

THE SOUTHERN GATEWAY PROJECT

DRAFT DESIGN-BUILD AGREEMENT TERM SHEET

This document provides background information and summarizes the major terms of the Design-Build Agreement (“DBA”) for the design, administration and construction, of the Southern Gateway Project (“Project”), which may be entered into by the Texas Department of Transportation (“TxDOT”), and a firm (the “Design-Build Contractor” or “DB Contractor”) to be selected by TxDOT based on responses to a Request for Proposals (the “RFP”). This document is intended as a general description of certain anticipated major terms of the DBA, which terms are subject to revision by TxDOT in its sole discretion, and this document is not a restatement or interpretation of the DBA requirements. Further, there are numerous details, exceptions and qualifications associated with the anticipated provisions described below that can only be ascertained by reviewing the DBA itself.

| CONTRACT OVERVIEW | |
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| DB Contractor & Agreement Date | To be determined. TxDOT anticipates executing the DBA in the summer of 2017. |
| Scope of Work | <p>The DBA requires the DB Contractor to deliver all Work (with quality and durability) for the Project. The DB Contractor's Work includes the obligation to furnish a complete design for the Project, meeting all requirements of the Contract Documents, to deliver the Project as designed and in accordance with all requirements under the Contract Documents, and otherwise to comply with all requirements under the Contract Documents.</p> <p>See the RFQ for further details regarding the Scope of Work.</p> |
| Notices to Proceed | <p>TxDOT anticipates issuing NTP1 concurrently with execution of the DBA. Issuance of NTP1 authorizes the DB Contractor to perform the portion of the Work necessary to obtain TxDOT's approval of the project management plan and to enter the Project Right of Way (ROW) that TxDOT owns in order to conduct surveys and site investigations, including geotechnical, hazardous materials and utilities investigations.</p> <p>TxDOT anticipates issuing NTP2 within 90 days after issuance of NTP1. NTP2, authorizing performance of the remainder of the Work, is conditioned upon approval by TxDOT of the Project Management Plan (PMP) and other requirements set forth in the Contract Documents.</p> <p>The Proposal Price will remain valid without escalation until 180 days after the Proposal Due Date; after that, the Price will be subject to escalation based on the ENR Construction Cost Index (CCI) until issuance of NTP1. If NTP1 is not issued within 365 days from the Effective Date, the DB Contractor may terminate the DBA.</p> |
| Contract Documents | The Contract Documents include: the DBA and exhibits, including federal requirements, Technical Provisions, design documents, specifications, plans, and all amendments to the foregoing and all Change Orders issued. |
| Contract Documents (Proposal) | The Proposal (to the extent that it is consistent with or exceeds the requirements of the other Contract Documents) will also be a Contract Document, such that commitments made by the DB Contractor in the Proposal relating to the Work will be binding. |

| PRICE, SECURITY & PAYMENTS | |
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| Price | This is a lump sum contract for the Work, to be paid based on progress in accordance with a Maximum Payment Schedule. The only changes to the Price will be via Change Order. |
| Payment Obligations & Progress Payment Limitations | <p>TxDOT will make payments based on Work progress as evidenced by a monthly Draw Request submitted by the DB Contractor. The Maximum Payment Schedule will establish the cap on cumulative progress payments at particular times.</p> <p>If the DB Contractor falls behind schedule, no progress payments will be paid until a recovery schedule is approved in writing.</p> |

