

Texas Department of Transportation

DESIGN-BUILD SPECIFICATIONS Items 10-28

Attachment 14-1
Utility Adjustment Forms
May 2025



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) l	box): Actual Cost	Lump Sum	Non-Reimbursable
Alternate Procedure Approval I	Date:		
Estimated Start Date:		, 20_	
Estimated Completion or Durati	on:	, 20_	
Estimated Total Adjustment Co	sts:	\$ <u>0.00</u>	
Estimated Betterment (in dollar	s and calculated %):	\$ <u>0.00</u>	<u>0%</u>
Estimated Accrued Depreciation:		\$ <u>0.00</u>	
Estimated Salvage:		\$ <u>0.00</u>	
Credits and Vouchers:		\$ <u>0.00</u>	
Eligibility Ratio (calculated and	d supported %)	\$ <u>0.00</u>	<u>0%</u>
Noteworthy Issues/Items:			



ASSEMBLY PACKAGE

1.	Have the required number of Utility Adjustment Assemblies of which the TxDOT Copy is col coded, been submitted?			
	Yes 🗌	No 🗌	N/A	
2.	Have the following forms been	n submitted?		
	PUAA/UAAA: UJUA: Statement - Contract Work: U-1 Affidavit: Quitclaim Deed: UM/UDC Sign Off:	Yes	No	N/A
3.	Are all forms submitted comp Adjustment?	lete and correct f	for the situation/	circumstance of the Utility
	Yes 🗌	No 🗌	N/A	
TRAN	ISMITTAL MEMO			
4.	If the Adjustment has unique of clarifications?	characteristics, d	oes the transmit	tal include explanations and
	Yes 🗌	No 🗌	N/A	
5.	Has a recommendation for app	proval been state	d?	
	Yes 🗌	No 🗌	N/A	
6.	If the Utility Adjustment is in percentages in each jurisdiction) RCSJ (Local .	Jurisdictional Boundary), have the
	Yes 🗌	No 🗌	N/A	



UTILITY ADJUSTMENT AGREEMENT

7.	Have language modifications to the utility agreement been approved by TxDOT?			
	Yes 🗌	No 🗌	N/A	
8.	Has the Utility consultar Utility Manager (UM)?	nt-engineering contract	peen reviewed and approved by the D	eveloper's
	Yes 🗌	No 🗌	N/A	
UTIL	ITY ADJUSTMENT PLA	ANS AND SPECIFICA	TIONS	
9.	Plans folded so as to fit	into 8.5" x 11" file?		
	Yes 🗌	No 🗌	N/A	
10.	Have the Utility Adjustr	nents 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 U (PE)?	Itility Adjustment been s	ealed by a Registered Professional E	ngineer
	Yes 🗌	No 🗌	N/A	
13.			the plans verifying review and appro er Owner Managed or Developer Ma	
	Yes 🗌	No 🗌	N/A	
14.	Backfill requirements m	et (item 400 referenced)	?	
	Yes 🗌	No 🗌	N/A	
15.	If excavation is required protection?	l, do the plans included	note on OSHA trench excavation	
	Yes 🗌	No 🗌	N/A	
16.	Is a note provided in the TMUTCD?	plans that the adjustme	nt will conform with the	

17.	Yes If the adjustment involves a pla been included in the estimate or		N/A
	Yes 🗌	No 🗌	N/A
18.	Barlow's calculation must be particle to complete Barlow's formula. Design Factor = F. Maximum	rovided by the utility ow S=Yield Strength, Wall Operating Pressure must	un-encased high pressure pipelines? (The ner. The following information is required thickness = t, Outside Diameter = D, also be given and compared to the ion must be shown with the submission.)
	Yes 🗌	No 🗌	N/A
19.	If the pipeline is un-encased, is	there adequate coating,	wrapping and cathodic protection?
	Yes 🗌	No 🗌	N/A
20.	Information on plans sufficient	and adequate to:	
	Determine necessity and justific	cation of proposed work	?
	Yes 🗌	No 🗌	N/A
	Demonstrate Utility Accommod	dation Rules compliance	?
	Yes 🗌	No 🗌	N/A
	Indicate highway stationing, ex and proposed grades, and edge		W, offsets from proposed ROW, existing
	Yes 🗌	No 🗌	N/A
	Provide any other necessary or condition, wall thickness, speci		ch as pressure, flow, offset, type,
	Yes 🗌	No 🗌	N/A
21.	Is this Utility Adjustment within project limits?	n ROW project limits or	directly related to work required within
	Yes	No 🗌	N/A
22.	Are any of the proposed utility	facilities installed longit	udinally within a control of access?
	Yes 🗌	No 🗌	N/A



