencies and recommend solutions]*

##### 4.2 Performance and Measurement Tables

Appendix 4 to the MMP contains the most recent approved versions of the Performance and Measurement Tables.

##### 4.3 Maintenance Management System (MMS)

Refer to the following procedure in Appendix 6:

- MMP-011 – Establishing Maintenance Management System

##### 4.4 Defects and Inspections

Refer to the following procedures in Appendix 6:

- MMP-012 – Defect Categorization and Repair
- MMP-013 – Maintenance Inspection Plan
- MMP-014 – Maintenance Repair Submittal Plan

*[Include within the above processes and responsibilities for:*

- (i) Training of responsible personnel to identify and to categorize Defects discovered during inspection. This shall include training specific to the identification and recording of Category 1 Defects.*
- (ii) Tracking and reporting of Defects including fault detection logs, software output*
- (iii) Generation of corrective action work orders through the MMS including how backlog of corrective maintenance and repair activities will be populated and monitored in the MMS*
- (iv) Action by Defect category type, to include a description of how the actions are carried out stating the responsible individuals and the processes for specific Defect types with examples*
- (v) How Defects will be remedied, with examples provided for all common Defects, stating necessary notification and the individuals to be notified for such Defect repair.*
- (vi) Documentation including how Defects will be entered, updated and closed in the Maintenance Management System.*

- (vii) Verification of the satisfactory completion of Maintenance Services and restoration of asset condition*
- (viii) Discovery of maintenance trends to determine the need for adjustments in the weekly, monthly and annual maintenance plan to address changing project conditions*
- (ix) Inspection and testing of Project items and the identification and classification of Defects and inspection failures.*
- (x) Monitoring instrumentation according to applicable specification*
- (xi) Field inspections of completed Maintenance Services and for preparing daily reports to document all inspections performed*
- (xii) Identification of inspection agencies and organizations, including information on each agency's capability to provide the specific services required, certifications held, and equipment*
- (xiii) Preparation and submittal of the Baseline Element Condition Report (BECR)*
- (xiv) Hazard mitigation for any Category 1 Defect in a Maintained Element of which the DB Contractor is aware through its own inspections, from a third party or through notification by TxDOT*
- (xv) Proposal to TxDOT of a repair method for any Defect]*

#### **4.5 Tracking and Reporting Noncompliance Events**

*[Include the following where Noncompliance Events are included in the Contract]*

Refer to the following procedure in Appendix 5 for Noncompliance Events:

- MMP-015 – Tracking and Reporting Noncompliance Events

*[Include within the above processes and responsibilities for:*

- (i) Meeting self-reporting obligations*
- (ii) Identification of the start date of each Noncompliance Event*
- (iii) Accurate assessment and reporting of the date of cure*
- (iv) Proper use of the Noncompliance Events database and integration with the MMS.*
- (v) Validation of the data, times, dates and other information entered into the Noncompliance Event database including frequency of checks / audits]*

## **5. MAINTENANCE SAFETY PLAN**

The Maintenance Safety Plan describes the DB Contractor's policies, plans, training programs, and work site controls to ensure the health and safety of personnel involved in the Project and the general public affected by the Project.

The Maintenance Safety Plan is part of the Maintenance Management Plan at *[Chapter X, Section X]* of the PMP.

**APPENDIX 1: STAFF NAMES CONTACT DETAILS AND QUALIFICATIONS**

*[Insert contact details, qualifications and training record for Maintenance Work]*

Key Personnel or other personnel position	Staff name and start date	Contact details	Education, qualifications and experience	Link to training record in connection with Project
			<i>[Insert details or link to resume]</i>	

**APPENDIX 2: CONTACT DETAILS FOR TXDOT AND THIRD PARTIES**

*[Insert contact details for Maintenance Work]*

Organization	Contact name, e-mail and address	Business Phone
TxDOT <i>[List all TxDOT contacts in connection with Project]</i>		
Governmental Entities <i>[list all Governmental Entities]</i>		
Traffic Management Centers (TMC)		
Utilities <i>[list all utilities]</i>		
<i>[Other third parties]</i>		

**APPENDIX 3: MAINTENANCE LIMITS AND LIMITS OF PERFORMANCE SECTIONS**

*[Include Schematic drawings that show the Maintenance Limits and the limits of the Performance Sections before Final Acceptance]*

**APPENDIX 4: PERFORMANCE AND MEASUREMENT TABLES**

*[Insert the latest version of the Performance and Measurement Tables]*

**APPENDIX 5: MAINTENANCE FACILITY LOCATION AND EQUIPMENT**

*[Insert a map showing the location of the Maintenance Facility and a list of equipment and tools]*

## APPENDIX 6: MMP PROCEDURES

MMP procedures are shown below. *[Add additional procedures as necessary and provide cross references to the applicable section of the MMP]*

MMP Procedure Number	MMP Procedure Name
MMP-001	Submittals and Coordination with TxDOT, Other Agencies and Third Parties
MMP-002	Agency Coordination for Oversize Loads
MMP-003	Maintenance of Facilities, Vehicles, and Equipment Plan
MMP-004	Emergency and Incident Management
MMP-005	Incident Damage Reports, Third Party Claims and Repairs
MMP-006	Complaint Review and Response
MMP-007	Customer Satisfaction Data Collection System
MMP-008	Snow and Ice Control Plan
MMP-009	Severe Weather Evacuation Plan
MMP-010	Mitigation Procedures for Impacts to Neighboring Facilities
MMP-011	Establishing Maintenance Management System
MMP-012	Defect Categorization and Repair
MMP-013	Maintenance Inspection Plan
MMP-014	Maintenance Repair Submittal Plan
MMP-015	Tracking and Reporting Noncompliance Events
MMP-016	Procedure for Updating MMP

## APPENDIX 7: TEMPLATE FOR TYPICAL PROCEDURE

### 1. PURPOSE AND NEED

*[List the reason for the procedure's implementation.]*

#### 1.1 Methodologies

*[List the methodologies to be defined as part of the procedure.]*

### 2. SCOPE

*[Define the limits of the procedure. Define individuals or workgroups to whom the procedure applies.]*

### 3. DEFINED TERMS

- *[List the terms defined as part of the procedure]*

### 4. STEPS IN PROCEDURE

*[Describe the procedure, in detail. List all steps. Assign individual responsibility for implementing the procedure]*

*[Include tables, flowcharts and figures as applicable.]*

### 5. DOCUMENT CONTROL

*[List the methods by which the procedure will be documented and archived. Define the location at which the procedure's records will be filed.]*

### REFERENCES

*[Reference applicable documents within the contract with specific section and page locations.]*

### Approved By:

---

FirstName LastName  
Maintenance Manager (MM)

---

Date

---

FirstName LastName  
Procedure Owner

---

Date

## **APPENDIX 8: QUALITY POLICIES**

*[Insert here links to or copies of the corporate quality policies and commitments of the DB Contractor and its Affiliates applicable to the Maintenance Work]*