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| <p>Proposal, Performance, Payment, Retainage & Warranty Bonds</p> | <p>Proposal Bond in the amount of \$35 million will remain in place as security for performance of the DB Contractor’s obligations. Upon receipt of the performance and payment bonds (and other documents required for NTP1) the Proposal Bond will be released.</p> <p>Payment and Performance Bonds in the amount of \$35 million will be required as security for the DB Contractor’s obligations as a condition to issuance of NTP1.</p> <p>Performance Bond in an amount equal to 100% of the cost of constructing the Project will be required on or before NTP2 and will be released upon Final Acceptance so long as the DB Contractor is not in default under the DBA and upon the receipt of the Warranty Bond.</p> <p>Payment Bond in an amount equal to 100% of the cost of constructing the Project is required on or before NTP2 and will be released upon: (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Payment Bond have been fully paid and (ii) unconditional releases of Liens and stop notices, or (b) expiration of the statutory period for filing a claim against the Payment Bond if no claims have been filed.</p> <p>Retainage Bond in the amount of 4% of the Price will be required on or before NTP2 as a guaranty for the protection of any claimants and TxDOT for overpayments, Liquidated Damages, and other deductions or damages owed by the DB Contractor.</p> <p>Warranty Bond in the amount of 10% of the Price is required (as a condition to Final Acceptance) to guarantee performance of the Work required to be performed during the Warranty period.</p> <p>If the Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond, as applicable.</p> |
| <p>Parent Guaranty</p> | <p>A guaranty of the DB Contractor’s obligations from a Guarantor approved by TxDOT will be required if the DB Contractor is a newly formed or limited liability entity, if the DB Contractor submitted parent company financial statements in response to the RFQ or RFP or if the DB Contractor fails to meet certain net worth requirements.</p> <p>Further, TxDOT may, in its discretion, upon the review of the financial information provided in the DB Contractor’s response to the RFQ and RFP, specify that an acceptable parent company or other affiliate company act as a Guarantor to the DB Contractor by providing a guarantee with respect to the DB Contractor’s financial capabilities in a form acceptable to TxDOT.</p> |
| <p>Mobilization</p> | <p>The DB Contractor shall be entitled to payment for mobilization in installments, in an amount equal to the bid item price for mobilization, not to exceed 10% of the Price.</p> |

| COMPLETION DEADLINES, SCHEDULE AND DELAY | |
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| Completion Deadlines | <p>The deadline for Substantial Completion of the Project will be the date set forth in the Proposal, which shall be no later than a date set forth in the RFP. The entire Project must be opened to traffic on or before such deadline.</p> <p>The Final Acceptance deadline is 120 days after Substantial Completion. Extensions of completion deadlines are allowed only under limited circumstances. (See Change Order section below.)</p> |
| Schedule | <p>The DB Contractor must perform the Work in accordance with an approved comprehensive critical path schedule. The baseline schedule will be the schedule submitted with the Proposal, and any changes must be approved by TxDOT as a condition to NTP2. The schedule will be updated monthly during the Project and used for payment, planning and monitoring progress of the Work. If the DB Contractor falls behind schedule, a recovery schedule to regain lost time is required or TxDOT may withhold payments.</p> |
| Delay | <p>Liquidated damages will be assessed for delays in meeting the deadlines for Substantial Completion and Final Acceptance. TxDOT will have the right to terminate the DBA if completion of the Project is delayed for more than a year. (See Liquidated Damages section below.)</p> |

| CONTRACT RIGHTS & RESPONSIBILITIES | |
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| Right of Way | <p>The DB Contractor will be responsible for the acquisition of all ROW needed for the Project. With respect to any additional ROW to be acquired after execution of the DBA, TxDOT will be responsible for the cost to purchase ROW within the schematic ROW limits and the DB Contractor will be responsible for providing and paying for ROW acquisition services in connection with the acquisition of such parcels. TxDOT shall assist the DB Contractor in the necessary acquisition of any additional ROW in accordance with applicable State law.</p> <p>The DB Contractor is responsible for the cost of any temporary construction easements or other temporary property interests.</p> |
| Design, Administration and Construction | <p>The DB Contractor is responsible for design, administration, and construction of the Project in accordance with the Contract Documents.</p> |
| Design Liability | <p>The DB Contractor assumes full responsibility and liability with respect to design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the schematic design affecting constructability.</p> |
| Quality Management | <p>The DB Contractor shall establish, implement, and maintain a comprehensive Quality Management System that fulfills all requirements of the Contract Documents for all Work. The DB Contractor shall describe the Quality Management System in a TxDOT-approved Quality Management Plan. QA/QC necessary to meet, and demonstrate fulfillment of, the Contract Documents will be provided by the DB Contractor.</p> |
| Oversight | <p>TxDOT shall have the right at all times to monitor, inspect, sample, measure,</p> |