COST ESTIMATE

23.	Has the Developer's Utility Design Coordinator located on the plans the major items of mat listed on the estimate by scaling or stationing?		
	Yes 🗌	No 🗌	N/A 🗌
24.	If the agreed sum metho been provided?	d has been marked, has	a detailed, itemized estimate and matching plans
	Yes 🗌	No 🗌	N/A
25.	Is the estimate properly	and adequately itemized	l and detailed?
	Yes 🗌	No 🗌	N/A
26.	Are overheads and loadi	ngs checked for reasona	ableness?
	Yes 🗌	No 🗌	N/A
27.	Replacement utility RO	W charges justified and	supported?
	Yes 🗌	No 🗌	N/A
28.	Eligibility ratio calculate	ed and recommended?	
	Yes 🗌	No 🗌	N/A
29.	Betterment credit applic	able?	
	Yes 🗌	No 🗌	N/A
	If yes, is credit calculate	ed and applied properly?	
	Yes 🗌	No 🗌	N/A
30.	Accrued Depreciation co	redit applicable?	
	Yes 🗌	No 🗌	N/A
	If yes, is credit calculate	ed and applied properly?	

31.	Yes Salvage credit applicable?	No 🗌	N/A
	Yes 🗌	No 🗌	N/A
	If yes, is credit applied proper	ly?	
	Yes 🗌	No 🗌	N/A
32.	Estimate extensions checked?		
	Yes 🗌	No 🗌	N/A
AFFIC	DAVIT OF PROPERTY INTE	REST	
33.	Proof of compensable property	y interest established by	utility where applicable?
	Yes 🗌	No 🗌	N/A
	If yes, according to the "Real	Property Interest" para	graph of the PUAA:
	Does the estimate detail reimb	oursement for "New Prop	perty" interest?
	Yes	No 🗌	N/A
	Does the estimate detail comp	ensation for relinquishin	g "Existing Property" interest?
	Yes	No 🗌	N/A
	Did the utility owner provide costs or an agreed sum if new		will quitclaim their property interest at no are not being acquired?
	Yes 🗌	No 🗌	N/A
34.	Have the parcel ID numbers to	be Quitclaimed been id	entified?
	Yes	No 🗌	N/A
35.	Has the owner provided a sign Quitclaim Deed(s) been subm		tclaim, and has a copy of the correct
	Yes 🗌	No 🗌	N/A 🗌



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 this assembly?		utility facilities been	plotted on	the ROW map and attached to
	Yes 🗌		No 🗌	N/A	
COMN	MENTS:				
Prepa	red by:	Utility Design	Coordinator	-	Date
	mmended for oval by:				
**	_	Quality Contro	ol	_	Date
Appro	oved by:	Utility Manag	er	-	Date



	County: ROW CSJ No.: Const. CSJ No.: Highway: Fed. Proj. No.:
	Limits: to
PROJECT UTILITY ADJUSTMEN (DB Contractor-Mana	
Agreement No.:U-	<u>-</u>
THIS AGREEMENT, by and between [DB Contractor], here and [Utility Owner], hereinafter identified as the "Owner", is a	
WITNESSETH	
WHEREAS, the STATE OF TEXAS, acting by and through hereinafter identified as "TxDOT", is authorized to design, projects as part of the state highway system throughout the S applicable provisions of Chapters 201, 203, 222, 223, 224 and amended; and	construct, operate, maintain, and improve state of Texas, all in conformance with the
WHEREAS, TxDOT proposes to construct a project identifical classified as either Interstate, Toll or Traditional (meaning eligible in the land occupied by the facility to be relocated within the indicated below (<i>check one box</i>). Reimbursement will be author in conformance with §203.092 of the Transportation Code,	bility based on existing compensable interest e proposed highway right of way limits) as
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 Utility(ies) 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 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(s) of the Owner Utility(ies) 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)]:

	1
•	and
•	anu
	;

1.