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| | attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable to: (a) comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements and agreements, and (b) verify the DB Contractor's compliance with the Contract Documents (including project and quality management plans). The DB Contractor at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with TxDOT and its Authorized Representative to facilitate TxDOT's oversight activities. |
| Standards | The DB Contractor must design and construct the Project in general conformity with the schematic design, in accordance with all professional engineering principles and construction practices generally accepted in the State as the standard in the industry, in a good and workmanlike manner, free from defects and in accordance with the terms and conditions set forth in the Contract Documents, including the Technical Provisions. The DB Contractor will be required to obtain TxDOT approval to make modifications to the specified components of the Basic Configuration. |
| Warranties | <p>The Warranty Term for the Project will commence upon Substantial Completion. A general warranty of the work in favor of TxDOT will remain in effect until one year after Final Acceptance of the Project, except that Warranties for elements of the Project that will be owned by Persons other than TxDOT (such as Utility Owners) will commence as of the date of acceptance thereof by such Persons and will end one year thereafter.</p> <p>The Warranties apply notwithstanding maintenance work performed by TxDOT during the Warranty period or Maintenance Work performed by DB Contractor under the CMA or otherwise during the Warranty Period.</p> |
| ENVIRONMENTAL & PERFORMANCE RISKS | |
| Permits & Approvals | TxDOT has obtained or will obtain key specified permits and governmental approvals as specified in the Contract Documents. The DB Contractor will be responsible for obtaining all other permits and government approvals. |
| New Environmental Approvals | The DB Contractor is responsible for obtaining all new environmental approvals or changes to existing approvals. If a new or revised environmental approval becomes necessary for any reason other than for a TxDOT-Directed Change or Force Majeure Event, the DB Contractor bears full responsibility for all costs and delays. |
| Environmental Compliance | The DB Contractor shall be responsible for performance of all environmental mitigation measures and compliance with all other conditions and requirements of the Contract Documents and Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals for the Project. |
| CONTRACT CHANGES & COSTS OUTSIDE THE CONTRACT | |
| Change Orders | <p>A TxDOT-signed Change Order or Directive Letter is required for any change in Price or time extension. TxDOT may issue unilateral Change Orders. The DB Contractor shall prepare a scope of work, cost estimate, delay analysis and other information for each Request for Change Order.</p> <p>Change Orders requesting a time extension must also provide an alternative</p> |

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| | Change Order form including an acceleration schedule. Change Orders are subject to strict requirements (including notice & delivery). No Change Order is allowed where the DB Contractor is entitled to added funds or time for matters that are also covered by insurance. |
| Differing Site Conditions | Change Orders for additional costs due to Differing Site Conditions will be allowed for (a) subsurface or latent conditions encountered at certain TxDOT-identified boring holes that differ materially from the conditions indicated in the geotechnical reports for such boring holes, (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area. The DB Contractor will be responsible for a specified amount of additional costs for each occurrence of a Differing Site Condition up to an aggregate cap for all such costs. The DB Contractor will not be allowed any time extension or delay damages for delays due to Differing Site Conditions. |
| Deviations | The DB Contractor may deviate from the schematic design as permitted in the Contract Documents. Changes to the Basic Configuration are only allowed through executed Change Orders. |
| Nonconforming Work | TxDOT may, but is not obligated to, accept any nonconforming work without requiring it to be fully corrected, in which case TxDOT will be entitled to compensation in accordance with the Contract Documents. TxDOT may require nonconforming work to be remedied or removed/replaced at the DB Contractor's cost and without time extension, and may deduct the cost of doing so if the DB Contractor fails to correct the nonconforming work as required. Acceptance of nonconforming work by TxDOT does not relieve the DB Contractor of any Warranty requirements. |
| TxDOT-Directed Changes | The DB Contractor will be entitled to a Change Order providing for price adjustment or a time extension for: <ul style="list-style-type: none"> • Change in the scope of the Work directed by TxDOT. • Suspensions of the Work by TxDOT for its convenience for more than the permitted period of time set forth in the Contract Documents. • Any new environmental approvals necessitated by a TxDOT-Directed Change. |
| Hazardous Materials | <p>The DB Contractor is not entitled to any increase in the Price or time with respect to: (a) immaterial quantities of Hazardous Materials, (b) Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (c) costs that could have been avoided, (d) Hazardous Materials on Additional Properties designated by the DB Contractor, or (e) Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements within the Site.</p> <p>Subject to certain conditions identified in the DBA, the DB Contractor is entitled to a Price increase for direct costs that are in excess of specified thresholds due to discovery of Hazardous Materials within the Schematic ROW.</p> <p>If the DB Contractor encounters Hazardous Materials for which the DB Contractor is entitled to a Price increase, and Hazardous Materials Management of such Hazardous Materials results in delays to the Critical Path, then the DB Contractor shall bear 100% of the risk of such Hazardous Materials Delay up to an aggregate</p> |

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| | <p>number of days to be specified in the DBA. TxDOT shall assume the risk for Hazardous Materials Delays in excess of the aggregate number of days to be specified in the DBA.</p> <p>The DB Contractor is not entitled to an increase in Price or time extension for investigation or characterization of Hazardous Materials.</p> <p>The DB Contractor is not entitled to an increase in Price or time extension for remediation costs or delays resulting from the acts or omissions of any DB Contractor-Related Entity, or Hazardous Materials brought onto the Site by a DB Contractor-Related Entity.</p> |
| Utilities | <p>The DB Contractor is responsible for performing all necessary Utility Adjustment Work for the Project and is not entitled to a Change Order for performing Adjustment Work that was initially anticipated to be performed by a Utility Owner (or vice versa).</p> <p>The DB Contractor is not entitled to any time extensions on account of delays attributable to unidentified utilities, except for delays affecting the Critical Path due to (a) New Utilities requiring adjustment and (b) uncooperative utility owners that do not enter into adjustment agreements.</p> <p>The DB Contractor is entitled to a Change Order increasing the Price for (a) any Unidentified Utility located within the Schematic ROW to the extent that the DB Contractor's costs increase by more than \$50,000, except that the DB Contractor shall not be responsible for any such \$50,000 deductibles beyond an aggregate cap of \$1,000,000, and (b) for any New Utility.</p> <p>TxDOT is entitled to a credit if the DB Contractor's costs are decreased due to an Unidentified Utility by more than \$50,000.</p> |
| Force Majeure Events | <p>The DB Contractor will be entitled to additional time and/or compensation for <u>specified</u> force majeure events (provided they are beyond the DB Contractor's control and not due to act or omission by the DB Contractor or its contractors, etc.) that materially and adversely affect the DB Contractor's obligations and that could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the DB Contractor. The following events will be specified in more detail in the DBA:</p> <ul style="list-style-type: none"> • Any earthquake, tornado, hurricane or other natural disaster causing direct physical damage to the Project; • Any epidemic in the Project area, • Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project; • Discovery of any archaeological, paleontological or cultural resources not disclosed or discoverable through reasonable investigation prior to the Proposal Due Date; • Discovery of any species listed as threatened or endangered if their existence was not disclosed or discoverable through reasonable investigation prior to the Proposal Due Date; |