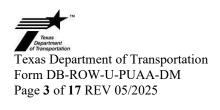
WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the DB Contractor and the Owner desire to implement the Adjustment of the Owner Utility(ies) 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:

Prepa	aration of Plans. [Check one 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 cos 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 at 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 **10 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 **10 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. <u>Design and Construction Standards.</u>

- (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 (i) published, current design practices regularly followed by the Utility Owner in its own work, and (ii) 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 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 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 <u>Exhibit A</u> 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 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 \$\square\$ ("Agreed Sum") as supported by the analysis of the Owner's estimated costs attached hereto as part of Exhibit A.
	(c)	be con perform of the Owner Owner	direct costs charged to the DB Contractor by the Owner shall be reasonable and shall inputed using rates and schedules not exceeding those applicable to similar work med by or for the Owner at the Owner's expense. The DB Contractor's performance Adjustment work hereunder and payment of the DB Contractor's share of the r's costs pursuant to this Agreement, if applicable, shall be full compensation to the for all costs incurred by the Owner in adjusting the Owner Utilities (including at limitation, costs of relinquishing and/or acquiring right of way).
7.	Advai	ncement	of Funds by Owner for Construction Costs.
	(a)	and of DB Co	cement of Owner's share, if any, of estimated costs, <u>Exhibit A</u> shall identify all ted engineering and construction-related costs, including labor, material, equipment her miscellaneous construction items. <u>Exhibit A</u> shall also identify the Owner's and ontractor's respective shares of the estimated costs. The Owner shall advance to the ontractor its allocated share, if any, of the estimated costs for construction and tering work to be performed by the DB Contractor, in accordance with the following
			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)	Adjust	ement Based on Actual Costs or Agreed Sum
		[Check	k the one 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)) <i>plus</i> 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. <u>Invoices.</u> 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 If Paragraph 9(b) identifies Betterment, the Owner shall advance to the DB Contractor, at (c) least 10 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 10 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. <u>Management of the Adjustment Work</u>. The DB Contractor will provide project management for the Adjustment of the Owner Utility(ies).
- 11. <u>Utility Investigations</u>. At the DB Contractor's request, the Owner shall assist the DB Contractor in locating any Utilities (including any 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 Utility(ies) nor existing, unadjusted Utility(ies) 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. <u>Design Changes</u>. 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. <u>Field Modifications</u>. 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 Utility(ies).

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 Utility(ies), 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 a 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 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. If the Owner Utility(ies) 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 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, permit applications 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 permit through TxDOT's Right of Way Utility and Leasing Information System (RULIS).
- 16. <u>Amendments and Modifications</u>. 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.

19. **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, including without limitation any claimed defect in any design or construction work supplied by the DB Contractor or by its Subcontractors; and
 - (2) In no event shall TxDOT be responsible for any repairs or maintenance to the Owner Utilities adjusted pursuant to this Agreement.
- (b) If the DB Contractor claims that the Owner has breached any of its obligations under this Agreement, the DB Contractor will notify the Owner and TxDOT in writing of such breach, and the Owner shall have **30 days** following receipt of such notice in which to cure such breach, before the DB Contractor may invoke any remedies which may be available to it as a result of such breach.
- 20. **Traffic Control.** The DB Contractor shall provide traffic control or shall reimburse the Owner for the DB Contractor's share (if any, as specified in Paragraph 4) of the costs for traffic control made necessary by the Adjustment work performed by either the DB Contractor or the Owner pursuant to this Agreement, in compliance with the requirements of the Texas *Manual on Uniform Traffic Control Devices*. Betterment percentages calculated in Paragraph 9 shall also apply to traffic control costs.
- 21. <u>Notices.</u> Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

Owner: Owener Contact
Address Line #1



DB Contractor:

Address Line #2
City, State Zip
Phone: () Fax: ()
DB Contact
Address Line #1

Address Line #1 Address Line #2 City, State Zip

Phone: () Fax: () -

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: Alternative Delivery Division 6230 E Stassney Lane Austin, TX 78744

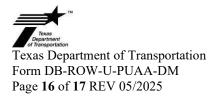
Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, or (c) by reliable messenger or overnight courier to the appropriate address set forth above. Any notice served personally shall be deemed delivered upon 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.



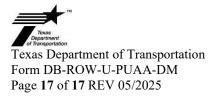
23. <u>Time</u>.

- (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. <u>Continuing Performance</u>. 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.
- 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. <u>Cooperation</u>. 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. <u>Termination</u>. 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 lease 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)].
- 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. <u>Captions</u>. 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. <u>Counterparts.</u> 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 and the same instrument.
- 35. <u>Effective Date</u>. 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.



APPROVED BY:

TEXAS DEPARTMENT OF TRANSPORTATION	OWNER
By: [Printed Name]	Ву:
[Printed Name]	[Print Owner Name]
Ву:	Ву:
Authorized Signature	Duly Authorized Representative
District Engineer (or designee)	[Title]
Date:	[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)

(11menument 110. to 1121 cement 110	Amendment No.	to Agreement No.:	-U-
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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**.

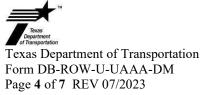
- (a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities in the Original Agreement is hereby amended to add the following Utility facility(ies) ("Additional Owner Utilities") and proposed Adjustment(s) to the Owner Utilities described in the Original Agreement [insert 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 v	with:
---	-------

1.3

		(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
			greed sum of \$ ("Agreed Sum") as supported by the Owner's estimated costs attached hereto as part of Exhibit
<u>Advan</u>	cement	of Funds by O	wner for Construction Costs.
(a)	all estir	nated engineeri ent and other	er's share, if any, of estimated costs. <u>Exhibit A</u> shall identifying and construction-related costs, including labor, material, miscellaneous construction items. <u>Exhibit A</u> shall also and DB Contractor's respective shares of the estimated costs.
	estimat	ed costs for co	nce to the DB Contractor its allocated share, if any, of the nstruction and engineering work to be performed by DB nce with the following terms:
		The Adjustmentunds.	nt of the Owner's Utilities does not require advancement of
		-	ent of the Owner's Utilities does require advancement of terms agreed to between the DB Contractor and Owner are
	[Insert Owner.	*	ance funding to be agreed between DB Contractor and
(b)	Adjustr	nent Based on A	Actual Costs or Agreed Sum.
	[Check	the <u>one</u> (1) app	propriate provision, if advancement of funds is required]:
		for the Adjus upon completi	responsible for its share of the DB Contractor Actual Cost tment, including the identified Betterment. Accordingly, on of all Adjustment work to be performed by both parties s Amendment:
		` '	wner shall pay to the DB Contractor the amount, if any, by the Actual Cost of the Betterment (as determined in

Paragraph 9(b)) plus the Actual Cost of Owner's share of the



1.4

1.5

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. 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. Betterment. Paragraph 9(b) (Betterment and Salvage) of the Original Agreement is hereby (a) 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

(b) If the above Paragraph 1.5(a) identifies Betterment, the Owner shall advance to the DB Contractor, at least **10 Business Days** prior to the date scheduled for

remainder is divided by (i).

the DB Contractor work under this Amendment which is attributable to Betterment is %, calculated by *subtracting* (ii) from (i), which

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 <i>multiplying</i> (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.

OWNED

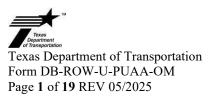
APPROVED BY:

TEXA C DED A DEMENTE OF

TRANSPORTATION	OWNER
By: [Printed Name]	By: [Print Name]
By:Authorized Signature	By: Duly Authorized Representative Signature
<u>District Engineer (or designee)</u>	[Title] [Company]
Date:	Date:
	DB CONTRACTOR
	By: [Print Name]
	By: Duly Authorized Representative



Date: _____

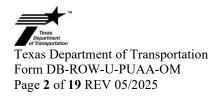


Const. Highw	CSJ No.: CSJ No.: vay:		
PROJECT UTILITY ADJUSTMENT AGRE (Owner-Managed)	EEMENT		
Agreement No.:U			
THIS AGREEMENT, by and between [DB Contractor], hereinafter identified as the "DB Contractor" and [Utility Owner], hereinafter identified as the "Owner", is as follows:			
WITNESSETH			
WHEREAS, the STATE OF TEXAS, acting by and through the Texa hereinafter identified as "TxDOT", is authorized to design, construct, projects as part of the state highway system throughout the State of Teapplicable provisions of Chapters 201, 203, 222, 223, 224 and 228 of the amended; and	operate, maintain, and improve exas, all in conformance with the		
WHEREAS, TxDOT proposes to construct a project identified as the [I classified as either Interstate, Toll or Traditional (meaning eligibility base in the land occupied by the facility to be relocated within the proposed indicated below (<i>check one box</i>). Reimbursement will be authorized by in conformance with Transportation Code 203.092,	d on existing compensable interest I highway right of way limits) as		
☐ Interstate			
Toll			
Traditional			

WHEREAS, pursuant to that certain Design-Build Contract (the "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 the existing Utility(ies) 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 Utility(ies)") are in locational conflict with the Project (and/or the Ultimate Configuration of the Project), and the Owner has decided to undertake the Adjustment of the Owner Utility(ies) 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(s) of the Owner Utility(ies) 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
•	and

1.