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| | <ul style="list-style-type: none"> • Material change in law; • Third party hazmat spill; • Issuance of a TRO or other form of injunction by a court that prohibits prosecution of a material portion of the Work; • Suspension, termination, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval; and • The addition of any new condition or requirement in the NEPA Approval or the final USACE Section 404 Permit that are not due to the DB Contractor's changes to the schematic design and the Schematic ROW. |
| Matters Not Eligible for Change Orders | The DB Contractor is responsible for all risks not specifically accepted by TxDOT; examples of specific exclusions will be identified in the DBA. |
| BUSINESS RISKS | |
| Insurance | <p>The DB Contractor is required to provide insurance coverage specified in the DBA, which must include at a minimum: commercial general liability, workers' compensation and employer's liability; bodily injury/property damage and comprehensive business auto liability, professional liability coverage, builder's risk, pollution liability, and railroad protective liability. Subcontractor insurance requirements are also specified in the DBA.</p> <p>TxDOT and its members, directors, officers, employees, agents and Project consultants must be additional insureds, except on the professional liability policy.</p> |
| DB Contractor Defaults | <p>Failure to begin Work within 30 days following issuance of NTP1, or failure to commence and diligently perform the Construction Work;</p> <p>Failure to complete the Work by the applicable Completion Deadlines;</p> <p>Failure to perform the Work in accordance with the Contract Documents,</p> <p>Suspending or ceasing the Work or failure to continuously and diligently prosecute the Work;</p> <p>Failure to obtain or maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under the DBA;</p> <p>Voluntary or involuntary assignment or transfer of all or any portion of the DBA not otherwise permitted in the DBA;</p> <p>Failure to make payment when due for labor, equipment or failure to make payment to TxDOT when due of any amounts owing to TxDOT;</p> <p>Failure to timely observe or perform any other material obligation, term or condition under the DBA;</p> <p>Material misrepresentation by the DB Contractor;</p> <p>Voluntary or involuntary bankruptcy or insolvency;</p> <p>Issuance of certain judgments against the DB Contractor;</p> <p>Occurrence of certain Persistent DB Contractor Defaults;</p> |

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| | Failure to perform maintenance under the DBA; and Default under the Capital Maintenance Agreement. |
| Cure of DB Contractor Defaults | The DB Contractor shall be provided the opportunity to cure certain DB Contractor Defaults, as described in the Contract Documents. |
| TxDOT Remedies for DB Contractor Default | TxDOT shall have the right to exercise one or more of the following remedies in the event of an uncured DB Contractor Default: <ul style="list-style-type: none"> • Right to terminate; • Right to deduct amounts (including interest) payable to TxDOT from amounts owing to the DB Contractor; • Right to recover damages; • Right to take immediate action in the event of emergency or danger; • Right to make demand upon, draw on, and enforce and collect any bonds, letters of credit, guaranty, or other performance security available to TxDOT for DB Contractor Default; and • Other remedies as provided by Law. |
| DB Contractor's Right to Stop Work | The DB Contractor shall have the right to stop Work if TxDOT fails to make an undisputed payment due under the DBA within 15 Business Days after TxDOT's receipt of written notice of nonpayment from the DB Contractor. If such nonpayment continues for more than 180 days, upon written notice from the DB Contractor to TxDOT, the nonpayment may be deemed a Termination for Convenience. |
| Suspension | TxDOT may order the DB Contractor to suspend all or any part of the Work for the period of time that TxDOT deems appropriate. Such suspension for convenience will be considered a TxDOT-Directed Change, except for suspensions not exceeding specified time periods as set forth in the DBA, for which the DB Contractor will be entitled to a time extension but not compensation. |
| Termination | The DB Contractor may terminate the DBA if NTP1 is not issued by TxDOT on or before 365 days after the Effective Date. After issuance of NTP1, the DB Contractor has no unilateral right to terminate, except in the event of (a) nonpayment after a specified period and (b) a suspension of work for more than one year. TxDOT may terminate the DBA for convenience or for the DB Contractor's default. |
| Liquidated Damages / Lane Rental Charges / Key Personnel Change Fees | Per day liquidated damages in the amount specified in the DBA will be assessed for delay in obtaining Substantial Completion by the Completion Deadline, for up to 365 days of delay. Per day liquidated damages in the amount specified in the DBA will be assessed for delay in Final Acceptance beyond the Final Acceptance Deadline. Lane rental charges will be assessed as specified in the DBA. |