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 Utility(ies) 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:

Preparation of Plans. [Check one 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 box that applies]:

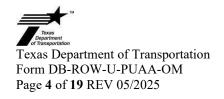


The Owner's employees were utilized to prepare the Plans, and the charges therefore do not exceed the Owner's typical costs for such work.
The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees 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 **10 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 10 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 Owner. 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.

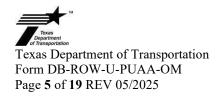


3. <u>Design and Construction Standards</u>.

- (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 (i) published, current design practices regularly followed by the Utility Owner in its own work, and (ii) 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. <u>Construction by the Owner; Scheduling.</u>

- (a) The Owner hereby agrees to perform the construction necessary to adjust the Owner Utility(ies). 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 Utility(ies), 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 Utility(ies), 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 the 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 the 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 Utility(ies) being adjusted, on the basis of the final approved Plans. The DB Contractor shall verify that the Owner Utility(ies), 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 Owner Utility reconstruction and relocation work,
	including final testing and acceptance thereof [check one box that applies]:

On or before [Month] [Day], 20[19].

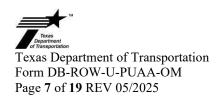


A duration not to exceed	calendar days upon	notice to	proceed by	the DB
Contractor.				

(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:

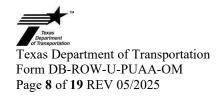
- (1) Force Majeure as described in Paragraph 24(c);
- (2) Any act or omission of the DB Contractor, if the Owner fails to meet any deadline established pursuant to Paragraph 4(f); or
- (3) If the DB Contractor and/or TxDOT determine, in their sole discretion, that a delay in the relocation work is the result of circumstances beyond the control of the



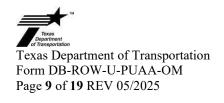
Owner or the Owner's contractor and the DB Contractor will not reduce the reimbursement.

|--|

Costs	or the vi	· · · · · ·
(a)	The Ov	wner'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, <i>plus</i>
	(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), <i>plus</i>
	(3)	The Owner's right of way acquisition costs, if any, which are reimbursable pursuant to Paragraph 16.
(b)		wner's costs associated with Adjustment of the Owner Utilities shall be developed nt to the method checked and described below [check only one 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 <u>\$</u> (" Agreed Sum "), as supported by the analysis of estimated costs attached hereto as part of <u>Exhibit A</u> .



- 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. <u>Billing, Payment, Records and Audits: Actual Cost Method</u>. 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. <u>Billing and Payment: Agreed Sum Method</u>. 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. <u>Invoices</u>. 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.

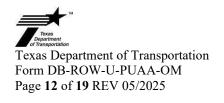
	order t	o maintain its written telephony standards.
(b)	that the in com Project constra withou	derstood and agreed that the DB Contractor will not pay for any Betterments and a Owner shall not be entitled to payment therefor. No Betterment may be performed nection with the Adjustment of the Owner Utilities which is incompatible with the cor the Ultimate Configuration or which cannot be performed within the other aints of applicable Law and any applicable governmental approvals, including t limitation the scheduling requirements thereunder. Accordingly, the parties agree lows [check the one 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 <i>[insert explanation, e.g. "replacing 12" pipe with 24" pipe]</i> : 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 <i>subtracting</i> (ii) from (i). The percentage of the total cost of the Owner's work hereunder which is attributable to Betterment is%, calculated by <i>subtracting</i> (ii) from (i), which remainder shall be <i>divided</i> by (i).
(c)	If Para	graph 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 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. <u>Salvage</u>. 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. <u>Utility Investigations</u>. 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 Utility(ies) nor existing, unadjusted Utility(ies) 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 the adjusted Owner Utilities. In no event shall the DB Contractor or TxDOT become



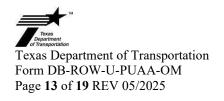
responsible for making any repairs or maintenance, or for discharging the cost of same. The provisions of this Paragraph 13(b) shall not limit any rights which the Owner may have against the DB Contractor if either party respectively damages any Owner Utility as a result of its respective Project activities.

- 14. <u>Design Changes</u>. 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. <u>Field Modifications</u>. 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 Utility(ies).

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 Utility(ies) 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 Utility(ies), 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

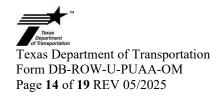


extent that it upgrades the Existing Utility Property Interest which it replaces, or in its entirety if the related Owner Utility was not installed pursuant to an Existing Utility Property Interest. Betterment costs shall be solely the Owner's responsibility.

- (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 Right of Way Utility and Leasing Information System (RULIS), 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-UAAA-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
- (2) In no event shall TxDOT be responsible for any repairs or maintenance to the Owner Utilities adjusted pursuant to this Agreement.
- (b) If the DB Contractor claims that the Owner has breached any of its obligations under this Agreement, the DB Contractor will notify the Owner and TxDOT in writing of such breach, and the Owner shall have **30 days** following receipt of such notice in which to cure such breach, before the DB Contractor or the DB Contractor may invoke any remedies which may be available to it as a result of such breach.
- 21. **Traffic Control**. The DB Contractor shall provide traffic control or shall reimburse the Owner for the DB Contractor's share (if any, as specified in Paragraph 6) of the costs for traffic control made necessary by the Adjustment work performed by either the DB Contractor or the Owner pursuant to this Agreement, in compliance with the requirements of the Texas *Manual on Uniform Traffic Control Devices*. Betterment percentages calculated in Paragraph 10 shall also apply to the traffic control costs.
- 22. **Notices**. Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

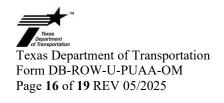
Owner:

Owner Contact
Address Line #1
Address Line #2
City, State Zip
Phone: () Fax: ()
DB Contact
Address Line #1
Address Line #1
Address Line #2
City, State Zip
Phone: () Fax: () -

A party sending a 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: Alternative Finance Division **6230 E Stassney Lane** Austin, Texas 78744

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 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

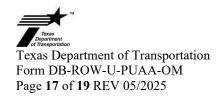


of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Any party may designate any other address for this purpose by written notice to all other parties; TxDOT may designate another address by written notice to all parties.

- 23. <u>Approvals</u>. 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.

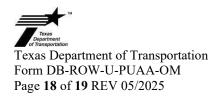
24. Time; Force Majeure.

- (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. <u>Continuing Performance</u>. 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



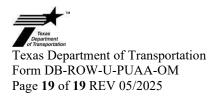
may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.

- 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. <u>Cooperation</u>. 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. <u>Termination</u>. 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. <u>Nondiscrimination</u>. 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 lease of equipment.
- 31. <u>Applicable Law, Jurisdiction and Venue</u>. 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. <u>Waiver of Consequential Damages</u>. 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. <u>Captions</u>. 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.
- 35. <u>Counterparts</u>. 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. <u>Effective Date</u>. 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.



APPROVED BY:

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____ By: _____ [Printed Name] [Print Owner Name] By: ______Authorized Signature By: ______ Duly Authorized Representative District Engineer (or designee) [Title] [Company] Date: Date: _____ **DB CONTRACTOR** By: _____ [Print Name] Duly Authorized Representative [Title] [Company]

OWNER

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)



_	
_	
_	
_	
_to	
	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.