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| | Key Personnel Change Fees will be assessed for unavailability of certain Key personnel, including Project Manager and Deputy Project Manager. |
| Noncompliance Charges | <p>The DB Contractor is required to self-monitor failures to meet specified requirements set forth in the Contract Documents and report them to TxDOT as Noncompliance Events. Failures to perform that are not reported may be assessed against DB Contractor by TxDOT.</p> <p>The DBA will set forth a table identifying Noncompliance Events, the cure period (if any) available to the DB Contractor and the number of Noncompliance Points that may be assessed.</p> <p>Upon assessment of the tenth Noncompliance Point pursuant to the DBA, and upon assessment of each additional tenth Noncompliance Point, TxDOT shall be entitled to Noncompliance Charges from the DB Contractor in an amount to be set forth in the DBA.</p> <p>The persistent accumulation of Noncompliance Points may result in a Persistent DB Contractor Default under the Default provisions of the DBA.</p> |
| Indemnification | The DB Contractor shall indemnify, defend and hold harmless TxDOT, State of Texas and their agents/employees for DB Contractor errors, omissions, negligence, or willful misconduct, breach of the DBA, DB Contractor release of hazmat, and failure to comply with applicable laws or Governmental Approvals, among other things. |
| OTHER CONTRACT PROVISIONS | |
| Dispute Resolution | <p>Partnering meetings conducted by a mutually agreed upon facilitator are to include key personnel & executives of both parties. Costs of partnering are to be shared equally by the parties.</p> <p>Informal and voluntary dispute resolution alternatives are encouraged and preferred in lieu of the following, more formal process.</p> <p>If partnering and informal dispute resolution fail to resolve an issue and the DB Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the dispute resolution procedures established thereunder, as the same may be amended from time to time.</p> |
| Records and Documentation | The DB Contractor must maintain all records and documents in accordance with the Texas State Records Retention Schedule. |
| Escrowed Proposal Documents | <p>The DB Contractor must deliver detailed pricing information used to prepare its Proposal (“EPDs”). EPDs will be kept at TxDOT’s office in a locked cabinet with the DB Contractor controlling the keys. EPDs are available for joint review by the DB Contractor, TxDOT and any dispute resolver(s). Change Order documentation will be added to EPDs.</p> <p>The EPDs will be maintained until: (a) 180 days have elapsed from the later of Final Acceptance or termination of this DBA, as applicable; (b) all Claims or</p> |

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| | Disputes regarding the Work have been settled; and (c) Final Payment has been made and accepted. |
| DBE Provisions; Subcontractors | <p>TxDOT's DBE Program for design-build contracts is based on TxDOT's standard DBE Program with certain modifications to accommodate the design-build approach.</p> <p>Subcontractors named in the Proposal may not be substituted without TxDOT's prior written approval. After execution of the DBA, the DB Contractor must select subcontractors based on competitive bidding procedures approved by TxDOT. The DB Contractor must include flow down required terms into subcontracts. Subcontracts will be fully assignable to TxDOT. Dispute procedures involving Subcontractors contain additional requirements.</p> |
| Key Personnel | Certain job categories of Key Personnel for the Project are identified. Key Personnel may not be substituted without TxDOT's prior written consent. Key Personnel Change Fees may be assessed for unavailability of certain Key Personnel (see Liquidated Damages section above). |
| Assignment | The DB Contractor may not assign its interests in the DBA without obtaining TxDOT's prior written consent. TxDOT may assign its interests in the DBA: (a) without the DB Contractor's consent, to any other public agency or public entity as permitted by Law; (b) without the DB Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT; and (c) to any other Person with the prior written approval of the DB Contractor. |