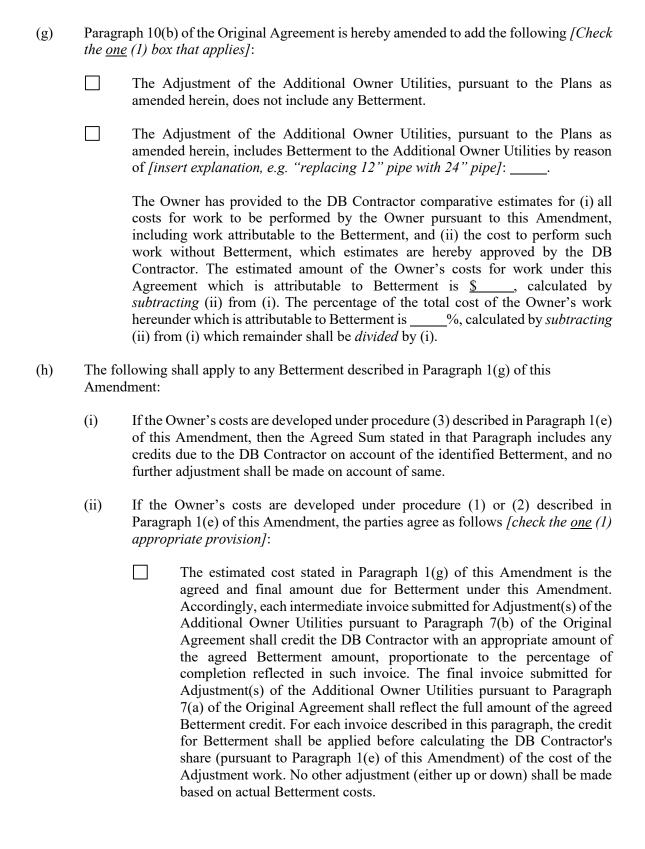
(a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities in the Original Agreement is hereby amended to add the following Utility facility(ies) ("Additional Owner Utilities") and proposed Adjustment(s) [insert below a description

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 <u>Exhibit A</u> .		
(c)	The Plans attached hereto as <u>Exhibit A</u> , 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)		aph 4(f) of the Original Agreement is hereby amended to add the following deadline 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] , 2019 .	
		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)	with A	rposes of Paragraph 5(b) of the Original Agreement, the Owner's costs associated djustment of the Additional Owner Utilities shall be developed pursuant to the 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)	or Actu Amend Exhibit allocati	poses of Paragraph 6 of the Original Agreement, responsibility for the Agreed Sumual Cost, as applicable, of all Adjustment work to be performed pursuant to this ment shall be allocated between the DB Contractor and the Owner as identified in <u>A</u> and in accordance with §203.092 of the Texas Transportation Code. An on percentage may be determined by application of an eligibility ratio, if riate, as detailed in <u>Exhibit A</u> ; <i>provided, however</i> , 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.



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.



APPROVED BY:

TRANSPORTATION	OWNER
By:	By:
[Printed Name]	[Print Owner Name]
By:	By:
Authorized Signature	Duly Authorized Representative
<u>District Engineer (or designee)</u>	[Title] [Company]
Date:	<u>[Company]</u>
	Date:
	DB CONTRACTOR
	By: [Print Name]
	By:
	[Title] [Company]
	Date:



County:	
ROW CSJ No.:	
Const. CSJ No.:	
Highway:	
Fed. Proj. No.:	
Limits:	to

EXHIBIT C

STATEMENT COVERING CONTRACT WORK



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK

(AS APPEARING IN ESTIMATE)

U-No					
District:					
County:		ROW CSJ No.:			
Federal I	Project No.:	Highway No.:			
fully cogn	a duly authorized and qualified representative of izant of the facts and make the following statem contract basis as appears in the estimate to which	nents in respect to work which will or may be			
adequately	economical and/or expedient for Owner to control staffed or equipped to perform the necessary windicated on the estimate.	•			
	Procedure to be Used in	Contracting Work			
A.		ugh open advertising and contract is to be awarded proposal in conformity with the requirements and			
□ B.	known qualified contractors and such contract	circulating to a list of pre-qualified contractors or et is to be awarded to the lowest qualified bidder e requirements and specifications for the work to ors are listed below:			
	1				
	2				
	3				
	4				
	5				
C.	regularly performed for Owner and under wh	g continuing contract under which certain work is nich the lowest available costs are developed. (If der an existing contract, give detailed information			



Texas Department of Transportation Form DB-ROW-U-48 Page **3** of **3** REV 07/2018

	D.	support of its proposal is attac and the Federal Highway Ad	net outside the foregoing requirements and therefore evidence in hed to the estimate in order to obtain the concurrence of the State, ministration Division Engineer where applicable, prior to taking e 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.		
[Sign	ature	of Officer/Representative]	Date	
[Title	e of C	Officer/Representative]		



Texas Department of Transportation Form DB-ROW-U-USO-UDC REV 07/2018 Page 1 of 2

DB Contractor's Utility Design Coordinator

	Utility 1	No Conflict Sign-Off Form
Utility Design Coordin Date plans received: Utility Company:	ator:	
Assembly "U" number		
Type of Utilities:	·	
Date on Utility's plans	:	No. of sheets in Utility's plans:
of the above reference been completed and hadesign features. Design features includ walls, traffic signals, ill water quality facilities Any design changes t Contractor's Utility Ma	d Utility Plans conceave not identified an e but are not limited lumination, signs, fou and other DB Contrato the after the langer and the affects	oC) on behalf of the DB Contractor () certify that a review erning the proposed highway improvements on the has y conflicts between the Utility's proposed relocation and any to pavement structures, drainage facilities, bridges, retaining andations, duct/conduit, ground boxes, erosion control facilities, actor-Managed Utilities. The signing of this form will be coordinated through the DB and insert comments below:
Utility Design Coordinator: (UDC)	(Signature) (Print Name)	Date
Utility Coordination	(Print Name)	



Texas Department of Transportation Form DB-ROW-U-USO-UDC REV 07/2018 Page 2 of 2

Firm:



Texas Department of Transportation Form DB-ROW-USO-UM REV 07/2018 Page 1 of 2

DB Contractor's Utility Manager

	Utility N	To 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:		
of the above referenced been completed and ha existing and/or propose	I Utility Plans conce ve not identified any d Utilities.	g on behalf of the DB Contractor () certify that a review rning the proposed highway improvements on the has a conflicts between the Utility's proposed relocation and any 43 of the Texas Administrative Code, Section 21.31 – 21.56	
of the Utility Accommo			
Check box if ar	y areas of concern a	nd insert comments below:	
Utility Manager:			
(UM)	(Signature)	Date	
	(Print Name)		
Utility Design			
Coordinator: (UDC)	(Signature)	Date	
	(Print Name)		
Utility Coordination Firm:			



Texas Department of Transportation Form DB-ROW-USO-UM REV 07/2018 Page 2 of 2

(Print Name)



Utility Company

NOTICE OF REQUIRED ACCOMMODATION (NORA)

Date

Contact Person Address		
City, State, Zip		
CMRR #:		
County:		
Highway:		
Limits From:		
Limits To:		
CCSJ:		
ROW CSJ:		

Dear Contact Person:

This letter is being sent to you as a result of the identification of a conflict between TxDOT's subject project and your utility, which is/are located Conflict Location(s). This/these conflict(s) will necessitate that the structure(s) be relocated.

It is imperative to have all Utility companies complete their relocations by our construction date of [insert date as shown in the Project schedule: date]. The project plans are shown in Attachment "A."

You may rely upon this notice and the provided plans to begin preliminary utility activities, such as design, subsurface utility engineering, and material procurement. If TxDOT or its DB Contractor changes its plans subsequent to this notice, your company will be entitled to reimbursement of additional eligible expenses incurred **relative to the specific change**, regardless of the Utility's status under §203.092 of the Transportation Code.

A Utility Permit, Project Utility Adjustment Agreement (PUAA), Utility Adjustment Agreement Amendment (UAAA), and/or Abbreviated Utility Assembly (AUA) (Attachment "B"), defining the terms, the timeline of the relocation, and the extent to which the Utility company's costs of such relocation are reimbursable, if at all, is required within 90 days of date of this letter, unless otherwise agreed to. Physical relocation shall not commence until the Utility Permit, PUAA, UAAA, and/or AUA is executed by both parties.

If your company wishes to relocate its utilities within the highway right of way, we must work together to determine the appropriate location of the relocated utility. Upon determination of the new location, within the highway right of way, and Utility Permit application by the Utility company, TxDOT will issue a Utility Permit, as applicable, allowing the installation of the utility.

DB-ROW-U-NORA (Rev. 10/2024) Page 2 of 2

If a PUAA, UAAA, AUA, and/or Utility Permit is not executed by [*insert date as agreed upon with TxDOT*: date], then TxDOT may initiate actions to relocate/accommodate the utility under the authority of law. This may include relocating the utility at the sole cost and expense of the Utility company, injunctive action, or exercising the power of eminent domain.

If the Parties have not agreed to resolve the conflict, an escalation process will be utilized. If the Utility company fails to resolve the conflicts within the timeline specified in the PUAA, UAAA, or AUA, TxDOT will invoke its right under Transportation Code §203.0935 to relocate the utility itself.

All reimbursements are subject to audit and standard documentation requirements, in accordance with TxDOT policies.

Please contact point of contact at email address or phone number if additional information is needed.

Sincerely,

Sender
Utility Manager, Company

Enclosure